

NUREG-0750
Cumulative Index 7

INDEXES TO
NUCLEAR REGULATORY
COMMISSION ISSUANCES

January 1, 2006 through December 31, 2010

U.S. NUCLEAR REGULATORY COMMISSION

Prepared by the
Office of Administration
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
(301-415-0955)

Available from

Superintendent of Documents
U.S. Government Printing Office
Mail Stop SSOP
Washington, DC 20402-0001

A year's subscription consists of 12 softbound issues,
4 indexes, and 2-4 hardbound editions for this publication.

Single copies of this publication
are available from
National Technical Information Service
Springfield, VA 22161-0002

Errors in this publication may be reported to the
Office of Administration
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
(301-415-0955)

Foreword

Digests and indexes for issuances of the Commission (CLI), the Atomic Safety and Licensing Board Panel (LBP), the Administrative Law Judges (ALJ), the Directors' Decisions (DD), and the Decisions on Petitions for Rulemaking (DPRM) are presented in this document. These digests and indexes are intended to serve as a guide to the issuances.

Information elements common to the cases heard and ruled upon are:

- Case name (owner(s) of facility)
- Full text reference (volume and pagination)
- Issuance number
- Issues raised by appellants
- Legal citations (cases, regulations, and statutes)
- Name of facility, Docket number
- Subject matter of issues and/or rulings
- Type of hearing (operating license, operating license amendment, etc.)
- Type of issuance (memorandum, order, decision, etc.)

These information elements are displayed in one or more of five separate formats arranged as follows:

1. Case Name Index

The case name index is an alphabetical arrangement of the case names of the issuances. Each case name is followed by the type of hearing, the type of issuance, docket number, issuance number, and full text reference.

2. Headers and Digests

The headers and digests are presented in issuance number order as follows: the Commission (CLI), the Atomic Safety and Licensing Board Panel (LBP), the Administrative Law Judges (ALJ), the Directors' Decisions (DD), and the Decisions on Petitions for Rulemaking (DPRM).

The header identifies the issuance by issuance number, case name, facility name, docket number, type of hearing, date of issuance, and type of issuance.

The digest is a brief narrative of an issue followed by the resolution of the issue and any legal references used in resolving the issue. If a given issuance covers more than one issue, then separate digests are used for each issue and are designated alphabetically.

3. Legal Citations Index

This index is divided into four parts and consists of alphabetical or alpha-numerical arrangements of Cases, Regulations, Statutes, and Others. These citations are listed as given in the issuances. Changes in regulations and statutes may have occurred to cause changes in the number or name and/or applicability of the citation. It is therefore important to consider the date of the issuance.

The references to cases, regulations, statutes, and others are generally followed by phrases that show the application of the citation in the particular issuance. These phrases are followed by the issuance number and the full text reference.

4. Subject Index

Subject words and/or phrases, arranged alphabetically, indicate the issues and subjects covered in the issuances. The subject headings are followed by phrases that give specific information about the subject, as discussed in the issuances being indexed. These phrases are followed by the issuance number and the full text reference.

5. Facility Index

This index consists of an alphabetical arrangement of facility names from the issuance. The name is followed by docket number, type of hearing, date, type of issuance, issuance number, and full text reference.

CASE NAME INDEX

AMERENUE

COMBINED LICENSE; MEMORANDUM AND ORDER (Approving Settlement Agreement and Terminating Contested Adjudicatory Proceeding); Docket No. 52-037-COL (ASLBP No. 09-884-07-COL-BD01); LBP-09-23, 70 NRC 659 (2009)

AMERGEN ENERGY COMPANY, LLC

LICENSE RENEWAL; MEMORANDUM AND ORDER; Docket No. 50-219-LR; CLI-06-24, 64 NRC 111 (2006); CLI-07-8, 65 NRC 124 (2007)

LICENSE RENEWAL; ORDER (Requesting Additional Briefs); Docket No. 50-219-LR; CLI-08-10, 67 NRC 357 (2008)

LICENSE RENEWAL; MEMORANDUM AND ORDER; Docket No. 50-219-LR; CLI-08-13, 67 NRC 396 (2008); CLI-08-23, 68 NRC 461 (2008); CLI-08-28, 68 NRC 658 (2008); CLI-09-7, 69 NRC 235 (2009)

LICENSE RENEWAL; MEMORANDUM AND ORDER (Denying New Jersey's Request for Hearing and Petition To Intervene, and Granting NIRS's Request for Hearing and Petition To Intervene); Docket No. 50-0219-LR (ASLBP No. 06-844-01-LR); LBP-06-7, 63 NRC 188 (2006)

LICENSE RENEWAL; MEMORANDUM AND ORDER (Denying NIRS's Motion for Leave To Add Contentions or Supplement the Basis of the Original Contention); Docket No. 50-0219-LR (ASLBP No. 06-844-01-LR); LBP-06-11, 63 NRC 391 (2006)

LICENSE RENEWAL; MEMORANDUM AND ORDER (Contention of Omission Is Moot, and Motions Concerning Mandatory Disclosure Are Moot); Docket No. 50-0219-LR (ASLBP No. 06-844-01-LR); LBP-06-16, 63 NRC 737 (2006)

LICENSE RENEWAL; MEMORANDUM AND ORDER (Granting Petition To File a New Contention); Docket No. 50-0219-LR (ASLBP No. 06-844-01-LR); LBP-06-22, 64 NRC 229 (2006)

LICENSE RENEWAL; INITIAL DECISION (Rejecting Citizens' Challenge to AmerGen's Application To Renew Its Operating License for the Oyster Creek Nuclear Generating Station); Docket No. 50-0219-LR (ASLBP No. 06-844-01-LR); LBP-07-17, 66 NRC 327 (2007)

LICENSE RENEWAL; MEMORANDUM AND ORDER (Denying Citizens' Motion to Reopen the Record and to Add a New Contention); Docket No. 50-0219-LR (ASLBP No. 06-844-01-LR); LBP-08-12, 68 NRC 5 (2008)

ANDREW J. SIEMASZKO

ENFORCEMENT; MEMORANDUM AND ORDER; Docket No. IA-05-021; CLI-06-12, 63 NRC 495 (2006); CLI-06-16, 63 NRC 708 (2006)

ENFORCEMENT; ORDER (Approving Proposed Settlement Agreement and Dismissing Proceeding); Docket No. IA-05-021-EA (ASLBP No. 05-839-02-EA); LBP-09-11, 70 NRC 151 (2009)

AREVA ENRICHMENT SERVICES, LLC

MATERIALS LICENSE; ORDER (Notice of Receipt of Application for License; Notice of Consideration of Issuance of License; Notice of Hearing and Commission Order; and Order Imposing Procedures for Access to Sensitive Unclassified Nonsafeguards Information and Safeguards Information for Contention Preparation); Docket No. 70-7015; CLI-09-15, 70 NRC 1 (2009)

BABCOCK & WILCOX NUCLEAR OPERATIONS GROUP, INC.

ENFORCEMENT ACTION; MEMORANDUM AND ORDER (Approving Proposed Settlement Agreement and Dismissing Proceeding); Docket No. 70-27-EA (ASLBP No. 10-902-01-EA-BD01); LBP-10-18, 72 NRC 519 (2010)

CASE NAME INDEX

CALVERT CLIFFS 3 NUCLEAR PROJECT, LLC
COMBINED LICENSE; MEMORANDUM AND ORDER; Docket No. 52-016-COL; CLI-09-20, 70 NRC 911 (2009)
COMBINED LICENSE; MEMORANDUM AND ORDER (Ruling on Joint Petitioners' Standing and Contentions); Docket No. 52-016-COL (ASLBP No. 09-874-02-COL-BD01); LBP-09-4, 69 NRC 170 (2009)
COMBINED LICENSE; MEMORANDUM AND ORDER (Granting Motion for Summary Disposition of Contention 2); Docket No. 52-016-COL (ASLBP No. 09-874-02-COL-BD01); LBP-09-15, 70 NRC 198 (2009)
COMBINED LICENSE; ORDER (Ruling on Intervenors' Proposed New Contention 10); Docket No. 52-016-COL (ASLBP No. 09-874-02-COL-BD01); LBP-10-24, 72 NRC 720 (2010)

CAROLINA POWER & LIGHT COMPANY
LICENSE RENEWAL; MEMORANDUM AND ORDER (Ruling on Standing and Contentions of Petitioners North Carolina Waste Awareness and Reduction Network and Nuclear Information and Resource Service); Docket No. 50-400-LR (ASLBP No. 07-855-02-LR-BD01); LBP-07-11, 66 NRC 41 (2007)
REQUEST FOR ACTION; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206; Docket Nos. 50-400, 50-261; DD-06-1, 63 NRC 133 (2006)
REQUEST FOR ACTION; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206; Docket No. 50-400 (License No. NPF-63); DD-07-3, 65 NRC 643 (2007)

CBS CORPORATION
MATERIALS LICENSE; MEMORANDUM AND ORDER; Docket No. 70-00698; CLI-07-15, 65 NRC 221 (2007)

CITY PUBLIC SERVICE BOARD acting for the CITY OF SAN ANTONIO, TEXAS
COMBINED LICENSE; MEMORANDUM AND ORDER (Affirming Denial of Access to SUNSI); Docket Nos. 52-012-COL, 52-013-COL (ASLBP No. 09-883-06-COL-BD01); LBP-09-5, 69 NRC 303 (2009)

COGEMA MINING, INC.
MATERIALS LICENSE RENEWAL; MEMORANDUM AND ORDER (Ruling on Petition for Review and Request for Hearing); Docket No. 40-08502-MLR (ASLBP No. 09-887-01-MLR-BD01); LBP-09-13, 70 NRC 168 (2009)

CONSTELLATION ENERGY GROUP, INC.
LICENSE TRANSFER; MEMORANDUM AND ORDER; Docket Nos. 50-317-LT-2, 50-318-LT-2, 72-8-LT-2, 50-220-LT-3, 50-410-LT-3, 50-244-LT-2, 50-250-LT, 50-251-LT, 50-335-LT, 50-389-LT, 50-443-LT, 50-331-LT; CLI-06-21, 64 NRC 30 (2006)
REQUEST FOR ACTION; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206; Docket No. 50-244; DD-06-1, 63 NRC 133 (2006)

CONSUMERS ENERGY COMPANY
LICENSE TRANSFER; MEMORANDUM AND ORDER; Docket No. 50-255-LT; CLI-07-18, 65 NRC 399 (2007)
LICENSE TRANSFER; MEMORANDUM AND ORDER; Docket Nos. 50-155-LT, 72-043-LT; CLI-07-19, 65 NRC 423 (2007); CLI-07-21, 65 NRC 519 (2007)
LICENSE TRANSFER; MEMORANDUM AND ORDER; Docket No. 50-255-LT; CLI-07-22, 65 NRC 525 (2007)

CROW BUTTE RESOURCES, INC.
LICENSE RENEWAL; MEMORANDUM AND ORDER (Ruling on Hearing Requests); Docket No. 40-8943 (ASLBP No. 08-867-02-MLA-BD01); LBP-08-24, 68 NRC 691 (2008)
LICENSE RENEWAL; ORDER (Ruling on Motion to Admit New Contention); ORDER (Ruling on Motion to Admit New Contention); LBP-08-27, 68 NRC 951 (2008)
MATERIALS LICENSE AMENDMENT; MEMORANDUM AND ORDER; Docket No. 40-8943-MLA (License Renewal); CLI-09-9, 69 NRC 331 (2009); CLI-09-12, 69 NRC 535 (2009)
MATERIALS LICENSE AMENDMENT; MEMORANDUM AND ORDER (Ruling on Standing and Contentions of Petitioners Owe Aku, Bring Back the Way; Western Nebraska Resources Council; Slim Buttes Agricultural Development Corporation; Debra L. White Plume; and Thomas Kanatakeniate Cook); Docket No. 40-8943 (ASLBP No. 07-859-03-MLA-BD01); LBP-08-6, 67 NRC 241 (2008)

CASE NAME INDEX

MATERIALS LICENSE AMENDMENT; MEMORANDUM AND ORDER (Ruling on Foreign Ownership and Arsenic Contentions and Other Pending Matters); Docket No. 40-8943 (ASLBP No. 07-859-03-MLA-BD01); LBP-09-1, 69 NRC 11 (2009)

DALE L. MILLER
ENFORCEMENT; ORDER (Approving Proposed Settlement and Dismissing Proceeding); Docket No. IA-05-053 (ASLBP No. 06-846-02-EA); LBP-06-21, 64 NRC 219 (2006)

DARYL M. SHAPIRO
ENFORCEMENT; MEMORANDUM AND ORDER; NRC Investigation No. 2-2006-17; CLI-08-6, 67 NRC 179 (2008)

DAVID B. KUHL, II
REACTOR OPERATOR LICENSE; MEMORANDUM AND ORDER (Regarding Request for Hearing); Docket No. 55-62335-SP (ASLBP No. 09-891-01-SP-BD01); LBP-09-14, 70 NRC 193 (2009)

DAVID GEISEN
ENFORCEMENT; MEMORANDUM AND ORDER; Docket No. IA-05-052; CLI-06-19, 64 NRC 9 (2006); CLI-07-6, 65 NRC 112 (2007); CLI-09-23, 70 NRC 935 (2009); CLI-10-23, 72 NRC 210 (2010)
ENFORCEMENT; MEMORANDUM AND ORDER (Denying Government's Request To Delay Proceeding); Docket No. IA-05-052 (ASLBP No. 06-845-01-EA); LBP-06-13, 63 NRC 523 (2006)
ENFORCEMENT; MEMORANDUM AND ORDER (Ruling on Motion To Compel Production); Docket No. IA-05-052 (ASLBP No. 06-845-01-EA); LBP-06-25, 64 NRC 367 (2006)
ENFORCEMENT; INITIAL DECISION; Docket No. IA-05-052 (ASLBP No. 06-845-01-EA); LBP-09-24, 70 NRC 676 (2009)

DAVID H. HAWES
SPECIAL PROCEEDING; ORDER (Approving Settlement Agreement and Terminating Proceeding); Docket No. 55-22685-SP (ASLBP No. 05-840-01-SP); LBP-06-2, 63 NRC 80 (2006)

DETROIT EDISON COMPANY
COMBINED LICENSE; MEMORANDUM AND ORDER; Docket No. 52-033-COL; CLI-09-4, 69 NRC 80 (2009); CLI-09-22, 70 NRC 932 (2009)
COMBINED LICENSE; MEMORANDUM AND ORDER (Ruling on Hearing Requests); Docket No. 52-033-COL (ASLBP No. 09-880-05-COL-BD01); LBP-09-16, 70 NRC 227 (2009)
COMBINED LICENSE; ORDER (Ruling on Proposed New Contentions 15 and 16); Docket No. 52-033-COL (ASLBP No. 09-880-05-BD01); LBP-10-9, 71 NRC 493 (2010)
ENFORCEMENT; MEMORANDUM AND ORDER; Docket No. 72-72-EA; CLI-10-3, 71 NRC 49 (2010)
LICENSE MODIFICATION; MEMORANDUM AND ORDER (Ruling on Standing and Contention Admissibility); Docket No. 72-71-EA (ASLBP No. 09-888-03-EA-BD01); LBP-09-20, 70 NRC 565 (2009)

DHIRAJ SONI
ENFORCEMENT; ORDER (Accepting Proposed Settlement and Dismissing Proceeding); Docket Nos. IA-08-023, IA-08-022 (EA-08-174) (ASLBP Nos. 09-882-02-EA-BD01, 09-881-01-EA-BD01); LBP-09-12, 70 NRC 159 (2009)

DOMINION NUCLEAR CONNECTICUT, INC.
LICENSE RENEWAL; MEMORANDUM OPINION AND ORDER; Docket Nos. 50-336-LR, 50-423-LR; CLI-06-4, 63 NRC 32 (2006)
OPERATING LICENSE AMENDMENT; MEMORANDUM AND ORDER; Docket No. 50-423-OLA; CLI-08-17, 68 NRC 231 (2008); CLI-09-5, 69 NRC 115 (2009)
OPERATING LICENSE AMENDMENT; MEMORANDUM AND ORDER (Ruling on Petition To Intervene and Request for Hearing); Docket No. 50-423-OLA (ASLBP No. 08-862-01-OLA-BD01); LBP-08-9, 67 NRC 421 (2008)

DOMINION NUCLEAR NORTH ANNA, LLC
EARLY SITE PERMIT; ORDER; Docket No. 52-008-ESP; CLI-07-23, 66 NRC 35 (2007)
EARLY SITE PERMIT; MEMORANDUM AND ORDER; Docket No. 52-008-ESP; CLI-07-27, 66 NRC 215 (2007)

CASE NAME INDEX

EARLY SITE PERMIT; MEMORANDUM AND ORDER (Granting Summary Disposition and Terminating Contested Proceeding); Docket No. 52-008-ESP (ASLBP No. 04-822-02-ESP); LBP-06-24, 64 NRC 360 (2006)

EARLY SITE PERMIT; INITIAL DECISION; Docket No. 52-008-ESP (ASLBP No. 04-822-02-ESP); LBP-07-9, 65 NRC 539 (2007)

DOMINION VIRGINIA POWER

COMBINED LICENSE; MEMORANDUM AND ORDER (Admitting Contention 10 in Part); Docket No. 52-017-COL (ASLBP No. 08-863-01-COL); LBP-09-27, 70 NRC 992 (2009)

COMBINED LICENSE; MEMORANDUM AND ORDER (Rulings on Motion to Dismiss Contention 10 and Proposed New Contention 11); Docket No. 52-017-COL (ASLBP No. 08-863-01-COL); LBP-10-17, 72 NRC 501 (2010)

DUKE ENERGY CAROLINAS, LLC

COMBINED LICENSE; MEMORANDUM AND ORDER; Docket Nos. 52-018-COL, 52-019-COL; CLI-09-21, 70 NRC 927 (2009)

COMBINED LICENSE; MEMORANDUM AND ORDER (Ruling on Petition for Intervention and Request for Hearing); Docket Nos. 52-018-COL, 52-019-COL (ASLBP No. 08-865-03-COL-BD01); LBP-08-17, 68 NRC 431 (2008)

DUKE ENERGY CORPORATION

REQUEST FOR ACTION; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206; Docket Nos. 50-369, 50-370, 50-413, 50-414; DD-06-1, 63 NRC 133 (2006)

EASTERN TESTING AND INSPECTION, INC.

ENFORCEMENT; ORDER (Accepting Proposed Settlement and Dismissing Proceeding); Docket Nos. IA-08-023, IA-08-022 (EA-08-174) (ASLBP Nos. 09-882-02-EA-BD01, 09-881-01-EA-BD01); LBP-09-12, 70 NRC 159 (2009)

ENERGYSOLUTIONS, LLC

IMPORT/EXPORT LICENSE; ORDER; Docket Nos. 110-05711 (Import), 110-05710 (Export); CLI-08-24, 68 NRC 491 (2008)

ENTERGY NUCLEAR FITZPATRICK, LLC

LICENSE TRANSFER; MEMORANDUM AND ORDER; Docket Nos. 50-333-LT-2, 72-12-LT (Consolidated); CLI-08-19, 68 NRC 251 (2008)

ENTERGY NUCLEAR GENERATION COMPANY

LICENSE RENEWAL; MEMORANDUM AND ORDER; Docket No. 50-293-LR; CLI-07-2, 65 NRC 10 (2007); CLI-07-3, 65 NRC 13 (2007); CLI-07-13, 65 NRC 211 (2007); CLI-08-2, 67 NRC 31 (2008); CLI-08-9, 67 NRC 353 (2008); CLI-09-10, 69 NRC 521 (2009)

LICENSE RENEWAL; MEMORANDUM AND ORDER (Requesting Additional Briefing); Docket No. 50-293-LR; CLI-09-11, 69 NRC 529 (2009)

LICENSE RENEWAL; MEMORANDUM AND ORDER; Docket No. 50-293-LR; CLI-10-11, 71 NRC 287 (2010); CLI-10-14, 71 NRC 449 (2010); CLI-10-15, 71 NRC 479 (2010); CLI-10-22, 72 NRC 202 (2010); CLI-10-28, 72 NRC 553 (2010)

LICENSE RENEWAL; MEMORANDUM AND ORDER (Ruling on Standing and Contentions of Petitioners Massachusetts Attorney General and Pilgrim Watch); Docket No. 50-293-LR (ASLBP No. 06-848-02-LR); LBP-06-23, 64 NRC 257 (2006)

LICENSE RENEWAL; MEMORANDUM AND ORDER (Ruling on Entergy's Motion for Summary Disposition of Pilgrim Watch Contention I, Regarding Adequacy of Aging Management Program for Buried Pipes and Tanks and Potential Need for Monitoring Wells To Supplement Program); Docket No. 50-293-LR (ASLBP No. 06-848-02-LR); LBP-07-12, 66 NRC 113 (2007)

LICENSE RENEWAL; MEMORANDUM AND ORDER (Ruling on Motion To Dismiss Petitioners' Contention 3 Regarding Severe Accident Mitigation Alternatives); Docket No. 50-293-LR (ASLBP No. 06-848-02-LR); LBP-07-13, 66 NRC 131 (2007)

LICENSE RENEWAL; INITIAL DECISION; Docket No. 50-293-LR (ASLBP No. 06-848-02-LR); LBP-08-22, 68 NRC 590 (2008)

LICENSE TRANSFER; MEMORANDUM AND ORDER; Docket No. 50-293-LT-2 (Consolidated); CLI-08-19, 68 NRC 251 (2008)

CASE NAME INDEX

ENTERGY NUCLEAR INDIAN POINT 2, LLC
LICENSE TRANSFER; MEMORANDUM AND ORDER; Docket No. 50-247-LT-2 (Consolidated);
CLI-08-19, 68 NRC 251 (2008)

ENTERGY NUCLEAR INDIAN POINT 3, LLC
LICENSE TRANSFER; MEMORANDUM AND ORDER; Docket No. 50-286-LT-2 (Consolidated);
CLI-08-19, 68 NRC 251 (2008)

ENTERGY NUCLEAR OPERATIONS, INC.
LICENSE RENEWAL; ORDER; Docket No. 50-271-LR; CLI-06-26, 64 NRC 225 (2006)
LICENSE RENEWAL; ORDER; Docket No. 50-293-LR; CLI-06-26, 64 NRC 225 (2006)
LICENSE RENEWAL; MEMORANDUM AND ORDER; Docket No. 50-271-LR; CLI-07-1, 65 NRC 1
(2007)
LICENSE RENEWAL; MEMORANDUM AND ORDER; Docket No. 50-293-LR; CLI-07-2, 65 NRC 10
(2007)
LICENSE RENEWAL; MEMORANDUM AND ORDER; Docket No. 50-271-LR; CLI-07-3, 65 NRC 13
(2007)
LICENSE RENEWAL; MEMORANDUM AND ORDER; Docket No. 50-293-LR; CLI-07-3, 65 NRC 13
(2007)
LICENSE RENEWAL; MEMORANDUM AND ORDER; Docket No. 50-271-LR; CLI-07-13, 65 NRC
211 (2007)
LICENSE RENEWAL; MEMORANDUM AND ORDER; Docket No. 50-293-LR; CLI-07-13, 65 NRC
211 (2007)
LICENSE RENEWAL; MEMORANDUM AND ORDER; Docket No. 50-271-LR; CLI-07-16, 65 NRC
371 (2007)
LICENSE RENEWAL; MEMORANDUM AND ORDER; Docket Nos. 50-247-LR, 50-286-LR;
CLI-07-28, 66 NRC 275 (2007)
LICENSE RENEWAL; MEMORANDUM AND ORDER; Docket No. 50-293-LR; CLI-08-2, 67 NRC 31
(2008)
LICENSE RENEWAL; MEMORANDUM AND ORDER; Docket Nos. 50-247-LR, 50-286-LR; CLI-08-7,
67 NRC 187 (2008)
LICENSE RENEWAL; MEMORANDUM AND ORDER; Docket No. 50-293-LR; CLI-08-9, 67 NRC
353 (2008)
LICENSE RENEWAL; MEMORANDUM AND ORDER; Docket No. 50-271-LR; CLI-08-23, 68 NRC
461 (2008)
LICENSE RENEWAL; MEMORANDUM AND ORDER; Docket No. 50-293-LR; CLI-08-23, 68 NRC
461 (2008)
LICENSE RENEWAL; MEMORANDUM AND ORDER; Docket Nos. 50-247-LR, 50-286-LR;
CLI-08-23, 68 NRC 461 (2008); CLI-08-27, 68 NRC 655 (2008); CLI-08-29, 68 NRC 899 (2008)
LICENSE RENEWAL; MEMORANDUM AND ORDER; Docket Nos. 50-247-LR; CLI-09-6, 69 NRC
128 (2009)
LICENSE RENEWAL; MEMORANDUM AND ORDER; Docket No. 50-271-LR; CLI-09-10, 69 NRC
521 (2009)
LICENSE RENEWAL; MEMORANDUM AND ORDER; Docket No. 50-293-LR; CLI-09-10, 69 NRC
521 (2009)
LICENSE RENEWAL; MEMORANDUM AND ORDER (Requesting Additional Briefing); Docket No.
50-293-LR; CLI-09-11, 69 NRC 529 (2009)
LICENSE RENEWAL; MEMORANDUM AND ORDER; Docket No. 50-293-LR; CLI-10-11, 71 NRC
287 (2010); CLI-10-14, 71 NRC 449 (2010); CLI-10-15, 71 NRC 479 (2010)
LICENSE RENEWAL; MEMORANDUM AND ORDER; Docket No. 50-271-LR; CLI-10-17, 72 NRC 1
(2010)
LICENSE RENEWAL; MEMORANDUM AND ORDER; Docket Nos. 50-247-LR, 50-286-LR;
CLI-10-19, 72 NRC 98 (2010)
LICENSE RENEWAL; MEMORANDUM AND ORDER; Docket No. 50-293-LR; CLI-10-22, 72 NRC
202 (2010); CLI-10-28, 72 NRC 553 (2010)
LICENSE RENEWAL; MEMORANDUM AND ORDER; Docket Nos. 50-247-LR, 50-286-LR;
CLI-10-30, 72 NRC 564 (2010)

CASE NAME INDEX

LICENSE RENEWAL; MEMORANDUM AND ORDER (Ruling on Standing, Contentions, Hearing Procedures, State Statutory Claim, and Contention Adoption); Docket No. 50-271-LR (ASLBP No. 06-849-03-LR); LBP-06-20, 64 NRC 131 (2006)

LICENSE RENEWAL; MEMORANDUM AND ORDER (Ruling on Standing and Contentions of Petitioners Massachusetts Attorney General and Pilgrim Watch); Docket No. 50-293-LR (ASLBP No. 06-848-02-LR); LBP-06-23, 64 NRC 257 (2006)

LICENSE RENEWAL; MEMORANDUM AND ORDER (Ruling on Entergy's Motion for Summary Disposition of Pilgrim Watch Contention 1, Regarding Adequacy of Aging Management Program for Buried Pipes and Tanks and Potential Need for Monitoring Wells To Supplement Program); Docket No. 50-293-LR (ASLBP No. 06-848-02-LR); LBP-07-12, 66 NRC 113 (2007)

LICENSE RENEWAL; MEMORANDUM AND ORDER (Ruling on Motion To Dismiss Petitioners' Contention 3 Regarding Severe Accident Mitigation Alternatives); Docket No. 50-293-LR (ASLBP No. 06-848-02-LR); LBP-07-13, 66 NRC 131 (2007)

LICENSE RENEWAL; MEMORANDUM AND ORDER (Ruling on NEC Motions To File and Admit New Contention); Docket No. 50-271-LR (ASLBP No. 06-849-03-LR); LBP-07-15, 66 NRC 261 (2007)

LICENSE RENEWAL; MEMORANDUM AND ORDER (Ruling on Petitions to Intervene and Requests for Hearing); Docket Nos. 50-247-LR, 50-286-LR (ASLBP No. 07-858-03-LR-BD01); LBP-08-13, 68 NRC 43 (2008)

LICENSE RENEWAL; INITIAL DECISION; Docket No. 50-293-LR (ASLBP No. 06-848-02-LR); LBP-08-22, 68 NRC 590 (2008)

LICENSE RENEWAL; PARTIAL INITIAL DECISION (Ruling on Contentions 2A, 2B, 3, and 4); Docket No. 50-271-LR (ASLBP No. 06-849-03-LR); LBP-08-25, 68 NRC 763 (2008)

LICENSE RENEWAL; FULL INITIAL DECISION (Denying NEC's Motion to File a New Contention); Docket No. 50-271-LR (ASLBP No. 06-849-03-LR); LBP-09-9, 70 NRC 41 (2009)

LICENSE RENEWAL; MEMORANDUM AND ORDER (Ruling on the Admissibility of New York's New and Amended Contentions 12B, 16B, 35, and 36); Docket Nos. 50-247-LR, 50-286-LR (ASLBP No. 07-858-03-LR-BD01); LBP-10-13, 71 NRC 673 (2010)

LICENSE RENEWAL; MEMORANDUM AND ORDER (Ruling on Motion to Reopen Proffering New Contention); Docket No. 50-271-LR (ASLBP No. 06-849-03-LR); LBP-10-19, 72 NRC 529 (2010)

LICENSE TRANSFER; MEMORANDUM AND ORDER; Docket No. 50-255-LT; CLI-07-18, 65 NRC 399 (2007); CLI-07-22, 65 NRC 525 (2007)

LICENSE TRANSFER; MEMORANDUM AND ORDER; Docket No. 50-293-LT-2 (Consolidated); CLI-08-19, 68 NRC 251 (2008)

LICENSE TRANSFER; MEMORANDUM AND ORDER; Docket Nos. 50-003-LT-2, 50-247-LT-2, 50-286-LT-2, 72-51-LT (Consolidated); CLI-08-19, 68 NRC 251 (2008)

LICENSE TRANSFER; MEMORANDUM AND ORDER; Docket Nos. 50-155-LT-2, 72-43-LT-2 (Consolidated); CLI-08-19, 68 NRC 251 (2008)

LICENSE TRANSFER; MEMORANDUM AND ORDER; Docket Nos. 50-255-LT-2, 72-7-LT (Consolidated); CLI-08-19, 68 NRC 251 (2008)

LICENSE TRANSFER; MEMORANDUM AND ORDER; Docket Nos. 50-271-LT-2, 72-59-LT (Consolidated); CLI-08-19, 68 NRC 251 (2008)

LICENSE TRANSFER; MEMORANDUM AND ORDER; Docket Nos. 50-333-LT-2, 72-12-LT (Consolidated); CLI-08-19, 68 NRC 251 (2008)

OPERATING LICENSE AMENDMENT; MEMORANDUM AND ORDER; Docket No. 50-271-OLA; CLI-06-8, 63 NRC 235 (2006)

OPERATING LICENSE AMENDMENT; MEMORANDUM AND ORDER (Ruling on Deliberative Process Privilege Claims); Docket No. 50-271-OLA (ASLBP No. 04-832-02-OLA); LBP-06-3, 63 NRC 85 (2006)

OPERATING LICENSE AMENDMENT; MEMORANDUM AND ORDER (Denying Motion for Summary Disposition of New England Coalition Contention 3); Docket No. 50-271-OLA (ASLBP No. 04-832-02-OLA); LBP-06-5, 63 NRC 116 (2006)

OPERATING LICENSE AMENDMENT; MEMORANDUM AND ORDER (Ruling on Admissibility of Three Additional Contentions); Docket No. 50-271-OLA (ASLBP No. 04-832-02-OLA); LBP-06-14, 63 NRC 568 (2006)

CASE NAME INDEX

OPERATING LICENSE AMENDMENT; MEMORANDUM AND ORDER (Approving Settlement Agreement, Granting Dismissal of Contentions, and Accepting Withdrawal of Vermont Department of Public Service); Docket No. 50-271-OLA (ASLBP No. 04-832-02-OLA); LBP-06-18, 63 NRC 830 (2006)

OPERATING LICENSE AMENDMENT; INITIAL DECISION (Ruling on NEC Contention 3); Docket No. 50-271-OLA (ASLBP No. 04-832-02-OLA); LBP-07-2, 65 NRC 153 (2007)

REQUEST FOR ACTION; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206; Docket Nos. 50-333, 50-247, 50-286, 50-271, 50-382, 50-313, 50-368; DD-06-1, 63 NRC 133 (2006)

REQUEST FOR ACTION; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206; Docket No. 50-271 (License No. DPR-28); DD-06-2, 63 NRC 425 (2006); DD-08-1, 67 NRC 347 (2008)

REQUEST FOR ACTION; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206; Docket Nos. 50-247, 50-286 (License Nos. DPR-26, DPR-64); DD-08-2, 68 NRC 339 (2008); DD-09-1, 69 NRC 501 (2009)

ENTERGY NUCLEAR PALISADES, LLC

LICENSE TRANSFER; MEMORANDUM AND ORDER; Docket No. 50-255-LT; CLI-07-18, 65 NRC 399 (2007); CLI-07-22, 65 NRC 525 (2007)

LICENSE TRANSFER; MEMORANDUM AND ORDER; Docket Nos. 50-155-LT-2, 72-43-LT-2 (Consolidated); CLI-08-19, 68 NRC 251 (2008)

LICENSE TRANSFER; MEMORANDUM AND ORDER; Docket Nos. 50-255-LT-2, 72-7-LT (Consolidated); CLI-08-19, 68 NRC 251 (2008)

ENTERGY NUCLEAR VERMONT YANKEE, LLC

LICENSE RENEWAL; ORDER; Docket No. 50-271-LR; CLI-06-26, 64 NRC 225 (2006)

LICENSE RENEWAL; MEMORANDUM AND ORDER; Docket No. 50-271-LR; CLI-07-1, 65 NRC 1 (2007); CLI-07-3, 65 NRC 13 (2007); CLI-07-13, 65 NRC 211 (2007); CLI-07-16, 65 NRC 371 (2007)

LICENSE RENEWAL; MEMORANDUM AND ORDER; Docket No. 50-271-LR; CLI-09-10, 69 NRC 521 (2009); CLI-10-17, 72 NRC 1 (2010)

LICENSE RENEWAL; MEMORANDUM AND ORDER (Ruling on Standing, Contentions, Hearing Procedures, State Statutory Claim, and Contention Adoption); Docket No. 50-271-LR (ASLBP No. 06-849-03-LR); LBP-06-20, 64 NRC 131 (2006)

LICENSE RENEWAL; MEMORANDUM AND ORDER (Ruling on NEC Motions To File and Admit New Contention); Docket No. 50-271-LR (ASLBP No. 06-849-03-LR); LBP-07-15, 66 NRC 261 (2007)

LICENSE RENEWAL; PARTIAL INITIAL DECISION (Ruling on Contentions 2A, 2B, 3, and 4); Docket No. 50-271-LR (ASLBP No. 06-849-03-LR); LBP-08-25, 68 NRC 763 (2008)

LICENSE RENEWAL; FULL INITIAL DECISION (Denying NEC's Motion to File a New Contention); Docket No. 50-271-LR (ASLBP No. 06-849-03-LR); LBP-09-9, 70 NRC 41 (2009)

LICENSE RENEWAL; MEMORANDUM AND ORDER (Ruling on Motion to Reopen Proffering New Contention); Docket No. 50-271-LR (ASLBP No. 06-849-03-LR); LBP-10-19, 72 NRC 529 (2010)

LICENSE TRANSFER; MEMORANDUM AND ORDER; Docket Nos. 50-271-LT-2, 72-59-LT (Consolidated); CLI-08-19, 68 NRC 251 (2008)

OPERATING LICENSE AMENDMENT; MEMORANDUM AND ORDER; Docket No. 50-271-OLA; CLI-06-8, 63 NRC 235 (2006)

OPERATING LICENSE AMENDMENT; MEMORANDUM AND ORDER (Ruling on Deliberative Process Privilege Claims); Docket No. 50-271-OLA (ASLBP No. 04-832-02-OLA); LBP-06-3, 63 NRC 85 (2006)

OPERATING LICENSE AMENDMENT; MEMORANDUM AND ORDER (Denying Motion for Summary Disposition of New England Coalition Contention 3); Docket No. 50-271-OLA (ASLBP No. 04-832-02-OLA); LBP-06-5, 63 NRC 116 (2006)

OPERATING LICENSE AMENDMENT; MEMORANDUM AND ORDER (Ruling on Admissibility of Three Additional Contentions); Docket No. 50-271-OLA (ASLBP No. 04-832-02-OLA); LBP-06-14, 63 NRC 568 (2006)

OPERATING LICENSE AMENDMENT; MEMORANDUM AND ORDER (Approving Settlement Agreement, Granting Dismissal of Contentions, and Accepting Withdrawal of Vermont Department of Public Service); Docket No. 50-271-OLA (ASLBP No. 04-832-02-OLA); LBP-06-18, 63 NRC 830 (2006)

CASE NAME INDEX

OPERATING LICENSE AMENDMENT; INITIAL DECISION (Ruling on NEC Contention 3); Docket No. 50-271-OLA (ASLBP No. 04-832-02-OLA); LBP-07-2, 65 NRC 153 (2007)
REQUEST FOR ACTION; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206; Docket No. 50-271 (License No. DPR-28); DD-06-2, 63 NRC 425 (2006); DD-08-1, 67 NRC 347 (2008)

EXELON GENERATION COMPANY, LLC
EARLY SITE PERMIT; MEMORANDUM AND ORDER; Docket No. 52-007-ESP; CLI-06-20, 64 NRC 15 (2006)
EARLY SITE PERMIT; ORDER; Docket No. 52-007-ESP; CLI-07-4, 65 NRC 24 (2007)
EARLY SITE PERMIT; MEMORANDUM AND ORDER; Docket No. 52-007-ESP; CLI-07-12, 65 NRC 203 (2007)
EARLY SITE PERMIT; INITIAL DECISION (Uncontested Issues); Docket No. 52-007-ESP (ASLBP No. 04-821-01-ESP); LBP-06-28, 64 NRC 460 (2006)

FIRSTENERGY NUCLEAR OPERATING COMPANY
LICENSE TRANSFER; MEMORANDUM AND ORDER; Docket Nos. 50-334-LT, 50-346-LT, 50-412-LT, 50-440-LT; CLI-06-2, 63 NRC 9 (2006)

FLORIDA POWER & LIGHT COMPANY
ENFORCEMENT; MEMORANDUM AND ORDER (Denying Request for Hearing); Docket Nos. 50-335-CO, 50-389-CO (ASLBP No. 08-866-01-CO-BD01); LBP-08-14, 68 NRC 279 (2008)
LICENSE TRANSFER; MEMORANDUM AND ORDER; Docket Nos. 50-317-LT-2, 50-318-LT-2, 72-8-LT-2, 50-220-LT-3, 50-410-LT-3, 50-244-LT-2, 50-250-LT, 50-251-LT, 50-335-LT, 50-389-LT, 50-443-LT, 50-331-LT; CLI-06-21, 64 NRC 30 (2006)
OPERATING LICENSE AMENDMENT; MEMORANDUM AND ORDER (Denying Request for Hearing); Docket Nos. 50-250, 50-251 (ASLBP No. 08-869-03-OLA-BD01); LBP-08-18, 68 NRC 533 (2008)
REQUEST FOR ACTION; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206; Docket Nos. 50-250, 50-251 (License Nos. DPR-31, DPR-41); DD-10-1, 72 NRC 149 (2010)

FPL ENERGY DUANE ARNOLD, LLC
LICENSE TRANSFER; MEMORANDUM AND ORDER; Docket Nos. 50-317-LT-2, 50-318-LT-2, 72-8-LT-2, 50-220-LT-3, 50-410-LT-3, 50-244-LT-2, 50-250-LT, 50-251-LT, 50-335-LT, 50-389-LT, 50-443-LT, 50-331-LT; CLI-06-21, 64 NRC 30 (2006)

FPL ENERGY POINT BEACH, LLC
LICENSE AMENDMENT; MEMORANDUM AND ORDER (Denying Request for Hearing); Docket No. 50-266-LA (ASLBP No. 08-870-01-LA-BD01); LBP-08-19, 68 NRC 545 (2008)

FPL ENERGY SEABROOK, LLC
LICENSE AMENDMENT; MEMORANDUM AND ORDER (Denying Request for Hearing); Docket No. 50-443-LA (ASLBP No. 08-872-02-LA-BD01); LBP-08-20, 68 NRC 549 (2008)
LICENSE TRANSFER; MEMORANDUM AND ORDER; Docket Nos. 50-317-LT-2, 50-318-LT-2, 72-8-LT-2, 50-220-LT-3, 50-410-LT-3, 50-244-LT-2, 50-250-LT, 50-251-LT, 50-335-LT, 50-389-LT, 50-443-LT, 50-331-LT; CLI-06-21, 64 NRC 30 (2006)

GE-HITACHI GLOBAL LASER ENRICHMENT LLC
MATERIALS LICENSE; ORDER (Notice of Receipt of Application for License; Notice of Consideration of Issuance of License; Notice of Hearing and Commission Order; and Order Imposing Procedures for Access to Sensitive Unclassified Nonsafeguards Information and Safeguards Information for Contention Preparation); Docket No. 70-7016; CLI-10-4, 71 NRC 56 (2010)

HIMAT SONI
ENFORCEMENT; ORDER (Accepting Proposed Settlement and Dismissing Proceeding); Docket Nos. IA-08-023, IA-08-022 (EA-08-174) (ASLBP Nos. 09-882-02-EA-BD01, 09-881-01-EA-BD01); LBP-09-12, 70 NRC 159 (2009)

HYDRO RESOURCES, INC.
MATERIALS LICENSE; MEMORANDUM AND ORDER; Docket No. 40-8968-ML; CLI-06-1, 63 NRC 1 (2006)
MATERIALS LICENSE; ORDER; Docket No. 40-8968-ML; CLI-06-7, 63 NRC 165 (2006)
MATERIALS LICENSE; MEMORANDUM AND ORDER; Docket No. 40-8968-ML; CLI-06-11, 63 NRC 483 (2006); CLI-06-14, 63 NRC 510 (2006)

CASE NAME INDEX

MATERIALS LICENSE; MEMORANDUM AND ORDER; Docket No. 40-8968-ML; CLI-06-29, 64 NRC 417 (2006)

MATERIALS LICENSE; PARTIAL INITIAL DECISION (Phase II Radiological Air Emissions Challenges to In Situ Leach Uranium Mining License); Docket No. 40-8968-ML (ASLBP No. 95-706-01-ML); LBP-06-1, 63 NRC 41 (2006)

MATERIALS LICENSE; FINAL PARTIAL INITIAL DECISION (Phase II Challenges to In Situ Leach Mining Materials License Regarding Adequacy of Environmental Impact Statement); Docket No. 40-8968-ML (ASLBP No. 95-706-01-ML); LBP-06-19, 64 NRC 53 (2006)

IDAHO STATE UNIVERSITY

MATERIALS LICENSE; MEMORANDUM AND ORDER (Granting Motion to Withdraw Hearing Request and Intervention Petition and Terminating Proceeding); Docket No. 70-1374-MLR (ASLBP No. 10-897-01-MLR-BD01) (Special Nuclear Materials License No. SNM-1373); LBP-10-3, 71 NRC 213 (2010)

REQUEST FOR ACTION; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206; Docket No. 50-284 (License No. R-110); DD-10-3, 72 NRC 171 (2010)

INDIANA MICHIGAN POWER COMPANY

REQUEST FOR ACTION; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206; Docket No. 50-315 (License No. DPR-58); DD-09-2, 70 NRC 899 (2009)

LOUISIANA ENERGY SERVICES, L.P.

MATERIALS LICENSE; MEMORANDUM AND ORDER; Docket No. 70-3103-ML; CLI-06-15, 63 NRC 687 (2006); CLI-06-22, 64 NRC 37 (2006)

MATERIALS LICENSE; SECOND PARTIAL INITIAL DECISION (Environmental Impacts of Disposal of Depleted Uranium); Docket No. 70-3103-ML (ASLBP No. 04-826-01-ML); LBP-06-8, 63 NRC 241 (2006)

MATERIALS LICENSE; MEMORANDUM AND ORDER (Ruling on Summary Disposition Cross-Motions Relating to Remand from CLI-05-20); Docket No. 70-3103-ML (ASLBP No. 04-826-01-ML); LBP-06-9, 63 NRC 289 (2006)

MATERIALS LICENSE; THIRD PARTIAL INITIAL DECISION (Safety-Related Contentions); Docket No. 70-3103-ML (ASLBP No. 04-826-01-ML); LBP-06-15, 63 NRC 591 (2006)

MATERIALS LICENSE; FINAL PARTIAL INITIAL DECISION (Mandatory Hearing/Uncontested Issues); Docket No. 70-3103-ML (ASLBP No. 04-826-01-ML); LBP-06-17, 63 NRC 747 (2006)

LUMINANT GENERATION COMPANY, LLC

COMBINED LICENSE; MEMORANDUM AND ORDER; Docket Nos. 52-034-COL, 52-035-COL; CLI-10-25, 72 NRC 469 (2010)

COMBINED LICENSE; MEMORANDUM AND ORDER (Ruling on Standing and Contentions of Petitioners, and Other Pending Matters); Docket Nos. 52-034-COL, 52-035-COL (ASLBP No. 09-886-09-COL-BD01); LBP-09-17, 70 NRC 311 (2009)

COMBINED LICENSE; MEMORANDUM AND ORDER (Ruling on New SUNSI Contentions, Mootness of Original Contention 7, and Intervenors' Access to ISG-016); Docket Nos. 52-034-COL, 52-035-COL (ASLBP No. 09-886-09-COL-BD01); LBP-10-5, 71 NRC 329 (2010)

COMBINED LICENSE; MEMORANDUM AND ORDER (Ruling on Mootness of Contentions 13 and 18, and New Environmental Contentions); Docket Nos. 52-034-COL, 52-035-COL (ASLBP No. 09-886-09-COL-BD01); LBP-10-10, 71 NRC 529 (2010)

NORTHERN STATES POWER COMPANY

LICENSE RENEWAL; MEMORANDUM AND ORDER; Docket Nos. 50-282-LR, 50-306-LR; CLI-10-27, 72 NRC 481 (2010)

LICENSE RENEWAL; MEMORANDUM AND ORDER (Ruling on Petition to Intervene, Request for Hearing, and Motion to Strike); Docket Nos. 50-282-LR, 50-306-LR (ASLBP No. 08-871-01-LR); LBP-08-26, 68 NRC 905 (2008)

REQUEST FOR ACTION; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206; Docket Nos. 50-282, 50-306 (License Nos. DPR-42, DPR-60); DD-10-2, 72 NRC 163 (2010)

NRG SOUTH TEXAS 3, LLC

COMBINED LICENSE; MEMORANDUM AND ORDER (Affirming Denial of Access to SUNSI); Docket Nos. 52-012-COL, 52-013-COL (ASLBP No. 09-883-06-COL-BD01); LBP-09-5, 69 NRC 303 (2009)

CASE NAME INDEX

NRG SOUTH TEXAS 4, LLC
COMBINED LICENSE; MEMORANDUM AND ORDER (Affirming Denial of Access to SUNSI);
Docket Nos. 52-012-COL, 52-013-COL (ASLBP No. 09-883-06-COL-BD01); LBP-09-5, 69 NRC 303
(2009)

NUCLEAR FUEL SERVICES, INC.
ENFORCEMENT; MEMORANDUM AND ORDER (Denying Requests for Hearing); Docket No.
70-143-CO (ASLBP No. 07-857-01-CO-BD01) (Confirmatory Order); LBP-07-16, 66 NRC 277 (2007)

NUCLEAR MANAGEMENT COMPANY, LLC
LICENSE RENEWAL; MEMORANDUM AND ORDER; Docket No. 50-263-LR; CLI-06-6, 63 NRC
161 (2006)
LICENSE RENEWAL; MEMORANDUM AND ORDER; Docket No. 50-255-LR; CLI-06-17, 63 NRC
727 (2006); CLI-07-9, 65 NRC 139 (2007); CLI-07-18, 65 NRC 399 (2007); CLI-07-22, 65 NRC 525
(2007)
LICENSE RENEWAL; MEMORANDUM AND ORDER (Ruling on Standing, Contentions, and Other
Pending Matters); Docket No. 50-255-LR (ASLBP No. 05-842-03-LR); LBP-06-10, 63 NRC 314
(2006)
REQUEST FOR ACTION; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206; Docket Nos. 50-255,
72-7 (License No. DPR-20); DD-07-2, 65 NRC 365 (2007)

OLD DOMINION ELECTRIC COOPERATIVE
COMBINED LICENSE; MEMORANDUM AND ORDER (Admitting Contention 10 in Part); Docket No.
52-017-COL (ASLBP No. 08-863-01-COL); LBP-09-27, 70 NRC 992 (2009)
COMBINED LICENSE; MEMORANDUM AND ORDER (Rulings on Motion to Dismiss Contention 10
and Proposed New Contention 11); Docket No. 52-017-COL (ASLBP No. 08-863-01-COL); LBP-10-17,
72 NRC 501 (2010)

OPERATING AND DECOMMISSIONING POWER REACTORS
REQUEST FOR ACTION; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206; DD-06-3, 64 NRC 407
(2006)

OPERATING AND DECOMMISSIONING RESEARCH AND TEST REACTORS
REQUEST FOR ACTION; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206; DD-06-3, 64 NRC 407
(2006)

PACIFIC GAS AND ELECTRIC COMPANY
INDEPENDENT SPENT FUEL STORAGE INSTALLATION; MEMORANDUM AND ORDER; Docket
No. 72-26-ISFSI; CLI-06-23, 64 NRC 107 (2006); CLI-06-27, 64 NRC 399 (2006); CLI-07-11, 65
NRC 148 (2007); CLI-08-1, 67 NRC 1 (2008)
INDEPENDENT SPENT FUEL STORAGE INSTALLATION; ORDER; Docket No. 72-26-ISFSI;
CLI-08-5, 67 NRC 174 (2008)
INDEPENDENT SPENT FUEL STORAGE INSTALLATION; MEMORANDUM AND ORDER; Docket
No. 72-26-ISFSI; CLI-08-8, 67 NRC 193 (2008); CLI-08-26, 68 NRC 509 (2008)
INDEPENDENT SPENT FUEL STORAGE INSTALLATION; ORDER (Granting NRC Staff's
Unopposed Motion for Summary Disposition of San Luis Obispo Mothers for Peace's Contention 1(b));
LBP-08-7, 67 NRC 361 (2008)
LICENSE RENEWAL; MEMORANDUM AND ORDER (Rulings on Standing, Contention Admissibility,
Waiver Petition, and Selection of Hearing Procedures); Docket Nos. 50-275-LR, 50-323-LR (ASLBP
No. 10-890-01-LR-BD01); LBP-10-15, 72 NRC 257 (2010)

PA'INA HAWAII, LLC
MATERIALS LICENSE; MEMORANDUM AND ORDER; Docket No. 30-36974-ML; CLI-06-13, 63
NRC 508 (2006); CLI-06-18, 64 NRC 1 (2006); CLI-06-25, 64 NRC 128 (2006); CLI-07-26, 66 NRC
109 (2007); CLI-08-3, 67 NRC 151 (2008); CLI-08-4, 67 NRC 171 (2008); CLI-08-16, 68 NRC 221
(2008)
MATERIALS LICENSE; ORDER; Docket No. 30-36974-ML; CLI-09-17, 70 NRC 309 (2009)
MATERIALS LICENSE; MEMORANDUM AND ORDER; Docket No. 30-36974-ML; CLI-09-19, 70
NRC 864 (2009); CLI-10-18, 72 NRC 56 (2010)
MATERIALS LICENSE; MEMORANDUM AND ORDER (Ruling on Petitioner's Standing and
Environmental Contentions); Docket No. 30-36974-ML (ASLBP No. 06-843-01-ML); LBP-06-4, 63
NRC 99 (2006)

CASE NAME INDEX

MATERIALS LICENSE; MEMORANDUM AND ORDER (Ruling on Petitioner's Safety Contentions);
Docket No. 30-36974-ML (ASLBP No. 06-843-01-ML); LBP-06-12, 63 NRC 403 (2006)

POWERTECH (USA), INC.
MATERIALS LICENSE AMENDMENT; MEMORANDUM AND ORDER (Ruling on Petitions to
Intervene and Requests for Hearing); Docket No. 40-9075-MLA (ASLBP No. 10-898-02-MLA-BD01);
LBP-10-16, 72 NRC 361 (2010)

PPL BELL BEND, LLC
COMBINED LICENSE; MEMORANDUM AND ORDER; Docket No. 52-039-COL; CLI-10-7, 71 NRC
133 (2010)
COMBINED LICENSE; MEMORANDUM AND ORDER (Ruling on Petitions to Intervene and Requests
for Hearing); Docket No. 52-039-COL (ASLBP No. 09-890-10-COL-BD01); LBP-09-18, 70 NRC 385
(2009)

PPL SUSQUEHANNA LLC
LICENSE RENEWAL; MEMORANDUM AND ORDER (Ruling on Standing and Contentions of
Petitioner Eric Joseph Epstein); Docket Nos. 50-387-LR, 50-388-LR (ASLBP No. 07-851-01-LR-BD01);
LBP-07-4, 65 NRC 281 (2007)
OPERATING LICENSE AMENDMENT; MEMORANDUM AND ORDER; Docket Nos. 50-387-OLA,
50-388-OLA; CLI-07-25, 66 NRC 101 (2007)
OPERATING LICENSE AMENDMENT; MEMORANDUM AND ORDER (Ruling on Standing and
Contentions); Docket Nos. 50-387-OLA, 50-388-OLA (ASLBP No. 07-854-01-OLA-BD01); LBP-07-10,
66 NRC 1 (2007)

PRIVATE FUEL STORAGE, L.L.C.
INDEPENDENT SPENT FUEL STORAGE INSTALLATION; MEMORANDUM AND ORDER; Docket
No. 72-22-ISFSI; CLI-06-3, 63 NRC 19 (2006)

PROGRESS ENERGY CAROLINAS, INC.
COMBINED LICENSE; MEMORANDUM AND ORDER; Docket Nos. 52-022-COL, 52-023-COL;
CLI-08-15, 68 NRC 1 (2008); CLI-09-8, 69 NRC 317 (2009); CLI-10-9, 71 NRC 245 (2010)
COMBINED LICENSE; MEMORANDUM AND ORDER (Ruling on Standing and Contention
Admissibility); Docket Nos. 52-022-COL, 52-023-COL (ASLBP No. 08-868-04-COL-BD01);
LBP-08-21, 68 NRC 554 (2008)
COMBINED LICENSE; MEMORANDUM AND ORDER (Ruling on Admissibility of Contention TC-1
in Response to the Commission's Remand in CLI-09-8); Docket Nos. 52-022-COL, 52-023-COL
(ASLBP No. 08-868-04-COL-BD01); LBP-09-8, 69 NRC 736 (2009)

PROGRESS ENERGY FLORIDA, INC.
COMBINED LICENSE; MEMORANDUM AND ORDER; Docket Nos. 52-029-COL, 52-030-COL;
CLI-10-2, 71 NRC 27 (2010)
COMBINED LICENSE; MEMORANDUM AND ORDER (Rulings on Standing, Contention
Admissibility, Motion to File New Contention, and Selection of Hearing Procedure); Docket Nos.
52-029-COL, 52-030-COL (ASLBP No. 09-879-04-COL-BD01); LBP-09-10, 70 NRC 51 (2009)
COMBINED LICENSE; INITIAL SCHEDULING ORDER; Docket Nos. 52-029-COL, 52-030-COL
(ASLBP No. 09-879-04-COL-BD01); LBP-09-22, 70 NRC 640 (2009)
COMBINED LICENSE; ORDER (Denying Motion to Compel Disclosure of Bases for Expert Opinion);
Docket Nos. 52-029-COL, 52-030-COL (ASLBP No. 09-879-04-COL-BD01); LBP-09-30, 70 NRC
1039 (2009)
COMBINED LICENSE; MEMORANDUM AND ORDER (Denying Motion for Summary Disposition of
Contention 8A); Docket Nos. 52-029-COL, 52-030-COL (ASLBP No. 09-879-04-COL-BD01);
LBP-10-20, 72 NRC 571 (2010)
COMBINED LICENSE; MEMORANDUM AND ORDER (Granting Motion to Compel Disclosure of
Groundwater Modeling Information); Docket Nos. 52-029-COL, 52-030-COL (ASLBP No.
09-879-04-COL-BD01); LBP-10-23, 72 NRC 692 (2010)

SANTEE COOPER
See South Carolina Public Service Authority

SHAW AREVA MOX SERVICES, LLC
MATERIALS LICENSE AMENDMENT; MEMORANDUM AND ORDER; Docket No. 70-3098-MLA;
CLI-09-2, 69 NRC 55 (2009)

CASE NAME INDEX

MATERIALS LICENSE AMENDMENT; MEMORANDUM AND ORDER (Ruling on Standing and Contentions); Docket No. 70-3098-MLA (ASLBP No. 07-856-02-MLA-BD01); LBP-07-14, 66 NRC 169 (2007)

MATERIALS LICENSE AMENDMENT; MEMORANDUM AND ORDER (Ruling on Contentions and All Other Pending Matters); Docket No. 70-3098-MLA (ASLBP No. 07-856-02-MLA-BD01); LBP-08-11, 67 NRC 460 (2008)

SHIELDALLOY METALLURGICAL CORPORATION

MATERIALS LICENSE AMENDMENT; MEMORANDUM AND ORDER; Docket No. 40-7102-MLA; CLI-07-20, 65 NRC 499 (2007)

MATERIALS LICENSE AMENDMENT; MEMORANDUM AND ORDER; Docket No. 40-7102-MLA (Amendment Request); CLI-09-1, 69 NRC 1 (2009)

MATERIALS LICENSE AMENDMENT; MEMORANDUM AND ORDER; Docket No. 40-7102-MLA (License Amendment Request); CLI-10-8, 71 NRC 142 (2010)

MATERIALS LICENSE AMENDMENT; MEMORANDUM AND ORDER (Ruling on Hearing Requests); Docket No. 40-7102-MLA (ASLBP No. 07-852-01-MLA-BD01); LBP-07-5, 65 NRC 341 (2007)

MATERIALS LICENSE AMENDMENT; MEMORANDUM AND ORDER (Addressing Filings of the Parties Directed by Commission in CLI-07-20); Docket No. 40-7102-MLA (ASLBP No. 07-852-01-MLA-BD01); LBP-07-8, 65 NRC 531 (2007)

MATERIALS LICENSE AMENDMENT; MEMORANDUM (Bringing Matter of Concern to Commission's Attention); Docket No. 40-7102-MLA (ASLBP No. 07-852-01-MLA-BD01); LBP-08-8, 67 NRC 409 (2008)

SOUTH CAROLINA ELECTRIC & GAS COMPANY

COMBINED LICENSE; MEMORANDUM AND ORDER; Docket Nos. 52-027-COL, 52-028-COL; CLI-10-1, 71 NRC 1 (2010); CLI-10-21, 72 NRC 197 (2010)

COMBINED LICENSE; ORDER (Ruling on Standing and Contention Admissibility); Docket Nos. 52-027-COL, 52-028-COL (ASLBP No. 09-875-03-COL-BD01); LBP-09-2, 69 NRC 87 (2009)

COMBINED LICENSE; MEMORANDUM AND ORDER ON REMAND (Denying on Remand the Sierra Club and Friends of the Earth's Petition to Intervene); Docket Nos. 52-027-COL, 52-028-COL (ASLBP No. 09-875-03-COL-BD01); LBP-10-6, 71 NRC 350 (2010)

SOUTH CAROLINA PUBLIC SERVICE AUTHORITY

COMBINED LICENSE; MEMORANDUM AND ORDER; Docket Nos. 52-027-COL, 52-028-COL; CLI-10-1, 71 NRC 1 (2010); CLI-10-21, 72 NRC 197 (2010)

COMBINED LICENSE; ORDER (Ruling on Standing and Contention Admissibility); Docket Nos. 52-027-COL, 52-028-COL (ASLBP No. 09-875-03-COL-BD01); LBP-09-2, 69 NRC 87 (2009)

COMBINED LICENSE; MEMORANDUM AND ORDER ON REMAND (Denying on Remand the Sierra Club and Friends of the Earth's Petition to Intervene); Docket Nos. 52-027-COL, 52-028-COL (ASLBP No. 09-875-03-COL-BD01); LBP-10-6, 71 NRC 350 (2010)

SOUTH TEXAS PROJECT NUCLEAR OPERATING COMPANY

COMBINED LICENSE; MEMORANDUM AND ORDER; Docket Nos. 52-012-COL, 52-013-COL; CLI-09-18, 70 NRC 859 (2009); CLI-10-16, 71 NRC 486 (2010); CLI-10-24, 72 NRC 451 (2010)

COMBINED LICENSE; MEMORANDUM AND ORDER (Affirming Denial of Access to SUNSI); Docket Nos. 52-012-COL, 52-013-COL (ASLBP No. 09-883-06-COL-BD01); LBP-09-5, 69 NRC 303 (2009)

COMBINED LICENSE; MEMORANDUM AND ORDER (Ruling on Standing and Admissibility of Certain Contentions); Docket Nos. 52-012-COL, 52-013-COL (ASLBP No. 09-885-08-COL-BD01); LBP-09-21, 70 NRC 581 (2009)

COMBINED LICENSE; MEMORANDUM AND ORDER (Ruling on Admissibility of Contentions 8-16); Docket Nos. 52-012-COL, 52-013-COL (ASLBP No. 09-885-08-COL-BD01); LBP-09-25, 70 NRC 867 (2009)

COMBINED LICENSE; ORDER (Rulings on the Admissibility of New Contentions and on Intervenor's Challenge to Staff Denial of Documentary Access); Docket Nos. 52-012-COL, 52-013-COL (ASLBP No. 09-885-08-COL-BD01); LBP-10-2, 71 NRC 190 (2010)

COMBINED LICENSE; MEMORANDUM AND ORDER (Rulings on Motions to Dismiss Contentions 8, 9, 14, 16, 21; Amended Contentions 8 and 21; New Colocation Contentions; and New Main Cooling

CASE NAME INDEX

Reservoir Contentions); Docket Nos. 52-12-COL, 52-13-COL (ASLBP No. 09-885-08-COL-BD01); LBP-10-14, 72 NRC 101 (2010)

SOUTHERN NUCLEAR OPERATING COMPANY

COMBINED LICENSE; MEMORANDUM AND ORDER; Docket Nos. 52-025-COL, 52-026-COL; CLI-09-13, 69 NRC 575 (2009); CLI-09-16, 70 NRC 33 (2009)

COMBINED LICENSE; MEMORANDUM AND ORDER (Ruling on Standing and Contention Admissibility); Docket Nos. 52-025-COL, 52-026-COL (ASLBP No. 09-873-01-COL-BD01); LBP-09-3, 69 NRC 139 (2009)

COMBINED LICENSE; MEMORANDUM AND ORDER (Ruling on Petition to Intervene); Docket Nos. 52-025-COL, 52-026-COL (ASLBP No. 09-873-01-COL-BD01); LBP-10-1, 71 NRC 165 (2010)

COMBINED LICENSE; MEMORANDUM AND ORDER (Ruling on Dispositive Motion Regarding Contention SAFETY-1); Docket Nos. 52-025-COL, 52-026-COL (ASLBP No. 09-873-01-COL-BD01); LBP-10-8, 71 NRC 433 (2010)

COMBINED LICENSE; MEMORANDUM AND ORDER (Ruling on Request to Admit New Contention); Docket Nos. 52-025-COL, 52-026-COL (ASLBP No. 10-903-01-COL-BD02); LBP-10-21, 72 NRC 616 (2010)

EARLY SITE PERMIT; MEMORANDUM AND ORDER; Docket No. 52-011-ESP; CLI-07-17, 65 NRC 392 (2007); CLI-07-24, 66 NRC 38 (2007); CLI-10-5, 71 NRC 90 (2010)

EARLY SITE PERMIT; MEMORANDUM AND ORDER (Ruling on Standing and Contentions); Docket No. 52-011-ESP (ASLBP No. 07-850-01-ESP-BD01); LBP-07-3, 65 NRC 237 (2007)

EARLY SITE PERMIT; MEMORANDUM AND ORDER (Ruling on Dispositive Motion and Associated Motions To Strike Regarding Environmental Contention 1.2); Docket No. 52-011-ESP (ASLBP No. 07-850-01-ESP-BD01); LBP-08-2, 67 NRC 54 (2008)

EARLY SITE PERMIT; MEMORANDUM AND ORDER (Ruling on Dispositive Motion and Associated Motions To Strike and To Supplement the Record Regarding Environmental Contention 1.3); Docket No. 52-011-ESP (ASLBP No. 07-850-01-ESP-BD01); LBP-08-3, 67 NRC 85 (2008)

EARLY SITE PERMIT; FIRST PARTIAL INITIAL DECISION (Contested Proceeding); Docket No. 52-011-ESP (ASLBP No. 07-850-01-ESP-BD01); LBP-09-7, 69 NRC 613 (2009)

EARLY SITE PERMIT; SECOND AND FINAL PARTIAL INITIAL DECISION (Mandatory/Uncontested Proceeding); Docket No. 52-011-ESP (ASLBP No. 07-850-01-ESP-BD01); LBP-09-19, 70 NRC 433 (2009)

STEVEN P. MOFFITT

ENFORCEMENT; ORDER (Approving Proposed Settlement and Dismissing Proceeding); Docket No. IA-05-054 (ASLBP No. 06-847-03-EA); LBP-06-26, 64 NRC 431 (2006)

STP NUCLEAR OPERATING COMPANY

REQUEST FOR ACTION; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206; Docket Nos. 50-498, 50-499 (License Nos. NPF-76, NPF-80); DD-07-1, 65 NRC 195 (2007)

SYSTEM ENERGY RESOURCES, INC.

EARLY SITE PERMIT; MEMORANDUM AND ORDER; Docket No. 52-009-ESP; CLI-06-20, 64 NRC 15 (2006)

EARLY SITE PERMIT; ORDER; Docket No. 52-009-ESP; CLI-06-28, 64 NRC 404 (2006); CLI-07-7, 65 NRC 122 (2007)

EARLY SITE PERMIT; MEMORANDUM AND ORDER; Docket No. 52-009-SP; CLI-07-10, 65 NRC 144 (2007); CLI-07-14, 65 NRC 216 (2007)

EARLY SITE PERMIT; INITIAL DECISION (Authorizing the Issuance of the Grand Gulf Early Site Permit); Docket No. 52-009-ESP (ASLBP No. 04-823-03-ESP); LBP-07-1, 65 NRC 27 (2007)

TENNESSEE VALLEY AUTHORITY

COMBINED LICENSE; MEMORANDUM AND ORDER; Docket Nos. 52-014-COL, 52-015-COL; CLI-09-3, 69 NRC 68 (2009); CLI-09-21, 70 NRC 927 (2009)

COMBINED LICENSE; MEMORANDUM AND ORDER (Ruling on Standing, Hearing Petition Timeliness, and Contention Admissibility); Docket Nos. 52-014-COL, 52-015-COL (ASLBP No. 08-864-02-COL-BD01); LBP-08-16, 68 NRC 361 (2008)

CONSTRUCTION PERMIT; MEMORANDUM AND ORDER; Docket Nos. 50-438-CP, 50-439-CP; CLI-10-6, 71 NRC 113 (2010); CLI-10-26, 72 NRC 474 (2010)

CASE NAME INDEX

CONSTRUCTION PERMIT; MEMORANDUM AND ORDER (Ruling on Intervention Petition); Docket Nos. 50-438-CP, 50-439-CP (ASLBP No. 10-896-01-CP-BD01); LBP-10-7, 71 NRC 391 (2010)

OPERATING LICENSE; MEMORANDUM AND ORDER; Docket No. 50-391-OL; CLI-10-12, 71 NRC 319 (2010); CLI-10-29, 72 NRC 556 (2010)

OPERATING LICENSE; MEMORANDUM AND ORDER (Granting Petition to Intervene); Docket No. 50-391-OL (ASLBP No. 09-893-01-OL-BD01); LBP-09-26, 70 NRC 939 (2009)

OPERATING LICENSE; MEMORANDUM AND ORDER (Denial of Petition to Waive 10 C.F.R. §§ 51.53(b), 51.95(b), 51.106(c) in the Watts Bar Operating License Proceeding); Docket No. 50-391-OL (ASLBP No. 09-893-01-OL-BD01); LBP-10-12, 71 NRC 656 (2010)

U.S. ARMY

MATERIALS LICENSE AMENDMENT; MEMORANDUM AND ORDER (Granting Hearing Request and Deferring Hearing); Docket No. 40-8838-MLA (ASLBP No. 00-776-04-MLA); LBP-06-6, 63 NRC 167 (2006)

MATERIALS LICENSE AMENDMENT; MEMORANDUM AND ORDER (Determining Scope of Evidentiary Hearing); Docket No. 40-8838-MLA (ASLBP No. 00-776-04-MLA); LBP-06-27, 64 NRC 438 (2006)

MATERIALS LICENSE AMENDMENT; MEMORANDUM AND ORDER (Denying Motion of Save the Valley, Inc. To Admit Additional Contention and Supporting Bases); Docket No. 40-8838-MLA (ASLBP No. 00-776-04-MLA); LBP-07-7, 65 NRC 507 (2007)

MATERIALS LICENSE AMENDMENT; INITIAL DECISION; Docket No. 40-8838-MLA (ASLBP No. 00-776-04-MLA); LBP-08-4, 67 NRC 105 (2008)

U.S. ARMY INSTALLATION COMMAND

MATERIALS LICENSE; MEMORANDUM AND ORDER; Docket No. 40-9083; CLI-10-20, 72 NRC 185 (2010)

MATERIALS LICENSE; MEMORANDUM AND ORDER (Denying Requests for Hearing); Docket No. 40-9083 (ASLBP No. 10-895-01-ML-BD01); LBP-10-4, 71 NRC 216 (2010)

U.S. DEPARTMENT OF ENERGY

CONSTRUCTION AUTHORIZATION; ORDER (Department of Energy; Notice of Hearing and Opportunity to Petition for Leave to Intervene on an Application for Authority to Construct a Geologic Repository at a Geologic Repository Operations Area at Yucca Mountain); Docket No. 63-001; CLI-08-25, 68 NRC 497 (2008)

CONSTRUCTION AUTHORIZATION; MEMORANDUM AND ORDER; Docket No. 63-001-HLW; CLI-09-14, 69 NRC 580 (2009); CLI-10-10, 71 NRC 281 (2010); CLI-10-13, 71 NRC 387 (2010)

CONSTRUCTION AUTHORIZATION; MEMORANDUM AND ORDER (Identifying Participants and Admitted Contentions); Docket No. 63-001-HLW; LBP-09-6, 69 NRC 367 (2009)

CONSTRUCTION AUTHORIZATION; MEMORANDUM AND ORDER (Addressing Contentions Filed After Initial Petitions); Docket No. 63-001-HLW (ASLBP No. 09-892-HLW-CAB04); LBP-09-29, 70 NRC 1028 (2009)

CONSTRUCTION AUTHORIZATION; MEMORANDUM AND ORDER (Granting Intervention to Petitioners and Denying Withdrawal Motion); Docket No. 63-001-HLW (ASLBP No. 09-892-HLW-CAB04); LBP-10-11, 71 NRC 609 (2010)

CONSTRUCTION AUTHORIZATION; MEMORANDUM AND ORDER (Deciding Phase I Legal Issues and Denying Rule Waiver Petitions); Docket No. 63-001-HLW (ASLBP No. 09-892-HLW-CAB04); LBP-10-22, 72 NRC 661 (2010)

PRE-LICENSE APPLICATION MATTERS; MEMORANDUM AND ORDER; Docket No. PAPO-00 (Pre-Application Matters); CLI-06-5, 63 NRC 143 (2006)

PRE-LICENSE APPLICATION MATTERS; MEMORANDUM AND ORDER; Docket Nos. PAPO-00, PAPO-001; CLI-08-11, 67 NRC 379 (2008)

PRE-LICENSE APPLICATION MATTERS; MEMORANDUM AND ORDER; Docket No. PAPO-00 (ASLBP No. 04-829-01-PAPO); CLI-08-12, 67 NRC 386 (2008)

PRE-LICENSE APPLICATION MATTERS; MEMORANDUM AND ORDER; Docket No. PAPO-001 (ASLBP No. 08-861-01-PAPO-BD01); CLI-08-14, 67 NRC 402 (2008)

PRE-LICENSE APPLICATION MATTERS; MEMORANDUM AND ORDER; Docket No. PAPO-00 (ASLBP No. 04-829-01-PAPO); CLI-08-18, 68 NRC 246 (2008); CLI-08-20, 68 NRC 272 (2008); CLI-08-21, 68 NRC 351 (2008); CLI-08-22, 68 NRC 355 (2008)

CASE NAME INDEX

PRE-LICENSE APPLICATION MATTERS; MEMORANDUM (Setting Forth Full Reasoning for Denying Nevada's Motion To Strike); Docket No. PAPO-00 (ASLBP No. 04-829-01-PAPO); LBP-08-1, 67 NRC 37 (2008)

PRE-LICENSE APPLICATION MATTERS; MEMORANDUM AND ORDER (Denying the Department of Energy's Motion To Strike); Docket No. PAPO-00 (ASLBP No. 04-829-01-PAPO); LBP-08-5, 67 NRC 205 (2008)

PRE-LICENSE APPLICATION MATTERS; MEMORANDUM AND ORDER (Case Management Order Concerning Petitions To Intervene, Contentions, Responses and Replies, Standing Arguments, and Referencing or Attaching Supporting Materials); Docket No. PAPO-001 (ASLBP No. 08-861-01-PAPO-BD01); LBP-08-10, 67 NRC 450 (2008)

UNISTAR NUCLEAR OPERATING SERVICES, LLC

COMBINED LICENSE; MEMORANDUM AND ORDER; Docket No. 52-016-COL; CLI-09-20, 70 NRC 911 (2009)

COMBINED LICENSE; MEMORANDUM AND ORDER (Ruling on Joint Petitioners' Standing and Contentions); Docket No. 52-016-COL (ASLBP No. 09-874-02-COL-BD01); LBP-09-4, 69 NRC 170 (2009)

COMBINED LICENSE; MEMORANDUM AND ORDER (Granting Motion for Summary Disposition of Contention 2); Docket No. 52-016-COL (ASLBP No. 09-874-02-COL-BD01); LBP-09-15, 70 NRC 198 (2009)

COMBINED LICENSE; ORDER (Ruling on Intervenors' Proposed New Contention 10); Docket No. 52-016-COL (ASLBP No. 09-874-02-COL-BD01); LBP-10-24, 72 NRC 720 (2010)

USEC INC.

MATERIALS LICENSE; MEMORANDUM AND ORDER; Docket No. 70-7004; CLI-06-9, 63 NRC 433 (2006); CLI-06-10, 63 NRC 451 (2006)

MATERIALS LICENSE; MEMORANDUM AND ORDER; Docket No. 70-7004-ML; CLI-07-5, 65 NRC 109 (2007)

MATERIALS LICENSE; INITIAL DECISION (Authorizing the Issuance of the American Centrifuge Plant License); Docket No. 70-7004-ML (ASLBP No. 05-838-01-ML); LBP-07-6, 65 NRC 429 (2007)

VIRGINIA ELECTRIC AND POWER COMPANY

COMBINED LICENSE; MEMORANDUM AND ORDER (Ruling on Petitioner's Standing and Contentions and NUC's Request to Participate as a Nonparty Interested State); Docket No. 52-017-COL (ASLBP No. 08-863-01-COL); LBP-08-15, 68 NRC 294 (2008)

COMBINED LICENSE; ORDER (Denying the Motion of the Blue Ridge Environmental Defense League to Reconsider the Board's Order of August 15, 2008); Docket No. 52-017-COL (ASLBP No. 08-863-01-COL); LBP-08-23, 68 NRC 679 (2008)

COMBINED LICENSE; MEMORANDUM AND ORDER (Admitting Contention 10 in Part); Docket No. 52-017-COL (ASLBP No. 08-863-01-COL); LBP-09-27, 70 NRC 992 (2009)

COMBINED LICENSE; MEMORANDUM AND ORDER (Rulings on Motion to Dismiss Contention 10 and Proposed New Contention 11); Docket No. 52-017-COL (ASLBP No. 08-863-01-COL); LBP-10-17, 72 NRC 501 (2010)

WESTINGHOUSE ELECTRIC COMPANY, LLC

MATERIALS LICENSE AMENDMENT; MEMORANDUM AND ORDER (Ruling on Request for Hearing); Docket No. 70-36-MLA (ASLBP No. 10-894-01-MLA-BD01); LBP-09-28, 70 NRC 1019 (2009)

DIGESTS
ISSUANCES OF THE NUCLEAR REGULATORY COMMISSION

- CLI-06-1 HYDRO RESOURCES, INC. (P.O. Box 777, Crownpoint, New Mexico 87313), Docket No. 40-8968-ML; MATERIALS LICENSE; January 11, 2006; MEMORANDUM AND ORDER
- A In Phase II of this materials license proceeding, the Commission denies review of an Atomic Safety and Licensing Board decision on groundwater protection, groundwater restoration, and surety estimates.
- B Where a Presiding Officer has reviewed an extensive record in detail, with the assistance of a technical advisor, the Commission is generally disinclined to upset his findings and conclusions, particularly on matters involving fact-specific issues or where the affidavits or submissions of experts must be weighed.
- C Post-hearing resolution of licensing issues must not be employed to obviate the basic findings prerequisite to a license, including a reasonable assurance that the facility can be operated without endangering the health and safety of the public.
- D Verification by the NRC Staff that a licensee complies with preapproved design or testing criteria is a highly technical inquiry not particularly suitable for hearing.
- CLI-06-2 FIRSTENERGY NUCLEAR OPERATING COMPANY (Beaver Valley Power Station, Units 1 and 2; Davis-Besse Nuclear Power Station, Unit 1; Perry Nuclear Power Plant, Unit 1), Docket Nos. 50-334-LT, 50-346-LT, 50-412-LT, 50-440-LT; LICENSE TRANSFER; January 31, 2006; MEMORANDUM AND ORDER
- A To qualify for intervenor status, a petitioner must, among other things, demonstrate standing. 10 C.F.R. § 2.309(d). As part of that demonstration, we require a showing that the petitioner “has suffered [or will suffer] a distinct and palpable harm that constitutes injury-in-fact within the zone of interests arguably protected by the governing statute [and that this] injury can fairly be traced to the challenged action” (here, the approval of the license transfer). *See, e.g., Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-96-1, 43 NRC 1, 6 (1996).
- B “Transmission services” is a concept central to our determination of standing in this proceeding; it refers to the transport of electricity on the wholesale market to local distribution companies. By contrast, the term “distribution” refers generally to the transport of electricity by local distribution companies to the end users of the electricity (e.g., homes, shops, office buildings, factories). *See generally Consumers Power Co.* (Midland Plant, Units 1 and 2), ALAB-452, 6 NRC 892, 973-74 & n.352 (1977).
- C “[T]he coordination services market is a market for the exchange of surplus electric power between utilities on a nonfirm basis and the joint and coordinated operation by utilities of their systems of generation and distribution, all with the purpose of achieving maximum efficiency and economies in their overall power supply operations.” *Toledo Edison Co.* (Davis-Besse Nuclear Power Station, Units 1, 2, and 3), ALAB-560, 10 NRC 265, 301 (1979) (opinion of Mr. Sharfman). *See also Midland*, ALAB-452, 6 NRC at 902-03 (citations and footnotes omitted): “‘Coordination’ refers to the electric power utilities’ practice of interchanging power and sharing responsibility for building new generating facilities to achieve economic benefits unattainable by an individual utility acting alone. The practice encompasses both ‘operational coordination,’ which is the unified control of generation and transmission facilities, and the sharing of one or more of reserve, emergency, maintenance, economy, dump, seasonal and time diversity power or energy, and ‘developmental coordination,’ which includes the cooperative planning of new facilities to allow their construction as joint ventures or on staggered time schedules.” As these definitions indicate, the vast majority of coordination services involve the supply of power rather than its transmission.
- D A statement purporting to show a real potential for injury sufficient for standing will be rejected if it is too vague and general. *See, e.g., GPU Nuclear, Inc.* (Oyster Creek Nuclear Generating Station), CLI-00-6, 51 NRC 193, 203 (2000). *See also Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-02-16, 55 NRC 317, 337 (2002).

DIGESTS
ISSUANCES OF THE NUCLEAR REGULATORY COMMISSION

- E Our rules require that motions be filed no more than 10 days after “the occurrence or circumstance from which the motion arises.” 10 C.F.R. § 2.323(a).
- CLI-06-3 PRIVATE FUEL STORAGE, L.L.C. (Independent Spent Fuel Storage Installation), Docket No. 72-22-ISFSI; INDEPENDENT SPENT FUEL STORAGE INSTALLATION; January 31, 2006; MEMORANDUM AND ORDER
- A Commission jurisdiction to reopen a proceeding continues until a license is actually issued. Until then, “there remains in existence an operating license ‘proceeding’” that can be “reopened.” *See Texas Utilities Electric Co.* (Comanche Peak Steam Electric Station, Units 1 and 2), CLI-92-1, 35 NRC 1, 6 n.5 (1992). The possibility of reopening an adjudicatory record terminates when the license is issued. Until that point in time, the Commission still has authority to add license conditions or to supplement an environmental impact statement (EIS) if intervenors or the NRC Staff uncover significant, previously unconsidered, and newly arising safety concerns or environmental effects.
- B For NEPA purposes, the “major federal action” triggering the Environmental Impact Statement (EIS) is issuing the license, not adjudicating the license.
- C When the record of a proceeding has long been closed, the burden on a party seeking to reopen the record is significant. The Commission need not reopen adjudicatory proceedings simply on a claim of new evidence. Of necessity there will be a gap in time between the closing of the record and the rendering of a decision. The hearing process would never end if the parties could demand the record be reopened any time new or additional evidence is found. *See Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 435 U.S. 519, 554-55 (1978) (internal quotation omitted). *See also Northern Lines Merger Cases*, 396 U.S. 491, 521 (1970).
- D A supplemental EIS is needed where new information “raises new concerns of sufficient gravity such that another, formal in-depth look at the environmental consequences of the proposed action is necessary.” *Wisconsin v. Weinberger*, 745 F.2d 412, 418 (7th Cir. 1984). *See Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 374 (1989). The new information must raise significant environmental impacts that may affect the overall view of the project’s impacts. *National Committee for the New River, Inc. v. Federal Energy Regulatory Commission*, 373 F.3d 1323, 1330 (D.C. Cir. 2004).
- E The Environmental Impact Statement may need to be supplemented when new evidence shows there may be environmental impacts that were not analyzed in the initial EIS. A supplemental EIS is not necessarily required when the new information is mere additional evidence supporting the likelihood of an uncertain environmental impact that was considered in the EIS.
- F New evidence that potentially alters the financial cost-benefit analysis, but which does not show a significant impact on the physical environment, does not warrant supplementing the EIS. While economic benefits are properly considered in an EIS, NEPA does not transform financial costs and benefits into environmental costs and benefits.
- CLI-06-4 DOMINION NUCLEAR CONNECTICUT, INC. (Millstone Nuclear Power Station, Units 2 and 3), Docket Nos. 50-336-LR, 50-423-LR; LICENSE RENEWAL; January 31, 2006; MEMORANDUM OPINION AND ORDER
- A When a licensing board has already dismissed the case, the licensing board no longer has jurisdiction over a motion to reopen. *See, e.g., Philadelphia Electric Co.* (Limerick Generating Station, Units 1 and 2), ALAB-823, 22 NRC 773, 775 (1985).
- B Until a license has actually been issued, the Commission itself (as opposed to the Licensing Board) retains jurisdiction to reopen a closed case. *See, e.g., Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-06-3, 63 NRC 19 (2006); *Texas Utilities Electric Co.* (Comanche Peak Steam Electric Station, Unit 2), CLI-93-1, 37 NRC 1 (1993); *Texas Utilities Electric Co.* (Comanche Peak Steam Electric Station, Units 1 and 2), CLI-92-1, 35 NRC 1 (1992).
- C A difference of opinion over a scientific question does not constitute fraud or misconduct on the part of the NRC Staff.
- D A motion to reopen a closed proceeding must satisfy the requirements of 10 C.F.R. § 2.326.
- E A motion to reopen that does not satisfy the Commission’s procedural requirements but which arguably raises a significant safety or environmental issue may be referred to the Staff under 10 C.F.R. § 2.206.
- F In a license renewal proceeding, petitioners must demonstrate that an issue “focuses on ‘the potential impacts of an additional 20 years of nuclear power plant operation,’ not on everyday operational issues.” *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-04-36, 60 NRC

DIGESTS
ISSUANCES OF THE NUCLEAR REGULATORY COMMISSION

631, 637-38 (2004), quoting *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 7 (2001).

- G A motion to reopen a closed proceeding must be timely. 10 C.F.R. § 2.326(a). A pleading cannot be timely when the petitioner does not explain why the motion was filed 11 months after the NRC terminated the case, 9 months after the petitioner first raised the particular issue in its comments, and 4 months after the Staff issued the final document containing the position the petitioner disputes.
- H If a party seeks to reopen a closed record and, in the process raises an issue that was not an admitted contention in the initial proceeding, it must also demonstrate that raising this issue now satisfies the requirements for a nontimely or “late-filed” contention. 10 C.F.R. § 2.326(d).
- I The NRC will not consider a last-second reopening of an adjudication and a restart of licensing board proceedings based on a pleading that is defective on its face.
- J Based upon an attorney’s previous disregard of the NRC’s practices and procedures, the Commission may order the Office of the Secretary to screen all filings bearing the offender’s signature and not to accept or docket them unless they meet all procedural requirements. 10 C.F.R. § 2.346(h).
- K An order denying a motion to reopen renders moot a petitioner’s request for leave to submit an amended petition to intervene.
- CLI-06-5 U.S. DEPARTMENT OF ENERGY (High-Level Waste Repository), Docket No. PAPO-00 (Pre-Application Matters); PRE-LICENSE APPLICATION MATTERS; February 2, 2006; MEMORANDUM AND ORDER
- A The threshold question in determining if certain items must be made available on the High-Level Waste Repository Licensing Support Network is whether the particular items fall within any of the three classes of documentary material, as defined in 10 C.F.R. § 2.1001.
- B Drafts of the license application are not Class 1, Class 2, or Class 3 documentary material under Subpart J, so the regulations do not require making draft license applications available on the Licensing Support Network.
- C Both Class 1 and Class 2 are tied to a “reliance” criterion. Class 1 covers information a party intends to rely upon in support of its position. Class 2 documentary material is material that the party in possession knows does not support its position. The material that falls within Class 1 or Class 2 is the underlying *independent* documentary material used (or not used if nonsupporting) by the Department of Energy in formulating its license application.
- D Class 3 documents are not tied to any “reliance” criterion. Class 3 documentary materials are “reports and studies” prepared on behalf of potential parties to the proceeding. Class 3 documentary material must satisfy two conditions. First, Class 3 documentary materials must be “reports and studies” that are relevant to the issues listed in the Topical Guidelines contained in Regulatory Guide 3.69. Second, the reports and studies must be relevant to the license application.
- E The question whether a draft is a “circulated” or a “preliminary” draft can arise in connection with Class 3 documentary material, although the Commission did not need to reach that question here. The distinction between “preliminary” and “circulated” drafts is a significant distinction in the Commission’s Subpart J regulations.
- F The purpose of 10 C.F.R. § 2.1003 is to define the *availability* of material, not to provide *definitions* of types of materials; definitions are contained in 10 C.F.R. § 2.1001. To be considered “documentary material,” a “basic licensing document” (10 C.F.R. § 2.1003(b)) must still meet the definition of Class 3 documentary material (10 C.F.R. § 2.1001).
- G The interpretation of a regulation, like the interpretation of a statute, begins “with the language and structure of the provision itself. Further, the entirety of the provision must be given effect. Although administrative history and other available guidance may be consulted for background information and the resolution of ambiguities in a regulation’s language, its interpretation may not conflict with the plain meaning of the wording used in that regulation.”
- CLI-06-6 NUCLEAR MANAGEMENT COMPANY, LLC (Monticello Nuclear Generating Plant), Docket No. 50-263-LR; LICENSE RENEWAL; February 2, 2006; MEMORANDUM AND ORDER
- A By our regulations, a notice of appeal must be accompanied by a brief. *See* 10 C.F.R. § 2.311(a). Failure to submit a brief, including legal argument and citations to the record, is reason enough to reject an appeal.

DIGESTS
ISSUANCES OF THE NUCLEAR REGULATORY COMMISSION

- B The NRC follows judicial concepts of standing in its own proceedings. *See, e.g., U.S. Department of Energy* (Plutonium Export License), CLI-04-17, 59 NRC 357, 363 (2004); *Sacramento Municipal Utility District* (Rancho Seco Nuclear Generating Station), CLI-92-2, 35 NRC 47, 56 (1992).
- C The Board properly found no standing where Petitioner failed to demonstrate that it, or any of its members, would suffer any concrete or particularized harm from the proposed license renewal.
- D It is our customary practice to disregard briefs that contain personal attacks on the Board. *See, e.g., Metropolitan Edison Co.* (Three Mile Island Nuclear Station, Unit 2), ALAB-474, 7 NRC 746, 748-49 (1978); *Louisiana Power & Light Co.* (Waterford Steam Electric Station, Unit 3), ALAB-121, 6 AEC 319, 320 (1973). Insulting language does nothing to advance a petitioner's arguments or the Commission's review, and will not be tolerated.
- CLI-06-7 HYDRO RESOURCES, INC. (P.O. Box 777, Crownpoint, New Mexico 87313), Docket No. 40-8968-ML; MATERIALS LICENSE; February 27, 2006; ORDER
- CLI-06-8 ENTERGY NUCLEAR VERMONT YANKEE, LLC, and ENTERGY NUCLEAR OPERATIONS, INC. (Vermont Yankee Nuclear Power Station), Docket No. 50-271-OLA; OPERATING LICENSE AMENDMENT; March 3, 2006; MEMORANDUM AND ORDER
- A A pending hearing does not delay a licensing decision. NRC regulations instruct the Staff "to issue its approval or denial of the application promptly" once it completes its own review of the application, notwithstanding the "pendency of any hearing." 10 C.F.R. § 2.1202(a).
- B After publishing its proposed findings for public comment, the Staff made a "no significant hazards consideration" finding and issued the power uprate amendment.
- C The Intervenor's request did not meet NRC standards for a stay. Mere speculation concerning a nuclear accident does not demonstrate immediate and irreparable harm necessary for a stay.
- D An NRC Staff decision to grant a power uprate license amendment did not leave Intervenor's without "effective redress," because the license amendment can be revoked or conditioned after a full hearing if the Board determines the license amendment should not have been granted.
- E Granting the license amendment prior to a Board decision did not circumvent Intervenor's right to a hearing. The Atomic Energy Act expressly authorizes the NRC to grant license amendments, and to make them immediately effective "in advance of the holding and completion of any required hearing," so long as the NRC determines that the amendment involves "no significant hazards consideration." *See* Atomic Energy Act § 189a(2)(A), 42 U.S.C. § 2239a(2)(A). *See also* 10 C.F.R. § 2.1202(a); 10 C.F.R. § 50.58(b)(6); 10 C.F.R. § 50.92.
- CLI-06-9 USEC, INC. (American Centrifuge Plant), Docket No. 70-7004; MATERIALS LICENSE; April 3, 2006; MEMORANDUM AND ORDER
- A The Commission's contention requirements are deliberately strict, and the Commission will reject any contention that does not satisfy these requirements. In NRC practice, "[m]ere 'notice pleading' does not suffice." Our rules call for "a clear statement of the basis for the contentions and the submission of supporting information and references to specific documents and sources that establish the validity of the contention."
- B The Commission's regulations governing appeals from the denial of intervention (10 C.F.R. § 2.311) provide for a notice of appeal with a supporting brief, and for a brief opposing the appeal, but do not provide for reply briefs.
- C The Commission will not permit, in a reply brief, the filing of new arguments or new legal theories that opposing parties have not had the opportunity to address.
- D Pursuant to NRC regulation (10 C.F.R. § 51.45(b)) "[t]he environmental report shall contain . . . a description of the environment *affected*," with impacts on the environment "discussed in proportion to their significance." This regulation does not require a discussion of *unaffected* areas or sites.
- E While it is true that no nomination or formal determination of eligibility is necessary to trigger a National Historic Preservation Act review, a site must be within the area of potential effects and the project must affect the site to trigger a review of that site.
- F Under the Commission's regulations, for issues arising under the National Environmental Policy Act, a petitioner must file contentions based on the applicant's environmental report. The petitioner may amend those contentions or file new contentions if the NRC draft or final environmental impact statement, environmental assessment, or any supplements relating thereto, differs significantly from the data or conclusions in the applicant's documents.

DIGESTS
ISSUANCES OF THE NUCLEAR REGULATORY COMMISSION

- G Where a contention based on an applicant's environmental report is "superseded by the subsequent issuance of licensing-related documents" — whether an environmental impact statement or an applicant's response to a request for additional information — the contention must be "disposed of or modified." Thus, where a contention alleges the omission of particular information or an issue from an application, and the information is later supplied by the applicant or considered by the NRC Staff in an environmental impact statement, the contention "is moot."
- H The agency granting a license has the obligation to comply with the National Historic Preservation Act. Any contractual provision that purports to shift National Historic Preservation Act compliance responsibility from a third party to the prospective licensee cannot affect the NRC's statutory obligation to comply with that Act with respect to the licensing of the proposed project.
- I Under the National Environmental Policy Act, the consideration of alternatives is an integral part of the application process from the outset, with no preconditions. The National Historic Preservation Act also requires the NRC Staff to examine alternatives. But unlike the National Environmental Policy Act requirement, the National Historic Preservation Act requirement comes into play *only if* the project will have an adverse effect on historic properties, and *only after* that determination is made. In short, an adverse effect is a required precondition to the consideration of alternatives under the National Historic Preservation Act.
- CLI-06-10 USEC INC. (American Centrifuge Plant), Docket No. 70-7004; MATERIALS LICENSE; April 3, 2006; MEMORANDUM AND ORDER
- A The Commission affirms an Atomic Safety and Licensing Board decision that rejected all of the contentions submitted by Intervenors Portsmouth/Piketon Residents for Environmental Safety and Security (PRESS).
- B Since 1989, our contention rules have insisted upon some reasonably specific factual or legal basis for a petitioner's allegations. No contention will be admitted for litigation in any NRC adjudicatory proceeding unless the contention requirements are met.
- C We expect our licensing boards to examine cited materials to verify that they do, in fact, support a contention. But it is not up to the boards to search through pleadings or other materials to uncover arguments and support never advanced by the petitioners themselves; boards may not simply "infer" unarticulated bases of contentions. It is a contention's proponent, not the licensing board, that is responsible for formulating the contention and providing the necessary information to satisfy the basis requirement for a contention.
- D Absent extreme circumstances, we will not consider on appeal either new arguments or new evidence supporting a contention, which the Board never had the opportunity to consider.
- E When reviewing a license application filed by a private applicant, the agency may appropriately accord substantial weight to the preferences of the applicant and/or sponsor in the siting and design of the project and should take into account the needs and goals of the parties involved in the application.
- F Agencies need only consider those alternatives that can achieve the purposes of the project.
- G The mere fact that an application requests an exemption from a particular regulatory provision does not render an application deficient. Our regulations specifically allow the NRC to grant exemptions that will not threaten the common defense and security, or endanger life or property, and that are otherwise in the public interest.
- H An expert opinion that merely states a conclusion without providing a reasoned basis or explanation for that conclusion is inadequate because it deprives the Board of the ability to make the necessary, reflective assessment of the opinion.
- I Our page limits on briefs are intended to encourage parties to make their strongest arguments as concisely as possible. Thus, generalized claims followed by unelaborated references to oral arguments and multiple pages run afoul of our page limitation rules.
- J Contentions must be based on a genuine material dispute, not the possibility that petitioners, if they perform their own additional analyses may ultimately disagree with the application.
- CLI-06-11 HYDRO RESOURCES, INC. (P.O. Box 777, Crownpoint, New Mexico 87313), Docket No. 40-8968-ML; MATERIALS LICENSE; April 3, 2006; MEMORANDUM AND ORDER
- A The Commission has discretion to grant a petition for review, "giving due weight to the existence of a substantial question with respect to" any of the grounds listed (in the Commission's regulations) as potential justification for review. "Review of an initial decision . . . is purely discretionary"

DIGESTS
ISSUANCES OF THE NUCLEAR REGULATORY COMMISSION

- B Legal determinations made on appeal in a case are controlling precedent, becoming the “law of the case,” for all later decisions in the same case, with only limited exceptions. The “law of the case” doctrine is “a salutary rule of policy and practice, grounded in important considerations related to stability in the decision[-]making process, predictability of results, proper working relationships between trial and appellate courts, and judicial economy.” A “prior decision should be followed unless: (1) the decision is clearly erroneous and its enforcement would work a manifest injustice, (2) intervening controlling authority makes reconsideration appropriate, or (3) substantially different evidence was adduced at a subsequent trial.”
- C Courts construe regulations in the same manner as they do statutes: by ascertaining the plain meaning of the regulation. “[A] basic tenet of statutory construction, equally applicable to regulatory construction, [is] that a statute should be construed so that effect is given to all its provisions” A “regulation should be construed to effectuate the intent of the enacting body. Such intent may be ascertained by considering the language used and the overall purpose of the regulation, and by reflecting on the practical effect of the possible interpretations.” “[A]dministrative history and other available guidance may be consulted for background information and the resolution of ambiguities in a regulation’s language”
- D We cannot apply new regulations retroactively absent clear evidence that Congress authorized, in the statute being implemented, the issuance of retroactive regulations, and that the statute intended the regulations to be applied retroactively.
- E While agencies may coordinate their National Environmental Policy Act and National Historic Preservation Act reviews, the reviews remain separate, and the regulations associated with each Act must be independently satisfied — “coordination” does not mean that National Environmental Policy Act regulations govern National Historic Preservation Act analysis or vice versa.
- CLI-06-12 ANDREW SIEMASZKO, Docket No. IA-05-021; ENFORCEMENT; May 3, 2006; MEMORANDUM AND ORDER
- A The Commission’s regulations do not provide a right to appeal interlocutory orders.
- B Section 2.341(f)(2) of 10 C.F.R. allows discretionary interlocutory review if the challenged Board decision threatens “immediate and serious irreparable impact” or “[a]ffects the basic structure of the proceeding in a pervasive or unusual manner.” The effect of the Board decision in this proceeding is “pervasive” and “unusual” — both in time and scope — because the Board’s March 2 Order stops the entire proceeding in its tracks and because the Commission and its boards have rarely, if ever, held an enforcement proceeding in abeyance for an indeterminate length of time.
- C In *Oncology Services Corp.*, CLI-93-17, 38 NRC 44 (1993), the Commission held that five factors need to be balanced when deciding whether to delay an enforcement proceeding: length of delay, reason for delay, prejudice to the recipient of the enforcement order, risk of erroneous deprivation, and recipient’s assertion of a right to a hearing.
- D The Commission usually defers to boards’ fact-based decisions. *See, e.g., Tennessee Valley Authority* (Watts Bar Nuclear Plant, Unit 1; Sequoyah Nuclear Plant, Units 1 and 2; Browns Ferry Nuclear Plant, Units 1, 2, and 3), CLI-04-24, 60 NRC 160, 189 (2004).
- E The Commission’s decision in *Oncology*, while not specifying the exact point after which a delay in an enforcement proceeding becomes unacceptable, does indicate that delay is particularly problematic in cases involving witness testimony. *Oncology Services Corp.*, CLI-93-17, 38 NRC at 53. In witness-intensive cases, delay would “be tolerable only if the Staff can demonstrate an important government interest coupled with factors minimizing the risk of an erroneous deprivation.” *Id.*
- F Enforcement cases are, by their very nature, fact-specific and typically rely far more on witness testimony than do licensing adjudications. For this reason, the Commission believes that the testimony of witnesses will likely prove significant in such proceedings. In theory at least, a long delay could result in the fading of witnesses’ memories and runs the risk of witnesses’ unavailability. *Id.*, CLI-93-17, 38 NRC at 59. *See also Dr. James E. Bauer* (Order Prohibiting Involvement in NRC-Licensed Activities), LBP-94-40, 40 NRC 323, 330 (1994), *petition for review denied on other grounds*, CLI-95-3, 41 NRC 245 (1995).
- G Where the length of the requested delay would depend on factors outside the Commission’s control, the absence of control weighs against holding the case in abeyance. *Hydro Resources, Inc.* (P.O. Box 15910, Rio Rancho, NM 87174), CLI-01-4, 53 NRC 31, 39 (2001).
- H The party supporting abeyance based on the pendency of a criminal case involving the same facts carries the burden of proof (10 C.F.R. § 2.325) and must make at least *some* showing of potential

DIGESTS
ISSUANCES OF THE NUCLEAR REGULATORY COMMISSION

detrimental effect on the criminal case. *See generally Oncology Services Corp.*, CLI-93-17, 38 NRC at 53-57.

- I The weight to be given the proponent's reason for seeking an abeyance turns on the quality of the factual record on which the proponent relies.
- J When issuing the Federal Rules of Criminal Procedure, the Supreme Court (with implicit congressional approval, 28 U.S.C. §§ 2072-2074) prescribed the disclosures necessary for a fair balance between criminal defendants' and prosecutors' interests.
- K The Commission (and its Board's) decision to pay heed to DOJ's concern about possible prejudice to its criminal prosecution in this case is driven to a considerable extent by the Commission's long-established policy — memorialized in a formal Memorandum of Understanding — of deferring to DOJ when it seeks a delay in our enforcement proceedings pending the conclusion of DOJ's own criminal investigations or proceedings. Memorandum of Understanding Between the Nuclear Regulatory Commission and the Department of Justice, 53 Fed. Reg. 50,317, 50,319 (Dec. 14, 1988). The Commission does not lightly second-guess DOJ's views on whether, and how, premature disclosures might affect its criminal prosecutions.
- L When determining whether good cause exists for holding a proceeding in abeyance, the decisionmaker "must consider both the public interest as well as the interests of the person subject to the immediately effective order," and "[t]he determination of whether a delay is reasonable depends on the facts of a particular case and requires a balancing of the[se] competing interests." *Oncology Services Corp.*, CLI-93-17, 38 NRC at 49-50 (footnote omitted).
- M An indeterminate length of the delay (the first *Oncology* factor) weighs against granting an abeyance, due to the delay's potentially adverse effect on testimony.
- N An actual assertion of a hearing right (*Oncology*'s fifth factor) weighs against granting the abeyance. But this factor is, by its nature, merely procedural, and consequently is of little importance when balancing real-life equities.
- CLI-06-13 PA'INA HAWAII, LLC, Docket No. 30-36974-ML; MATERIALS LICENSE; May 15, 2006; MEMORANDUM AND ORDER
- A The Commission's procedural rules allow an applicant (here Pa'ina) the right to file an interlocutory appeal of board orders admitting contentions, but only if the appeal challenges the admissibility of all admitted contentions. 10 C.F.R. § 2.311(c). *See also Exelon Generation Co., LLC* (Early Site Permit for the Clinton ESP Site), CLI-04-31, 60 NRC 461, 468 (2004). This procedural requirement is well established in Commission jurisprudence and in fact long precedes the promulgation of our current Rule 2.311(c), *supra*. *See* 10 C.F.R. § 2.714a(c) (2004) (rescinded); *Northern States Power Co.* (Tyrone Energy Park, Unit 1), ALAB-492, 8 NRC 251, 252 (1978) (challenges to the admissibility of less than all admitted contentions must "abide the end of the case").
- CLI-06-14 HYDRO RESOURCES, INC. (P.O. Box 777, Crownpoint, New Mexico 87313), Docket No. 40-8968-ML; MATERIALS LICENSE; May 16, 2006; MEMORANDUM AND ORDER
- A The NRC does not regulate conventional uranium mining. The Atomic Energy Act requires an NRC license to transfer or receive in interstate commerce any source material (such as uranium ore) only "after removal from its place of deposit in nature." Atomic Energy Act of 1954, as amended, § 62, 42 U.S.C. § 2092. This provision precludes the NRC from exercising jurisdiction over conventional uranium mining. *See, e.g., Rochester Gas and Electric Corp.* (Sterling Power Project Nuclear Unit No. 1), ALAB-507, 8 NRC 551, 554 n.7 (1978) ("the Commission's authority over uranium ore and other 'source material' attaches only 'after removal from its place of deposit in nature,' and not when the ore is mined," citing 42 U.S.C. § 2092 (emphasis removed)).
- B TEDE includes radiation from "licensed operations" and excludes preexisting "background radiation." 10 C.F.R. § 20.1301(a)(1). Thus, the plain language of the regulation excludes emissions not directly tied to licensed activity.
- C The bare ownership of land containing radioactive material is not part of the licensee's licensed "operation." An NRC license is not required to "possess" source material in the form of unprocessed and unrefined ore so long as the ore is not processed or refined. *See* 10 C.F.R. § 40.13(b).
- D Mine spoil is a subset of "naturally occurring radioactive material" (NORM) commonly known as "technologically enhanced naturally occurring radioactive material" or TENORM. Emissions from NORM are background radiation.

DIGESTS
ISSUANCES OF THE NUCLEAR REGULATORY COMMISSION

- E At the time the NRC drafted the regulation defining “background radiation,” the term NORM was understood to include TENORM. This is evident from the definition’s history.
- F Radiation from unregulated “source material” is considered background radiation. All uranium and thorium is source material, but the NRC does not regulate source material in unprocessed ores and source material with insignificant concentrations of radionuclides.
- G “[T]echnical terms of art should be interpreted by reference to the trade or industry to which they apply.” *Louisiana Public Service Commission v. Federal Communications Commission*, 476 U.S. 355, 372 (1986), citing *Corning Glass Works v. Brennan*, 417 U.S. 188 (1974).
- H The NRC does not need a formal rulemaking to include technologically enhanced naturally occurring radioactive material (TENORM) in the category of naturally occurring radioactive material (NORM). The inclusion of TENORM as a subset of NORM was implicit at the time the regulatory definition of background was promulgated. There is no need for the NRC to draw fine distinctions among various classes of materials that it does not even regulate.
- CLI-06-15 LOUISIANA ENERGY SERVICES, L.P. (National Enrichment Facility), Docket No. 70-3103-ML; MATERIALS LICENSE; June 2, 2006; MEMORANDUM AND ORDER
- A The Commission considers a petition for review of two Atomic Safety and Licensing Board decisions, one a partial initial decision on the environmental impacts of depleted uranium disposal, and the second a related Board order ruling on summary disposition motions. The Commission affirms and supplements the Boards’ decisions, and supplements the NRC Staff’s Final Environmental Impact Statement (FEIS) discussion of the impacts of depleted uranium disposal.
- B Under NEPA standards and our environmental regulations it is appropriate to consider reasonably foreseeable environmental impacts of a proposed action, even if they are only indirect effects.
- C An NRC environmental impacts analysis of depleted uranium disposal impacts does not require a full-scale, site-specific licensing review under 10 C.F.R. Part 61. The Commission would expect that the appropriate state or federal regulatory authority, such as an Agreement State, will conduct any necessary site-specific evaluation to confirm that applicable radiological dose limits and standards can be met at a particular site.
- D While the Commission has discretion to review all underlying factual issues *de novo*, we are disinclined to do so where a Board has weighed arguments presented by experts and rendered reasonable, record-based factual findings. We generally step in only to correct “clearly erroneous” findings — that is, findings not even plausible in light of the record viewed in its entirety.
- E NEPA requires only that we consider “reasonably foreseeable” indirect effects of the proposed licensing action.
- F While a literal reading of 10 C.F.R. § 61.55(a)(6) would render depleted uranium a “Class A” waste (a category of low-level radioactive waste), the Part 61 rulemaking did not analyze the uranium enrichment waste stream. Therefore, the Commission in an earlier decision directed the NRC Staff, outside of this adjudication, to consider whether the quantities of depleted uranium at issue in the waste stream from uranium enrichment facilities warrant amending section 61.55(a)(6) or the section 61.55(a) waste classification tables.
- G Our contention-pleading rules direct petitioners to file their NEPA contentions based on the applicant’s environmental report. If, later, the NRC Staff’s draft or final EIS contains data or conclusions that differ significantly from the data or conclusions in the applicant’s documents, then petitioners may file new or amended contentions.
- CLI-06-16 ANDREW SIEMASZKO, Docket No. IA-05-021; ENFORCEMENT; June 2, 2006; MEMORANDUM AND ORDER
- A The Commission will reverse a licensing board’s determination on discretionary intervention only if the Board has abused its discretion. *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-98-13, 48 NRC 26, 34 (1998) (“PFS”); *Public Service Co. of Oklahoma* (Black Fox Station, Units 1 and 2), ALAB-397, 5 NRC 1143, 1149, *reconsid’n denied*, ALAB-402, 5 NRC 1182 (1977). Under that review standard, the appellant faces a substantial burden. “It is not enough for [the appellant] to establish simply that the Licensing Board might justifiably have” reached the same conclusion as the appellant regarding the petition for discretionary intervention. *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), ALAB-952, 33 NRC 521, 532, *aff’d*, CLI-91-13, 34 NRC 185 (1991), quoting *Washington Public Power Supply System* (WPPSS Nuclear Project No. 3),

DIGESTS
ISSUANCES OF THE NUCLEAR REGULATORY COMMISSION

ALAB-747, 18 NRC 1167, 1171 (1983). Rather, the appellant must persuade us “that a reasonable mind could reach no other result.” *WPPSS*, ALAB-747, 18 NRC at 1171.

B This agency has “broad discretion to provide hearings or permit interventions in cases where these avenues of public participation would not be available as a matter of right” — that is, discretionary intervention. *Public Service Co. of Indiana* (Marble Hill Nuclear Generating Station, Units 1 and 2), CLI-80-10, 11 NRC 438, 442 (1980), *aff’d*, *Save the Valley v. NRC*, 714 F.2d 142 (6th Cir. 1983) (Table). See also *Cities of Statesville v. AEC*, 441 F.2d 962, 976-77 (D.C. Cir. 1969).

C In exercising discretion in ruling on requests for discretionary intervention, the NRC’s presiding officers and licensing boards traditionally consider the following six factors, originally developed in case law but now codified in our regulations:

- (1) Factors weighing in favor of allowing intervention [the “positive” factors] —
 - (i) The extent to which the requestor’s/petitioner’s participation may reasonably be expected to assist in developing a sound record;
 - (ii) The nature and extent of the requestor’s/petitioner’s property, financial or other interests in the proceeding; and
 - (iii) The possible effect of any decision or order that may be issued in the proceeding on the requestor’s/petitioner’s interest;
- (2) Factors weighing against allowing intervention [the “negative” factors] —
 - (i) The availability of other means whereby the requestor’s/petitioner’s interest will be protected;
 - (ii) The extent to which the requestor’s/petitioner’s interest will be represented by existing parties; and
 - (iii) The extent to which the requestor’s/petitioner’s participation will inappropriately broaden the issues or delay the proceeding.

10 C.F.R. § 2.309(e)(1)-(2). See also *Portland General Electric Co.* (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 616 (1976). The first of these factors — assistance in developing a sound record — is the most important. Final Rule: “Changes to Adjudicatory Process,” 69 Fed. Reg. 2182, 2201, 2220 (Jan. 14, 2004) (“Final Rule”). See also *Pebble Springs*, CLI-76-27, 4 NRC at 617.

D When a licensing board balances the six “discretionary intervention” factors, it must keep in mind that discretionary intervention is “an extraordinary procedure.” Final Rule, 69 Fed. Reg. at 2201.

E Because the NRC resolves discretionary intervention motions largely on their facts (*Pebble Springs*, CLI-76-27, 4 NRC at 616), NRC legal precedent is less helpful than on most other adjudicatory issues. As we stated in our seminal *Pebble Springs* decision, the practice of granting or denying discretionary intervention should develop “not through precedent, but through attention to the concrete facts of particular situations.” *Id.* at 617. *Accord Sacramento Municipal Utility District* (Rancho Seco Nuclear Generating Station), CLI-93-12, 37 NRC 355, 358, *clarified on other issues*, CLI-93-19, 38 NRC 81 (1993).

F “Abuse of discretion” is a high standard of review. The Commission routinely accords substantial deference to the Board on matters involving standing (*Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 324 (1999)) and also in the analogous area of credibility determinations (*Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-03-8, 58 NRC 11, 25-27 (2003)). Hence, the Commission does not lightly set aside a Board’s grant of discretionary intervention.

G Under the NRC’s rules, the “standing” requirement does not apply to petitions for discretionary intervention. Discretionary intervention comes into play only “in the event that the petitioner is determined to lack standing to intervene as a matter of right under [10 C.F.R. § 2.309(d)(1)].” 10 C.F.R. § 2.309(e). The Commission’s regulatory history makes clear that discretionary intervention was created to afford party status to petitioners unable to demonstrate standing: “Under current agency case law, the Commission may . . . allow discretionary intervention to a person who does not meet standing requirements, where there is reason to believe the person’s participation will make a valuable contribution to the proceeding and where a consideration of the other criteria on discretionary intervention shows that such intervention is warranted.” Final Rule: “Streamlined Hearing Process for NRC Approval of License Transfers,” 63 Fed. Reg. 66,721, 66,724 (Dec. 3, 1998).

H NRC procedural rules require a petitioner seeking to intervene as of right in NRC adjudication to demonstrate standing and to offer an admissible contention. 10 C.F.R. § 2.309(a), (d), (f). Although under our rules the “standing” requirement does not apply to petitions for discretionary intervention, the

DIGESTS

ISSUANCES OF THE NUCLEAR REGULATORY COMMISSION

- “admissible contention” requirement does. Nothing in our rules of practice excuses a petitioner seeking discretionary intervention from proposing “at least one admissible contention,” a general requirement covering *all* petitions to intervene. 10 C.F.R. § 2.309(a). Absent this requirement, a discretionary intervenor would be free to litigate issues it had not raised. This incongruity would give a discretionary intervenor a participatory role much broader than that of an intervenor as of right (who may litigate only its own contentions or those of another intervenor that it has properly adopted). *Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-04-35, 60 NRC 619, 626-27 (2004); 10 C.F.R. § 2.309(f)(3).
- I “[W]e d[o] not intend that a petitioner should be entitled to discretionary intervention without an issue of its own worthy of exploration in an adjudication.” *Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-02-16, 55 NRC 317, 346 (2002). *See also Commonwealth Edison Co.* (Dresden Nuclear Power Station, Unit 1), LBP-82-52, 16 NRC 183, 194 (1982) (dictum).
- J To be admissible, a contention must meet certain specificity and basis requirements and also must fall within the scope of the proceeding. 10 C.F.R. § 2.309(f)(1).
- K The scope of an enforcement proceeding is narrow. Typically, enforcement orders limit adjudication to two issues only — whether the facts as stated in the order are true, and whether the proposed sanction is supported by those facts. *See, e.g., Alaska Department of Transportation and Public Facilities*, CLI-04-26, 60 NRC 399, 404-11, *reconsid’n denied*, CLI-04-38, 60 NRC 652 (2004), *petition for review docketed sub nom. Farmer v. NRC*, No. 05-70718 (9th Cir. Feb. 11, 2005); *Tennessee Valley Authority* (Watts Bar Nuclear Plant, Unit 1; Sequoyah Nuclear Plant, Units 1 and 2; Browns Ferry Nuclear Plant, Units 1, 2, and 3), CLI-04-24, 60 NRC 160, 203 (2004). *See generally Bellotti v. NRC*, 725 F.2d 1380 (D.C. Cir. 1983). For instance, an enforcement contention might appropriately address the factual underpinnings of the NRC Staff’s finding of violation (*see, e.g., North Anna*, ALAB-363, 4 NRC at 633) or the mitigating factors to be considered in determining the penalty. By contrast, a contention seeking to challenge the agency’s overall enforcement policy would fall outside the scope of the enforcement proceeding and therefore be inadmissible.
- L The Board may reframe contentions, following a determination of their admissibility, “for purposes of clarity, succinctness, and a more efficient proceeding.” *Virginia Electric and Power Co.* (North Anna Power Station, Units 1 and 2), LBP-84-40A, 20 NRC 1195, 1199 (1984). *See also Philadelphia Electric Co.* (Limerick Generating Station, Units 1 and 2), LBP-82-43A, 15 NRC 1423, 1479, 1483 (1982). But the Board must not redraft an inadmissible contention to cure deficiencies and thereby render it admissible. *See Arizona Public Service Co.* (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), CLI-91-12, 34 NRC 149, 155 (1991). This bar against corrective redrafting is particularly compelling in the context of a request for discretionary intervention, for a Board rewrite of contentions undermines the very basis for granting discretionary intervention, i.e., the *Petitioner’s* demonstrated ability to contribute to the record. Such an action would be tantamount to raising a new issue *sua sponte* without the required prior permission from the Commission. 10 C.F.R. § 2.340(a); *Duke Cogema Stone & Webster* (Savannah River Mixed Oxide Fuel Fabrication Facility), CLI-01-13, 53 NRC 478, 483 (2001).
- M “[G]eneralized expertise, even scientific eminence, is an insufficient substitute for particularized knowledge of the issues actually in dispute.” *PFS*, CLI-98-13, 48 NRC at 35. The most vivid example of this practice is our refusal in *PFS* to allow discretionary intervention to a distinguished group of scientists — including six Nobel laureates — because their knowledge was not specifically relevant to the proceeding at bar. *See id.*, 48 NRC at 34-35, *aff’g* LBP-98-7, 47 NRC at 177-78. In justifying as “extraordinary [a] procedure” as discretionary intervention (Final Rule, 69 Fed. Reg. at 2201), the Board should identify the *specific* contributions that Petitioners could offer.
- N A denial of a motion for discretionary intervention does not eliminate all possibility of Petitioners’ participation in the litigation; e.g., Petitioners could request permission to participate as *amici curiae* on appropriate issues (10 C.F.R. § 2.315(d)), and/or their representative could serve as an advisor to Mr. Siemaszko, or (if qualified) as an expert witness (*Diablo Canyon*, CLI-02-16, 55 NRC at 346; *PFS*, CLI-98-13, 48 NRC at 35).
- O When issuing its discretionary intervention rule, the Commission characterized the “sound record” factor as “foremost” in importance, but also indicated that other factors, especially the last (inappropriate broadening or delay of the proceeding) could overcome it. *See* Final Rule, 69 Fed. Reg. at 2201. Consistent with this principle, prior adjudicatory decisions have typically examined all six discretionary intervention factors, regardless of the result on the critical first factor (“assist in developing a sound record”). *See, e.g., Tennessee Valley Authority* (Watts Bar Nuclear Plant, Units 1 and 2), ALAB-413, 5 NRC 1418, 1422-23

DIGESTS

ISSUANCES OF THE NUCLEAR REGULATORY COMMISSION

(1977), *aff'g* LBP-77-36, 5 NRC 1292, 1296 (1977); *Ohio Edison Co.* (Perry Nuclear Power Plant, Unit 1), LBP-91-38, 34 NRC 229, 250-51 (1991); *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-90-24, 32 NRC 12, 16-17 & n.16 (1990), *aff'd*, ALAB-952, 33 NRC 521, *aff'd*, CLI-91-13, 34 NRC 185 (1991); *Cleveland Electric Illuminating Co.* (Perry Nuclear Power Plant, Units 1 and 2), LBP-81-24, 14 NRC 175, 179 (1981). Even so, the Commission is aware of no NRC decision allowing discretionary intervention in the face of a negative finding on the “sound record” factor.

P A policy of granting discretionary intervention whenever a petitioner has more experience or background than another participant or party could lead to complex and inappropriate comparative inquiries into various participants’, parties’, and lawyers’ resources and experience. An open-ended approach like this would also be inconsistent with the Commission’s view that “discretionary intervention is an extraordinary procedure, and will not be allowed unless there are compelling factors in [its] favor.” Final Rule, 69 Fed. Reg. at 2201. Discretionary intervention is meant to ensure a sound adjudicatory record, not simply to provide a second representative to assist (allegedly) ill-represented parties.

Q The Commission expects boards taking the extraordinary action of allowing discretionary intervention to set out specific findings on each pertinent factor.

CLI-06-17 NUCLEAR MANAGEMENT COMPANY, LLC (Palisades Nuclear Plant), Docket No. 50-255-LR; LICENSE RENEWAL; June 23, 2006; MEMORANDUM AND ORDER

A A reply cannot expand the scope of the arguments set forth in the original pleading. *Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-04-25, 60 NRC 223 (2004), *reconsideration denied*, CLI-04-35, 60 NRC 619 (2004). *Accord, USEC, Inc.* (American Centrifuge Plant), CLI-06-9, 63 NRC 433, 439 (2006). Replies must focus narrowly on the legal or factual arguments first presented in the original petition or raised in the answers to it.

B New bases for a contention cannot be introduced in a reply brief, or any other time after the date the original contentions are due, unless the petitioner meets the late-filing criteria set forth in 10 C.F.R. § 2.309(c), (f)(2). While a petitioner need not introduce at the contention phase every document on which it will rely in a hearing, if the contention as originally pled did not cite adequate documentary support, a petitioner cannot remediate the deficiency by introducing in the reply documents that were available to it during the time frame for initially filing contentions. Allowing new claims in a reply would defeat the contention-filing deadline and unfairly deprive other participants an opportunity to rebut the new claims.

C Petitioners would not be able to meet the criteria for filing amended or new contentions after the initial filing because the documentary material upon which the new or amended contention was based was not previously unavailable to the Petitioners. 10 C.F.R. § 2.309(f)(2)(i).

D A claim that the pads for storing spent fuel storage are defective is outside the scope of a nuclear power plant operating license renewal proceeding. *See Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 344 n.4 (1999).

CLI-06-18 PA'INA HAWAII, LLC, Docket No. 30-36974-ML; MATERIALS LICENSE; July 26, 2006; MEMORANDUM AND ORDER

A The Commission’s rules allow discretionary interlocutory review only when a licensing board certifies a ruling or refers a question, or when an interlocutory board ruling creates “immediate and serious irreparable impact” or “affects the basic structure of the proceeding in a pervasive or unusual manner. 10 C.F.R. § 2.341(f)(1), (f)(2)(i) & (ii).

B Settling some but not all contentions is a routine feature of NRC litigation; it does not affect the proceeding in a pervasive or unusual manner.

C “[A] licensing board’s [order] is final for appellate purposes where it either disposes of at least a major segment of the case or terminates a party’s right to participate; rulings which do neither are interlocutory.” *Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), ALAB-731, 17 NRC 1073, 1074 (1983), and cited authority.

D The burden of a settlement with an intervenor regarding NEPA issues falls on the NRC Staff (*Wetlands Action Network v. Army Corps of Engineers*, 222 F.3d 1105, 1114 (9th Cir. 2000), *cert. denied*, 534 U.S. 815 (2001)), and thus does not compromise Pa’ina’s hearing rights. It is the NRC, not licensee, that has the legal duty to perform a NEPA analysis and to issue appropriate NEPA documents. *See id.* *See also USEC Inc.* (American Centrifuge Plant), CLI-06-10, 63 NRC 451, 474 & n.144 (2006), citing 10 C.F.R. § 51.41. The Licensee complains about the resulting “extra expense [and] work,” the “procedural delays,” and the “greater uncertainty” associated with the purported bifurcation of this proceeding into an “EA track with a public meeting many months in the future” and “an evidentiary, trial-type hearing

DIGESTS
ISSUANCES OF THE NUCLEAR REGULATORY COMMISSION

with expert opinions on the non-environmental contentions.” But these are normal accoutrements of any hearing process involving NEPA. License applicants at the NRC assume the risk of imposition of these additional burdens. *See generally Consolidated Edison Co. of New York* (Indian Point, Units 1 and 2), CLI-01-8, 53 NRC 225, 229 (2001) (observing, albeit in another context, that “litigation inevitably results in the parties’ loss of both time and money”).

- E Third parties have no absolute right to veto settlements that the agreeing parties find to their advantage.
- F Settlements that are presumably based on an analysis of litigation risk and optimum use of the NRC Staff’s scarce resources are commonplace in litigation and have, in the past, received our approval. *Sequoyah Fuels Corp.* (Gore, Oklahoma Site), CLI-97-13, 46 NRC 195, 207-11 (1997).
- G The Commission has a longstanding policy of supporting settlements. 10 C.F.R. § 2.338. *See also Sequoyah Fuels Corp.*, CLI-97-13, 46 NRC at 205.
- H Administrative agencies and their adjudicators routinely approve stipulations and settlements to which fewer than all the parties in a case subscribe. We have done so ourselves, albeit in the enforcement context. *Sequoyah Fuels*, CLI-97-13, 46 NRC at 222-23. Indeed, our own regulations contemplate just such a possibility — requiring only “the consenting parties” to file the settlement with the board. 10 C.F.R. § 2.338(g).
- CLI-06-19 DAVID GEISEN, Docket No. IA-05-052; ENFORCEMENT; July 26, 2006; MEMORANDUM AND ORDER
- A The Commission usually defers to boards’ fact-based decisions. *Andrew Siemaszko*, CLI-06-12, 63 NRC 495, 501 & n.14 (2006).
- B Given the Memorandum of Understanding (MOU) between the NRC and the U.S. Department of Justice regarding the potential need to hold NRC enforcement proceedings in abeyance pending the conclusion of DOJ’s parallel criminal cases, the Commission is generally inclined to accommodate DOJ’s abeyance requests. Memorandum of Understanding Between the Nuclear Regulatory Commission and the Department of Justice, 53 Fed. Reg. 50,317, 50,318 (§ II) (Dec. 14, 1988). But the MOU does *not* specify an ironclad guarantee of such accommodation. The MOU reflects a clear understanding that DOJ must provide factual justification for delaying our own adjudicatory process and for imposing on the enforcement target the additional financial, professional, emotional, and other burdens that perforce accompany a delay in the resolution of an enforcement proceeding. Indeed, the MOU expressly calls on DOJ to provide the NRC Staff with factual support for an abeyance request — with “appropriate affidavits or testimony.” MOU, 53 Fed. Reg. at 50,319 (§ III.C.2).
- CLI-06-20 EXELON GENERATION COMPANY, LLC (Early Site Permit for Clinton ESP Site), Docket No. 52-007-ESP; SYSTEM ENERGY RESOURCES, INC. (Early Site Permit for Grand Gulf ESP Site), Docket No. 52-009-ESP; EARLY SITE PERMIT; July 26, 2006; MEMORANDUM AND ORDER
- A The Commission accepted review under its inherent supervisory power over adjudications. Because our licensing boards are conducting the first “mandatory” hearings this agency has held in more than two decades, additional Commission guidance was deemed appropriate. *See, e.g., Duke Energy Corp.* (Catawba Nuclear Station, Units 1 and 2), CLI-04-21, 60 NRC 21, 27 (2004).
- B The Commission vacated the Board’s demand for a complete narrative report summarizing the Staff’s review of the license application, directed the Board to focus on specific issues, and approved the use of indexes as a means to summarize the documents on which the Staff’s review relied.
- C The Commission approved the Board’s request for a list of all regulatory guides applicable to the Staff’s analysis, together with a list of all instances where potentially applicable regulatory guides were not used.
- D The Commission vacated the Board’s order to the NRC Staff to provide it with information relevant to instances where the Staff reviewer disagreed with his supervisor with respect to the license application.
- E The Commission held that while the Board may ask the Staff to produce ACRS documents that it reviewed in conducting its license application review, the Staff need not obtain additional ACRS documents that it never saw in conducting its review.
- F Whether the NRC Staff should be required to produce four paper copies of relevant documents is a matter best left for the Board’s discretion. The Commission denied the Staff’s request to vacate this portion of the Board’s order.

DIGESTS
ISSUANCES OF THE NUCLEAR REGULATORY COMMISSION

- G In keeping with the Commission's expectation that the boards act promptly in concluding the hearing process, the Commission expects the boards in uncontested cases to issue their final initial decisions generally within 4, and at the most 6, months of the Staff's SER and FEIS issuances.
- CLI-06-21 FLORIDA POWER & LIGHT COMPANY, FPL ENERGY SEABROOK, LLC, FPL ENERGY DUANE ARNOLD, LLC, CONSTELLATION ENERGY GROUP, INC. (Calvert Cliffs Nuclear Power Plant, Units 1 and 2; Calvert Cliffs Independent Spent Fuel Storage Installation; Nine Mile Point Nuclear Station, Units 1 and 2; R.E. Ginna Nuclear Power Plant; Turkey Point Nuclear Generating Plant, Units 3 and 4; St. Lucie Nuclear Power Plant, Units 1 and 2; Seabrook Station; Duane Arnold Energy Center), Docket Nos. 50-317-LT-2, 50-318-LT-2, 72-8-LT-2, 50-220-LT-3, 50-410-LT-3, 50-244-LT-2, 50-250-LT, 50-251-LT, 50-335-LT, 50-389-LT, 50-443-LT, 50-331-LT; LICENSE TRANSFER; July 26, 2006; MEMORANDUM AND ORDER
- A Late-filing petitioners to intervene must satisfy not only our requirements that intervenors demonstrate standing (10 C.F.R. § 2.309(d)) and submit at least one admissible contention (10 C.F.R. § 2.309(f)(1)), but also our stringent requirements for untimely filings (10 C.F.R. § 2.309(c)) and late-filed contentions (10 C.F.R. § 2.309(f)(2)).
- B A petitioner's failure to read carefully the governing procedural regulations does not constitute good cause for the Commission to accept a late-filed petition to intervene.
- C Section 2.309(f)(1) of the NRC's procedural regulations provides that a petitioner "must set forth with particularity the contentions sought to be raised."
- D Although the Commission is disinclined to "step into the middle of a labor dispute" (*Power Authority of the State of New York* (James A. FitzPatrick Nuclear Power Plant; Indian Point, Unit 3), CLI-00-22, 52 NRC 266, 314 (2000)) or "involve [ourselves] in the personnel decisions of licensees" (*id.* at 316), the Commission has nonetheless recognized that there may be cases where employment-related contentions which are "closely tied to specific health-and-safety concerns or to potential violations of NRC rules[] can be admitted for a hearing" (*id.* at 315).
- E It is not enough under our contention-pleading rules — whose "hallmark" is "specificity" — simply to say that a merger will result in personnel reductions that will adversely affect safety. *Northeast Nuclear Energy Co.* (Millstone Nuclear Power Station, Units 1, 2, and 3), CLI-00-18, 52 NRC 129, 132 (2000). General assertions, unsupported by specific facts or expert opinion, that personnel reductions may adversely affect health and safety are inadmissible. *FitzPatrick*, CLI-00-22, 52 NRC at 315.
- F To establish standing, a petitioner must show (among other things) that its potential injury is fairly traceable to a grant of the application(s).
- CLI-06-22 LOUISIANA ENERGY SERVICES, L.P. (National Enrichment Facility), Docket No. 70-3103-ML; MATERIALS LICENSE; August 17, 2006; MEMORANDUM AND ORDER
- A We do not undertake a point-by-point review of the Board's factual findings. While we have discretion to review all underlying factual issues *de novo*, we are disinclined to do so where the Board has weighed arguments presented by experts and rendered reasonable, record-based factual findings. We generally step in only to correct clearly erroneous findings — that is, findings not even plausible in light of the record viewed in its entirety.
- B The Board's "reliability" approach is not a "new" standard. The Board did not act unreasonably when it examined LES's estimates for "reliability" — an inquiry consistent with verifying whether the estimates provided "reasonable assurance" for decommissioning funding.
- C Each decommissioning situation is unique; the reasonableness of costs and estimates must be assessed on a case-by-case basis. Our precedents, as well as NUREG-1757, call for objective, documented data, not self-serving conclusory statements.
- D Obtaining an estimate from an experienced third-party vendor is not the only way for an applicant to demonstrate that its cost estimate is documented and reasonable, although it clearly is one way to reach that end. If an arm's-length third-party estimate is unavailable, the balance of an applicant's showing must be sufficiently "reliable" — documented and reasonable — to carry the day.
- E The Commission does not credit arguments made for the first time in a reply brief.
- CLI-06-23 PACIFIC GAS AND ELECTRIC COMPANY (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), Docket No. 72-26-ISFSI; INDEPENDENT SPENT FUEL STORAGE INSTALLATION; September 6, 2006; MEMORANDUM AND ORDER

DIGESTS
ISSUANCES OF THE NUCLEAR REGULATORY COMMISSION

- A A factual situation where there is ongoing construction of an independent spent fuel storage installation, but no loading of spent fuel, causes no imminent or irreparable harm justifying immediate Commission action. Such harm is the *sine qua non* of the kind of equitable relief sought.
- CLI-06-24 AMERGEN ENERGY COMPANY, LLC (Oyster Creek Nuclear Generating Station), Docket No. 50-0219-LR; LICENSE RENEWAL; September 6, 2006; MEMORANDUM AND ORDER
- A The scope of our 10 C.F.R. Part 54 safety review is limited to “those potential detrimental effects of aging that are not routinely addressed by ongoing regulatory oversight programs”; a license renewal review does not revisit the full panoply of issues considered during review of an initial license application.
- B Renewal applicants must demonstrate that they will adequately manage the detrimental effects of aging for all important components and structures, with attention, for example, to “[a]dverse aging effects [resulting] from [potential] metal fatigue, erosion, corrosion, thermal and radiation embrittlement, microbiologically induced effects, creep, and shrinkage,” which “can affect a number of reactor and auxiliary systems, including the reactor vessel, the reactor coolant system pressure boundary, steam generators, electrical cables, the pressurizer, heat exchangers, and the spent fuel pool.”
- C To the extent that any health and safety analyses performed during the initial licensing process were limited to the initial 40-year license period, the applicant must show that it has reassessed these “time-limited aging analyses” and that these analyses remain valid for the period of extended operation.
- D Review of a license renewal application does not reopen issues relating to a plant’s current licensing basis, or any other issues that are subject to routine and ongoing regulatory oversight and enforcement.
- E A Part 51 license renewal environmental review has both a generic component and a plant-specific component. In a generic environmental impact statement, the NRC has already considered certain environmental issues common to all (or to a certain category of) reactors. These issues are designated “Category 1” issues, and include such matters as onsite land use, noise, bird collisions with cooling towers, and onsite spent fuel storage. The site-specific environmental review does not routinely reconsider Category 1 issues, but requires applicants (and ultimately the NRC Staff) to assess certain site-specific, “Category 2” issues.
- F We have tailored our Part 51 environmental review requirements to provide an efficient and focused renewal-specific review, rather than duplicating the review required for an initial license.
- G To intervene in a Commission proceeding, including a license renewal proceeding, a person must file a petition for leave to intervene. In accordance with 10 C.F.R. § 2.309(a), this petition must demonstrate standing under 10 C.F.R. § 2.309(d), and must proffer at least one admissible contention as required by 10 C.F.R. § 2.309(f)(1)(i)-(vi).
- H The requirements for admissibility set out in 10 C.F.R. § 2.309(f)(1)(i)-(vi) are “strict by design,” and we will reject any contention that does not satisfy these requirements. Our rules require “a clear statement as to the basis for the contentions and the submission of . . . supporting information and references to specific documents and sources that establish the validity of the contention.” “Mere ‘notice pleading’ does not suffice.” Contentions must fall within the scope of the proceeding — here, license renewal — in which intervention is sought.
- I Under our rules, where (as here) the NRC Staff or the license applicant argues that the Board ought to have rejected all contentions, an appeal lies. An appeal also lies where (as here) a potential intervenor claims that the Board wrongly rejected all contentions.
- J We have discretion to grant interlocutory review at the request of a party in limited circumstances. However, “[t]he Commission’s longstanding general policy disfavors interlocutory review.” We recognize “an exception where the disputed ruling threatens the aggrieved party with serious, immediate, and irreparable harm or where it will have a ‘pervasive or unusual’ effect on the proceedings below.” We grant review under the “pervasive and unusual” effect standard “only in extraordinary circumstances.”
- K We give “substantial deference” to our boards’ determinations on threshold issues, such as standing and contention admissibility. We regularly affirm “Board decisions on the admissibility of contentions where the appellant ‘points to no error of law or abuse of discretion.’”
- L An (in effect) rewritten cumulative usage factor contention converted that contention into an impermissible new contention. Also, as formulated on appeal, another contention — “demanding an updated interconnection agreement” — did not match any of the three pieces that formed the original proposed contention. A person cannot raise new contentions for the first time on appeal to the Commission.
- M Section 50.55a(a)(3) expressly states that authorization from the Director of the NRC’s Office of Nuclear Reactor Regulation is required only when “alternatives” to the established requirements in

DIGESTS
ISSUANCES OF THE NUCLEAR REGULATORY COMMISSION

- subsections (c), (d), (e), (f), (g), and (h) are used. Since the Applicant's change in cumulative usage factor is "already endorsed" by subsection (g), the approval requirements of subsection (a)(3) do not apply.
- N Section 2.311 is not applicable to the Board's refusal to supplement the basis of a contention or to add new contentions because the section applies only where a board decision rules on a request for hearing, petition to intervene, or selection of hearing procedures. It does not authorize appeals from an order refusing to supplement an admitted contention.
- O For a viable petition for review where a decision was not a final decision on the merits, the petitioner needed to make a case for *interlocutory* review under section 2.341(f). Under section 2.341(f), a petitioner must show that the issue for which interlocutory review is sought: "(i) [t]hreatens the party adversely affected by it with immediate and serious irreparable impact which, as a practical matter, could not be alleviated through a petition for review of the presiding officer's final decision; or (ii) [a]ffects the basic structure of the proceeding in a pervasive or unusual manner."
- CLI-06-25 PA'INA HAWAII, LLC, Docket No. 30-36974-ML; MATERIALS LICENSE; September 6, 2006; MEMORANDUM AND ORDER
- A Appeals under 10 C.F.R. § 2.311(c) must be filed within 10 days of service of the appealed order(s). 10 C.F.R. § 2.311(a).
- B Section 2.311 contemplates just one opportunity for license applicants to appeal contention admissibility rulings — at the outset of a proceeding, within 10 days after a Board grants a petition to intervene, and only if the license applicant argues the petition should have been "wholly denied."
- CLI-06-26 ENTERGY NUCLEAR OPERATIONS, INC. (Pilgrim Nuclear Power Station), Docket No. 50-293-LR; ENTERGY NUCLEAR VERMONT YANKEE, LLC, and ENTERGY NUCLEAR OPERATIONS, INC. (Vermont Yankee Nuclear Power Station), Docket No. 50-271-LR; LICENSE RENEWAL; October 10, 2006; ORDER
- A The Commission denies "petitions" for a "backfit order" filed by the Massachusetts Attorney General, noting that they amount to a request for enforcement action, and not a matter within the scope of a license renewal adjudication.
- B A request for an order to modify a license based upon an allegedly hazardous condition in the current spent fuel pool amounts to a request for agency enforcement action. Such a request is not suitable for a license renewal adjudication, but perhaps suitable for consideration under 10 C.F.R. § 2.206.
- CLI-06-27 PACIFIC GAS AND ELECTRIC COMPANY (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), Docket No. 72-26-ISFSI; INDEPENDENT SPENT FUEL STORAGE INSTALLATION; November 9, 2006; MEMORANDUM AND ORDER
- A We undertake reconsideration only when a party shows a "compelling circumstance," "such as the existence of a clear and material error in a decision, which could not have reasonably been anticipated" and that "renders the decision invalid." We apply this standard strictly, and do not grant motions for reconsideration lightly.
- B Where a party *itself* requested that *we* provide injunctive relief, we balanced the equities to decide *that* question — as any determination on the necessity for an injunction requires. To justify reconsideration of our denial of the request for an injunction, the motion for reconsideration had to support a rebalancing of the equities, which it did not.
- C Since the original motion for injunctive relief never mentioned 10 C.F.R. § 51.101(a), a motion for reconsideration of the denial of injunctive relief based on that section falls afoul of our prohibition against raising new arguments in a motion for reconsideration.
- CLI-06-28 SYSTEM ENERGY RESOURCES, INC. (Early Site Permit for Grand Gulf ESP Site), Docket No. 52-009-ESP; EARLY SITE PERMIT; November 9, 2006; ORDER
- CLI-06-29 HYDRO RESOURCES, INC. (P.O. Box 777, Crownpoint, NM 87313), Docket No. 40-8968-ML; MATERIALS LICENSE; December 14, 2006; MEMORANDUM AND ORDER
- A The Commission denies a petition for review of a Presiding Officer initial decision on the adequacy of a Final Environmental Impact Statement.
- B Not all new information that might emerge following issuance of an environmental impact statement requires a supplement to the impacts analysis. The new information must present a seriously different picture of the environmental impact of the proposed project from what was previously envisioned.
- C On fact-specific technical issues, where a Presiding Officer has reviewed an extensive record in detail with the assistance of a technical advisor, the Commission is disinclined to upset the Presiding Officer's findings and conclusions, particularly where the submissions of experts have been weighed. While the

DIGESTS

ISSUANCES OF THE NUCLEAR REGULATORY COMMISSION

- Commission may choose on occasion to make its own *de novo* findings of fact, we generally do not exercise that authority where a Presiding Officer or Licensing Board has issued a plausible decision that rests on carefully rendered findings of fact.
- D The purpose of addressing possible mitigation measures in an FEIS is to ensure that the agency has taken a hard look at the potential environmental impacts of a proposed action. An EIS therefore must address mitigation measures in sufficient detail to ensure that environmental consequences have been fairly evaluated. An EIS need not, however, contain a complete mitigation plan. In addition, NEPA does not guarantee that federally approved projects will have no adverse impacts at all.
- CLI-07-1 ENTERGY NUCLEAR VERMONT YANKEE, LLC, and ENTERGY NUCLEAR OPERATIONS, INC. (Vermont Yankee Nuclear Power Station), Docket No. 50-271-LR; LICENSE RENEWAL; January 11, 2007; MEMORANDUM AND ORDER
- A The Commission customarily does not entertain discretionary interlocutory appeals, due in large part to a “general unwillingness to engage in ‘piecemeal interference in ongoing Licensing Board proceedings.’” *Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), CLI-04-31, 60 NRC 461, 466 (2004), quoting *Duke Cogema Stone & Webster* (Savannah River Mixed Oxide Fuel Fabrication Facility), CLI-02-7, 55 NRC 205, 213 (2002).
- B The Commission’s procedural rules set a high bar for interlocutory review petitions, viz, a petitioner must demonstrate that the licensing board’s ruling at issue either “[t]hreatens the party adversely affected by it with immediate and serious irreparable impact which, as a practical matter, could not be alleviated through a petition for review of the presiding officer’s final decision; or . . . [a]ffects the basic structure of the proceeding in a pervasive or unusual manner.” 10 C.F.R. § 2.341(f)(2)(i)-(ii).
- C Outside the context of petitions for interlocutory review, the Commission may also take interlocutory review of questions or rulings that a licensing board either refers or certifies to the Commission under 10 C.F.R. §§ 2.319(f) or 2.323(f), respectively. See 10 C.F.R. § 2.341(f)(1).
- D The Commission will occasionally take review of an issue on its own motion, or *sua sponte*, where that issue is not otherwise before it on appeal. The Commission has used *sua sponte* review as a vehicle to address unappealed issues or orders, to set a specific timetable or otherwise customize our procedures for individual adjudications, to suspend a proceeding, to vacate an unreviewed board order after withdrawal of the challenged application, to decide whether to disqualify a presiding officer, to address an issue of wide implication, and to provide guidance to a licensing board.
- E The Commission announced in its 1998 *Statement of Policy on Conduct of Adjudicatory Proceedings* that it would, where appropriate, exercise its authority to instruct the board to certify novel license renewal issues. CLI-98-12, 48 NRC 18, 23 (1998). The Commission’s taking *sua sponte* review yields essentially the same result.
- CLI-07-2 ENTERGY NUCLEAR GENERATION COMPANY and ENTERGY NUCLEAR OPERATIONS, INC. (Pilgrim Nuclear Power Station), Docket No. 50-293-LR; LICENSE RENEWAL; January 11, 2007; MEMORANDUM AND ORDER
- A The Commission denies an appeal by an admitted Intervenor who seeks interlocutory review of one rejected contention.
- B Under 10 C.F.R. § 2.311, appeals are permitted under three circumstances: (1) where a petitioner challenges an order “denying” a petition to intervene and/or request for hearing; (2) where a party other than a petitioner challenges an order granting a petition to intervene, claiming that the petition should have been “wholly denied”; and (3) where a party claims that an order selecting a hearing procedure “was in clear contravention” of applicable Commission hearing selection criteria. Section 2.311 does not provide for interlocutory appeals by an admitted intervenor, and the Commission generally disfavors interlocutory, piecemeal appeals.
- C In exceptional instances, the Commission may in its discretion grant a petition for interlocutory review, where a party demonstrates that a ruling threatens it with immediate and serious irreparable impact, or affects the basic structure of the proceeding in a pervasive or unusual manner.
- CLI-07-3 ENTERGY NUCLEAR VERMONT YANKEE, LLC, and ENTERGY NUCLEAR OPERATIONS, INC. (Vermont Yankee Nuclear Power Station), Docket No. 50-271-LR; ENTERGY NUCLEAR GENERATION COMPANY and ENTERGY NUCLEAR OPERATIONS, INC. (Pilgrim Nuclear Power Station), Docket No. 50-293-LR; LICENSE RENEWAL; January 22, 2007; MEMORANDUM AND ORDER
- A Generic environmental impacts analyzed in the GEIS for license renewal are designated “Category 1” issues, for which the license renewal applicant is generally excused from discussing. 10 C.F.R.

DIGESTS
ISSUANCES OF THE NUCLEAR REGULATORY COMMISSION

§ 51.53(c)(3)(i). Generic analysis is “clearly an appropriate method” of meeting the agency’s statutory obligations under NEPA. *See Baltimore Gas & Electric Co. v. Natural Resources Defense Council, Inc.*, 462 U.S. 87, 101 (1984).

B The license renewal GEIS determined that the environmental effects of storing spent fuel for an additional 20 years at the site of nuclear reactors would be “not significant.” *See* NUREG-1427, “Generic Environmental Impact Statement for License Renewal of Nuclear Plants (May 1996),” at 6-72 to -75, 6-85. Accordingly, this finding was expressly incorporated into our regulations. *See* 10 C.F.R. Part 51, Subpart A, App. B, Table B-1, “Summary of Findings on NEPA Issues for License Renewal of Nuclear Power Plants.” Because the generic environmental analysis was incorporated into a regulation, the conclusions of that analysis are not subject to attack in an individual adjudication unless the rule is waived or suspended. 10 C.F.R. § 2.335(a), (b); *see also Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 NRC 349, 364 (2001).

C One way to challenge a generic finding, or “Category 1” issue, in a particular license proceeding is to apply for a waiver where “special circumstances . . . are such that the application of the rule or regulation . . . would not serve the purposes for which the rule or regulation was adopted.” 10 C.F.R. § 2.335(b). In theory, Commission approval of a waiver could allow a contention on a Category 1 issue to proceed where special circumstances exist.

D Adjudicating Category 1 issues site by site based merely on a claim of “new and significant information,” would defeat the purpose of resolving generic issues in a GEIS.

E Where a petitioner argues that new information contradicts assumptions underlying the entire generic analysis for all facilities or a whole class of facilities, the appropriate remedy is a rulemaking petition. It makes more sense for the NRC to study whether, as a technical matter, the agency should modify its requirements for all plants across the board than to litigate in particular adjudications whether generic findings in the GEIS are impeached by a claim of new information.

F Pending resolution of a rulemaking petition, the NRC Staff may, where appropriate, seek the Commission’s permission to suspend the generic determination of a Category 1 issue and include a new analysis in the plant-specific environmental impact statements. *See* Statement of Considerations, Final Rule: “Environmental Review for Renewal of Nuclear Power Plant Operating Licenses,” 61 Fed. Reg. 28,467, 28,472 (June 5, 1996). If the rule is suspended for the analysis, each supplemental EIS would reflect the corrected analysis until such time as the rule is amended.

G A license renewal applicant need not discuss severe accident mitigation alternatives for generic — or “Category 1” — issues. *See Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 21-22 (2001). This makes obvious sense since “for all issues designated as Category 1 the Commission has concluded that [generically] additional site-specific mitigation alternatives are unlikely to be beneficial.” *Id.* at 22.

CLI-07-4 EXELON GENERATION COMPANY, LLC (Early Site Permit for Clinton ESP Site), Docket No. 52-007-ESP; EARLY SITE PERMIT; January 22, 2007; ORDER

CLI-07-5 USEC INC. (American Centrifuge Plant), Docket No. 70-7004-ML; MATERIALS LICENSE; February 1, 2007; MEMORANDUM AND ORDER

A The Commission directs the Atomic Safety and Licensing Board to revise its mandatory hearing schedule.

CLI-07-6 DAVID GEISEN, Docket No. IA-05-052; ENFORCEMENT; February 1, 2007; MEMORANDUM AND ORDER

A The question whether to hold an NRC enforcement proceeding in abeyance pending a related criminal prosecution is generally suitable for interlocutory Commission review because, unlike most interlocutory questions, the abeyance issue cannot await the end of the proceeding (it becomes moot).

B A petition seeking review of an order granting or denying such an abeyance motion meets our standard for interlocutory review because the appealed order would have an “immediate and serious irreparable impact which, as a practical matter, could not be alleviated through a petition for review of the presiding officer’s final decision.”

C In analyzing the abeyance question, we balance here the risk of harm Mr. Geisen could suffer from an abeyance order against the risk of harm DOJ could suffer from the NRC Staff moving forward in its enforcement hearing.

D Given the Memorandum of Understanding between the NRC and DOJ regarding the potential need to hold our enforcement proceedings in abeyance pending the conclusion of DOJ’s parallel criminal cases,

DIGESTS
ISSUANCES OF THE NUCLEAR REGULATORY COMMISSION

we are generally inclined to accommodate an abeyance request from DOJ as long as it provides at least *some* showing of potential detrimental effect on its parallel criminal case. Memorandum of Understanding Between the Nuclear Regulatory Commission and the Department of Justice, 53 Fed. Reg. 50,317, 50,318 (§ II) (Dec. 14, 1988).

- E Our regulations require that hearings regarding immediately effective enforcement orders be held expeditiously.
- CLI-07-7 SYSTEM ENERGY RESOURCES, INC. (Early Site Permit for Grand Gulf ESP Site), Docket No. 52-009-ESP; EARLY SITE PERMIT; February 15, 2007; ORDER
- CLI-07-8 AMERGEN ENERGY COMPANY, LLC (Oyster Creek Nuclear Generating Station), Docket No. 50-0219-LR; LICENSE RENEWAL; February 26, 2007; MEMORANDUM AND ORDER
- A The NRC is not obligated to adhere, in all of its proceedings, to the first court of appeals decision to address a controversial question. Such an obligation would defeat any possibility of a conflict between the Circuits on important issues.
- B The National Environmental Policy Act does not require the NRC to consider the environmental consequences of hypothetical terrorist attacks on NRC-licensed facilities. “Terrorism contentions are, by their very nature, directly related to security and are therefore, under our [license renewal] rules, unrelated to ‘the detrimental effects of aging.’ Consequently, they are beyond the scope of, not ‘material’ to, and inadmissible in, a license renewal proceeding.” Moreover, as a general matter, NEPA “imposes no legal duty on the NRC to consider intentional malevolent acts . . . in conjunction with commercial power reactor license renewal applications.”
- C “The ‘environmental’ effect caused by third-party miscreants ‘is . . . simply too far removed from the natural or expected consequences of agency action to require a study under NEPA.’” “[T]he claimed impact is too attenuated to find the proposed federal action to be the ‘proximate cause’ of that impact.” There simply is no “proximate cause” link between an NRC licensing action, such as (in this case) renewing an operating license, and any altered risk of terrorist attack. Instead, the level of risk depends upon political, social, and economic factors *external* to the NRC licensing process. It is not sensible to hold an NRC licensing decision, rather than terrorists themselves, the “proximate cause” of an attack on an NRC-licensed facility.
- D The NRC Staff’s Generic Environmental Impact Statement (GEIS) for license renewal has already “performed a discretionary analysis of terrorist acts in connection with license renewal, and concluded that the core damage and radiological release from such acts would be no worse than the damage and release to be expected from internally initiated events.” And, as required by the GEIS, the NRC Staff performed a site-specific analysis of alternatives to mitigate severe accidents.
- E As a legal matter, the specific characteristics of the facility now identified as special risk factors amount to new information, not part of the original contention, and improperly introduced for the first time on appeal.
- F Site-specific claims relating to the safe *ongoing* operations of a nuclear reactor are not matters peculiar to plant aging or to the license extension period. If information in hand suggests license amendments or other protective measures may be required for a nuclear plant, then a petition for relief under 10 C.F.R. § 2.206 (providing for petitions for enforcement relief) may be filed with the NRC.
- G If there is reason to believe that a departure from the NRC’s license renewal Generic Environmental Impact Statement and related regulations is warranted, then the remedy is a petition for rulemaking to modify our rules or a petition for a waiver of our rules based on “special circumstances,” not an adjudicatory contention.
- CLI-07-9 NUCLEAR MANAGEMENT COMPANY, LLC (Palisades Nuclear Plant), Docket No. 50-255-LR; LICENSE RENEWAL; February 26, 2007; MEMORANDUM AND ORDER
- A The National Environmental Policy Act (NEPA) does not require the NRC to consider the environmental consequences of hypothetical terrorist attacks on NRC-licensed facilities. *AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-07-8, 65 NRC 124 (2007). As a general matter, NEPA “imposes no legal duty on the NRC to consider intentional malevolent acts . . . in conjunction with commercial power reactor license renewal applications.” *Id.* at 129. The claimed impact is too attenuated to find the proposed federal action to be the “proximate cause” of that impact.
- B There is no basis for admitting this terrorism contention in this, or any other, license renewal proceeding. “Terrorism contentions are, by their very nature, directly related to security and are therefore, under our [license renewal] rules, unrelated to the ‘detrimental effects of aging.’ Consequently, they are

DIGESTS
ISSUANCES OF THE NUCLEAR REGULATORY COMMISSION

- beyond the scope of, not ‘material’ to, and inadmissible in, a license renewal proceeding.” *AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-07-8, 65 NRC at 129.
- C Any new contention on the subject of terrorism in this proceeding would be inexcusably late. *See System Energy Resources, Inc.* (Early Site Permit for Grand Gulf ESP Site), CLI-07-10, 65 NRC 144, 146 (2007). Would-be intervenors must file contentions at the outset of the proceeding, on the basis of the applicant’s environmental report. 10 C.F.R. § 2.309(f)(2). An appeals court ruling does not constitute “new information” on which a party can base a new contention. *Grand Gulf*, CLI-07-10, 65 NRC at 146.
- CLI-07-10 SYSTEM ENERGY RESOURCES, INC. (Early Site Permit for Grand Gulf ESP Site), Docket No. 52-009-SP; EARLY SITE PERMIT; February 26, 2007; MEMORANDUM AND ORDER
- A Petitioners waived their right to pursue the NEPA-terrorism issue in this adjudication by not filing the contention on the basis of the environmental report. A late-filed contention can be admitted only when the information on which the amended or new contention is based was previously unavailable. 10 C.F.R. § 2.309(f)(2)(i). A change in the law controlling — in a different Circuit — does not constitute previously unavailable information to excuse late filing.
- B The National Environmental Policy Act (NEPA) does not require the NRC to consider the environmental consequences of hypothetical terrorist attacks on NRC-licensed facilities. “The ‘environmental’ effect caused by third-party miscreants ‘is . . . simply too far removed from the natural or expected consequences of agency action to require a study under NEPA.” Thus, a terrorist act is not “proximately caused” by the licensing of a regulated nuclear facility. *AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-07-8, 65 NRC 124, 129 (2007), quoting *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-02-25, 56 NRC 340, 349 (2002).
- CLI-07-11 PACIFIC GAS AND ELECTRIC COMPANY (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), Docket No. 72-26-ISFSI; INDEPENDENT SPENT FUEL STORAGE INSTALLATION; February 26, 2007; MEMORANDUM AND ORDER
- CLI-07-12 EXELON GENERATION COMPANY, LLC (Early Site Permit for Clinton ESP Site), Docket No. 52-007-ESP; EARLY SITE PERMIT; March 8, 2007; MEMORANDUM AND ORDER
- A An initial decision authorizing a construction permit is considered stayed pending Commission action. 10 C.F.R. § 2.340(f). An early site permit is considered a partial construction permit, and thus requires action by the Commission even in the absence of any appeal from the Board’s Initial Decision.
- B The Commission has the authority to appropriately condition the license approved by the Board.
- C The NRC has broad legal authority under the Atomic Energy Act and has authority to independently verify the facts contained in an application. The Staff appropriately uses an audit system to prioritize the facts it will independently verify, taking into account whether the issue involves “first-of-a-kind analysis, use of new modeling techniques, application of new or revised review guidance, areas of higher significance based upon risk-informed reviews, or where the Staff’s independent analysis or technical experience and judgment does not support the analysis results of the Applicant.” *See* NUREG-0800, “Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants” (1996), and Review Standard RS-002, “Processing Applications for Early Site Permits” (2004).
- D An application for an NRC permit must be made under oath or affirmation. *See* AEA § 182, 42 U.S.C. 2232. Section 186 of the Atomic Energy Act allows the NRC to revoke any license for a material false statement in the application. Thus, the NRC reasonably relies on its licensees and applicants to submit complete and accurate information. A violation of this requirement is a serious violation and can result in a range of enforcement actions.
- E Issues resolved in the ESP proceeding are treated as “resolved” in a subsequent construction permit or COL proceeding that references the ESP, unless a contention is admitted under narrowly specified conditions. 10 C.F.R. § 52.39(a)(2). For instance, a contention arguing that the proposed reactor does not fit into the site parameters of the ESP, or that the terms and conditions of the ESP are not met, is potentially admissible at the COL stage. But any challenge to the established terms and conditions of the ESP could only be raised as a petition to modify a license under 10 C.F.R. § 2.206.
- F Whether or not any petitioner challenges the construction permit, the NRC Staff will address each COL action item at the construction permit stage.
- CLI-07-13 ENTERGY NUCLEAR VERMONT YANKEE, LLC, and ENTERGY NUCLEAR OPERATIONS, INC. (Vermont Yankee Nuclear Power Station), Docket No. 50-271-LR; ENTERGY NUCLEAR GENERATION COMPANY and ENTERGY NUCLEAR OPERATIONS, INC. (Pilgrim Nuclear Power Station), Docket No. 50-293-LR; LICENSE RENEWAL; March 15, 2007; MEMORANDUM AND ORDER

DIGESTS
ISSUANCES OF THE NUCLEAR REGULATORY COMMISSION

- A A motion for reconsideration must demonstrate “compelling circumstances, such as the existence of a clear and material error in a decision, which could not have reasonably been anticipated, that renders the decision invalid.” 10 C.F.R. § 2.323(e). The Massachusetts Attorney General has not demonstrated a “clear and material error” in our affirming the two Board decisions we were reviewing.
- B Our decision in CLI-07-3 was final as to the Massachusetts Attorney General’s only claims in the two license renewal proceedings. The Massachusetts Attorney General has no claim remaining in either adjudication. A request for judicial review must be brought immediately if at all. *See Environmental Law and Policy Center v. NRC*, 470 F.3d 676, 681 (7th Cir. 2006). She also has the option of awaiting an NRC decision in her petition for rulemaking. Agency decisions on rulemaking petitions are judicially reviewable. *See, e.g., Bullcreek v. NRC*, 359 F.3d 536 (D.C. Cir. 2004).
- C The mere potential that an issue may become moot in the future due to a rulemaking does not affect the finality of a decision resting on current law.
- D Only a “party” to a proceeding, or an interested governmental entity participating under 10 C.F.R. § 2.315, may file a request to stay proceedings pending a rulemaking under 10 C.F.R. § 2.802. The Mass AG did not offer an admissible contention and was never admitted to either of these two proceedings as a “party.”
- CLI-07-14 SYSTEM ENERGY RESOURCES, INC. (Early Site Permit for Grand Gulf ESP Site), Docket No. 52-009-ESP; EARLY SITE PERMIT; March 27, 2007; MEMORANDUM AND ORDER
- A It is appropriate to defer issues concerning the effects of short-term damage to the environment and the irretrievable commitment of resources to the construction permit or combined license stage. These effects cannot be meaningfully assessed at the ESP stage because such an inquiry requires weighing the short-term damage against long-term benefits of the project, and the long-term benefits cannot be assessed until the construction permit or COL stage. For the proposed facility, the precise electrical output of the unit, which will be selected at the construction permit phase, is not yet known. Similarly, an assessment of the irretrievable commitment of resources — i.e., construction resources — will not be known until a particular reactor design is selected.
- B Any power level selected at the COL stage other than the 2000-MWe target value used in the Environmental Impact Statement’s alternative energy analysis would constitute new information that, if found to be significant, would have to be evaluated at the construction permit or combined license application stage.
- CLI-07-15 CBS CORPORATION (Waltz Mill Facility), Docket No. 70-00698; MATERIALS LICENSE; March 29, 2007; MEMORANDUM AND ORDER
- A The Commission holds in abeyance a request for a hearing by CBS Corporation (CBS) on the NRC Staff’s denial of CBS’s application for a declaratory order which would relax cleanup standards at a Waltz Mill, Pennsylvania site or in the alternative, for an amendment to the materials license, which is held by Westinghouse Electric Company, LLC (Westinghouse).
- B The Commission will not be drawn into commercial contractual disputes, absent a concern for the public health and safety or the common defense and security, except to carry out its responsibilities to act to enforce its licenses, orders, and regulations.
- C The Commission is holding this hearing request in abeyance because Staff action may obviate the need for the Commission to address the hearing request presented by CBS for the Westinghouse license. Additionally, the commercial dispute between the two licensees may be resolved in binding arbitration before the Arbitration Panel.
- CLI-07-16 ENTERGY NUCLEAR VERMONT YANKEE, LLC, and ENTERGY NUCLEAR OPERATIONS, INC. (Vermont Yankee Nuclear Power Station), Docket No. 50-271-LR; LICENSE RENEWAL; April 11, 2007; MEMORANDUM AND ORDER
- A “Heat shock” falls within the scope of the Clean Water Act in the following way. Section 402(b) of that statute authorizes the Environmental Protection Agency to approve state programs for the issuance of National Pollutant Discharge Elimination System [“NPDES”] permits. 33 U.S.C. § 1342(b). The permits Vermont issues under its NPDES program impose “effluent limitations and other requirements on facilities that discharge pollutants into the waters of the United States.” For purposes of NPDES permits, “effluent” is defined as “[l]iquid waste that is discharged into a river, lake, or other body of water.” *Black’s Law Dictionary* (2d ed. 2001). *See also* Clean Water Act § 502(11), 33 U.S.C. § 1362(11). Congress intended the word “effluent” to include heat. 33 U.S.C. § 1326. Hence, “heat shock” falls within the parameters of the NPDES provisions of the Clean Water Act’s section 402(b).

DIGESTS
ISSUANCES OF THE NUCLEAR REGULATORY COMMISSION

- B** Pursuant to section 316(a) of the Clean Water Act, NPDES permits may address thermal discharges into bodies of water. 33 U.S.C. § 1326(a). Section 511(c)(2) of the Act precludes us from either second-guessing the conclusions in NPDES permits or imposing our own effluent limitations — thermal or otherwise. 33 U.S.C. § 1371(c)(2). Indeed, the Clean Water Act’s legislative history indicates that Congress, when enacting section 511(c)(2), *specifically* intended to deprive the NRC’s predecessor agency (the Atomic Energy Commission) of such authority. S. Rep. No. 92-1236, 92d Cong., 2d Sess. (1972) (Conference Report on S. 2770), *Legislative History* at 198.
- C** Section 51.53(c)(3)(ii)(B) of our regulations on license renewal implements the statutory provisions cited above by providing, in relevant part, that “If the applicant’s plant utilizes [a] once-through cooling . . . system[], the applicant shall provide a copy of . . . [a Clean Water Act section] . . . 316a variance . . . or equivalent State permit[] and supporting documentation. If the applicant can not provide these documents, it shall assess the impact of the proposed action on fish and shellfish resources resulting from heat shock” 10 C.F.R. § 51.53(c)(3)(ii)(B). Our regulations also classify the effects of heat shock on the protection and propagation of fish and shellfish as a so-called “Category 2” environmental issue. This means that the NRC cannot treat heat shock generically but must instead address it on a case-by-case basis. *See* 10 C.F.R. Part 51, Subpart A, Appendix B.
- D** The Commission can legitimately rely on a state permit which expires only 5 years into the 20-year renewal period.
- E** The Commission’s rules prohibit collateral attacks on our regulations unless the agency grants a waiver of the prohibition. 10 C.F.R. § 2.335(a). *See, e.g., AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-07-8, 65 NRC 124, 133 (2007).
- F** Section 51.53(c)(3)(ii)(B) of the Clean Water Act requires that an applicant submit the EPA section 316(a) variance or the equivalent state document. The regulation does not limit this requirement to those situations where the state permit expires within a period greater than 5 years. Nor could it, because section 402(b)(1)(B) of the Clean Water Act expressly prohibits any state from issuing an NPDES permit for a period longer than 5 years. 33 U.S.C. § 1342(b)(1)(B).
- G** A licensee may satisfy the requirements of 10 C.F.R. § 51.53(c)(3)(ii)(B) in either of two ways: to evaluate, in its Environmental Report, the impacts on aquatic resources from entrainment, impingement, and heat shock, or to provide a copy of the current section 316(a) permit (issued by either the EPA or the state where the plant is located).
- H** Congress has severely limited our scope of inquiry into section 316(a) determinations. All we may do is examine whether the EPA or the state agency considered its permit to be a section 316(a) determination. If the answer is “yes,” our inquiry ends.
- I** Section 511(c)(2) of the Clean Water Act does not give us the option of looking behind the agency’s permit to make an independent determination as to whether it qualifies as a *bona fide* section 316(a) determination. That section expressly prohibits us from “review[ing] any effluent limitation or other requirement established pursuant to” the Clean Water Act.
- J** The Atomic Safety and Licensing Appeal Board was disbanded in 1991, but its decisions still carry precedential value. *See Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-99-24, 50 NRC 219, 222 n.3 (1999).
- K** We and our Appeal Board have repeatedly interpreted section 511(c)(2) as requiring us to take a section 316(a) determination at face value and as prohibiting us from undertaking any independent analysis of the thermal impact that a state environmental agency has already assessed.
- L** Section 51.53(c)(3)(ii)(B) rests on the presumption that we need not — indeed *cannot* — review and judge environmental permits issued under the Clean Water Act by the EPA or an authorized state agency. Given this statutory limitation, it is questionable whether we have the authority to consider even the environmental impacts of such permits. *See generally Department of Transportation v. Public Citizen*, 541 U.S. 752, 754 (2004).
- M** As we stated in *Seabrook* (another case involving both section 511(c)(2) and a once-through cooling system), the permitting agency “determines what cooling system a nuclear power facility may use[,] and NRC factors the impacts resulting from use of that system into the NEPA cost-benefit analysis.” *Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), CLI-78-1, 7 NRC 1, 26 (1978). And our instruction in *Seabrook* to Licensing and Appeal Boards is likewise equally applicable today: “In future cases where EPA [or, as here, a state permitting agency] has made the necessary factual findings for approval of a specific once-through cooling system for a facility after full administrative proceedings,

DIGESTS
ISSUANCES OF THE NUCLEAR REGULATORY COMMISSION

we expect our adjudicatory boards to do as we have done today,” i.e., defer to the agency that issued the section 316(a) permit. *Id.* at 28 n.42.

- N Only Category-2 environmental issues must be addressed in an Environmental Report (10 C.F.R. § 51.53(c)(3)(ii)) and may therefore be litigated at an adjudicatory hearing. *Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), CLI-07-3, 65 NRC 13, 20 (2007); *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 19 (2001).
- CLI-07-17 SOUTHERN NUCLEAR OPERATING COMPANY (Early Site Permit for Vogtle ESP Site), Docket No. 52-011-ESP; EARLY SITE PERMIT; April 17, 2007; MEMORANDUM AND ORDER
- A Section 2.332(d) of 10 C.F.R. distinguishes between safety issues and environmental issues with respect to the timing of the hearing (though not with respect to the timing of discovery). Our regulations give the presiding officer discretion to accelerate the merits hearing on safety issues, but not on environmental issues. Thus, while the Board may decide to proceed to an early hearing on the merits of safety issues — that is, before the NRC Staff finishes its safety evaluation — the Board “may not commence” a hearing on environmental issues before the final environmental impact statement has been issued.
- B As a general proposition, the Commission has the authority “to enter into case-specific procedural orders . . . to facilitate the efficient resolution of issues before the Board.” The Commission is willing to be flexible in the timing of National Environmental Policy Act hearings where special circumstances are present. But we see no basis for deviating from our regulations here.
- CLI-07-18 CONSUMERS ENERGY COMPANY, NUCLEAR MANAGEMENT COMPANY, LLC, ENTERGY NUCLEAR PALISADES, LLC, and ENTERGY NUCLEAR OPERATIONS, INC. (Palisades Nuclear Plant), Docket No. 50-255-LT; LICENSE TRANSFER; April 26, 2007; MEMORANDUM AND ORDER
- A The “issues” in license transfer proceedings constitute “contentions” under 10 C.F.R. § 2.309(f) and must therefore meet the standards for admissibility set forth in that regulation.
- B The Staff ordinarily does not participate as a party in the adjudicatory portion of license transfer proceedings. *See generally* 10 C.F.R. § 2.1316(b), (c).
- C To intervene as of right in any Commission licensing proceeding, a petitioner must demonstrate that its “interest may be affected by the proceeding,” i.e., it must demonstrate “standing.”
- D To demonstrate standing in a license transfer proceeding, the petitioner must
- (1) identify an interest in the proceeding by
 - (a) alleging a concrete and particularized injury (actual or threatened) that
 - (b) is fairly traceable to, and may be affected by, the challenged action (e.g., the grant of an application to approve a license transfer), and
 - (c) is likely to be redressed by a favorable decision, and
 - (d) lies arguably within the “zone of interests” protected by the governing statute(s).
- E The petitioner must also specify the facts pertaining to that interest. *See Port Authority of the State of New York* (James A. FitzPatrick Nuclear Power Plant; Indian Point, Unit 3), CLI-00-22, 52 NRC 266, 293 (2000); *Niagara Mohawk Power Corp.* (Nine Mile Point Nuclear Station, Units 1 and 2), CLI-99-30, 50 NRC 333, 340-41 & n.5 (1999) (and cited authority).
- F Any organization seeking “representational standing” (i.e., permission to represent the interests of its members) must show that at least one of its members may be affected by the Commission’s approval of the transfer (such as by the member’s activities on or near the site), must identify that member, and must demonstrate that the member has (preferably by affidavit) authorized the organization to represent him or her and to request a hearing on his or her behalf. *See FitzPatrick*, CLI-00-22, 52 NRC at 293; *Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), CLI-00-20, 52 NRC 151, 163 (2000); *GPU Nuclear Inc.* (Oyster Creek Nuclear Generating Station), CLI-00-6, 51 NRC 193, 202 (2000), and cited authority. The member seeking representation must qualify for standing in his or her own right; the interests that the representative organization seeks to protect must be germane to its own purpose; and neither the asserted claim nor the requested relief must require an individual member to participate in the organization’s legal action. *See, e.g., Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 323 (1999), and CLI-98-13, 48 NRC 26, 30-31 (1998), *petition for review filed sub nom. Ohngo Gaudadeh Devia v. NRC*, No. 05-1419 (D.C. Cir. Nov. 7, 2005).
- G If an organization does not identify the members it purportedly represents, the NRC cannot “determine whether the organization actually does represent members who consider that they will be affected by [the licensing action] . . . or rather, [i]s simply seeking the ‘vindication of its own value preference.’” *Houston*

DIGESTS

ISSUANCES OF THE NUCLEAR REGULATORY COMMISSION

Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 NRC 377, 389-90, *reconsideration denied*, ALAB-539, 9 NRC 422 (1979), and ALAB-544, 9 NRC 630 (1979). *See also Sierra Club v. Morton*, 405 U.S. 727, 739-40 (1972). And without written authorization for such representation, we would have no “concrete indication that, in fact, the member wishes to have [the organization represent its interests] in th[is] proceeding.” *Allens Creek*, ALAB-535, 9 NRC at 396.

H To demonstrate an interest based on proximity, a petitioner must provide greater specificity than merely stating that some of its members live, work, or engage in recreation “adjacent” to or “near” an NRC-licensed facility. *See, e.g., Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-94-3, 39 NRC 95, 102 n.10 (1994); *Atlas Corp.* (Moab, Utah Facility), LBP-97-9, 45 NRC 414, 426-27, *aff’d*, CLI-97-8, 46 NRC 21 (1997). We require fact-specific standing allegations, not conclusory assertions.

I Assertions that a member lives within the service area of the utility that operates a licensed facility or within the same county as the facility is insufficiently specific to justify a finding of standing.

J Organizations seeking to intervene in their own right must satisfy the same standing requirements as individuals seeking to intervene. *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), ALAB-952, 33 NRC 521, 528, *aff’d in relevant part*, CLI-91-13, 34 NRC 185, 187-88 (1991). This is because an organization, like an individual, is considered a “person” as we have defined that word in 10 C.F.R. § 2.4 and as we have used it in 10 C.F.R. § 2.309 regarding standing.

K Petitioners’ interest in the promotion of “economic use of energy” falls outside the zone of interests protected by either the Atomic Energy Act or the National Environmental Policy Act. *See Metropolitan Edison Co.* (Three Mile Island Nuclear Station, Unit 1), CLI-83-25, 18 NRC 327, 332 (1983). *See generally Envirocare of Utah v. NRC*, 194 F.3d 72 (D.C. Cir. 1999). Likewise, petitioners’ promotion of “the public interest, environmental protection, and consumer protection” are broad interests shared with many others (*see generally Sierra Club v. Morton*, 405 U.S. 727, 734-35 (1972); *Three Mile Island*, CLI-83-25, 18 NRC at 332) and too general to constitute a protected interest under these two statutes. *Three Mile Island*, CLI-83-25, 18 NRC at 332. Petitioners have shown no risk of “discrete institutional injury to [themselves], other than the general environmental and policy interests of the sort we repeatedly have found insufficient for organizational standing.” *International Uranium (USA) Corp.* (White Mesa Uranium Mill), CLI-01-21, 54 NRC 247, 252 (2001) (emphasis added).

L In essence, Petitioners seek to play the role of a “private attorney general” — a role that AEA § 189 — which grants a hearing right to those with an “interest” in the proceeding — does not contemplate. *Exelon Generation Co., LLC* (Peach Bottom Atomic Power Station, Units 2 and 3), CLI-05-26, 62 NRC 577, 579 & n.4 (2005), citing *Portland General Electric Co.* (Pebble Springs Nuclear Plant, Units 1 and 2), ALAB-333, 3 NRC 804, 806 n.6 (1976). *See also Curators of the University of Missouri* (TRUMP-S Project), LBP-90-30, 32 NRC 95, 103 (1990).

M The County and Township within which a licensed facility is located are local governmental bodies that, pursuant to 10 C.F.R. § 2.309(d)(2), need make no further demonstration of standing.

N Not all organizations with governmental ties are entitled to participate in our proceedings as a “local governmental body (county, municipality, or other subdivision)” under section 2.309(d)(2), in much the same way not all organizations with governmental ties were entitled to participate in our proceedings as governmental agencies under our former regulation, 10 C.F.R. § 2.715(c), regarding participation by nonparties. Under that former section, an advisory body that lacked executive or legislative responsibilities was determined by the Commission to be “so far removed from having the representative authority to speak and act for the public that [it did] not qualify” as a governmental entity for the purpose of section 2.715(c). *See Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-98-21, 48 NRC 185, 202-03 (1998).

O Commission practice requires each party to separately establish standing. *See Commonwealth Edison Co.* (Dresden Nuclear Power Station, Unit 1), CLI-81-25, 14 NRC 616, 623 (1981).

P We defer ruling on the admissibility of the contentions at this stage since we find that the arguments concerning at least one contention and the need for access to redacted information are sufficient to warrant our approval of the requested access. *FitzPatrick*, CLI-00-22, 52 NRC at 300 n.23. Petitioners are obligated to put forward and support contentions when seeking intervention, based on the application and information available. *See, e.g., Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-03-17, 58 NRC 419, 429 (2003). *See generally* 10 C.F.R. § 2.309(c) and (f)(2) (providing for admission of late-filed contentions if based on previously unavailable information). The Commission may decide the admissibility of such contentions or defer ruling on them, considering the

DIGESTS
ISSUANCES OF THE NUCLEAR REGULATORY COMMISSION

need for access to redacted information and other relevant factors. *See FitzPatrick*, CLI-00-22, 52 NRC at 296-319.

Q To demonstrate that contentions are admissible under Subpart M, a petitioner must “set forth the [contentions] (factual and/or legal) that petitioner seeks to raise, . . . demonstrate that those [contentions] fall within the scope of the proceeding, . . . demonstrate that those [contentions] are relevant and material to the findings necessary to a grant of the license transfer application, . . . show that a genuine dispute exists with the applicant regarding the [contentions], and . . . provide a concise statement of the alleged facts or expert opinions supporting petitioner’s position on such [contentions], together with references to the sources and documents on which petitioner intends to rely.” *FitzPatrick*, CLI-00-22, 52 NRC at 295; *Nine Mile Point*, CLI-99-30, 50 NRC at 342 (and cited authority). *See* 10 C.F.R. § 2.309(f). As we observed in *FitzPatrick*, “[t]hese standards do not allow mere notice pleading; the Commission will not accept the filing of a vague, unparticularized [contention], unsupported by alleged fact or expert opinion and documentary support.” In short, “[g]eneral assertions or conclusions will not suffice.” *FitzPatrick*, CLI-00-22, 52 NRC at 295 (internal quotation marks omitted).

R In a license transfer adjudication, petitioners who have been granted access to an applicant’s or licensee’s proprietary information must show that any new or revised contentions could not have been submitted without the requested access to the redacted proprietary information in the license transfer application. If petitioners cannot make this showing, then they will have to meet not only the contention requirements set forth above, but also the late-filing requirements set forth in 10 C.F.R. § 2.309(c).

CLI-07-19 CONSUMERS ENERGY COMPANY (Big Rock Point Independent Spent Fuel Storage Installation), Docket Nos. 50-155-LT, 72-043-LT; LICENSE TRANSFER; April 26, 2007; MEMORANDUM AND ORDER

A Although a petitioner’s claim of residence within 50 miles of the Big Rock Point ISFSI might entitle him to a presumption of standing based on his proximity if this were a reactor construction permit or operating license proceeding (*see Florida Power & Light Co.* (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325, 329 (1989); *Tennessee Valley Authority* (Watts Bar Nuclear Plant, Units 1 and 2), ALAB-413, 5 NRC 1418, 1421 n.4 (1977)), we have required far closer proximity in other licensing proceedings, including license transfer cases. We determine on a case-by-case basis whether the proximity presumption should apply, considering the “obvious potential for offsite [radiological] consequences,” or lack thereof, from the application at issue, and specifically “taking into account the nature of the proposed action and the significance of the radioactive source.” *Exelon Generation Co.* (Peach Bottom Atomic Power Station, Units 2 and 3), CLI-05-26, 62 NRC 577, 580-81 (2005).

B License transfers even for *operating* nuclear power plants typically involve little if any radiological risk, as there are generally no changes to the physical plant, its operating procedures, or its design basis accident analysis. The potential radiological risks associated with an ISFSI license transfer are even lower, because an ISFSI is essentially a passive structure rather than an operating facility, and there therefore is less chance of widespread radioactive release.

C An individual petitioner should not request to intervene in his own right and simultaneously authorize other petitioners to represent his or her interests. Such multiple representation might lead to confusion as to which of the petitioners was speaking for the individual; such confusion would be detrimental to the process of adjudication. *Northern States Power Co.* (Pathfinder Atomic Plant), LBP-89-30, 30 NRC 311, 316 (1989). By contrast, nothing precludes an individual from seeking to intervene both on his/her own behalf and as a representative of others. *See, e.g., Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), ALAB-952, 33 NRC 521, 530, *aff’d*, CLI-91-13, 34 NRC 185 (1991); *Commonwealth Edison Co.* (Braidwood Nuclear Power Station, Units 1 and 2), LBP-85-11, 21 NRC 609, 615 (1985).

CLI-07-20 SHIELDALLOY METALLURGICAL CORPORATION (License Amendment Request for Decommissioning of the Newfield, New Jersey Facility), Docket No. 40-7102-MLA; MATERIALS LICENSE AMENDMENT; May 30, 2007; MEMORANDUM AND ORDER

A The Commission’s regulations, in 10 C.F.R. § 2.309(i), require the presiding officer “within forty-five (45) days after the filing of answers and replies . . . [to] issue a decision on each request for hearing/petition to intervene, absent an extension from the Commission.” In general, we do not endorse deferring the consideration of proposed contentions because, in our view, prompt consideration of contentions promotes the efficient and complete development of the record while conserving resources. Prompt identification of all of the contentions also allows the parties to concentrate on matters truly at issue in a proceeding.

DIGESTS
ISSUANCES OF THE NUCLEAR REGULATORY COMMISSION

Prompt identification maintains the proceeding's primary focus on adequacy of the application at issue, and may induce — or enhance the prospects for — early settlement. But deferral may be appropriate in some very limited and exceptional circumstances.

B The Commission's regulations allow unsuccessful petitioners to appeal the denial of their intervention petitions. But appellants must make some argument that an appeal is justified. Pointing out errors in the Board's decision is a basic requirement for an appeal. Supporting information is to be provided at the time the contention is filed, not at a later date on appeal. Moreover, "[t]he purpose of an appeal to the Commission is to point out errors made in the Board's decision, not to attempt to cure deficient contentions by presenting arguments and evidence never provided to the Board."

C The Commission does "not look with favor on 'amended or new contentions filed after the initial filing.'"

CLI-07-21 CONSUMERS ENERGY COMPANY (Big Rock Point Independent Spent Fuel Storage Installation), Docket Nos. 50-155-LT, 72-043-LT; LICENSE TRANSFER; June 28, 2007; MEMORANDUM AND ORDER

A To succeed, a "petition for reconsideration must demonstrate a compelling circumstance, such as the existence of a clear and material error in a decision, which could not have been reasonably anticipated, which renders the decision invalid." 10 C.F.R. § 2.345(b). *See also Pacific Gas and Electric Co.* (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), CLI-06-27, 64 NRC 399, 400-01 (2006).

B A petitioner cannot satisfy our standing requirement by offering a vague claim of 50-mile "proximity" in an initial petition and later using a petition for reconsideration to fill in gaps with more specific information that was available all along. *See generally* 10 C.F.R. § 2.345(b) ("A petition for reconsideration must demonstrate a compelling circumstance, such as the existence of a clear and material error in a decision, which could not have been reasonably anticipated, which renders the decision invalid" (emphasis added)).

C In license transfer decisions issued subsequent to the *Vogtle* decision in 1993, the Commission's grants of standing based on a facility's proximity to a petitioner's residence have not approached the 40-42 miles at issue here. Indeed, the longest specific distance for which the Commission has granted proximity-based standing in a post-*Vogtle* license transfer case is 6–6-1/2 miles. By contrast, we have denied proximity-based standing in license transfer proceedings to petitioners within 5-10 miles, 12 miles, and 40 miles from licensed facilities. All these proceedings involved active, operating reactors. The Commission therefore denies the requested proximity-based standing claim in this case resting on a residence within 42 miles of an ISFSI or on occasional sailing trips within 15 miles.

D NRC licensing boards and the Commission itself have recognized proximity standing at such close distances where a petitioner "*frequently* engages in *substantial* business and related activities in the vicinity of the facility," engages in "normal, *everyday* activities" in the vicinity, has "*regular*" and "*frequent* contacts" in an area near a licensed facility, or otherwise has visits of a "length" and "nature" showing "an ongoing connection and presence." Conversely, the agency has denied proximity-based standing where contact has been limited to "*mere occasional trips* to areas located close to reactors."

CLI-07-22 CONSUMERS ENERGY COMPANY, NUCLEAR MANAGEMENT COMPANY, LLC, ENTERGY NUCLEAR PALISADES, LLC, and ENTERGY NUCLEAR OPERATIONS, INC. (Palisades Nuclear Plant), Docket No. 50-255-LT; LICENSE TRANSFER; June 28, 2007; MEMORANDUM AND ORDER

A A petition for reconsideration exceeds the 10-page limit specified in our regulations. 10 C.F.R. § 2.323(e), incorporated by reference into 10 C.F.R. § 2.341(d), incorporated by reference into 10 C.F.R. § 2.345(a)(2). The last of these regulations governs petitions for reconsideration of final Commission orders.

B A petition for reconsideration "must demonstrate a compelling circumstance, such as the existence of a clear and material error in a decision, which could not have been reasonably anticipated, which renders the decision invalid." 10 C.F.R. § 2.345(b). *See also Pacific Gas and Electric Co.* (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), CLI-06-27, 64 NRC 399, 400-01 (2006). Petitioners seeking reconsideration of a Commission order must demonstrate that the Commission has committed "clear" error, must do so by raising new arguments, and must not previously have been able to make those arguments. *Consumers Energy Co.* (Big Rock Point Independent Spent Fuel Storage Installation), CLI-07-21, 65 NRC 519 (2007).

DIGESTS
ISSUANCES OF THE NUCLEAR REGULATORY COMMISSION

- C The Commission does not consider granting organizations proximity-based standing merely because their members' domiciles lie within the same zip code as the facility. This is far too imprecise a basis for standing. A "same zip code" test for standing is inappropriate, given that the sizes of zip-code areas vary greatly throughout the country.
- D In a license transfer case, a petition cannot, for purposes of standing, successfully claim injury based on the financial qualifications and assurances of the transferor.
- CLI-07-23 DOMINION NUCLEAR NORTH ANNA, LLC (Early Site Permit for North Anna ESP Site), Docket No. 52-008-ESP; EARLY SITE PERMIT; August 2, 2007; ORDER
- CLI-07-24 SOUTHERN NUCLEAR OPERATING COMPANY (Early Site Permit for Vogtle ESP Site), Docket No. 52-011-ESP; EARLY SITE PERMIT; August 30, 2007; MEMORANDUM AND ORDER
- CLI-07-25 PPL SUSQUEHANNA LLC (Susquehanna Steam Electric Station, Units 1 and 2), Docket Nos. 50-387-OLA, 50-388-OLA; OPERATING LICENSE AMENDMENT; October 5, 2007; MEMORANDUM AND ORDER
- A Issues concerning alleged violations of State law or regulations were outside the scope of, and not material to, an NRC power uprate proceeding. The Board did not err in finding that the NRC's adjudicatory process was not the proper forum for investigating alleged violations that are primarily the responsibility of other Federal, state, or local agencies. *Hydro Resources, Inc.* (2929 Coors Road, Suite 101, Albuquerque, NM 87120), CLI-98-16, 48 NRC 119, 121-22 (1998).
- B Water use issues that are under the jurisdiction of another agency, and which are not affected by any NRC regulation, are outside the scope of an NRC proceeding.
- C The Board appropriately rejected the contention of a petitioner who failed to support his premise that a river water intake valve is a safety-related system with information or expert opinion.
- CLI-07-26 PA'INA HAWAII, LLC, Docket No. 30-36974-ML; MATERIALS LICENSE; October 24, 2007; MEMORANDUM AND ORDER
- CLI-07-27 DOMINION NUCLEAR NORTH ANNA, LLC (Early Site Permit for North Anna ESP Site), Docket No. 52-008-ESP; EARLY SITE PERMIT; November 20, 2007; MEMORANDUM AND ORDER
- A The Commission approves the Early Site Permit for the North Anna facility.
- B In a mandatory ESP hearing, the NRC must address six issues:
- Safety Issue 1:* whether the issuance of an ESP will be inimical to the common defense and security or to the health and safety of the public.
- Safety Issue 2:* whether, taking into consideration the site criteria contained in 10 C.F.R. Part 100, a reactor, or reactors, having the characteristics that fall within the parameters for the site, can be constructed and operated without undue risk to the health and safety of the public.
- Overriding NEPA Issue:* whether the review conducted by the Commission pursuant to the National Environmental Policy Act (NEPA) has been adequate.
- NEPA Baseline Issue 1:* whether the requirements of section 102(2)(A), (C), and (E) of NEPA and the regulations in [10 C.F.R. Part 51, Subpart A] have been complied with in this proceeding.
- NEPA Baseline Issue 2:* independently consider the final balance among the conflicting factors contained in the record of the proceeding with a view to determining the appropriate action to be taken.
- NEPA Baseline Issue 3:* determine, after considering reasonable alternatives, whether the construction permit . . . should be issued, denied, or appropriately conditioned to protect environmental values.
- C NEPA Baseline Issue 1 requires that the NRC determine, among other things, whether it has complied with NEPA § 102(2)(C)(iii), which in turn requires the NRC to provide a "detailed statement" on "alternatives to the proposed action."
- D Although the CEQ's guidance does not bind us, we give such guidance substantial deference.
- E Our own examination of the entire administrative record leads us to conclude that the Staff's underlying review was sufficiently detailed to qualify as "reasonable" and a "hard look" under NEPA. Our discussion of this issue today adds necessary additional details and constitutes a supplement to the FEIS's alternative site review.
- F According to the courts, agencies may defer certain issues in an EIS for a multistage project when detailed useful information on a given topic is not "meaningfully possible" to obtain, and the unavailable information is not essential to determination at the earlier stage. The CEQ has likewise recognized that

DIGESTS
ISSUANCES OF THE NUCLEAR REGULATORY COMMISSION

- information may be unavoidably incomplete or unavailable, and that under those circumstances, an FEIS can overcome this deficiency if it states that fact, explains how the missing information is relevant, sets forth the existing information, and evaluates the environmental impacts to the best of the agency's ability.
- G Where, as here, one or more particular environmental impacts cannot be meaningfully assessed at the ESP stage, those matters may be designated as "unresolved," provided they do not interfere with the Staff's ability to determine whether there is any obviously superior alternative to the proposed site.
- H Policy Statements are neither rules nor orders, and therefore do not establish requirements that bind either the agency or the public.
- I Executive Order 12,898 itself does not establish new substantive or procedural requirements applicable to NRC regulatory or licensing activities.
- J An FEIS is necessarily more concise than the underlying pre-FEIS analysis, as the explanation is intended to summarize the analysis in a manner both concise and understandable to the public. In *LES*, we explained that an FEIS's discussion need not be "elaborate or lengthy," but found a "conclusory statement on 'some negative impact' on property values, without explanation or analysis," to be plainly deficient.
- K NRC's NEPA process for preparation of an environmental impact statement mandates openness and clarity.
- L Given the fact-specific nature of environmental justice issues and inquiries, we believe that the methods and form of Staff review — including any decision whether to hold discussions with knowledgeable community and governmental representatives — is best left to the informed discretion of the Staff.
- M The Staff's explanation of how it reached its conclusions regarding environmental justice is rather cursory for a licensing action of this magnitude. However, in this instance, the Commission does not direct the Staff to supplement its environmental justice review, as the Commission otherwise might, because it believes that the review was sufficient and that such a supplement would constitute a purely academic exercise with little or no practical benefit.
- N The Staff's review did not clearly comport with the letter of the Commission's environmental justice Policy Statement, or with its internal Staff guidance. However, it appears to the Commission that the Staff's review satisfied the statutory and regulatory requirements of NEPA, in that it did take a "hard look" at the environmental impacts of the construction and operation of new units on the North Anna ESP site. On a practical level, its review was sufficient to identify significant environmental impacts that would fall heavily on a particular minority or low-income community.
- O For light-water-cooled reactors (LWRs), section 20.1301(e) would be the limiting standard, because a licensee within the uranium fuel cycle could not release the 100-mrem limit permitted by section 20.1301(a) without necessarily violating the 25-mrem limit of section 20.1301(e) that applies to the entire site.
- P Specific numerical guidelines for maintaining effluent releases ALARA for non-LWRs have not been developed. Unless and until such guidelines are implemented, whether a particular non-LWR design complies with ALARA requirements will be determined on a case-by-case basis in the context of a future COL or CP application referencing the ESP.
- Q In making its determination on the postulated source terms, the Staff did not, and need not, authorize the proposed reactors to release radioactivity in the amounts used in connection with the dose estimates. Rather, the Staff used conservative estimates to conclude that two new units bounded by the postulated source terms *could* comply with applicable radiation standards found in 10 C.F.R. Part 20. However, *actual compliance* with applicable radiation standards is deferred at the ESP stage, and can only be determined in a COL or CP proceeding, when the applicant must proffer necessary design information and proposed operational programs.
- R If a COL or CP applicant chooses to pursue a new reactor design before the Commission has set specific standards applicable to that type of reactor, then the applicant will be subject to the existing requirement of 10 C.F.R. § 20.1301(a)(1), and will further be required to demonstrate that its emissions will be ALARA pursuant to 10 C.F.R. §§ 50.34a, 50.36a, and 20.1101. While the design objectives found in Appendix I could potentially serve as guidance to the Staff in performing its review in this area, they would not bind such a CP or COL applicant.
- S Approval of an ESP does not — and is not intended to — approve the construction or operation of reactor(s) of any specific design at the proposed ESP site.

DIGESTS
ISSUANCES OF THE NUCLEAR REGULATORY COMMISSION

- T Like permit conditions, site characteristics, and plant parameter values, the COL action items identify significant information requirements that do not affect the Staff's ability to make the requisite safety findings for issuance of an ESP, but nevertheless merit tracking and resolution during the safety review performed for a subsequent CP or COL application referencing the ESP. By contrast, the "representations, assumptions, and unresolved issues" discussed in the FEIS serve a different purpose. "representations and assumptions," as well as any other key assumptions that are captured within the text of the FEIS, help to form the basis for the Staff's "finality" determinations in the environmental arena during any subsequent CP or COL proceeding. However, they neither place limitations on the ESP or the ESP holder, nor bind a CP or COL applicant in the preparation of future applications referencing the ESP.
- U In the environmental context, the contents of the FEIS bound the reach of both issue preclusion and Staff inquiry into new and significant information in a future CP or COL proceeding referencing an ESP granted for the North Anna ESP site.
- CLI-07-28 ENTERGY NUCLEAR OPERATIONS, INC. (Indian Point, Units 2 and 3), Docket Nos. 50-247-LR, 50-286-LR; LICENSE RENEWAL; December 12, 2007; MEMORANDUM AND ORDER
- A In matters of case management, such as censure orders, the Commission generally defers to the Board.
- CLI-08-1 PACIFIC GAS AND ELECTRIC COMPANY (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation). Docket No. 72-26-ISFSI; INDEPENDENT SPENT FUEL STORAGE INSTALLATION; January 15, 2008; MEMORANDUM AND ORDER
- A Before a petition to admit a late-filed contention can be granted, the five factors set out in the Commission's procedural rules must be balanced. The first factor — whether good cause exists to excuse the late-filing of the contention — is the most important factor. If "good cause" is not shown, a petitioner "must make a 'compelling' showing" on the four remaining factors. In this analysis, factors three and five — the extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record and the extent to which this participation will broaden the issues or delay the proceeding — are to be given more weight than factors two and four — the availability of other means for protecting the petitioner's interest and the extent to which this interest will be represented by existing parties.
- B Even if late-filing criteria are satisfied, proposed contentions must still meet the Commission's admissibility standards.
- C A contention shall not be admitted if the Commission's admissibility requirements are not satisfied or if the contention, even if proven, would not entitle the petitioner to relief. This strict contention pleading rule is designed to focus the hearing process on genuine disputes susceptible of resolution, puts the other parties on notice of the specific grievances at issue, and restricts participation to "those able to proffer at least some minimal factual and legal foundation in support of their contentions."
- D The link between the National Environmental Policy Act (NEPA) and the Freedom of Information Act (FOIA) is spelled out in section 102(2)(C) of NEPA: copies of environmental impact statements "shall be made available to the President, the Council on Environmental Quality and to the public as provided in [FOIA] section 552 of Title 5." This includes information underlying environmental impact statements (or environmental assessments). But information that must be considered as part of the NEPA decisionmaking process may be withheld from public disclosure pursuant to FOIA exemptions.
- E The NRC has a statutory obligation to protect national security information. Hearings on the essentially limitless range of conceivable (albeit highly unlikely) terrorist scenarios could not be conducted in a meaningful way without substantial disclosure of classified and safeguards information on threat assessments and security arrangements and without substantial litigation over their significance. Such information — disclosure of which is prohibited by law — would lie at the center of any adjudicatory inquiry into the probability and success of various terrorist scenarios, and NEPA does not contemplate such adjudications.
- F While the Commission certainly agrees that in implementing its security program the NRC should take account of the National Infrastructure Protection Plan (NIPP), to which the NRC is a signatory, the Commission does not agree that the NRC must demonstrate compliance with the NIPP in its NEPA evaluation. The NIPP is concerned with security issues, not environmental quality standards and requirements — and it is environmental quality standards and requirements that 10 C.F.R. § 51.71(d) obliges the environmental analysis to address, not security issues.

DIGESTS
ISSUANCES OF THE NUCLEAR REGULATORY COMMISSION

- CLI-08-2 ENTERGY NUCLEAR GENERATION COMPANY and ENTERGY NUCLEAR OPERATIONS, INC. (Pilgrim Nuclear Power Station), Docket No. 50-293-LR; LICENSE RENEWAL; January 15, 2008; MEMORANDUM AND ORDER
- A A ruling granting summary disposition on a single contention, where other contentions are still pending in an adjudication, is not a “final” decision, and is not susceptible to Commission review.
- B The provision expressly permitting immediate review of a “partial initial decision” is an exception to the Commission’s established policy of disfavoring interlocutory appeals. *See* 10 C.F.R. § 2.341(b)(1). *See* Final Rule: “Procedures for Direct Commission Review of Decisions of Presiding Officers,” 56 Fed. Reg. 29,403 (July 27, 1991). The rule making partial initial decisions immediately appealable codified the Commission’s longstanding practice of considering a Board order appealable where it “disposes of . . . a major segment of the case or terminates a party’s right to participate.” *See Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), ALAB-731, 17 NRC 1073, 1074-75 (1983), quoting *Toledo Edison Co.* (Davis-Besse Nuclear Power Station), ALAB-300, 2 NRC 752, 758 (1975).
- CLI-08-3 PA’INA HAWAII, LLC, Docket No. 30-36974-ML; MATERIALS LICENSE; March 17, 2008; MEMORANDUM AND ORDER
- A The Commission addresses two questions that the Atomic Safety and Licensing Board certified to the Commission. The Commission concludes that contentions raising irradiator siting concerns are not barred as a matter of law, but must be adequately supported.
- B The Statement of Considerations (SOC) for Part 36 indicates that in developing the Part 36 regulations, the NRC considered whether there was a need to impose limits on irradiator siting, but determined that no specific siting limitations were warranted. The SOC makes clear that the NRC explicitly considered whether there should be siting requirements because of potential floods, tidal waves, airplane crashes, or earthquakes, but concluded that irradiators could be located anywhere that local governments permit an industrial facility to be built. There is no evidence that the Commission intended to exempt underwater irradiators from its conclusion that irradiators can be built anywhere that local authorities permit an industrial facility to be located.
- C The Part 36 Statement of Considerations does hold open the possibility that the NRC may choose, in an exceptional case, to conduct an irradiator facility siting review, if a unique threat is involved which may not be addressed by state and local requirements. But the general expectation was that the NRC would not need to conduct a special safety review of facility siting. Instead, both the Statement of Considerations and 10 C.F.R. § 36.1(a) stress the responsibility of licensees to satisfy all applicable state and local siting, zoning, land use, and building code requirements.
- D The Commission often refers to the Statement of Considerations as an aid in interpreting our regulations.
- E As guidance reached in a rulemaking following notice and comment, and endorsed by the Commission, the Statement of Considerations is entitled to special weight.
- F The Part 36 rulemaking history leaves open the possibility that there could be a need for the NRC to review facility siting, on a case by case basis, if a unique threat is involved which may not be addressed by state and local requirements. Therefore, a contention calling for a siting safety analysis is not barred by the Part 36 regulatory scheme. But contentions challenging an irradiator facility’s siting must be sufficiently supported, in light of the Statement of Considerations’ conclusions. Petitioners must set forth, with adequate elaboration and support, a plausible claim that a proposed irradiator facility would not be adequately protective in the event of specific phenomena.
- G The degree of support necessary for an irradiator siting contention will depend on how obvious a threat the asserted risk is, given the irradiator facility’s design and protective features (e.g., depth and dimensions, lack of volatility of sources, shielding provided by water and/or concrete, temperatures, pressure, impact, and other conditions the source assemblies have been tested to withstand, etc.).
- H At the contention admissibility stage, it is not necessary to establish a general “probability threshold” for irradiators to assess in qualitative terms the significance and plausibility of particular asserted siting-related threats.
- CLI-08-4 PA’INA HAWAII, LLC, Docket No. 30-36974-ML; MATERIALS LICENSE; March 27, 2008; MEMORANDUM AND ORDER
- A The Commission takes *sua sponte* review of the issue whether the NRC, under the National Environmental Policy Act (NEPA), must analyze the potential health effects of consuming irradiated foods. The Commission establishes a briefing schedule, and seeks the parties’ answers to two questions.

DIGESTS
ISSUANCES OF THE NUCLEAR REGULATORY COMMISSION

- B Whether NEPA requires the NRC to consider potential health effects of consuming irradiated food raises the kind of broad legal question appropriate for Commission interlocutory review. In our 1998 *Statement of Policy on Conduct of Adjudicatory Proceedings*, CLI-98-12, 48 NRC 129, 130 (1998), we encouraged boards to certify, as soon as possible, novel legal or policy questions related to admitted issues. We also noted that we may exercise our supervisory authority over proceedings to direct boards to certify such questions.
- CLI-08-5 PACIFIC GAS AND ELECTRIC COMPANY (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), Docket No. 72-26-ISFSI; INDEPENDENT SPENT FUEL STORAGE INSTALLATION; March 27, 2008; ORDER
- A By law, disclosure of documents under the National Environmental Policy Act (NEPA) is expressly governed by the Freedom of Information Act (FOIA). Based on this linkage, we will not give the petitioners here NEPA-based access to documents exempt from disclosure under FOIA, even under protective measures.
- B Limited discovery may be allowed in a Freedom of Information Act (FOIA) dispute, but only if absolutely necessary to ensure a complete record and a fair decision. Discovery is sparingly granted in FOIA litigation — which ordinarily is resolved in summary disposition without discovery and without evidentiary trials or hearings.
- CLI-08-6 DARYL M. SHAPIRO, NRC Investigation No. 2-2006-17; ENFORCEMENT; March 27, 2008; MEMORANDUM AND ORDER
- A *Upjohn Co. v. United States*, 449 U.S. 383 (1981), holds that the communications between company employees and an attorney conducting an internal investigation presumptively fall within the attorney-client privilege.
- B The attorney-client privilege belongs to the client, not to the lawyer. Thus, the client may waive the privilege, either by an express waiver or by an implied waiver.
- C Implied waiver of the attorney-client privilege exists when a regulated company voluntarily discloses investigative materials to a government agency. In such cases, courts have assumed, without discussion, that the privileges were waived with respect to the particular agency to which the investigative materials were disclosed.
- D If a licensee has voluntarily provided information to the NRC, the voluntary nature of the submission is not compromised by the NRC's ability to conduct its own investigation into the same matter. The submission of information to a government agency is voluntary even if the company submitting the information feels pressure to do so as a result of its dealings with the federal government. *United States v. Massachusetts Institute of Technology*, 129 F.3d 681, 686 (1st Cir. 1997).
- E Implied waiver of the attorney-client privilege exists when the holder of the privilege places the report "in issue." Courts have held that if a company claims that the internal investigation establishes it has met its obligation, for example, the requirement to investigate a sexual discrimination charge, then the company has waived the attorney-client privilege associated with the internal investigation. *E.g., McKenna v. Nestle Purina PetCare Co.*, 2007 U.S. Dist. LEXIS 8876 (S.D. Ohio 2007); *McGrath v. Nassau Health Care Corp.*, 204 F.R.D. 240, 247-48 (E.D.N.Y. 2001); *Brownell v. Roadway Package System, Inc.*, 185 F.R.D. 19, 25 (N.D.N.Y. 1999); *Worthington v. Endee*, 177 F.R.D. 113, 118 (N.D.N.Y. 1998); *Harding v. Dana Transport, Inc.*, 914 F. Supp. 1084, 1096 (D.N.J. 1996). In effect, the company places the contents of the report in issue by claiming that the investigation is sufficient or that it meets regulatory requirements.
- F The work-product privilege covers only documents and tangible things that are prepared in anticipation of litigation or for trial by or for another party or its representatives. Fed. R. Civ. P. 26(b)(3).
- CLI-08-7 ENTERGY NUCLEAR OPERATIONS, INC. (Indian Point, Units 2 and 3), Docket Nos. 50-247-LR, 50-286-LR; LICENSE RENEWAL; April 30, 2008; MEMORANDUM AND ORDER
- A The Board here has not made even the threshold ruling on WestCAN's standing and contentions. Therefore, we consider WestCAN's Petition under our usual standard for review of an interlocutory Board order: whether the ruling threatens the petitioner with "immediate and serious, irreparable impact" or will affect the "basic structure of the proceeding in a pervasive and unusual manner." 10 C.F.R. § 2.341(f)(2).
- B A Licensing Board order canceling oral argument on the admissibility of petitioner's proposed contention did not cause serious and irreparable harm to petitioner. Oral argument on contention admissibility is not a "right."
- C Our rules provide that a petitioner must explain and support its contention in the petition to intervene. 10 C.F.R. § 2.309(f).

DIGESTS

ISSUANCES OF THE NUCLEAR REGULATORY COMMISSION

- D A Licensing Board's refusal to hear petitioner's oral presentation on contention admissibility would not cause "irreparable" impact. If the Board rejects the petition in its entirety, then petitioner may appeal to the Commission at that time. 10 C.F.R. § 2.311(b). On the other hand, if the Board grants petitioner party status, but declines to admit some of its contentions, this would not constitute "immediate and serious irreparable impact." The rejection or admission of a contention, where the petitioner has been admitted as a party and has other contentions pending, neither constitutes serious and irreparable impact, nor affects the "basic structure of the proceeding in a pervasive and unusual manner." See, e.g., *Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), CLI-04-31, 60 NRC 461, 466-67 (2004). See also *Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-07-2, 65 NRC 10, 12 (2007); *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-00-2, 51 NRC 77, 79-80 (2000).
- E Licensing Boards have broad discretion to issue procedural orders to regulate the course of proceedings and the conduct of participants. It is the Board's responsibility to "conduct a fair and impartial hearing according to law, to take appropriate action to control the prehearing and hearing process, and to maintain order." 10 C.F.R. § 2.319. The Commission generally will not interfere with the Board's day-to-day case management decisions, unless there has been an abuse of power. See, e.g., *Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), CLI-07-28, 66 NRC 275 (2007); *Consolidated Edison Co. of New York* (Indian Point, Unit 2), CLI-82-15, 16 NRC 27, 37 (1982). We see no abuse in the Board's actions here.
- CLI-08-8 PACIFIC GAS AND ELECTRIC COMPANY (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), Docket No. 72-26-ISFSI; INDEPENDENT SPENT FUEL STORAGE INSTALLATION; April 30, 2008; MEMORANDUM AND ORDER
- A By law, disclosure of documents under the National Environmental Policy Act is expressly governed by the Freedom of Information Act. Freedom of information Act litigation is ordinarily "resolved on summary disposition without discovery and without evidentiary trials or hearings," and discovery is sparingly used.
- B Five factors must be balanced (under our pre-2004 rules) before a petition to admit a late-filed contention can be granted. "The first factor — whether good cause exists to excuse the late-filing of the contention — is the most important factor." "If 'good cause' is not shown, a petitioner 'must make a 'compelling' showing' on the remaining four factors." "In this analysis, factors three and five are to be given more weight than factors two and four." If the late-filed contention criteria are satisfied, our next inquiry is whether the proposed contention is suitable for hearing.
- C It is not practical or legally required for the Nuclear Regulatory Commission to adjudicate the essentially limitless range of conceivable (albeit highly unlikely) terrorist scenarios, where the core evidence (threat assessment and security measures) is protected security information. The National Environmental Policy Act does not contemplate adjudications resulting in the disclosure of matters under law considered secret or confidential.
- CLI-08-9 ENTERGY NUCLEAR GENERATION COMPANY and ENTERGY NUCLEAR OPERATIONS, INC. (Pilgrim Nuclear Power Station), Docket No. 50-293-LR; LICENSE RENEWAL; May 16, 2008; MEMORANDUM AND ORDER
- A A Court order required the Commission to stay "the close of hearings" to afford the Commonwealth of Massachusetts an opportunity to request status as an interested state so that it would qualify to request a suspension of the proceeding under 10 C.F.R. § 2.802(d). "The close of hearings" refers to the close of the proceeding as a whole, including the Commission's ultimate decision on review, and not to the ministerial act of closing the evidentiary record. As the Commonwealth has already filed a notice of intent to participate as an interested state, it may petition to suspend the proceedings under 10 C.F.R. § 2.802(d) after the Board closes the evidentiary record.
- CLI-08-10 AMERGEN ENERGY COMPANY, LLC (Oyster Creek Nuclear Generating Station), Docket No. 50-219-LR; LICENSE RENEWAL; May 28, 2008; ORDER (Requesting Additional Briefs)
- CLI-08-11 U.S. DEPARTMENT OF ENERGY (High-Level Waste Repository), Docket Nos. PAPO-00, PAPO-001; PRE-LICENSE APPLICATION MATTERS; June 5, 2008; MEMORANDUM AND ORDER
- A The Commission denies a motion to disqualify counsel for conflicts of interests.
- B The Commission takes seriously any allegation that an unresolved conflict of interest or other ethical breach threatens the integrity of an NRC licensing proceeding, potentially leading to a biased result and potentially compromising public health and safety. We recognize that our regulations do not address conflicts of interest as such, but the absence of a specific rule does not interfere with our inherent supervisory authority over the conduct of adjudicatory proceedings before this Commission.

DIGESTS
ISSUANCES OF THE NUCLEAR REGULATORY COMMISSION

- C We may not lightly interfere in arrangements made between parties and their lawyers. In investigations, for example, the D.C. Circuit has held that the NRC may not disqualify attorneys representing multiple witnesses unless it has “concrete evidence” that the attorney will obstruct and impede the investigation. While this standard does not require proof of wrongdoing, it requires more than mere concern or speculation.
- D The Commission could (among other remedies) disqualify a party’s counsel from participating in an NRC proceeding upon a concrete showing that a conflict of interest or other ethics concern would obstruct our obtaining a full range of necessary safety or environmental information, or would otherwise threaten the integrity of our regulatory process.
- CLI-08-12 U.S. DEPARTMENT OF ENERGY (High-Level Waste Repository), Docket No. PAPO-00 (ASLBP No. 04-829-01-PAPO); PRE-LICENSE APPLICATION MATTERS; June 17, 2008; MEMORANDUM AND ORDER
- A “The interpretation of a regulation, like the interpretation of a statute, begins with the language and structure of the provision itself.” Recourse to regulatory history is not necessary unless the language and structure of the regulation reveal an ambiguity that must be resolved. It is a fundamental precept that “the entirety of the provision must be given effect.”
- B Section 2.1003’s reference to “all documentary material (including circulated drafts but excluding preliminary drafts) generated by, or at the direction of, or acquired by” clearly “conveys that possession or control of the documentary material is a prerequisite [to] the duty to produce it.” Thus, as our regulations indicate, at the time it made its initial certification, the Department of Energy was required to place on the Licensing Support Network only extant material on which it intended to rely.
- C The use of the Licensing Support Network was intended, among other things, to “enable[e] the comprehensive and early review of the millions of pages of relevant licensing material by the potential parties to the proceeding, so as to permit the earlier submission of better focused contentions resulting in a substantial saving of time during the proceeding.” That is not to say that documents were not envisioned to be entered into the Licensing Support Network post-certification. The Licensing Support Network does not have to be frozen at the time of certification.
- D Our Subpart J rules do not provide for the filing of reply briefs in the context of appeals from interlocutory decisions (10 C.F.R. § 2.1015(b)). Nor do our Subpart J rules permit reply briefs in connection with appeals from initial or partial decisions of the presiding officer (10 C.F.R. § 2.1015(c)). When reply briefs are permitted, our rules provide explicitly for their filing (10 C.F.R. § 2.341(b)(3), or set strict conditions on their filing (10 C.F.R. § 2.323(c)).
- CLI-08-13 AMERGEN ENERGY COMPANY, LLC (Oyster Creek Nuclear Generating Station), Docket No. 50-219-LR; LICENSE RENEWAL; June 17, 2008; MEMORANDUM AND ORDER
- A Commission rules of procedure do not provide for a motion to stay issuance of a license while proceedings are pending before the Board. In practice, however, we have held that a motion to stay issuance of a license might be granted where the factors usually considered in granting emergency injunctive relief are satisfied, including the likelihood of success on the merits, irreparable harm, absence of harm to others, and the public interest. *Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), CLI-06-8, 63 NRC 235, 237 n.4 (2006).
- B Failure to address the four stay factors in a motion to stay issuance of a license is reason enough to deny the motion. *See State of Illinois*, CLI-90-11, 32 NRC 333, 334 (1990).
- C A party opposing a renewed license does not face “irreparable harm by the mere issuance of a renewed license, because the license may be set aside (or appropriately conditioned) even after it has been issued, upon subsequent administrative or judicial review. *See* 10 C.F.R. § 54.27(c); *cf. Vermont Yankee*, CLI-06-8, 63 NRC at 238.
- D In accordance with established practice, the Staff will issue a renewed license in contested proceedings only after notice to and authorization by the Commission. *See, e.g.,* Memorandum from Annette Vietti-Cook, Secretary, to William D. Travers, Executive Director of Operations re: Staff Requirements — SECY 02-0088 — Turkey Point Nuclear Plant, Units 3 and 4, Renewal of Full-Power Operating Licenses (June 5, 2002).
- CLI-08-14 U.S. DEPARTMENT OF ENERGY (High-Level Waste Repository), Docket No. PAPO-001 (ASLBP No. 08-861-01-PAPO-BD01); PRE-LICENSE APPLICATION MATTERS; June 17, 2008; MEMORANDUM AND ORDER

DIGESTS
ISSUANCES OF THE NUCLEAR REGULATORY COMMISSION

- A A proceeding commences when a notice of hearing or notice of proposed action under 10 C.F.R. is issued.
- CLI-08-15 PROGRESS ENERGY CAROLINAS, INC. (Shearon Harris Nuclear Power Plant, Units 2 and 3), Docket Nos. 52-022-COL, 52-023-COL; COMBINED LICENSE; July 23, 2008; MEMORANDUM AND ORDER
- A The mere fact that the Staff asks an applicant for more information does not make an application incomplete.
- B Docketing decisions are not challengeable in an adjudicatory proceeding. Instead, in adjudicatory proceedings "it is the license application, not the NRC staff review, that is at issue." *Baltimore Gas & Electric Co.* (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), CLI-98-25, 48 NRC 325, 350 (1998).
- C Petitioners may not attack Commission regulations in adjudicatory proceedings. 10 C.F.R. § 2.335(a).
- D Issues concerning a design certification application should be resolved in the design certification rulemaking and not in an individual COL proceeding. When a contention is raised in a COL proceeding that challenges information in the design certification rulemaking, licensing boards "should refer such a contention to the staff for consideration in the design certification rulemaking, and hold that contention in abeyance, if it is otherwise admissible." Final Policy Statement on the Conduct of New Reactor Licensing Proceedings, 73 Fed. Reg. 20,963, 20,972 (Apr. 17, 2008). If an applicant later decides not to reference a certified design, and instead proceeds with a site-specific design, any admissible issues would have to be addressed in the licensing adjudication.
- CLI-08-16 PA'INA HAWAII, LLC, Docket No. 30-36974-ML; MATERIALS LICENSE; August 13, 2008; MEMORANDUM AND ORDER
- A The Commission *sua sponte* reviews the legal question whether the National Environmental Policy Act (NEPA) requires the NRC, in an irradiator licensing proceeding, to consider the potential health effects of consuming irradiated food. The Commission concludes that NEPA does not require analysis of the potential impacts of an increase in the supply of irradiated food.
- B NEPA does not require an agency to assess every impact or effect of its proposed action, only effects on the environment. To be encompassed by NEPA, there needs to be a reasonably close causal relationship between a change in the physical environment and the effect at issue.
- C If a harm does not have a sufficiently close connection to the physical environment, NEPA does not apply, regardless of the gravity of the harm.
- D In the context of NEPA, one must examine underlying policies or legislative intent to draw a manageable line between those causal changes that make an agency responsible for an effect and those that do not.
- CLI-08-17 DOMINION NUCLEAR CONNECTICUT, INC. (Millstone Nuclear Power Station, Unit 3), Docket No. 50-423-OLA; OPERATING LICENSE AMENDMENT; August 13, 2008; MEMORANDUM AND ORDER
- A The Commission affirms an Atomic Safety and Licensing Board decision, which found inadmissible all submitted contentions.
- B A petitioner cannot seek to use a specific adjudicatory proceeding to attack generic NRC regulations and requirements, or express generalized grievances about NRC policies.
- C Petitioners may not seek to skirt our contention rules by initially filing unsupported contentions, and later recasting or modifying their contentions on appeal with new arguments never raised before the Board.
- D Generic NRC policies and standards, and the nature of the NRC Staff's licensing review, are not subject to challenge in an adjudicatory proceeding.
- E Petitioners cannot seek on appeal to revive a contention based on new arguments never presented to the Licensing Board.
- F The mere issuance of RAIs does not mean an application is incomplete for docketing.
- CLI-08-18 U.S. DEPARTMENT OF ENERGY (High-Level Waste Repository), Docket No. PAPO-00 (ASLBP No. 04-829-01-PAPO); PRE-LICENSE APPLICATION MATTERS; August 13, 2008; MEMORANDUM AND ORDER
- A The Commission has authority to issue case-specific orders modifying procedural regulations, including milestone schedules. *National Whistleblower Center v. NRC*, 208 F.3d 256 (D.C. Cir. 2000), *cert. denied*, 531 U.S. 1070 (2001).
- CLI-08-19 ENTERGY NUCLEAR OPERATIONS, INC., and ENTERGY NUCLEAR PALISADES, LLC (Palisades Nuclear Plant), Docket Nos. 50-255-LT-2, 72-7-LT; ENTERGY NUCLEAR OPERATIONS,

DIGESTS
ISSUANCES OF THE NUCLEAR REGULATORY COMMISSION

INC., and ENTERGY NUCLEAR FITZPATRICK, LLC (James A. FitzPatrick Nuclear Power Plant), Docket Nos. 50-333-LT-2, 72-12-LT; ENTERGY NUCLEAR OPERATIONS, INC., and ENTERGY NUCLEAR GENERATION COMPANY (Pilgrim Nuclear Power Station), Docket No. 50-293-LT-2; ENTERGY NUCLEAR OPERATIONS, INC., and ENTERGY NUCLEAR VERMONT YANKEE, LLC (Vermont Yankee Nuclear Power Station), Docket Nos. 50-271-LT-2, 72-59-LT; ENTERGY NUCLEAR OPERATIONS, INC., ENTERGY NUCLEAR INDIAN POINT 2, LLC, and ENTERGY NUCLEAR INDIAN POINT 3, LLC (Indian Point, Units 1, 2, and 3), Docket Nos. 50-003-LT-2, 50-247-LT-2, 50-286-LT-2, 72-51-LT; ENTERGY NUCLEAR OPERATIONS, INC., and ENTERGY NUCLEAR PALISADES, LLC (Big Rock Point Plant), Docket Nos. 50-155-LT-2, 72-43-LT-2; LICENSE TRANSFER (Consolidated); August 22, 2008; MEMORANDUM AND ORDER

- A Indirect transfers involve corporate restructuring or reorganizations which leave the licensee itself intact as a corporate entity and therefore involve no application for a new operating license. By contrast, a direct license transfer entails a change to operating and/or possession authority.
- B If the Staff approves a license transfer application prior to the Commission completing its adjudication, the application will lack the agency's final approval until and unless the Commission concludes the adjudication in the Applicant's favor. In the latter situation, the Commission's procedural rules leave license transfer applicants who have received Staff approval but are still awaiting the results of a Commission adjudication free to act in reliance on the Staff's order. *See generally* 10 C.F.R. § 2.1327. However, they do so at their peril in the event that the Commission later determines that intervenors have raised valid objections to the license transfer application. In such a case, the Commission may require that the license [transfer approval] be rescinded.
- C To intervene as of right in any Commission licensing proceeding, a petitioner must demonstrate that its interest may be affected by the proceeding, i.e., it must demonstrate "standing." To make such a demonstration, the petitioner must: (1) identify an interest in the proceeding by (a) alleging a concrete and particularized injury (actual or threatened) that (b) is fairly traceable to, and may be affected by, the challenged action (here, the grant of an application to approve a license transfer), and (c) is likely to be redressed by a favorable decision, and (d) lies arguably within the "zone of interests" protected by the governing statute(s) (here the AEA and the National Environmental Policy Act); (2) specify the facts pertaining to that interest.
- D Any organization seeking "representational standing" (i.e., permission to represent the interests of one or more of its members) must also show that at least one of its members may be affected by the Commission's approval of the transfer (such as by the member's domicile, work, or activities on or near the site), must identify that member by name, and must demonstrate that the member has (preferably by affidavit) authorized the organization to represent him or her and to request a hearing on his or her behalf. The member seeking representation must qualify for standing in his or her own right; the interests that the representative organization seeks to protect must be germane to its own purpose; and neither the asserted claim nor the requested relief must require an individual member to participate in the organization's legal action.
- E The NRC does not automatically assume that an organization member necessarily considers him- or herself potentially aggrieved by a particular outcome of the proceeding (an essential ingredient of standing). The statement indicating exactly how the member is aggrieved is an essential ingredient of a showing of standing.
- F Although the Commission abolished the Atomic Safety and Licensing Appeal Board in 1991, its decisions still carry precedential weight.
- G Were the Commission to accept and consider a belatedly submitted "representative standing" affidavit attached to a Reply Brief, the applicant would be deprived of the right to challenge the substantive sufficiency of the affidavit.
- H The Commission seeks, wherever possible, to avoid the delays (such as an additional round of pleadings) caused by a petitioner's "attempt to backstop elemental deficiencies in its original" petition to intervene.
- I The "representational standing" requirements apply to labor unions.
- J Damage to a nuclear power facility's reputation does not constitute a threatened injury to the interests of the Local's members who work at the facility.
- K The Commission may consider a petitioner's request for discretionary intervention only if at least one other petitioner has established standing and has presented at least one admissible contention.

DIGESTS
ISSUANCES OF THE NUCLEAR REGULATORY COMMISSION

- L Proximity-based standing differs from traditional standing in that the petitioner claiming it need not make an express showing of harm. Rather, proximity standing rests on the presumption that an accident associated with the nuclear facility could adversely affect the health and safety of people working, living, or regularly engaging in activities offsite but within a certain distance of that facility.
- M In ruling on claims of proximity standing in license transfer adjudications, the Commission decides the appropriate radius on a case-by-case basis. The Commission determines the radius beyond which it believes there is no longer an obvious potential for offsite consequences by taking into account the nature of the proposed action and the significance of the radioactive source. The initial question is whether the kind of action at issue, when considered in light of the radioactive sources at the plant, justifies a presumption that the licensing action could plausibly lead to the offsite release of radioactive fission products from the reactors. The burden falls on the petitioner to demonstrate this. If the petitioner fails to show that a particular licensing action raises an *obvious potential for offsite consequences*, then the Commission's standing inquiry reverts to a traditional standing analysis of whether the petitioner has made a specific showing of injury, causation, and redressability.
- N A petitioner's status as an anti-nuclear advocate and a source of information for its community is insufficient, without more, to qualify it for organizational standing.
- O The role as a "private attorney general" is not contemplated under section 189a of the Atomic Energy Act.
- CLI-08-20 U.S. DEPARTMENT OF ENERGY (High-Level Waste Repository), Docket No. PAPO-00 (ASLBP No. 04-829-01-PAPO); PRE-LICENSE APPLICATION MATTERS; August 22, 2008; MEMORANDUM AND ORDER
- A The purpose of NRC adjudicatory hearings is to consider claims of deficiencies in a license application; such contentions are commonplace at the outset of NRC adjudications.
- B In conducting its "acceptance review," the NRC Staff does not consider the technical or legal merits of the application; rather, the Staff's preliminary review is simply a screening process — a determination whether the license application contains sufficient information for the NRC to begin its safety review.
- CLI-08-21 U.S. DEPARTMENT OF ENERGY (High-Level Waste Repository); PRE-LICENSE APPLICATION MATTERS; September 8, 2008; MEMORANDUM AND ORDER
- A As a general matter, the Commission disfavors the issuance of advisory opinions.
- CLI-08-22 U.S. DEPARTMENT OF ENERGY (High-Level Waste Repository), Docket No. PAPO-00 (ASLBP No. 04-829-01-PAPO); PRE-LICENSE APPLICATION MATTERS; September 8, 2008; MEMORANDUM AND ORDER
- A The Licensing Support Network functions as a mechanism for early collection of all extant documents that normally would be collected later through traditional discovery. We expect full compliance with our Licensing Support Network requirements as set out in Part 2, Subpart J, of our regulations.
- B The Licensing Support Network is intended to "provide potential participants with the opportunity to frame focused and meaningful contentions and to avoid the delay potentially associated with document discovery, by requiring parties and potential parties to the proceeding to make all of their Subpart J-defined documentary material available through the [Licensing Support Network] prior to the submission of the [Department of Energy] application." "[We expect] all participants to make a *good faith* effort to have made available all . . . documentary material by the date specified for initial compliance in section 2.1003(a) of the Commission's regulations."
- C Subpart J does not provide for the filing of amicus curiae briefs. Our general rule on amicus briefs, 10 C.F.R. § 2.315(d), as a formal matter applies only to petitions for review filed under 10 C.F.R. § 2.341 or to matters taken up by the Commission *sua sponte*, not to appeals filed, as here, under 10 C.F.R. § 2.1015.
- D Where 10 C.F.R. § 2.315(d) does apply, an amicus brief must be filed by the same deadline as the brief of the party whose side the amicus brief supports, unless the Commission provides otherwise. Permission to file an amicus brief under 10 C.F.R. § 2.315(d) is at the discretion of the Commission.
- E All motions, including a motion to file an amicus brief, are required to include a certification that the sponsor of the motion has made a sincere effort to contact the other parties and to resolve the issues raised in the motion (10 C.F.R. § 2.323).
- CLI-08-23 AMERGEN ENERGY COMPANY, LLC (Oyster Creek Nuclear Generating Station), Docket No. 50-219-LR; ENTERGY NUCLEAR OPERATIONS, INC. (Indian Point, Units 2 and 3), Docket Nos. 50-247-LR, 50-286-LR; ENTERGY NUCLEAR OPERATIONS, INC. (Pilgrim Nuclear Power Station), Docket No. 50-293-LR; ENTERGY NUCLEAR OPERATIONS, INC. (Vermont Yankee Nuclear Power

DIGESTS
ISSUANCES OF THE NUCLEAR REGULATORY COMMISSION

Station), Docket No. 50-271-LR; LICENSE RENEWAL; October 6, 2008; MEMORANDUM AND ORDER

- A Over several years, the NRC has developed a regulatory process to review power reactor license renewal applications that is efficient, thorough, and appropriately focused on certain aging effects that would not reveal themselves through performance indicators associated with active functions. The Staff's conduct of safety reviews for license renewal applications is governed by 10 C.F.R. Part 54, and principally guided by two documents: NUREG-1800, "Standard Review Plan for Review of License Renewal Applications for Nuclear Power Plants," Rev. 1 (Sept. 2005) (SRP-LR), and NUREG-1801, "Generic Aging Lessons Learned Report," Rev. 1 (Sept. 2005) (GALL Report).
- B The GALL Report identifies generic aging management programs that the Staff has determined to be acceptable, based on the experiences and analyses of existing programs at operating plants during the initial license period. The GALL Report was developed because the Staff discovered, in reviewing the initial license renewal applications, that many of the programs the licensee would rely on to manage aging effects during the renewal period were already in place during the initial license period. *See* NUREG-1800, Rev. 1, at 1.
- C Notwithstanding the requirement that motions initially be addressed to the Presiding Officer when a proceeding is pending (10 C.F.R. § 2.323(a)), in this case, the Commission addresses the motions pursuant to its inherent supervisory authority over agency proceedings. *See Pacific Gas and Electric Co.* (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), CLI-02-23, 56 NRC 230, 237 (2002).
- D The purpose and scope of a licensing proceeding is to allow interested persons the right to challenge the sufficiency of the application. The NRC will not litigate claims about the adequacy of the Staff's safety review in licensing adjudications. *See* Final Rule: "Changes to Adjudicatory Process," 69 Fed. Reg. 2182, 2202 (Jan. 14, 2004) (citing *Curators of the University of Missouri*, CLI-95-1, 41 NRC 71, 121-22 (1995), and prior agency rulings holding same). *See also Duke Energy Corp.* (Catawba Nuclear Station, Units 1 and 2), CLI-04-6, 59 NRC 62, 74 (2004); *Baltimore Gas & Electric Co.* (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), CLI-98-25, 48 NRC 325, 349-50 (1998).
- E It is the applicant, not the Staff, that has the burden of proof in litigation. *Curators of the University of Missouri*, CLI-95-1, 41 NRC at 121.
- F It is neither possible nor necessary for the Staff to verify each and every factual assertion in complex license applications, including license renewal applications. The Staff's audit, or sampling, method of verifying a license renewal applicant's aging management programs, together with the other components of its review, enables the Staff to make the safety findings necessary for issuance of a renewed license. *See also* 10 C.F.R. § 54.13 (requiring, among other things, that information provided to the Commission by a license renewal applicant for a renewed license must be complete and accurate in all material respects).
- G The Federal Records Act (FRA) gives federal agencies some discretion in determining which documentary materials are appropriate for preservation as an agency "record." FRA, 44 U.S.C. § 3301; *see also* 36 C.F.R. § 1220.14.
- H According to an agency Management Directive which is in turn based on regulations of the National Archives and Records Administration, an agency employee's working file constitutes an "agency record" if it *both* contains unique information that underlies an agency decision, *and* it was also made available to other agency employees for purposes of helping to reach or support that decision. Otherwise, materials created by an employee for the individual's own use in performing his or her job, and which are not circulated (and are not otherwise required by NRC policy to be maintained), may be discarded at the employee's discretion. *See* Handbook 1, Management Directive 3.53 (Rev. Mar. 2007), at 19-20; 36 C.F.R. § 1222.34(c).
- I Suspension of licensing proceedings is a "drastic" action that is not warranted absent "immediate threats to public health and safety." *Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station) CLI-00-20, 52 NRC 151, 173-74 (2000) (refusing request to suspend all license transfer proceedings involving a particular transferee while the Commission examined effects of ownership by limited liability companies).
- J While our regulations do not provide for a "motion to suspend" a proceeding, we have occasionally considered similar requests to suspend proceedings or hold them in abeyance in the exercise of our inherent supervisory powers over proceedings. For example, we considered similar motions presented to us in the wake of the September 11 terrorist attacks. We ultimately rejected such requests pending the Commission's comprehensive review of anti-terrorist measures at licensed facilities. *See Private Fuel*

DIGESTS
ISSUANCES OF THE NUCLEAR REGULATORY COMMISSION

Storage, L.L.C. (Independent Spent Fuel Storage Installation), CLI-01-26, 54 NRC 376 (2001). *See also Diablo Canyon*, CLI-02-23, 56 NRC 230; *Duke Cogema Stone & Webster* (Savannah River Mixed Oxide Fuel Fabrication Facility), CLI-01-28, 54 NRC 393 (2001).

- K We expect licensees and license renewal applicants to adjust their aging management programs to reflect lessons learned in the future through individual and industrywide experiences. As new insights or changes emerge over time, we expect the Staff to require, as appropriate, any modification to systems, structures, or components that is necessary to assure adequate protection of the public health and safety, or to bring the facility into compliance with a license, or the rules and orders of the Commission. 10 C.F.R. § 50.109.
- L Reopening a closed record requires, among other things, a showing that the motion is timely. 10 C.F.R. § 2.326. A motion filed 4 months after release of the information on which it is based was not timely.
- M A motion “must address a significant safety or environmental issue.” Petitioners’ speculation that the Staff may have failed to identify a health or safety issue because its review was insufficiently thorough does not meet this requirement.
- CLI-08-24 ENERGY SOLUTIONS, LLC (Radioactive Waste Import/Export Licenses), Docket Nos. 110-05711 (Import), 110-05710 (Export); IMPORT/EXPORT LICENSE; October 6, 2008; ORDER
- A The Commission holds in abeyance an application for a license to import low-level radioactive waste from Italy for processing and ultimate disposal in Utah and an export license that would authorize the export back to Italy of any low-level radioactive waste that cannot be disposed of in Utah following processing. The Commission also holds in abeyance requests for hearing on these applications.
- B Under the NRC’s regulations governing imports and exports of nuclear materials, the Commission will issue a low-level radioactive waste import license if it finds that: (1) the proposed import will not be inimical to the common defense and security; (2) the proposed import will not constitute an unreasonable risk to the public health and safety; (3) the environmental requirements of Part 51 have been satisfied (to the extent applicable); and (4) an appropriate facility has agreed to accept the waste for management or disposal.
- C The NRC will not grant an import license for waste intended for disposal unless it is clear that a disposal facility, host state, and compact (where applicable) will accept the waste. An integral aspect of the Commission’s determination of a facility’s appropriateness for disposal of imported waste is whether the facility can actually accept that waste for disposal.
- D In light of litigation in federal court between the Applicant and the Northwest Compact over whether the disposal facility may accept imported low-level waste without the Compact’s authorization, the Commission held in abeyance further proceedings on the import application, accompanying export application, and hearing requests on the applications pending resolution of the legal dispute.
- CLI-08-25 U.S. DEPARTMENT OF ENERGY (High-Level Waste Repository), Docket No. 63-001; CONSTRUCTION AUTHORIZATION; October 17, 2008; ORDER (Department of Energy; Notice of Hearing and Opportunity to Petition for Leave to Intervene on an Application for Authority to Construct a Geologic Repository at a Geologic Repository Operations Area at Yucca Mountain)
- CLI-08-26 PACIFIC GAS AND ELECTRIC COMPANY (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), Docket No. 72-26-ISFSI; INDEPENDENT SPENT FUEL STORAGE INSTALLATION; October 23, 2008; MEMORANDUM AND ORDER
- A Subpart K (10 C.F.R. Part 2) implements the “totally new procedure” established by the Nuclear Waste Policy Act for adjudicating spent fuel storage controversies expeditiously. Subpart K allows the presiding officer to resolve factual and legal disputes, including disagreements between experts, on the basis of a brief discovery period and written submissions and oral argument — without a full trial-type evidentiary hearing. Under Subpart K and the Nuclear Waste Policy Act we resort to full evidentiary hearings “only” when necessary for “accuracy.”
- B The Commission’s rules, in 10 C.F.R. § 2.1113, do not provide for supplementing Subpart K presentations.
- C Under the National Environmental Policy Act, an environmental assessment, with its accompanying finding of no significant impact, constitutes an agency’s evaluation of the environmental effects of a proposed action — unless a more detailed statement is required. A more detailed environmental impact statement is not required unless the contemplated action is a “major federal [action] *significantly* affecting the quality of the human environment.”

DIGESTS
ISSUANCES OF THE NUCLEAR REGULATORY COMMISSION

- D Hearings on alternate terrorist scenario claims could not be conducted in a meaningful way without substantial disclosure of classified and safeguards information on threat assessments and security arrangements and without substantial litigation over their significance. Such information — disclosure of which is prohibited by law — would lie at the center of any adjudicatory inquiry into the probability and success of various terrorist scenarios. The National Environmental Policy Act does not require the Commission to reveal sensitive government security information regarding the agency’s environmental analysis.
- E National Environmental Policy Act claims are governed by the Act’s own specific nondisclosure provision, as construed by the Supreme Court in *Weinberger v. Catholic Action League*, 454 U.S. 139 (1981), rather than by more general provisions in the Atomic Energy Act or in the Commission’s regulations. Under the National Environmental Policy Act, the Commission may withhold from public disclosure any information that is exempt under the Freedom of Information Act.
- CLI-08-27 ENTERGY NUCLEAR OPERATIONS, INC. (Indian Point, Units 2 and 3), Docket Nos. 50-247-LR, 50-286-LR; LICENSE RENEWAL; November 6, 2008; MEMORANDUM AND ORDER
- A As a general matter, a board ruling denying a waiver request is interlocutory in nature, and therefore not appealable until the board has issued a final decision resolving the case.
- B When considering whether to undertake “pendent” appellate review of otherwise nonappealable issues, the Commission has expressed a willingness to take up otherwise unappealable issues that are “inextricably intertwined” with appealable issues.
- CLI-08-28 AMERGEN ENERGY COMPANY, LLC (Oyster Creek Nuclear Generating Station), Docket No. 50-219-LR; LICENSE RENEWAL; November 6, 2008; MEMORANDUM AND ORDER
- A The Commission’s regulations, in 10 C.F.R. § 2.341(b)(4), provide that the Commission may grant a petition for review at its discretion, giving due weight to the existence of a substantial question with respect to the five considerations listed in the regulation.
- B As 10 C.F.R. § 2.326(d) makes clear, where a motion to reopen proposes a contention not previously part of the proceeding, the requirements for late-filed contentions set out in 10 C.F.R. § 2.309(c) must also be satisfied.
- C “[A] party seeking to reopen a closed record to raise a new matter faces an elevated burden to lay a proper foundation for its claim. Commission practice holds that the standard for admitting a new contention after the record is closed is higher than for an ordinary late-filed contention.” “New information is not enough . . . to reopen a closed hearing record at the last minute; the information must be significant and plausible enough to require reasonable minds to inquire further.” “The burden of satisfying the reopening requirements is a heavy one,” and “proponents of a reopening motion bear the burden of meeting all of [these] requirements.”
- D The plain language of 10 C.F.R. § 2.326(b) requires motions to reopen to be accompanied by affidavits of qualified experts presenting the factual and/or technical bases for the claim that there is a significant safety issue, together with evidence that satisfies the admissibility standards. A “mere showing” of a possible violation is not enough.
- E “The interpretation of a regulation, like the interpretation of a statute, begins ‘with the language and structure of the provision itself . . . [and] the entirety of the provision must be given effect.’” The standards governing motions to reopen appear in 10 C.F.R. § 2.326. Motions for summary disposition are governed by an entirely separate rule, 10 C.F.R. § 2.710. The summary disposition standards are not applicable to and do not replace the standards applicable to motions to reopen.
- F The party seeking reopening has the deliberately heavy burden, through its motion to reopen and accompanying affidavit, to demonstrate that the motion should be granted. Bare assertions and speculation do not supply the requisite support and a Judge’s dissenting opinion cannot substitute for the affidavit required to be submitted to the Board, with a motion to reopen, in the first instance.
- G A licensing board is not required to augment a deficient motion to reopen by performing supplementary technical analysis. In fact, “a Board is to decide the motion to reopen on the information before it and has no authority to engage in discovery in order to supplement the pleadings before it.
- H The Commission is generally disinclined to upset fact-driven Licensing Board determinations, particularly “where the affidavits or submissions of experts must be weighed.” Where, as here, a party merely complains that the Board improperly weighed the evidence and identifies no clear Board factual or legal error requiring further Commission consideration on appellate review, the Commission is disinclined to second-guess the Board’s assessment of the party’s affidavits.

DIGESTS
ISSUANCES OF THE NUCLEAR REGULATORY COMMISSION

- I The Commission's rules and longstanding precedent bar discovery in connection with the preparation of proposed contentions.
- J The Atomic Energy Act's guarantee of a hearing on material issues is not without limitation. "[S]ection 189(a)'s hearing requirement does not unduly limit the Commission's wide discretion to structure its licensing hearings in the interests of speed and efficiency." The hearing right provided in section 189(a) is not automatic — the Commission's rules appropriately require the identification of specific factual support to justify reopening.
- CLI-08-29 ENTERGY NUCLEAR OPERATIONS, INC. (Indian Point, Units 2 and 3), Docket Nos. 50-247-LR, 50-286-LR; LICENSE RENEWAL; December 9, 2008; MEMORANDUM AND ORDER
- A Dismissal of a party falls within the "spectrum of sanctions . . . available to the boards to assist in the management of proceedings" under 10 C.F.R. § 2.319, although dismissal should be reserved for "severe cases." *Statement of Policy on Conduct of Licensing Proceedings*, CLI-81-8, 13 NRC 452, 454 (1981).
- B The Appeal Board has stated, albeit in *dictum*, that a Licensing Board is "clearly authorized" to dismiss a party who obstructs the discovery process, disobeys the Board orders, and engages in willful, bad-faith, and prejudicial conduct toward another party. *Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), ALAB-902, 28 NRC 423, 428 (1988).
- C Dismissal due to counsel's malfeasance is a logical extension of the Board's disciplinary authority under 10 C.F.R. § 2.314(c) to reprimand, censure, or suspend from a proceeding any party or representative who "refuses to comply with its directions."
- D The Commission is generally loath to interfere with the Board's management of its cases, absent an abuse of power. *Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), CLI-08-7, 67 NRC 187, 192 (2008).
- CLI-09-1 SHIELDALLOY METALLURGICAL CORPORATION (Decommissioning of the Newfield, New Jersey Facility), Docket No. 40-7102-MLA (Amendment Request); MATERIALS LICENSE AMENDMENT; January 27, 2009; MEMORANDUM AND ORDER
- CLI-09-2 SHAW AREVA MOX SERVICES, LLC (Mixed Oxide Fuel Fabrication Facility), Docket No. 70-3098-MLA; MATERIALS LICENSE AMENDMENT; February 4, 2009; MEMORANDUM AND ORDER
- A The Commission grants the Staff's request for interlocutory review, finds that the Board overstepped the bounds of its authority, and reverses the Board's imposition of conditions and a potential sanction. The Commission also affirms the Board's dismissal of Contention 7. But the Commission further rules that if, within 60 days after the pertinent information that would support the framing of the contention first becomes available, Intervenor submit a particularized and otherwise admissible contention regarding the construction of the MOX facility, then the contention will be deemed timely without the need to satisfy the balancing test for late-filing requirements of 10 C.F.R. § 2.309(c) or the regulatory requirements in 10 C.F.R. § 2.326 for reopening the record if otherwise applicable.
- B Contention 7 satisfies the interlocutory review standard in 10 C.F.R. § 2.341(f)(2)(ii) in that the ruling "affects the basic structure of the proceeding in a pervasive or unusual manner." The Board's ruling derives from the unusual (perhaps unique) nature of this proceeding. During the earlier (construction) phase of this proceeding, we considered the requirements of the AEA, and determined that a "two-step" licensing (and hearing) process for a MOX facility was permissible. We went on to approve a procedural scheme crafted specifically for this adjudication. As a result, this proceeding is likely to generate Board rulings that "affect[] the basic structure of the proceeding in a pervasive or unusual manner" — which is just what happened here. Indeed, in our earlier *MOX* adjudication, we embraced the "affects the basic structure of the proceeding" rationale to justify interlocutory review of the "two-step licensing" issue.
- C The Board overstepped its authority when it imposed the two conditions and the potential sanction for any failure by the Staff or Applicant to satisfy them. Although dismissing a contention with conditions differs in form from admitting a contention with conditions, the two are the same in substance. Both essentially hold a contention in suspended animation — the first by declaring it "dead, but then, maybe not," and the latter by declaring it "alive, but then, maybe not." Consequently, the Board contravened longstanding NRC precedent that "a licensing board is not authorized to admit conditionally, for any reason, a contention that falls short of meeting the specificity requirements" set forth in our procedural rules. The Board must instead dismiss insufficient contentions outright.
- D The Board also acted without authority in instructing the Staff to give Intervenor notice of its intent to take certain administrative action (that is, issue a "completion" finding). Absent delegated authority,

DIGESTS
ISSUANCES OF THE NUCLEAR REGULATORY COMMISSION

which is not present here, our licensing boards lack authority to direct the Staff's nonadjudicatory actions. Boards also lack authority to establish prospective sanctions for any failure by the Staff and/or the applicant to comply with the Board's notice conditions. Any other conclusion would inappropriately permit the Board to do indirectly what it may not do directly, that is, to avoid applying our regulations concerning late-filed contentions (10 C.F.R. § 2.309(c)).

E Although the Atomic Safety and Licensing Appeal Board (ALAB) was disbanded in 1991, its decisions still carry precedential value. *See, e.g., Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-99-24, 50 NRC 219, 222 n.3 (1999).

F The Applicant is still in only the very early stages of construction, and is not slated to complete construction for a number of years. Consequently, information is not currently available (nor could it be) that would permit Intervenors to frame an admissible contention challenging specific aspects of construction. And for the same reason, Intervenors have not (nor could they have) carried their additional regulatory burden of presenting "facts or expert opinion" to support Contention 7.

G Because Intervenors' inability to satisfy our contention admissibility rules in this instance is due to factors beyond their control, we decline to require Intervenors to meet both our strict late-filing requirements and our even stricter reopening standards if Intervenors identify safety issues during the upcoming years of ongoing construction. Rather, if Intervenors file a new or amended Contention 7, with supporting materials, within 60 days after pertinent information (be it a supplement to the application or some other document, such as a Staff inspection report) first becomes available, then the contention will be deemed timely filed and Intervenors will be absolved of their obligation to satisfy the late-filing requirements of 10 C.F.R. § 2.309(c). Likewise, under those same circumstances, Intervenors need not satisfy our regulatory requirements for reopening the record.

H Intervenors have an "ironclad obligation" to regularly and diligently search publicly available NRC or Applicant documents for information relevant to their contentions.

I Reopening the record is an "extraordinary" action. 51 Fed. Reg. 19,535, 19,538 (May 30, 1986). Because proponents of motions seeking to reopen the record bear a "heavy burden" (*Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-756, 18 NRC 1340, 1344 (1983) (quoting *Kansas Gas and Electric Co.* (Wolf Creek Generating Station, Unit 1), ALAB-462, 7 NRC 320, 338 (1978)), a waiver of the "reopening" requirements seems the most equitable course of action to take in this particular case.

CLI-09-3 TENNESSEE VALLEY AUTHORITY (Bellefonte Nuclear Power Plant, Units 3 and 4), Docket Nos. 52-014-COL, 52-015-COL; COMBINED LICENSE; February 17, 2009; MEMORANDUM AND ORDER

A The Commission reverses the Board's admission of two contentions, and declines to accept the Board's suggestion that the Commission consider instituting a "low-level waste confidence" rulemaking proceeding.

B The Commission generally accepts Board certifications or referrals. However, the agency's rules provide that the Commission will review referred rulings only if the referral "raises significant and novel legal or policy issues, and resolution of the issues would materially advance the orderly disposition of the proceeding."

C Routine rulings on contention admissibility are usually not occasions to exercise our authority to step into ongoing Licensing Board proceedings and undertake interlocutory review. The Commission does, however, have authority to review Board rulings *sua sponte*, in the exercise of the Commission's inherent supervisory authority over NRC adjudications, regardless of whether the Commission accepts the referral. Absent the instant referral, the Commission might well have declined to exercise that authority here. But with the issue already before the Commission, it considers the Board's rulings, and reverses the admission of both contentions.

D A board is free to decide this issue on a theory different from those argued by the litigants, *but only if* it explains the specific basis of its ruling and gives the litigants a chance to present arguments (and, where appropriate, evidence) regarding the Board's new theory.

E Absent a waiver, parties are prohibited from collaterally attacking our regulations in an adjudication. But the Commission does not grant waivers where the circumstances on which the waiver's proponent relies are common to a large class of applicants or facilities.

F A "waste confidence" rulemaking is not the appropriate instrument for resolving low-level radioactive waste issues, particularly issues of disposal.

DIGESTS
ISSUANCES OF THE NUCLEAR REGULATORY COMMISSION

- G The questions of the safety and environmental impacts of onsite low-level waste *storage* are, in the Commission's view, largely site- and design-specific, and appropriately decided in an individual licensing proceeding, provided that litigants proffer properly framed and supported contentions. Indeed, a "low-level waste confidence" rule would not, if it followed the pattern set by the high-level waste confidence rule, alter any requirements to consider in the adjudicatory proceeding the environmental impacts of waste storage during the term of the license.
- H The Commission does not, however, rule out that, in a future COL proceeding, a petitioner could proffer an application-specific contention suitable for litigation on the subject of onsite storage of low-level radioactive waste.
- CLI-09-4 DETROIT EDISON COMPANY (Fermi Nuclear Power Plant, Unit 3), Docket No. 52-033-COL; COMBINED LICENSE; February 17, 2009; MEMORANDUM AND ORDER
- A Difficulties in coordinating action among volunteers and large public interest organizations and the challenge of simultaneously preparing for an environmental scoping meeting while drafting contentions did not constitute the good cause necessary to justify an extension of the deadline to file hearing requests or petitions to intervene, particularly when Petitioners will have had nearly 5 months to review the application by that deadline. 10 C.F.R. § 2.307(a).
- B Because Congress has explicitly prohibited the NRC from paying the expenses of or otherwise compensating intervening in its proceedings, the Commission could not grant Petitioners funds to prepare requests for access to safeguards information or sensitive unclassified nonsafeguards information.
- C Even if the Commission could waive the application fee for access to safeguards information, the mere fact that Petitioners were public interest organizations provides no special reason for departing from well-established NRC practice.
- D Petitioners' request for additional information on redacted portions of the combined license application is denied because the public record indicates the nature of the redacted information.
- E Although a 10-day deadline from the date of the hearing notice is reasonable for filing requests for access to safeguards information or sensitive, unclassified, nonsafeguards information, the Commission recognizes that the practice is a new one with which many petitioners may be unfamiliar. This along with Petitioners' companion requests for additional resources to support their requests for such information justify a 10-day extension to request access to the information.
- F The Commission policy of permitting the conduct of an adjudicatory proceeding on a combined license that references a design certification that the Commission has not approved does not violate the Atomic Energy Act of 1954, 10 C.F.R. Part 52, or judicial decisions.
- CLI-09-5 DOMINION NUCLEAR CONNECTICUT, INC. (Millstone Nuclear Power Station, Unit 3), Docket No. 50-423-OLA; OPERATING LICENSE AMENDMENT; March 5, 2009; MEMORANDUM AND ORDER
- A Commission regulations do not contemplate filing a vague, unsupported pleading as a "placeholder" for a more detailed pleading to follow. Such a filing would be tantamount to a "notice pleading," expressly prohibited by our rules of practice. See *Consumers Energy Co.* (Palisades Nuclear Plant), CLI-07-18, 65 NRC 399, 414 (2007), citing *Port Authority of the State of New York* (James A. FitzPatrick Nuclear Power Plant; Indian Point, Unit 3), CLI-00-22, 52 NRC 266, 295 (2000).
- B Petitioner's argument that a "new" contention must only meet the requirements for a new contention found in 10 C.F.R. § 2.309(f)(2), and need not meet the contention admissibility standards themselves, found in 10 C.F.R. § 2.309 (f)(1)(i)-(vi), is simply incorrect. The plain language of the rule requires each proposed contention to satisfy those requirements. *Pacific Gas and Electric Co.* (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), CLI-08-1, 67 NRC 1, 6 (2008).
- C Generally, once there has been an appeal or petition to review a Board order ruling on intervention petitions (or, where a hearing is granted, following a partial or final initial decision), jurisdiction passes to the Commission, including jurisdiction to consider any motion to reopen. See *Northeast Nuclear Energy Co.* (Millstone Nuclear Power Station, Unit 3), CLI-00-25, 52 NRC 355, 357 (2000); *Philadelphia Electric Co.* (Limerick Generating Station, Units 1 and 2), ALAB-823, 22 NRC 773 (1985).
- D A referral by the Secretary of Petitioner's motion to admit a late-filed contention effectively returned jurisdiction to the Board to rule on the motion. The Secretary's referral did not, however, reopen the already-closed record.
- E Issuance of a license amendment did not terminate the adjudicatory proceedings; proceedings on license amendments continue until they are over, even if the amendment is issued in the interim.

DIGESTS
ISSUANCES OF THE NUCLEAR REGULATORY COMMISSION

- F While only a “party” to a proceeding may move to reopen a closed record, this does not mean that a petitioner who was never admitted as a party is excused from meeting the reopening standard. Commission rules of practice make it clear that the reopening standards — as well as the late intervention standards — must be met when an entirely new issue is sought to be introduced after the closing of the record. *See* 10 C.F.R. § 2.326(d).
- CLI-09-6 ENTERGY NUCLEAR OPERATIONS, INC. (Indian Point, Units 2 and 3), Docket Nos. 50-247-LR; LICENSE RENEWAL; March 5, 2009; MEMORANDUM AND ORDER
- A The Commission denies a petition for reconsideration.
- B The Commission grants discretionary interlocutory review only in extraordinary circumstances.
- C The Commission’s decisions have repeatedly held that increased litigation delay and expense do not justify interlocutory review of an admissibility decision. Absent highly unusual circumstances, the Commission has consistently declined to conduct interlocutory review of contention admissibility decisions.
- D When the Commission abolished the Appeal Board in 1991 and established a new appellate structure for reviewing presiding officers’ decisions, the Commission codified in 10 C.F.R. § 2.786(g) the existing standard governing interlocutory review pursuant to 10 C.F.R. § 2.718(i) and 2.730(f). In 2004, the Commission again revised its rules of practice, retaining this provision in the context of referrals and certifications to the Commission. 10 C.F.R. § 2.323(f)(1) (2008) (providing that the presiding officer may refer a ruling to the Commission if, in the presiding officer’s judgment, “prompt decision is necessary to prevent detriment to the public interest or *unusual delay or expense*,” or if the ruling involves a novel issue that “merits Commission review at the earliest opportunity”). This standard does not apply, however, to petitions for interlocutory review. Those are governed by section 2.341(f)(2).
- E The Commission has found no instance in NRC jurisprudence where either the Commission or its boards have ruled that expenses of any kind constituted “irreparable injury.” This issue arises most frequently in situations where a movant for a stay or interlocutory review claims “irreparable injury” based on excessive or unnecessary litigation expenses. The Commission has uniformly rejected such arguments.
- F The potential for litigation expense and delay is the kind of burden that licensees and applicants voluntarily assume when filing applications with the Commission.
- G To the extent Entergy may be subject to unreasonable or burdensome discovery requests in the future, it is free to seek relief from the Board, which has ample authority to prevent or modify unreasonable discovery demands.
- H Litigation efforts that a litigant considers unnecessary because they relate to a contention that the litigant considers to have been improperly admitted do not “affect the basic structure of this proceeding” at all — much less in “a pervasive and unusual manner.” Indeed, were the Commission to permit litigants to successfully invoke interlocutory review based merely on an assertion that the licensing board erred in admitting (or excluding) a contention, then the Commission would be opening the floodgates to a potential deluge of interlocutory appeals from any number of participants who lose admissibility rulings. This would eviscerate the Commission’s longstanding policy disfavoring interlocutory appeals.
- I In situations in which a board denies a petition to intervene in its entirety or grants a petition to intervene that, according to an opposing litigant, should have been denied in its entirety, the losing litigant has a right to Commission review under 10 C.F.R. § 2.311(b) or (c).
- J “The possibility that an interlocutory ruling may be wrong does not in itself justify interlocutory review.” *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-01-1, 53 NRC 1, 5 (2001), *citing Sequoyah Fuels Corp.* (Gore, Oklahoma Site), CLI-94-11, 40 NRC 55, 61 (1994). “Incorrect interlocutory rulings may be reviewed, if necessary, on appeals from partial initial decisions or other final appealable orders.” *Private Fuel Storage*, CLI-01-1, 53 NRC at 5, *citing Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-00-2, 51 NRC 77, 80 (2000).
- K “[T]he Commission itself may exercise its discretion to review a licensing board’s interlocutory order if the *Commission* wants to address a novel or important issue However, the Commission’s decision to do so in any particular proceeding stems from its inherent supervisory authority over adjudications and *in no way implies that parties have a right to seek interlocutory review on that same ground.* *Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant), CLI-00-11, 51 NRC 297, 299 (2000) (first emphasis in original; second emphasis added).

DIGESTS
ISSUANCES OF THE NUCLEAR REGULATORY COMMISSION

- L Indeed, if the Commission permitted such requests, there would be no limit to the arguments parties could present via interlocutory appeal — a result fundamentally at odds with the Commission’s expressed intent to limit such appeals.
- CLI-09-7 AMERGEN ENERGY COMPANY, LLC (Oyster Creek Nuclear Generating Station), Docket No. 50-219-LR; LICENSE RENEWAL; April 1, 2009; MEMORANDUM AND ORDER
- A Under the Commission’s rules, the granting of petitions for review is discretionary, given due weight to the existence of a substantial question with respect to the five considerations listed in 10 C.F.R. § 2.341(b)(4).
- B Under the Commission’s adjudicatory scheme, the licensing board’s chief function is carefully to review all of the evidence, including testimony and exhibits, and to resolve any factual disputes.
- C While the Commission has authority to make *de novo* findings of fact, it does not do so “where a licensing board has issued a plausible decision that rests on carefully rendered findings of fact.” The Commission’s “standard of ‘clear error’ for overturning a board’s factual finding is quite high,” and the Commission defers to its boards’ findings unless “clearly erroneous” — that is, “not even plausible in light of the record viewed in its entirety.” “[U]nless there is a strong reason to believe that in a particular case a board has overlooked or misunderstood important evidence, we will defer to its findings of fact.” “As for conclusions of law, our standard of review is more searching. We will review legal questions *de novo*. We will reverse a licensing board’s legal rulings if they are ‘a departure from or contrary to established law.’”
- D The Commission’s contention admissibility “requirements are deliberately strict, and we will give ‘substantial deference’ to our boards’ determinations on threshold issues, such as standing and contention admissibility,” and we will affirm “decisions on the admissibility of contentions where the appellant ‘points to no error of law or abuse of discretion.’”
- E While a board may view a petitioner’s supporting information in a light favorable to the petitioner, it cannot do so by ignoring our contention admissibility rules, which require the petitioner (not the board) to supply all of the required elements for a valid intervention petition (*see* 10 C.F.R. § 2.309(f)(1)). A board may not simply infer the bases for a contention. Failing to provide information required under 10 C.F.R. § 2.309(f)(1) bars admission of the contention.
- F The Commission’s “requirements for untimely filings (10 C.F.R. § 2.309(c)) and late-filed contentions (10 C.F.R. § 2.309(f)(2))” are “stringent.” “Section 2.309(c)(2) clearly provides that a petitioner ‘shall address’ all eight factors set forth in section 2.309(c)(1). . . . [F]ailure to comply with our pleading requirements for late filings constitutes sufficient grounds for rejecting intervention and hearing requests.” Decisions on nontimely filings require a balancing of the eight factors set forth in section 2.309(c)(1), the first of which, good cause for failure to file on time, is the most important.
- G New or amended contentions may be filed only with leave of the presiding officer upon a showing that satisfies the three criteria set out in 10 C.F.R. § 2.309(f)(2).
- H “New bases for a contention cannot be introduced in a reply brief, or any other time after the date the original contentions are due, unless the petitioner meets the late-filing criteria set forth in 10 C.F.R. § 2.309(c), (f)(2).” And, even if the late-filed contention criteria are satisfied, proposed contentions still must meet the threshold admissibility standards contained in 10 C.F.R. § 2.309(f)(1).
- I “Reasonable assurance” is not quantified as equivalent to a 95% (or any other percent) confidence level, but is based on sound technical judgment of the particulars of a case and on compliance with the Commission’s regulations. As the Board stated, our applicable regulations, 10 C.F.R. §§ 54.21 and 54.29, read together, “require AmerGen to establish an aging management program that provides ‘reasonable assurance’ that the Oyster Creek drywell shell will continue to perform its intended function consistent with the [current licensing basis] during the period of extended operation.” To satisfy this “reasonable assurance” standard, AmerGen must make a showing that meets the “preponderance of the evidence” threshold of compliance with the applicable regulations — *not* a 95% confidence level of compliance.
- J In the Commission’s adjudications, “[t]he ultimate burden of proof on the question of whether the permit or the license should be issued is . . . upon the applicant. But where . . . one of the other parties contends that, for a specific reason . . . the permit or license should be denied, that party has the *burden of going forward* with evidence to buttress that contention. Once he has introduced sufficient evidence to establish a *prima facie* case, the burden then shifts to the applicant who, as part of his overall burden of proof, must provide sufficient rebuttal to satisfy the Board that it should reject the contention as a basis for denial of the permit or license.”

DIGESTS
ISSUANCES OF THE NUCLEAR REGULATORY COMMISSION

- K The Commission's contention admissibility and timeliness rules require a high level of discipline and preparation by petitioners, "who must examine the publicly available material and set forth their claims and the support for their claims at the outset." "There simply would be 'no end to NRC licensing proceedings if petitioners could disregard our timeliness requirements'" and add new contentions at their convenience during the course of a proceeding based on information that could have formed the basis for a timely contention at the outset of the proceeding. Our expanding adjudicatory docket makes it critically important that parties comply with our pleading requirements and that the Board enforce those requirements.
- L Petitioners may not raise entirely new arguments in a reply brief unless the standards for late-filed contentions are met. And even if those standards are satisfied, support for a contention must be provided when a contention is filed, not at some later date.
- M The requirements for applying Subpart G to a particular proceeding are set out in 10 C.F.R. § 2.700. The rule explicitly applies to *eyewitnesses*, not *expert witnesses*. The credibility of a witness testifying based on technical expertise is not the same as the credibility of an eyewitness to a past event.
- N The Commission's rules, in 10 C.F.R. § 2.311(d), set a *ten*-day limit for appealing the selection of a particular hearing procedure. An appeal cannot wait until a board issues a decision on the merits of a contention.
- O New information concerning safety may be new "evidence," but not necessarily raise a new "issue." A new "issue" is raised "only when *the argument itself (as distinct from its chances of success) was not apparent at the time of the application.*"
- P A petition for review does not automatically prevent issuance of a renewed operating license (*see* 10 C.F.R. §§ 2.340(a) and 54.31(c)). In uncontested operating license renewal proceedings, the NRC Staff is authorized to issue a renewed license once the Director of the Office of Nuclear Reactor Regulation has made the appropriate findings. When a proceeding is contested, the Staff, as a matter of policy, seeks Commission approval to issue the license, even though issuance of the license is not stayed by the petition for review.
- Q Motions to reopen are governed by 10 C.F.R. § 2.326, which requires satisfaction of three listed criteria (§ 2.326(a)) and also requires that the motion be accompanied by an affidavit that meets certain specific requirements (§ 2.326(b)). "The burden of satisfying the reopening requirements is a heavy one," and "proponents of a reopening motion bear the burden of meeting all of [these] requirements." "Section 2.326(b) requires motions to reopen to be accompanied by affidavits of qualified experts presenting the factual and/or technical bases for the claim that there is a significant safety issue, together with evidence that satisfies our admissibility standards. A 'mere showing' of a possible violation is not enough." The affidavit must contain specific factual and/or technical bases for the movant's argument that the three criteria of subpart (a) are satisfied. Expert affidavits must be presented by competent individuals with knowledge of the facts alleged or by experts in the appropriate disciplines and the evidence must meet our admissibility standards.
- CLI-09-8 PROGRESS ENERGY CAROLINAS, INC. (Shearon Harris Nuclear Power Plant, Units 2 and 3), Docket Nos. 52-022-COL, 52-023-COL; COMBINED LICENSE; May 18, 2009; MEMORANDUM AND ORDER
- A The Commission's contention admissibility requirements, as set out in 10 C.F.R. § 2.309(f)(1), obligate intervenors to "offer 'specific' contentions on 'material' issues, supported by 'alleged facts or expert opinion.'" Intervenors must provide "a clear statement as to the basis for the contentions and the submission of . . . supporting information and references to specific documents and sources that establish the validity of the contention." In evaluating petitions to intervene, licensing boards are "not free to ignore the contention admissibility requirements of 10 C.F.R. § 2.309(f)(1)," and contentions that do not satisfy the requirements must be rejected. The Commission defers to the Board's rulings on contention admissibility in the absence of clear error or abuse of discretion.
- B As the Commission stated in the New Reactor Policy Statement and reiterated in CLI-08-15, an otherwise admissible contention that raises challenges to information in a design certification rulemaking should be referred to the Staff for resolution in the rulemaking. This is a two-step process requiring, first, an admissibility determination, and second, a determination as to whether an issue should be referred to the Staff for resolution in the design certification rulemaking.
- C It is true that in the case of a genuine contention of omission the applicant may be able to cure the omission by supplying the missing information, thus rendering the contention moot. But the initial

DIGESTS
ISSUANCES OF THE NUCLEAR REGULATORY COMMISSION

burden of showing whether the contention meets the Commission's admissibility standards still lies with the petitioner.

D A board must thoroughly analyze whether the issues raised in a contention — assuming the contention is admissible — belong in the design certification rulemaking rather than in an adjudication. In this proceeding, the Board misallocated the applicable regulatory obligations when it referred the list of nine "omissions" to the Staff to "sort out" in the context of the design certification rulemaking. Indeed, the Board's choice to make the referral, without sorting it first, implicitly acknowledges that it has not examined each "omission" itself in order to determine whether it encompasses a generic design issue or a site-specific issue appropriate for consideration in an individual application. The universe of potential contentions in a combined license proceeding includes site-specific contentions that do not implicate issues appropriately considered in a design certification rulemaking; rote referral of contentions that are generally related to facility design to the Staff for resolution in rulemaking is not appropriate.

E Our rules do not provide for multiple requests for reconsideration of the same decision, and, even if they did, the arguments in a petition in a separate matter — which the petitioner in this proceeding now adopts but could have made earlier — do not provide a compelling substantive basis for reconsidering CLI-08-15. Nor does the pleading in the separate matter reset the clock for purposes of calculating timeliness.

F The Commission's rules permit the filing of combined license applications in advance of design certifications. The design certification rulemaking and individual combined license adjudicatory proceedings may proceed simultaneously, and issues raised in an adjudicatory proceeding that are appropriately addressed in the generic design certification rulemaking are to be referred to the rulemaking for resolution.

G The burden of participating in a proceeding is not a harm that can form the basis for holding a proceeding in abeyance. "[I]t has long been a 'basic principle that a person who invokes the right to participate in an NRC proceeding also voluntarily accepts the obligations attendant upon such participation.'" These obligations include participation within the schedule established for the proceeding despite the burden on a participant's time and resources and despite uncertainties engendered by the potential for new information.

CLI-09-9 CROW BUTTE RESOURCES, INC. (In Situ Leach Facility, Crawford, Nebraska), Docket No. 40-8943-MLA (License Renewal); MATERIALS LICENSE AMENDMENT; May 18, 2009; MEMORANDUM AND ORDER

A The Board appropriately followed the U.S. Supreme Court's ruling that treaties granting ownership of the Black Hills to the Sioux Nation had been abrogated by act of Congress and are no longer in effect. LBP-08-24, 68 NRC 691, 711-12 (2008), citing *United States v. Sioux Nation of Indians*, 448 U.S. 371, 382-83, 410-11 (1980). As the treaty was the only grounds supporting the Indian group's claim of standing, the Board correctly found that the Indian group did not have standing as a party to this proceeding.

B The Commission would not disturb the Board's ruling that an Indian Tribe had demonstrated standing due to interest in cultural artifacts onsite that could be affected by a proposed licensing action.

C The Commission declined to impose a requirement that petitioners show a nexus between interest upon which standing is based and the substance of petitioners' proposed contentions.

D Affidavits by an individual with standing authorizing an organization to represent him must be filed with specific reference to the proceeding in which standing is sought for the organization.

E In a materials licensing proceeding, petitioners have the burden to show a "specific and plausible means" whereby the licensing decision may harm them. Where there is no "obvious potential" for offsite harm, the petitioner must show a "specific and plausible means of how the challenged action may harm him or her." *USEC Inc. (American Centrifuge Plant)*, CLI-05-11, 61 NRC 309, 311-12 (2005).

F Applicant's arguments that petitioners' claims were unfounded in fact went to the merits of the contention and did not show that there was no genuine dispute over the substance of the contention.

G Petitioners' contention that NRC Staff had not consulted with the affected Indian tribe, as required by the NHPA, was premature. The Board erred in admitting the contention prior to the time for the Staff to act.

H Whether the petitioner has proved its claim is not the issue at the contention pleading stage. The Board simply has to find that each of the elements of contention admissibility is satisfied, and need not weigh the merits of the petitioner's arguments.

DIGESTS

ISSUANCES OF THE NUCLEAR REGULATORY COMMISSION

- I To raise an admissible issue, “[a]llegations of management improprieties . . . must be of more than historical interest.” *Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Georgia), CLI-95-12, 42 NRC 111, 120 (1995).
- J The Board erred in admitting a contention concerning the economic value of wetlands without requiring petitioners to demonstrate that the proposed licensing action or “no action” alternative would have any effect on wetlands.
- K There is no statutory or regulatory bar, per se, on a foreign-owned or -controlled company holding a source materials license, whether as a licensee or as a parent entity.
- L The Board erred in admitting a contention on adverse health effects of exposure to arsenic, where petitioners had not laid a foundation by showing that (1) the applicant’s operation has released, and will continue to release, arsenic into the groundwater; and (2) arsenic released from applicant’s operation has already reached petitioners; and (3) petitioners and others living in these areas have been exposed to arsenic released from applicant’s operation sufficient to develop the adverse health effects about which petitioners are concerned. Without more, petitioners’ arguments were speculative, and did not form the basis for a litigable contention.
- CLI-09-10 ENTERGY NUCLEAR GENERATION COMPANY and ENTERGY NUCLEAR OPERATIONS, INC. (Pilgrim Nuclear Power Station), Docket No. 50-293-LR; ENTERGY NUCLEAR VERMONT YANKEE, LLC, and ENTERGY NUCLEAR OPERATIONS, INC. (Vermont Yankee Nuclear Power Station), Docket No. 50-271-LR; LICENSE RENEWAL; June 4, 2009; MEMORANDUM AND ORDER
- A The Commission denies the particular relief requested in a request for direct Commission action, but acknowledges the petitioner’s concerns and explains how the Commission will address them.
- B Because NRC license renewal regulations codify environmental impacts conclusions for a number of generically reviewed issues, these issues normally fall outside the scope of individual license renewal proceedings. But our rules recognize the possibility of new and significant information calling into question prior generic findings, and our decisions have consistently pointed to the petition for rulemaking device as one means to alert the Commission to new information that may render a generic finding incorrect.
- CLI-09-11 ENTERGY NUCLEAR GENERATION COMPANY and ENTERGY NUCLEAR OPERATIONS, INC. (Pilgrim Nuclear Power Station), Docket No. 50-293-LR; LICENSE RENEWAL; June 4, 2009; MEMORANDUM AND ORDER (Requesting Additional Briefing)
- CLI-09-12 CROW BUTTE RESOURCES, INC. (North Trend Expansion Project), Docket No. 40-8943-MLA; MATERIALS LICENSE AMENDMENT; June 25, 2009; MEMORANDUM AND ORDER
- A The Commission defers to the Board’s determinations on the admissibility of contentions unless we find an error of law or abuse of discretion. *PPL Susquehanna LLC* (Susquehanna Steam Electric Station, Units 1 and 2), CLI-07-25, 66 NRC 101, 104 (2007); *see also AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-06-24, 64 NRC 111, 121 (2006); *International Uranium (USA) Corp.* (White Mesa Uranium Mill), CLI-98-6, 47 NRC 116, 118 (1998).
- B The Commission gives the Board’s judgment on determinations of standing “substantial deference” absent a “clear misapplication of facts or law.” *Sequoyah Fuels Corp.* (Gore, Oklahoma Site Decommissioning), CLI-01-2, 53 NRC 9, 14 (2001); *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 324 (1999).
- C The Board did not act unreasonably in basing standing on potential harm from new operation that would be similar to harm petitioner claims he has suffered from existing operation.
- D Requirement to show “distinct new” harm from a license amendment application would not preclude standing to contest commencement of new operations at a separate site, where petitioner showed potential for harm to himself from new operation.
- E The Commission is “not inclined to disturb the Licensing Board’s judgment on standing,” “[a]bsent a gross misapplication of the facts or applicable law.” *Sequoyah Fuels Corp. and General Atomics* (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 72 (1994). The Commission found no “gross misapplication” of facts or applicable law in the Board’s finding that petitioners had met their burden to show a “plausible chain of causation” of possible harm.
- F Proximity alone does not suffice for standing in materials licensing cases. *International Uranium (USA) Corp.* (White Mesa Uranium Mill), CLI-98-6, 47 NRC 116, 117 n.1 (1998).
- G The Commission does not entertain on appeal arguments not raised before the Board. *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-04-22, 60 NRC 125, 139-40 (2004). *See also USEC Inc.* (American Centrifuge Plant), CLI-06-10, 63 NRC 451, 458 (2006); *Hydro Resources,*

DIGESTS
ISSUANCES OF THE NUCLEAR REGULATORY COMMISSION

- Inc.* (2929 Coors Road, Suite 101, Albuquerque, NM 87120), CLI-00-8, 51 NRC 227, 243 (2000). The Commission cannot find “clear error” in the Board’s failing to acknowledge an argument that was not brought to its attention and to which the petitioners had no opportunity to respond.
- H A late-filed document that supports or provides a basis for a proposed contention should be considered using the late-filing factors of 10 C.F.R. §§ 2.309(c) and 2.309(f)(2).
- I Where a document relevant to the licensing proceeding was available on the agency public document management system, but not indexed by license number, the Board did not act unreasonably in finding that late-filing factors weighed in favor of the party seeking to introduce the document as late support for an otherwise timely contention.
- J A licensing board may reformulate contentions to “eliminate extraneous issues or to consolidate issues for a more efficient proceeding.” *Shaw AREVA MOX Services* (Mixed Oxide Fuel Fabrication Facility), LBP-08-11, 67 NRC 460, 482 (2008) (emphasis omitted). (*See id.* at 481-83 for a discussion of the board’s legal authority to reformulate contentions).
- K A board may not add material not raised by a petitioner in order to render a contention admissible. *Andrew Siemaszko*, CLI-06-16, 63 NRC 708, 720-21 (2006). *See also Arizona Public Service Co.* (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), CLI-91-12, 34 NRC 149, 155 (1991).
- L NEPA and the National Historic Preservation Act required NRC Staff to consult with interested Indian tribes as part of its review of the application. The fact that reviews had not yet taken place at the time the application was filed did not reflect a deficiency in the application. Absent a genuine dispute over the sufficiency of the application, the contention was inadmissible.
- M Our rules of procedure explicitly allow the filing of a new contention on the basis of the draft or final environmental impact statement where that document contains information that differs “significantly” from the information that was previously available. *See* 10 C.F.R. § 2.309(f)(2) (providing that, with respect to issues arising under NEPA, the petitioner may file new contentions “if there are data or conclusions in the NRC draft or final environmental impact statement . . . that differ significantly from the data or conclusions in the applicant’s documents”). *See Crow Butte Resources, Inc.* (In Situ Leach Facility, Crawford, Nebraska), CLI-09-9, 69 NRC 331, 351 (2009).
- N The Board erred when it disregarded the rule that a reply cannot expand the scope of the arguments set forth in the original hearing request. New bases may not be introduced in a reply brief unless they meet the late-filing criteria set forth in our regulations. *See Nuclear Management Co., LLC* (Palisades Nuclear Plant), CLI-06-17, 63 NRC 727, 732 (2006).
- O Petitioners’ claim that a foreign-owned company would be more likely than a U.S.-owned company to export its product overseas fell outside the scope of the proceeding, where the applicant had not applied for a license to export recovered uranium.
- P Our regulations do not prohibit issuance of a materials license to a licensee wholly owned by a foreign parent. *See Crow Butte Resources, Inc.* (In Situ Leach Facility, Crawford, Nebraska), CLI-09-9, 69 NRC at 361.
- CLI-09-13 SOUTHERN NUCLEAR OPERATING COMPANY (Vogtle Electric Generating Plant, Units 3 and 4), Docket Nos. 52-025-COL, 52-026-COL; COMBINED LICENSE; June 25, 2009; MEMORANDUM AND ORDER
- A Under the Commission’s rules, the Board may refer a ruling to the Commission if it determines that “prompt decision is necessary to prevent detriment to the public interest or unusual delay or expense,” or if the ruling involves “a novel issue that merits Commission review at the earliest opportunity.” The Commission will review a referred ruling only if it raises “significant and novel legal or policy issues, and resolution of the issues would materially advance the orderly disposition of the proceeding.” *See* 10 C.F.R. §§ 2.323(f), 2.341(f)(1).
- B When the unique circumstances of a case could result in the compromise of a participant’s hearing rights, the Commission has taken action to ensure that hearings are fair and accommodate the rights of participants.
- CLI-09-14 U.S. DEPARTMENT OF ENERGY (High-Level Waste Repository), Docket No. 63-001-HLW; CONSTRUCTION AUTHORIZATION; June 30, 2009; MEMORANDUM AND ORDER
- A Commission silence on matters not specifically considered on appeal constitutes neither approval nor disapproval of any individual unreviewed ruling. *See Baltimore Gas & Electric Co.* (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), CLI-98-25, 48 NRC 325, 343 n.3 (1998) (citations omitted) (unreviewed Board rulings carry no precedential weight).

DIGESTS
ISSUANCES OF THE NUCLEAR REGULATORY COMMISSION

- B** As a general matter, the Commission defers to Board rulings on contention admissibility in the absence of clear error or abuse of discretion. *See Crow Butte Resources, Inc.* (In Situ Leach Facility, Crawford, Nebraska), CLI-09-9, 69 NRC 331, 336 (2009) (citing, *inter alia*, *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Unit 3), CLI-08-17, 68 NRC 231, 234 (2008)); *Progress Energy Carolinas, Inc.* (Shearon Harris Nuclear Power Plant, Units 2 and 3), CLI-09-8, 69 NRC 317, 324 (2009); *AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-06-24, 64 NRC 111, 121 (2006).
- C** A petitioner is limited to the contention as initially filed and may not rectify its deficiencies through a reply brief or on appeal. *Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-04-25, 60 NRC 223 (2004).
- D** Commission pleading rules permit contentions that raise issues of law as well as contentions that raise issues of fact. *See* 10 C.F.R. § 2.309(f)(1)(i).
- E** The Boards reasonably concluded that it was not necessary for petitioners to allege “facts” under section 2.309(f)(1)(v) or to provide an affidavit that sets out the “factual and/or technical bases” under section 51.109(a)(2) to support a purely legal contention. Therefore, the Commission found that the Boards’ interpretation and application of section 2.309(f)(1) contention admissibility requirements and section 51.109(a)(2) affidavit requirement were reasonable.
- F** Whether “excessive” safety design could lead to “licensing uncertainty,” unnecessary costs, or delays are not issues material to this licensing proceeding. There is no legal requirement that the Staff find that the proposed design is not “too conservative” or that the associated costs are not excessive as part of its safety review of the construction authorization application.
- G** Contentions that DOE lacks “management integrity” to operate a high-level waste geologic repository were impermissible challenges to the Nuclear Waste Policy Act (NWPA), and to actions by the President and the Congress under the statutory scheme established by the NWPA, and are therefore beyond the scope of this proceeding. In the NWPA, Congress designated DOE, an executive agency, as the body solely responsible for constructing and operating the Yucca Mountain repository.
- H** DOE is not a “person” for purposes of AEA § 11s.
- CLI-09-15** AREVA ENRICHMENT SERVICES, LLC (Eagle Rock Enrichment Facility), Docket No. 70-7015; MATERIALS LICENSE; July 23, 2009; ORDER (Notice of Receipt of Application for License; Notice of Consideration of Issuance of License; Notice of Hearing and Commission Order; and Order Imposing Procedures for Access to Sensitive Unclassified Nonsafeguards Information and Safeguards Information for Contention Preparation)
- A** The Commission provides notice of its docketing and consideration of the 10 C.F.R. Part 70 license application submitted by AREVA Enrichment Services, LLC (AES), for authorization to possess and use source, byproduct, and special nuclear material to enrich natural uranium by the gas centrifuge process at its planned Eagle Rock Enrichment Facility (EREF) to be built in Bonneville County, Idaho. In addition to providing notice of the application, the Commission also gives notice of hearing, Commission guidance on the conduct of the proceeding, and procedures for access to sensitive unclassified nonsafeguards information and safeguards information for contention preparation.
- B** Section 193(b)(1) of the Atomic Energy Act of 1954, as amended (AEA), requires that for license applications for uranium enrichment facilities, “the [Nuclear Regulatory] Commission shall conduct a single adjudicatory hearing on the record with regard to the licensing of the construction and operation of a uranium enrichment facility.” 42 U.S.C. § 2243(b) (2000). Sections 70.23a and 70.31(e) of 10 C.F.R. implement this mandate, declaring that before a uranium enrichment facility can be licensed, a hearing is required to be held on that license application.
- C** The matters of fact and law to be considered in a proceeding on an application for a license to construct and operate a uranium enrichment facility are whether the application satisfies the applicable standards in 10 C.F.R. Parts 30, 40, and 70, and whether the requirements of the National Environmental Policy Act of 1969 (NEPA) and the NRC’s implementing regulations in 10 C.F.R. Part 51 have been met. *See Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-04-3, 59 NRC 10, 13 (2004).
- D** When a proceeding involving an application for a uranium enrichment facility is uncontested, the Licensing Board will determine without conducting a *de novo* evaluation of the application: whether the application and record of the proceeding contain sufficient information to support license issuance; whether the NRC Staff’s review of the application has been adequate to support the finding to be made by

DIGESTS
ISSUANCES OF THE NUCLEAR REGULATORY COMMISSION

the Director of the Office of Nuclear Materials Safety and Safeguards; and whether the review conducted by the NRC Staff pursuant to 10 C.F.R. Part 51 has been adequate.

E Regardless of whether a proceeding on an application for a uranium enrichment facility is contested or uncontested, the Licensing Board will, in its initial decision, in accordance with Subpart A of 10 C.F.R. Part 51: (1) determine whether the requirements of section 102(2)(A), (C), and (E) of NEPA and Subpart A of Part 51 have been complied with in the proceeding; (2) independently consider the final balance among conflicting factors contained in the record of the proceeding with a view to determining the appropriate action to be taken; and (3) determine, after weighing the environmental, economic, technical, and other benefits against the environmental and other costs, and considering reasonable alternative, whether a license should be issued, denied, or conditioned to protect environmental values. *See National Enrichment Facility*, CLI-04-3, 59 NRC at 13; *see also* 10 C.F.R. § 2.104(b)(2)(ii).

F If the proceeding on an application for a uranium enrichment facility becomes a contested proceeding, the Licensing Board shall make findings of fact and conclusions of law on admitted contentions. Moreover, with respect to matters relating to the applicable standards of 10 C.F.R. Parts 30, 40, and 70, and the adequacy of the Staff's review pursuant to Part 51, but not covered by admitted contentions, the Board will determine, without conducting a *de novo* evaluation of the application: whether the applicant and record of the proceeding contain sufficient information to support license issuance; whether the NRC Staff's review of the application has been adequate to support the finding to be made by the Director of the Office of Nuclear Materials Safety and Safeguards; and whether the review conducted by the NRC Staff pursuant to 10 C.F.R. Part 51 has been adequate. *See National Enrichment Facility*, CLI-04-3, 59 NRC at 13; *see also* 10 C.F.R. § 2.104(b)(1)(i)-(iv) and (b)(2)(i).

G To intervene in an NRC proceeding, a petitioner must file a written petition for leave to intervene in accordance with the requirements of 10 C.F.R. § 2.309. In addition to setting forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding, the petitioner must also include at least one contention meeting the requirements of 10 C.F.R. § 2.309(f)(1). Failure of a contention to meet any of the requirements of 10 C.F.R. § 2.309(f)(1) is grounds for its dismissal.

H For each contention, the petitioner must assert an issue of law or fact that is within the scope of the proceeding and is material to the outcome of the licensing proceeding, meaning that the subject matter of the contention must impact the grant or denial of a pending license application. *See* 10 C.F.R. § 2.309(f)(1)(iv).

I For licensing decisions involving facilities located within the jurisdictional boundaries of the United States Court of Appeals for the Ninth Circuit, the NRC Staff will consider, as part of its NEPA analysis, the potential environmental consequences, if any, were a terrorist attack on the proposed facility to occur. *See Pacific Gas and Electric Co.* (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), CLI-08-26, 68 NRC 509 (2008).

CLI-09-16 SOUTHERN NUCLEAR OPERATING COMPANY (Vogle Electric Generating Plant, Units 3 and 4), Docket Nos. 52-025-COL, 52-026-COL; COMBINED LICENSE; July 31, 2009; MEMORANDUM AND ORDER

A The Commission will give substantial deference to a board's rulings on contention admissibility in the absence of clear error or abuse of discretion.

CLI-09-17 PA'INA HAWAII, LLC, Docket No. 30-36974-ML; MATERIALS LICENSE; August 13, 2009; ORDER

CLI-09-18 SOUTH TEXAS PROJECT NUCLEAR OPERATING COMPANY (South Texas Project, Units 3 and 4), Docket Nos. 52-012-COL, 52-013-COL; COMBINED LICENSE; September 23, 2009; MEMORANDUM AND ORDER

A Section 2.311(d) of 10 C.F.R. permits an aggrieved litigant to seek interlocutory review of an order granting a petition to intervene, and/or request for hearing, on the question as to whether the request for hearing or petition to intervene should have been wholly denied.

B A necessary prerequisite for an appeal taken pursuant to 10 C.F.R. § 2.311 is that the Board rule on all pending contentions first.

C Where petitioners filed new contentions in advance of a board ruling on initial intervention petitions, no appeal under 10 C.F.R. § 2.311 lies until the board acts on all contentions.

CLI-09-19 PA'INA HAWAII, LLC, Docket No. 30-36974-ML; MATERIALS LICENSE; September 23, 2009; MEMORANDUM AND ORDER

DIGESTS
ISSUANCES OF THE NUCLEAR REGULATORY COMMISSION

CLI-09-20 CALVERT CLIFFS 3 NUCLEAR PROJECT, LLC, and UNISTAR NUCLEAR OPERATING SERVICES, LLC (Calvert Cliffs Nuclear Power Plant, Unit 3), Docket No. 52-016-COL; COMBINED LICENSE; October 13, 2009; MEMORANDUM AND ORDER

A The Commission will reject any contention that does not satisfy its deliberately strict contention admissibility requirements. The Commission gives substantial deference to its boards' determinations on threshold issues like standing and contention admissibility, and will affirm decisions on the admissibility of contentions where the appellant points to no error of law or abuse of discretion.

B To demonstrate standing to intervene, the Commission's rules require a petitioner to state, and our boards to assess, the nature of the petitioner's right under the Atomic Energy Act, the National Environmental Policy Act, or other statute governing the proceeding, to be made a party; the nature and extent of the petitioner's property, financial, or other interest; and the possible effect of the outcome of the proceeding on the petitioner's interest. In assessing whether a petitioner has standing the Commission has long applied contemporaneous judicial concepts of standing, but the Commission is not strictly bound by judicial standing doctrines.

C We generally require the elements of the judicial concept of standing, that is, the requirement for a concrete and particularized injury that is fairly traceable to the challenged action and is likely to be redressed by a favorable decision, where the injury is to an interest arguably within the zone of interests protected by the governing statute, to be pled with specificity. But in certain circumstances — such as construction permit and operating license proceedings for power reactors — the Commission recognizes a "proximity," or geographic, presumption. In such proceedings, the Commission presumes that a petitioner has standing to intervene if the petitioner lives within, or otherwise has frequent contacts with, the zone of possible harm from the nuclear reactor. In practice, the Commission has found standing based on this proximity presumption if a petitioner (or a representative of a petitioner organization) resides within approximately 50 miles of the facility in question.

D The Commission's 50-mile "proximity presumption" is simply a shortcut for determining standing in certain cases. The presumption rests on the Commission's finding, in construction permit and operating license cases, that persons living within the roughly 50-mile radius of the facility face a realistic threat of harm if a release from the facility of radioactive material were to occur.

E The analysis of compliance with section 103d of the Atomic Energy Act is a function performed by the NRC Staff as part of its evaluation of the combined license application. The Commission's guidance directs the NRC Staff to consider an applicant to be foreign owned, controlled, or dominated whenever a foreign interest has the power, direct or indirect, whether or not exercised, to direct or decide matters affecting the management or operations of the applicant. The Commission has not determined a specific threshold above which it would be conclusive that an applicant is controlled by foreign interests through ownership of a percentage of the applicant's stock. Rather, these percentages must be interpreted in light of all the information that bears on who in the corporate structure exercises control over what issues and what rights may be associated with certain types of shares. Where the ownership interest is less than 100%, although the analytical focus remains on safeguarding security and the national defense, a variety of factors are given further consideration: the extent of the proposed partial ownership of the reactor; whether the applicant is seeking authority to operate the reactor; whether the applicant has interlocking directors or officers and details concerning the relevant companies; whether the applicant would have access to any restricted data; and details concerning ownership of the foreign parent company.

CLI-09-21 DUKE ENERGY CAROLINAS, LLC (William States Lee III Nuclear Station, Units 1 and 2), Docket Nos. 52-018-COL, 52-019-COL; TENNESSEE VALLEY AUTHORITY (Bellefonte Nuclear Power Plant, Units 3 and 4), Docket Nos. 52-014-COL, 52-015-COL; COMBINED LICENSE; November 3, 2009; MEMORANDUM AND ORDER

A The Commission will review referred rulings only if the referral "raises significant and novel legal or policy issues, and resolution of the issues would materially advance the orderly disposition of the proceeding." 10 C.F.R. § 2.341(f)(1); *see Tennessee Valley Authority* (Bellefonte Nuclear Power Plant, Units 3 and 4), CLI-09-3, 69 NRC 68, 72 (2009). *See also* 10 C.F.R. § 2.323(f) (the presiding officer may refer a ruling to the Commission if, in the judgment of the presiding officer, "prompt decision is necessary to prevent detriment to the public interest or unusual delay or expense, or if the presiding officer determines that the decision or ruling involves a novel issue that merits Commission review at the earliest opportunity"). Referred rulings were not reviewed because contentions were rejected by the Board due

DIGESTS
ISSUANCES OF THE NUCLEAR REGULATORY COMMISSION

- to legal insufficiency. Therefore, early Commission review would not advance the orderly disposition of either proceeding.
- CLI-09-22 DETROIT EDISON COMPANY (Fermi Nuclear Power Plant, Unit 3), Docket No. 52-033-COL; COMBINED LICENSE; November 17, 2009; MEMORANDUM AND ORDER
- A The Commission's rules of practice provide for an automatic right to appeal a licensing board standing and contention admissibility decision on the issue of whether a request for hearing or petition to intervene should have been wholly denied.
- B The Commission will defer to the Board's rulings on standing unless the appeal points to an error of law or abuse of discretion.
- CLI-09-23 DAVID GEISEN, Docket No. IA-05-052; ENFORCEMENT; November 17, 2009; MEMORANDUM AND ORDER
- A Whether the party seeking a stay faces potentially irreparable harm is the most important factor considered in the Commission's determination whether to grant a stay.
- B The possibility that the prevailing party would use the Board's order in his favor to persuade a District Court to reconsider part of the penalty imposed on him in a parallel criminal proceeding did not constitute "immediate, irreparable harm" to the NRC Staff.
- C Party seeking a stay did not show an "overwhelming" probability of success on the merits of its appeal sufficient to overcome its lack of showing of irreparable harm.
- CLI-10-1 SOUTH CAROLINA ELECTRIC & GAS COMPANY and SOUTH CAROLINA PUBLIC SERVICE AUTHORITY (also referred to as SANTEE COOPER) (Virgil C. Summer Nuclear Station, Units 2 and 3), Docket Nos. 52-027-COL, 52-028-COL; COMBINED LICENSE; January 7, 2010; MEMORANDUM AND ORDER
- A The Commission's rules of practice provide for an automatic right to appeal a board decision wholly denying a petition to intervene.
- B The Commission will defer to the board's rulings on standing and contention admissibility unless the appeal points to an error of law or abuse of discretion.
- C The Commission generally extends some latitude to *pro se* litigants, but they still are expected to comply with the Commission's procedural rules, including contention pleading requirements.
- D The Commission will not consider information that is introduced for the first time on appeal in an attempt to cure deficient contentions.
- E Replies should be narrowly focused on the legal or logical arguments presented in the answers on a request for hearing/petition to intervene.
- F The Commission's contention admissibility standards do not call for a dispositive standard of proof for a contention or its bases, but rather, a clear statement as to the basis for the contention and the submission of supporting information and references to specific documents and sources that establish the validity of the contention.
- G The Commission's regulations allow an applicant — at its own risk — to submit a combined license application that does not reference a certified design.
- H Before a board may refer a design certification-related contention to the Staff and hold it in abeyance, the contention must first be admissible. If the contention is inadmissible in the first instance, no further action is required on the part of the board.
- I In a case involving an application to produce baseload power for a defined service area, NEPA's "rule of reason" would not exclude consideration of demand-side management as part of an alternatives analysis *per se*.
- CLI-10-2 PROGRESS ENERGY FLORIDA, INC. (Levy County Nuclear Power Plant, Units 1 and 2), Docket Nos. 52-029-COL, 52-030-COL; COMBINED LICENSE; January 7, 2010; MEMORANDUM AND ORDER
- A A licensing board may reformulate contentions to "eliminate extraneous issues or to consolidate issues for a more efficient proceeding." *Crow Butte Resources, Inc.* (North Trend Expansion Project), CLI-09-12, 69 NRC 535, 552 (citing *Shaw AREVA MOX Services* (Mixed Oxide Fuel Fabrication Facility), LBP-08-11, 67 NRC 460, 482 (2008) (emphasis omitted).
- B The Board did not err in reformulating a contention to state that the application failed to comply with 10 C.F.R. Part 51, rather than with the National Environmental Policy Act (NEPA). Strictly speaking, NEPA imposes requirements on the agency, while Part 51 imposes requirements on both a license applicant and the agency. Because NEPA, by its terms, places obligations upon the federal agency, not

DIGESTS

ISSUANCES OF THE NUCLEAR REGULATORY COMMISSION

- the applicant, it is correct to say that an application violates section 51.45, not “NEPA.” The Board’s clarifying restatement is no basis for rejecting the substantive claims in a contention charging that the application violates “NEPA.”
- C Although NRC recognizes a difference between contentions of “omission” and contentions of inadequacy, the Board did not err in reading the contention as one of inadequacy despite the contentions’ occasional use of terms such as “failed to address.”
- D The Board did not make an impermissible “merits” ruling by observing that a contention was supported by the affidavit of an “expert.” This initial assessment is not dispositive of the expert status of the witness or the Board’s reliance on testimony provided by the witness. As the case progresses the Board will consider the proffered expert’s qualifications in further depth and accord her opinion appropriate weight.
- E The Board did not create a “new regulatory requirement” in finding that an application must show how the proposed facility will deal with long-term storage of low-level radioactive waste (LLRW). Safety regulations in 10 C.F.R. § 52.79(a)(3) require the COL application to describe the kinds and quantities of radioactive materials that will be produced in operating a proposed new power plant and to describe the “means for controlling and limiting the radioactive effluents and radiation exposures within the limits set forth” in 10 C.F.R. Part 20.
- F Given that proposed contentions were grounded in the partial closure of the Barnwell facility for the disposal of low-level radioactive waste (LLRW), contentions failed to show basis for including Greater-Than-Class C (GTCC) waste. GTCC waste is the responsibility of the federal government and has never been shipped to the Barnwell facility.
- CLI-10-3 DETROIT EDISON COMPANY (Fermi Power Plant Independent Spent Fuel Storage Installation), Docket No. 72-72-EA; ENFORCEMENT; January 7, 2010; MEMORANDUM AND ORDER
- A We do not consider arguments or new facts raised for the first time on appeal unless their proponent can demonstrate that the information was previously unavailable. *See, e.g., AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-07-8, 65 NRC 124, 132-33 & n.38 (2007), *aff’d, New Jersey Department of Environmental Protection v. NRC*, 561 F.3d 132 (3d Cir. 2009).
- B We generally defer to our licensing boards on issues of standing, absent an error of law or abuse of discretion. *See, e.g., Crow Butte Resources, Inc.* (In Situ Leach Facility, Crawford, Nebraska), CLI-09-9, 69 NRC 331, 336 (2009).
- C In *Bellotti v. NRC*, the U.S. Court of Appeals for the District of Columbia Circuit upheld an NRC decision to limit the scope of an enforcement adjudication to the question of whether the order should be sustained. 725 F.2d 1380 (D.C. Cir. 1983). In subsequent enforcement cases, we have consistently followed the *Bellotti* approach. *See, e.g., State of Alaska Department of Transportation and Public Facilities*, CLI-04-26, 60 NRC 399 (2004). Under *Bellotti*, petitioners must provide factual support for their claim that injury could be redressed by a favorable Board ruling; that is, that they would be better off if the order were vacated. *See id.* at 406.
- D If a petitioner wishes to propose security measures in addition to those laid out in a Staff enforcement order, then the petitioner’s remedies are either to petition the NRC under 10 C.F.R. § 2.206 for further enforcement action or to petition the NRC under 10 C.F.R. § 2.802 to institute a rulemaking to impose broader security measures.
- E It is well established that the Commission has discretion under the Administrative Procedure Act to impose binding, prospectively applicable legal requirements by either rulemaking or adjudication.
- CLI-10-4 GE-HITACHI GLOBAL LASER ENRICHMENT LLC (GLE Commercial Facility), Docket No. 70-7016; MATERIALS LICENSE; January 7, 2010; ORDER (Notice of Receipt of Application for License; Notice of Consideration of Issuance of License; Notice of Hearing and Commission Order; and Order Imposing Procedures for Access to Sensitive Unclassified Nonsafeguards Information and Safeguards Information for Contention Preparation)
- A The Commission provides notice of its docketing and consideration of the 10 C.F.R. Part 70 license application submitted by GE Hitachi Global Laser Enrichment LLC (GEH), for authorization to possess and use source, byproduct, and special nuclear material to enrich natural uranium by a laser-based enrichment process at its planned GLE Commercial Facility to be built in the City of Wilmington in New Hanover County, North Carolina. In addition to providing notice of the application, the Commission also gives notice of hearing, Commission guidance on the conduct of the proceeding, and procedures for access to sensitive unclassified nonsafeguards information and safeguards information for contention preparation.

DIGESTS
ISSUANCES OF THE NUCLEAR REGULATORY COMMISSION

- B** Pursuant to 10 C.F.R. § 70.23a and section 193 of the AEA, as amended, a hearing will be conducted according to the rules of practice in 10 C.F.R. Part 2, Subparts A, C, G, and to the extent that classified information becomes involved, Subpart I. The hearing will be held under the authority of sections 53, 63, 189, 191, and 193 of the AEA.
- C** The matters of fact and law to be considered in a proceeding on an application for a license to construct and operate a uranium enrichment facility are whether the application satisfies the applicable standards in 10 C.F.R. Parts 30, 40, and 70, and whether the requirements of the National Environmental Policy Act of 1969 (NEPA) and the NRC's implementing regulations in 10 C.F.R. Part 51 have been met.
- D** When a proceeding involving an application for a uranium enrichment facility is uncontested, the Licensing Board will determine without conducting a *de novo* evaluation of the application: whether the applicant and record of the proceeding contain sufficient information to support license issuance; whether the NRC Staff's review of the application has been adequate to support findings to be made by the Director of the Office of Nuclear Materials Safety and Safeguards; and whether the review conducted by the NRC Staff pursuant to 10 C.F.R. Part 51 has been adequate.
- E** Regardless of whether a proceeding on an application for a uranium enrichment facility is contested or uncontested, the Licensing Board will, in its initial decision, in accordance with Subpart A of 10 C.F.R. Part 51: (1) determine whether the requirements of section 102(2)(A), (C), and (E) of NEPA and Subpart A of Part 51 have been complied with in the proceeding; (2) independently consider the final balance among conflicting factors contained in the record of the proceeding with a view to determining the appropriate action to be taken; and (3) determine, after weighing the environmental, economic, technical, and other benefits against the environmental and other costs, and considering reasonable alternatives, whether a license should be issued, denied, or conditioned to protect environmental values.
- F** If the proceeding on an application for a uranium enrichment facility becomes a contested proceeding, the Licensing Board shall make findings of fact and conclusions of law on admitted contentions. Moreover, with respect to matters relating to the applicable standards of 10 C.F.R. Parts 30, 40, and 70, and the adequacy of the Staff's review pursuant to Part 51, but not covered by admitted contentions, the Board will determine, without conducting a *de novo* evaluation of the application: whether the applicant and record of the proceeding contain sufficient information to support license issuance; whether the NRC Staff's review of the application has been adequate to support findings to be made by the Director of the Office of Nuclear Materials Safety and Safeguards; and whether the review conducted by the NRC Staff pursuant to 10 C.F.R. Part 51 has been adequate.
- G** To intervene in an NRC proceeding, a petitioner must file a written petition for leave to intervene in accordance with the requirements of 10 C.F.R. § 2.309. In addition to setting forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding, a petition for leave to intervene must also include a specification of the contentions that the petitioner seeks to have litigated in the hearing. Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully with respect to resolution of that person's admitted contentions.
- H** For each contention, the petitioner must assert an issue of law or fact that is within the scope of the proceeding and is material to the outcome of the licensing proceeding. Each contention must be one that, if proven, would entitle the petitioner to relief.
- CLI-10-5** SOUTHERN NUCLEAR OPERATING COMPANY (Early Site Permit for Vogtle ESP Site), Docket No. 52-011-ESP; EARLY SITE PERMIT; January 7, 2010; MEMORANDUM AND ORDER
- A** The Commission grants review on a discretionary basis, giving due weight to a petitioner's showing that there is a substantial question with respect to the five considerations listed in 10 C.F.R. § 2.341(b)(4).
- B** The licensing board's principal role in our adjudicatory process is carefully to review all of the evidence, including testimony and exhibits, and to resolve any factual disputes.
- C** The Commission does not exercise its authority to make *de novo* findings of fact where a licensing board has issued a plausible decision that rests on carefully rendered findings of fact. The Commission has discretion to review all underlying factual issues *de novo*, but is disinclined to do so where a board has weighed arguments presented by experts and rendered reasonable, record-based factual findings. The Commission defers to a board's factual findings and generally steps in only to correct clearly erroneous findings — that is, findings not even plausible in light of the record viewed in its entirety — where there is strong reason to believe that a board has overlooked or misunderstood important evidence. The Commission's standard of clear error for overturning a board's factual finding is quite high.

DIGESTS
ISSUANCES OF THE NUCLEAR REGULATORY COMMISSION

- D As for conclusions of law, our standard of review is more searching. We review legal questions *de novo*. We will reverse a licensing board's legal rulings if they are a departure from or contrary to established law.
- E Decisions on evidentiary questions fall within our boards' authority to regulate hearing procedures. A licensing board normally has considerable discretion in making evidentiary rulings. The Commission reviews decisions on evidentiary questions under an abuse of discretion standard.
- F The separate purposes of the Commission's adjudicatory and National Environmental Policy Act (NEPA) processes should not be confused — contested proceedings litigate particular contentions that may include arguable NEPA-analysis shortfalls, whereas the Staff's NEPA analysis encompasses the full range of NEPA issues whether or not a contested proceeding even takes place.
- G The scope of a contention is limited to issues of law and fact pled with particularity in the intervention petition, including its stated bases, unless the contention is satisfactorily amended in accordance with the Commission's rules. Otherwise, NRC adjudications quickly would lose order. Parties and licensing boards must be on notice of the issues being litigated, so that parties and boards may prepare for summary disposition or for hearing. The Commission's procedural rules on contentions are designed to ensure focused and fair proceedings.
- H There is a difference between what an agency like the NRC must look at in order to evaluate cumulative impacts under the National Environmental Policy Act — regardless of any contentions that may be filed by a party — and the scope of a particular cumulative impacts contention, which may, as here, be a subset of the total array of cumulative impacts required to be examined.
- CLI-10-6 TENNESSEE VALLEY AUTHORITY (Bellefonte Nuclear Plant, Units 1 and 2), Docket Nos. 50-438-CP, 50-439-CP; CONSTRUCTION PERMIT; January 7, 2010; MEMORANDUM AND ORDER
- A Section 185 of the Atomic Energy Act, 42 U.S.C. § 2235, is the Act's only section that addresses construction permits. This section does not speak to reinstating construction permits which a licensee surrendered to the NRC prior to the construction permit's expiration date. Rather, section 185 states that a construction permit will not expire and no rights under the permit will be forfeited unless two circumstances are present: (1) the facility is not completed, and (2) the latest date for completion has passed. Therefore, reinstating a voluntarily surrendered construction permit does not conflict with the AEA's statutory language.
- B Section 185a of the AEA, 42 U.S.C. § 2235(a), addresses forfeiture: "Unless the construction or modification of the facility is completed by the completion date, the construction permit shall expire, and all rights thereunder be forfeited, unless upon good cause shown, the Commission extends the completion date." A licensee's voluntary surrender of a construction permit prior to that permit's expiration date does not constitute "forfeiture" under section 185.
- C The NRC possesses broad discretion to act under the AEA when the statute is otherwise silent. *See Siegel v. AEC*, 400 F.2d 778, 783 (1968); *Public Service Co. of New Hampshire v. NRC*, 582 F.2d 77, 82 (1st Cir. 1978) (some internal citations omitted); *see also Massachusetts v. NRC*, 522 F.3d 115, 126-27 (1st Cir. 2008). In the context of expired construction permits, the D.C. Circuit also found that the NRC may use its broad discretion of authority under the AEA to reinstate expired construction permits which the licensee inadvertently failed to renew. *See Citizens Association for Sound Energy v. NRC*, 821 F.2d 725, 731 (D.C. Cir. 1987).
- D Section 186 of the AEA, 42 U.S.C. § 2236, addresses revocation of licenses where there is wrongdoing on the part of the licensee. The voluntary surrender of a valid construction permit does not amount to wrongful activity which would warrant revocation.
- E Section 189 of the AEA, 42 U.S.C. § 2239, calls for a mandatory hearing for the granting of a construction permit, as well as a hearing upon request for the granting, revoking, or amending of any permit or license. The issuance of new construction permits requires a section 189 mandatory hearing. However, the AEA does not provide for a mandatory hearing for the reinstatement of previously issued construction permits, as a hearing already occurred when the permits were initially issued.
- F As a general matter, administrative agencies have inherent authority to change and modify their own prior decisions. *See generally United Gas Improvement Co. v. Callery Properties, Inc.*, 382 U.S. 223, 229 (1965); *Gun South, Inc. v. Brady*, 877 F.2d 858, 862-63 (11th Cir. 1989). The NRC's authority to reinstate previously surrendered construction permits is consistent with general administrative law practice.

DIGESTS
ISSUANCES OF THE NUCLEAR REGULATORY COMMISSION

- G Notice-and-comment rulemaking is required only when the NRC is attempting to change a regulation. See *Citizens Awareness Network v. NRC*, 59 F.3d 284 (1st Cir. 1995); section 189 of the AEA, 42 U.S.C. § 2239.
- CLI-10-7 PPL BELL BEND, LLC (Bell Bend Nuclear Power Plant), Docket No. 52-039-COL; COMBINED LICENSE; January 7, 2010; MEMORANDUM AND ORDER
- A The Commission generally defers to Board decisions regarding standing and contention admissibility in the absence of clear error or an abuse of discretion. *Progress Energy Carolinas, Inc.* (Shearon Harris Nuclear Power Plant, Units 2 and 3), CLI-09-8, 69 NRC 317, 324 (2009); *Crow Butte Resources, Inc.* (In Situ Leach Facility, Crawford, Nebraska), CLI-09-9, 69 NRC 331, 336 (2009) (citing, *inter alia*, *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Unit 3), CLI-08-17, 68 NRC 231, 234 (2008)); *AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-06-24, 64 NRC 111, 121 (2006).
- B A petitioner cannot rely on another board's finding of standing in a prior proceeding, even where the same licensed facility is involved.
- C A petitioner must make a fresh demonstration of standing for *each* proceeding in which he seeks intervention because a petitioner's circumstances may change from one proceeding to the next. *Texas Utilities Electric Co.* (Comanche Peak Steam Electric Station, Unit 2), CLI-93-4, 37 NRC 156, 162-63 (1993). See also *Crow Butte*, CLI-09-9, 69 NRC at 342-43 (organizational petitioner could not rely on affidavit authorizing representation that was executed with respect to one proceeding to authorize representation in separate proceeding involving the same license).
- D Unreviewed board decisions have no binding effect on a later board. See *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-05-22, 62 NRC 542, 544 (2005); *Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-99-24, 50 NRC 219, 222 (1999).
- E The petitioner bears the burden to provide facts sufficient to establish standing. *U.S. Enrichment Corp.* (Paducah, Kentucky Gaseous Diffusion Plant), CLI-01-23, 54 NRC 267, 272 (2001) (citing *Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 and 2), CLI-00-5, 51 NRC 90, 98 (2000)).
- F The sufficiency of a nonresident petitioner's "frequent contacts" is a determination that necessarily will require the Board to weigh the information provided. Therefore, a petitioner who seeks to base standing on contacts within a 50-mile radius of a proposed facility must provide enough detail to allow the Board to distinguish a casual interest from a substantial one.
- G A petitioner's lack of specificity concerning the nature, extent, and duration of his contacts with the area surrounding the proposed site is a sufficient basis to reject a claim of standing. *PPL Bell Bend, LLC* (Bell Bend Nuclear Power Plant), LBP-09-18, 70 NRC 385, 402 n.85 (2009) (citing *Shieldalloy Metallurgical Corp.* (Cambridge, Ohio Facility), CLI-99-12, 49 NRC 347, 354-55 (1999); *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 324 (1999)).
- CLI-10-8 SHIELDALLOY METALLURGICAL CORPORATION (Decommissioning of the Newfield, New Jersey Site), Docket No. 40-7102-MLA (License Amendment Request); MATERIALS LICENSE AMENDMENT; January 7, 2010; MEMORANDUM AND ORDER
- A Section 2.342 of Title 10 of the *Code of Federal Regulations* applies to a stay of a decision or action of a presiding officer or licensing board. The movant must be a "party to the proceeding," which, in the context of section 2.342, refers to an adjudicatory proceeding presided over by a presiding officer or board.
- B Section 274 of the Atomic Energy Act of 1954, as amended, governs cooperation between the Commission and a state. That section authorizes the Commission, if certain conditions are met, to discontinue its regulatory authority over certain categories of material, which authority then is assumed by the state.
- C As a general matter, a policy statement announces what the Commission seeks to establish as policy, and does not bind either the agency or the public.
- D In reviewing a stay application, the Commission considers four factors: (1) whether the moving party has made a strong showing that it is likely to prevail on the merits; (2) whether the party will be irreparably injured unless a stay is granted; (3) whether the granting of a stay would harm other parties; and (4) where the public interest lies.
- E When evaluating a motion for a stay the Commission places the greatest weight on the second factor — irreparable injury to the moving party unless a stay is granted. The Commission requires a showing of a threat of immediate and irreparable harm that will result absent a stay.

DIGESTS
ISSUANCES OF THE NUCLEAR REGULATORY COMMISSION

- F Without a showing of irreparable harm, the moving party must show that success on the merits is a virtual certainty to warrant issuance of a stay.
- G Agreement State Program compatibility designations are made as part of the rulemaking process. Submission of a petition for rulemaking under 10 C.F.R. § 2.802 is the appropriate mechanism for challenging the compatibility category of an NRC regulation after the final rule has issued.
- CLI-10-9 PROGRESS ENERGY CAROLINAS, INC. (Shearon Harris Nuclear Power Plant, Units 2 and 3), Docket Nos. 52-022-COL, 52-023-COL; COMBINED LICENSE; March 11, 2010; MEMORANDUM AND ORDER
- A The Commission has discretion to allow oral argument upon the request of a party made in a petition for review, brief on review, or upon its own initiative. In order to grant a request for oral argument, the Commission requires a showing of how it will assist the Commission in reaching a decision.
- B A motion for reconsideration may not be filed except upon leave of the adjudicatory body that rendered the decision. If leave is granted, the motion must show compelling circumstances, such as the existence of an unanticipated, clear, and material error, which could not have been anticipated, that renders the decision invalid.
- C The Commission's rules do not allow for multiple requests for reconsideration of the same decision.
- D The Commission's rules permit the filing of a combined license application during the pendency of a design certification rulemaking.
- E The Commission's rules of practice provide for an automatic right to appeal a board decision wholly denying a petition to intervene.
- F The Commission will defer to the board's rulings on standing and contention admissibility unless the appeal points to an error of law or abuse of discretion.
- G The Commission has placed strict limits on management and character contentions. When character or integrity issues are raised, they are expected to be directly germane to the challenged licensing action, and of more than historical interest.
- H The Commission will deem waived arguments before the Board that are abandoned on appeal.
- I The Commission will not consider information that was not raised before the Board.
- J There is a difference between contentions that merely allege an omission of information and those that challenge substantively and specifically how particular information has been discussed in a license application.
- K Pursuant to longstanding Commission precedent, a contention that is the subject of what is, or is about to become, the subject of a rulemaking is inadmissible.
- L Attempting to circumvent page-limit rules could be grounds for sanctions. The better practice is for participants to abide by page-limit rules, and if they cannot, to file a motion to enlarge the number of pages permitted.
- CLI-10-10 U.S. DEPARTMENT OF ENERGY (High-Level Waste Repository), Docket No. 63-001-HLW; CONSTRUCTION AUTHORIZATION; March 11, 2010; MEMORANDUM AND ORDER
- A The procedural rules governing this proceeding in 10 C.F.R. Part 2, Subpart J, do not provide for the appeal of a Presiding Officer's ruling on a late-filed intervention petition. No appeals may be taken from any Presiding Officer order or decision, except as specifically permitted by rule. 10 C.F.R. § 2.1015(a).
- CLI-10-11 ENTERGY NUCLEAR GENERATION COMPANY and ENTERGY NUCLEAR OPERATIONS, INC. (Pilgrim Nuclear Power Station), Docket No. 50-293-LR; LICENSE RENEWAL; March 26, 2010; MEMORANDUM AND ORDER
- A The Commission grants review of an Atomic Safety and Licensing Board decision that dismissed a contention on summary disposition. The Commission reverses in part the decision, remanding the contention to the Board for hearing, as limited by the Commission's ruling.
- B Mitigation alternatives or "SAMAs" refer to safety enhancements such as a new hardware item or procedure intended to reduce the risk of severe accidents.
- C Applicable NRC standards governing summary disposition are set forth in 10 C.F.R. § 2.710. Summary disposition is appropriate where relevant documents and affidavits show that there is no genuine issue as to any material fact and that the moving party is entitled to a decision as a matter of law.
- D When a motion for summary disposition is made and supported as described in our regulations, a party opposing the motion may not rest upon mere allegations or denials, but must state specific facts showing that there is a genuine issue of material fact. Only disputes over facts that might affect the outcome of a proceeding would preclude summary disposition.

DIGESTS
ISSUANCES OF THE NUCLEAR REGULATORY COMMISSION

- E At the summary disposition stage, the licensing board's or presiding officer's function is not to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for hearing. The evidence of the movant is to be believed, and all justifiable inferences are to be drawn in his favor. If reasonable minds could differ as to the import of the evidence, summary disposition is not appropriate. But if the evidence in favor of the nonmoving party is merely colorable, or not significantly probative, summary disposition may be granted.
- F NRC threshold contention standards require petitioners to review application materials and set forth their contentions with particularity. Where any issue arises over the proper scope of a contention, the Commission has long referred back to the bases set forth in support of the contention. Our contention rules require reasonably specific factual and legal allegations at the outset to assure that matters admitted for hearing have at least some minimal foundation, are material to the proceeding, and provide notice to opposing parties of the issues they will need to defend against.
- G Intervenors may not freely change the focus of an admitted contention at will to add a host of new issues and objections that could have been raised at the outset. Where warranted, we allow for amendment of admitted contentions, but do not allow distinctly new complaints to be added at will as litigation progresses, stretching the scope of admitted contentions beyond their reasonably inferred bounds.
- H There is no NEPA requirement to use the best scientific methodology, and NEPA should be construed in the light of reason if it is not to demand virtually infinite study and resources. Nor is an environmental impact statement intended to be a research document, reflecting the frontiers of scientific methodology, studies, and data.
- I The SAMA analysis is a site-specific mitigation analysis. For a mitigation analysis, NEPA demands no fully developed plan or detailed examination of specific measures which will be employed to mitigate adverse environmental effects.
- J Unless it looks genuinely plausible that inclusion of an additional factor or use of other assumptions or models may change the cost-benefit conclusions for the SAMA candidates evaluated, no purpose would be served to further refine the SAMA analysis, whose goal is only to determine what safety enhancements are cost-effective to implement.
- CLI-10-12 TENNESSEE VALLEY AUTHORITY (Watts Bar Nuclear Plant, Unit 2), Docket No. 50-391-OL; OPERATING LICENSE; March 26, 2010; MEMORANDUM AND ORDER
- A The Commission's rules of practice provide for an automatic right to appeal a board decision wholly denying a petition to intervene.
- B The Commission will defer to the board's rulings on threshold issues absent an error of law or abuse of discretion.
- C In ruling on a nontimely petition, boards are to consider eight factors that will excuse the tardiness of the petition if, on balance, they weigh in favor of the petitioner: (i) good cause, if any, for the failure to file on time; (ii) the nature of the requestor's/petitioner's right under the Atomic Energy Act of 1954, as amended (AEA) to be made a party to the proceeding; (iii) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; (iv) the possible effect of any order that may be entered in the proceeding on the requestor's/petitioner's interest; (v) the availability of other means whereby the requestor's/petitioner's interest will be protected; (vi) the extent to which the requestor's/petitioner's interests will be represented by existing parties; (vii) the extent to which the requestor's/petitioner's participation will broaden the issues or delay the proceeding; and (viii) the extent to which the requestor's/petitioner's participation may reasonably be expected to assist in developing a sound record.
- D The first factor — good cause — is accorded the greatest weight.
- E Absent a showing of good cause, a nontimely petition will not be excused unless the petitioner makes a compelling showing on the remaining factors. A petitioner's showing must be highly persuasive; it would be a rare case where the Commission would excuse a nontimely petition absent good cause.
- F Under longstanding Commission precedent, a petitioner must provide more than vague assertions that it will be able to assist in developing the record. When a petitioner addresses this criterion it should set out with as much particularity as possible the precise issues it plans to cover, identify its prospective witnesses, and summarize their proposed testimony.
- G Fundamentally, fairness requires that all participants in NRC adjudicatory proceedings abide by the Commission's procedural rules, especially those who are cognizant of those rules and represented by counsel.

DIGESTS
ISSUANCES OF THE NUCLEAR REGULATORY COMMISSION

- CLI-10-13 U.S. DEPARTMENT OF ENERGY (High-Level Waste Repository), Docket No. 63-001-HLW; CONSTRUCTION AUTHORIZATION; April 23, 2010; MEMORANDUM AND ORDER
- CLI-10-14 ENTERGY NUCLEAR GENERATION COMPANY and ENTERGY NUCLEAR OPERATIONS, INC. (Pilgrim Nuclear Power Station), Docket No. 50-293-LR; LICENSE RENEWAL; June 17, 2010; MEMORANDUM AND ORDER
- A The Commission addresses a petition for review of several Atomic Safety and Licensing Board decisions, including LBP-08-22, 68 NRC 590 (2008), LBP-06-23, 64 NRC 257 (2006), and interlocutory decisions, and denies review of these Board decisions. An earlier Commission decision, CLI-10-11, 71 NRC 287 (2010), *reconsideration denied*, CLI-10-15, 71 NRC 479 (2010) addressed the petition's request for review of LBP-07-13, 66 NRC 131 (2007), and granted review of and partially reversed LBP-07-13.
- B The NRC's license renewal safety regulations are set forth in 10 C.F.R. Part 54. Underlying the renewal regulations is the principle that each nuclear power plant has a plant-specific licensing basis that must be maintained during the renewal term in the same manner and to the same extent as during the original licensing term. The current licensing basis is the set of NRC requirements applicable to a specific plant. The current licensing basis does not remain static. The NRC continually reassesses the current licensing basis through the regulatory oversight process, including plant-specific and generic reviews, plant inspections, and enforcement actions.
- C The aging management review for license renewal focuses on structures and components that perform passive functions — with no moving parts or changes in configuration or properties. Further, the license renewal safety review focuses on those systems, structures, and components that are of principal importance to safety. The general scope of the license renewal safety review is outlined in 10 C.F.R. § 54.4.
- D Section 54.4(a)(1)(3) outlines the three general categories of systems, structures, and components (SSCs) falling within the initial focus of the license renewal safety review. The first category (§ 54.4(a)(1)) consists of all safety-related SSCs. These are SSCs relied upon to remain functional during and following design-basis events to ensure the integrity of the reactor coolant pressure boundary, the capability to shut down the reactor and maintain it in a safe shutdown condition, or the capability to prevent or mitigate the consequences of accidents which could result in potential offsite exposures comparable to those referred to in sections 50.34(a)(1), 50.67(b)(2), or 100.11. The second category (§ 54.4(a)(2)) consists of all non-safety-related SSCs whose failure could prevent satisfactory accomplishment of any of the safety functions identified in section 54.4(a)(1). The third category (§ 54.4(a)(3)) consists of all SSCs relied on in safety analyses or plant evaluations to perform a function that demonstrates compliance with the NRC's regulations for fire protection, pressurized thermal shock, anticipated transients without scram, and station blackout.
- E From among the three general categories of SSCs that fall within the initial focus of the license renewal safety review, applicants must identify and list, in an integrated plant assessment (IPA), those structures and components subject to an aging management review. Section 54.21 provides the standards for determining which structures and components require an aging management review.
- F SSCs requiring an aging management review perform an "intended function" as described in section 54.4. These are the functions outlined in the three general categories of SSCs within the initial scope of license renewal. Additionally, SSCs subject to an aging management review perform an intended function in a *passive* fashion, and they are not already subject to replacement based on a qualified life or specified time period.
- G For each structure or component requiring an aging management review, a license renewal applicant must demonstrate that the effects of aging will be adequately managed so that the intended function(s) will be maintained consistent with the CLB for the period of extended operation.
- H The reasonable assurance determination for license renewal need not be reduced to a mechanical verbal formula or set of objective standards but may be given content through case-by-case applications of the Commission's technical judgment in light of all relevant information. The reasonable assurance determination is not quantified as equivalent to a percent confidence level, but is based on sound technical judgment of the particulars of a case and on compliance with our regulations.
- I A license renewal applicant need not address mitigation for issues designated "Category 1." The license renewal rulemaking history makes clear that an issue cannot be identified as "Category 1" if the NRC has not made a generic determination that additional mitigation measures are unlikely to be warranted, given mitigation practices already in place.

DIGESTS
ISSUANCES OF THE NUCLEAR REGULATORY COMMISSION

- J Onsite storage of spent fuel during the license renewal term is a “Category 1” issue, and as such explicitly has been found not to warrant any additional site-specific analysis of mitigation measures.
- CLI-10-15 ENTERGY NUCLEAR GENERATION COMPANY and ENTERGY NUCLEAR OPERATIONS, INC. (Pilgrim Nuclear Power Station), Docket No. 50-293-LR; LICENSE RENEWAL; June 17, 2010; MEMORANDUM AND ORDER
- A The Commission denies a motion for reconsideration of its decision in CLI-10-11, 71 NRC 287 (2010).
- B The Commission will grant a motion for reconsideration only upon a showing of compelling circumstances, such as a clear and material error that could not have been reasonably anticipated and that renders a decision invalid.
- C At the summary disposition stage, the quality of evidentiary support is expected to be of a higher level than that at the contention filing stage.
- CLI-10-16 SOUTH TEXAS PROJECT NUCLEAR OPERATING COMPANY (South Texas Project, Units 3 and 4), Docket Nos. 52-012-COL, 52-013-COL; COMBINED LICENSE; June 17, 2010; MEMORANDUM AND ORDER
- A Section 2.311 of our rules of practice permits an appeal as of right from a board’s ruling on an intervention petition in two limited circumstances: (1) upon the denial of a petition to intervene and/or request for hearing, on the question as to whether it should have been granted; or (2) upon the granting of a petition to intervene and/or request for hearing, on the question as to whether it should have been wholly denied.
- B Other requests for review generally are governed by section 2.341, which provides for interlocutory review, at our discretion, only upon a showing that the issue for which interlocutory review is sought: (i) Threatens the party adversely affected by it with immediate and serious irreparable impact which, as a practical matter, could not be alleviated through a petition for review of the presiding officer’s final decision; or (ii) Affects the basic structure of the proceeding in a pervasive or unusual manner.
- C That interlocutory review only will be granted under extraordinary circumstances reflects our disfavor of piecemeal appeals during ongoing licensing board proceedings.
- D Under longstanding Commission precedent, once a petition to intervene and request for hearing has been granted and contentions are admitted for hearing, appeals of Board rulings on new or amended contentions are treated under section 2.341(f)(2), regardless of the subject matter of those contentions.
- E The rejection or admission of a contention, where the Petitioner has been admitted as a party and has other contentions pending, neither constitutes serious and irreparable impact, nor affects the basic structure of the proceeding in a pervasive and unusual manner.
- CLI-10-17 ENTERGY NUCLEAR VERMONT YANKEE, LLC and ENTERGY NUCLEAR OPERATIONS, INC. (Vermont Yankee Nuclear Power Station), Docket No. 50-271-LR; LICENSE RENEWAL; July 8, 2010; MEMORANDUM AND ORDER
- A The licensing board’s interpretation of 10 C.F.R. §§ 54.3, 54.21, 54.29 is challenged.
- B We welcome appellate briefs *amicus curiae* from parties in other Commission adjudications that presented or present an issue similar to the one in the case before us.
- C We see no reason to postpone consideration of pending issues until the resolution of other issues unrelated to this adjudication.
- D On appeal, we review legal issues *de novo*. By contrast, we generally defer to our boards’ findings of fact, unless they are clearly erroneous. When we review our boards’ rulings on contention admissibility, we employ the clear error and abuse of discretion standards of review.
- E We are generally disinclined to upset *fact*-driven Licensing Board determinations.
- F We will not consider cursory, unsupported arguments.
- G A litigant opposing a licensing action is entitled to challenge the sufficiency of any guidance document on which a licensee or applicant relies, but it must do so with substantive support.
- H Entergy modified its Fatigue Monitoring Program to be consistent with the AMP in the GALL Report and thereby satisfy 10 C.F.R. § 54.21(c)(1)(iii). It did so by removing both of the exceptions that the application had previously taken to the generic AMP in the GALL Report — including the exception that omitted any consideration of environmentally assisted fatigue from Entergy’s AMP. These modifications placed the metal fatigue portion of the application within the parameters of 10 C.F.R. § 54.21(c)(1)(iii). Entergy amended its application to include the revised Fatigue Monitoring Program on September 17, 2007. The Board misunderstood Entergy’s modifications and dismissed them as merely “relabeling”

DIGESTS

ISSUANCES OF THE NUCLEAR REGULATORY COMMISSION

its demonstration in an effort to avoid its purported obligations under subsections (i) and/or (ii) of 10 C.F.R. § 54.21(c)(1). In so concluding, the Board was not correct in equating the fatigue analyses under subsections (i) and (ii) with the fatigue analyses under subsection (iii). Further, the Board failed to recognize that an applicant may use similar or identical methodology to calculate the fatigue usage factor for the TLAA and for the AMP — regardless of how it seeks to comply with section 54.21(c)(1), whether through a predictive TLAA or by the use of an AMP.

I We also disagree with the Board’s legal determination that CUF_{en}s are TLAAAs and that the renewed license therefore may not issue without them. Our regulations in 10 C.F.R. § 54.3 define TLAAAs as being contained in the current licensing basis. Because CUF_{en}s are not contained in Vermont Yankee’s current licensing basis, they cannot be TLAAAs and thereby a prerequisite to license renewal. The Staff’s consideration of CUF_{en}s in its review of the Vermont Yankee license renewal application does not render the use of CUF_{en}s a requirement under our rules.

J The following technical issues are discussed: Metal Fatigue, Aging Management Program (AMP), Time-Limited Aging Analyses (TLAA), Cumulative Use (or Usage) Factor (CUF), Environmentally Adjusted Cumulative Use (or Usage) Factor (CUF_{en}), Environmental Adjustment Factor (F_{en}), Generic Aging Lessons Learned Report (NUREG-1801), Standard Review Plan for Review of License Renewal Applications for Nuclear Power Plants (NUREG-1800).

CLI-10-18 PA’INA HAWAII, LLC, Docket No. 30-36974-ML (Materials License Application); MATERIALS LICENSE; July 8, 2010; MEMORANDUM AND ORDER

A Under the Commission’s rules, the granting of petitions for review is discretionary, given due weight to the existence of a substantial question with respect to the five considerations listed in 10 C.F.R. § 2.341(b)(4).

B Under the Commission’s adjudicatory scheme, the licensing board’s principal role is carefully to review all of the evidence, including testimony and exhibits, and to resolve any factual disputes.

C The Commission refrains from exercising its authority to make *de novo* findings of fact in situations where a Licensing Board has issued a plausible decision that rests on carefully rendered findings of fact. While the Commission has discretion to review all underlying factual issues *de novo*, it is disinclined to do so where a Board has weighed arguments presented by experts and rendered reasonable, record-based factual findings. The Commission’s standard of “clear error” for overturning a Board’s factual findings is quite high. The Commission defers to a board’s factual findings, correcting only “clearly erroneous” findings — that is, findings not even plausible in light of the record viewed in its entirety — where it has strong reason to believe that a board has overlooked or misunderstood important evidence. The Commission will not lightly reverse its boards’ factual determinations, and will not overturn a licensing board’s findings simply because it might have reached a different result.

D In contrast to findings of fact, for conclusions of law, the Commission’s standard of review is more searching. We review legal questions *de novo*. We will reverse a licensing board’s legal rulings if they are a departure from or contrary to established law.

E The Commission’s boards have the authority to regulate hearing procedure, and decisions on evidentiary questions fall within that authority. A licensing board normally has considerable discretion in making evidentiary rulings. The Commission applies an abuse of discretion standard to its review of decisions on evidentiary questions.

F National Environmental Policy Act § 102(2)(C) requires federal agencies, “to the fullest extent possible,” to include a detailed statement on five listed items “in every recommendation or report on proposals for . . . major Federal actions significantly affecting the quality of the human environment.” The five items are: “(i) the environmental impact of the proposed action, (ii) any adverse environmental effects which cannot be avoided should the proposal be implemented, (iii) alternatives to the proposed action, (iv) the relationship between local short-term uses of man’s environment and the maintenance and enhancement of long-term productivity, and (v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.”

G The National Environmental Policy Act requires a hard look at environmental effects; general statements about “possible” effects and “some risk” do not constitute a “hard look” absent a justification regarding why more definitive information could not be provided. A rule of reason applies to the assessment of the adequacy of a National Environmental Policy Act analysis. This rule of reason is implicit in the Act’s requirement that an agency consider reasonable alternatives to a proposed action.

DIGESTS
ISSUANCES OF THE NUCLEAR REGULATORY COMMISSION

- H The National Environmental Policy Act twice refers to the consideration of “alternatives.” In addition to the “alternatives” language in section 102(2)(C)(iii), section 102(2)(E) of the Act requires federal agencies to “study, develop, and describe appropriate alternatives to recommend courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources.” This section 102(E) “alternatives provision” applies both when an agency prepares an environmental impact statement and when an agency prepares an environmental assessment. In either case, the provision requires the agency to give “full and meaningful consideration to all reasonable alternatives.” But the obligation to consider alternatives is a lesser one under an environmental assessment than under an environmental impact statement. When preparing an environmental impact statement, the agency must “[r]igorously explore and objectively evaluate all reasonable alternatives.” In contrast, when preparing an environmental assessment, the agency only must “include a brief discussion of reasonable alternatives.” Even when a proposed action does not require preparation of an environmental impact statement, the consideration of alternatives remains critical to the Act’s goals. In short, whether an agency is preparing an environmental assessment or an environmental impact statement, the alternatives that should be considered will be the same — it is only in the depth of the consideration and in the level of detail provided in the corresponding environmental documents that an environmental assessment and an environmental impact statement will differ.
- I Consistent with the Council on Environmental Quality’s regulations and the definition of “categorical exclusion,” the Commission has by regulation designated certain actions as “categorically excluded” from the requirement to prepare an environmental assessment or an environmental impact statement. Once a categorical exclusion has been established, the Staff need not prepare an environmental assessment or an environmental impact statement, absent the existence of special circumstances.
- J An environmental assessment for a proposed action must identify the action and include (1) a brief discussion of: (i) the need for the proposed action; (ii) alternatives as required by section 102(2)(E) of the National Environmental Policy Act; (iii) the environmental impacts of the proposed action and alternatives as appropriate; and (2) a list of agencies and persons consulted, and identification of sources used.
- K The applicant’s stated purpose defines the correlating range of alternatives that should be considered: while different from the specific proposal, the alternatives that should be considered must still accomplish the underlying purpose of the proposed action. The adequacy of the alternatives analysis is judged on the substance of the alternatives rather than the sheer number of alternatives examined. So long as all reasonable alternatives have been considered and an appropriate explanation is provided as to why an alternative was eliminated, the regulatory requirement is satisfied. The regulation does not impose a numerical floor on alternatives to be considered. The consideration of alternatives is bounded by a notion of feasibility. Alternatives that do not advance the purpose of the project will not be considered reasonable or appropriate.
- L While the Commission does accord “substantial weight” to an applicant’s preferences, this does not equate to complete deference to those preferences. Such deference would, in many cases, preclude the consideration of reasonable alternatives that the National Environmental Policy Act requires. While it is true that the project goal is to be determined by the applicant, not the agency, courts will not allow an agency to define the objectives so narrowly as to preclude a reasonable consideration of alternatives.
- M The Commission does not find that alternative sites always must be analyzed in an environmental assessment. Analysis of alternative sites is appropriate only when such sites are determined to be reasonable alternatives. In this particular instance, it was appropriate for the Board to require the Staff to include a brief analysis — at the level of detail appropriate for an environmental assessment — of the impacts of siting the irradiator at a different location. Consideration of alternative sites is not universally required in the preparation of an environmental assessment.
- N New or amended contentions may be filed only with leave of the presiding officer upon a showing that satisfies the three criteria set out in 10 C.F.R. § 2.309(f)(2).
- O The Atomic Energy Act and the National Environmental Policy Act contemplate *separate* NRC reviews of proposed licensing actions. While the Commission’s safety and environmental reviews may consider overlapping concerns, they are separate and independent, with differing objectives and scope, governed by different statutes with different requirements. Consequently, the fact that the Board dismissed a safety-related transportation contention is not dispositive of the merits of an environmentally based transportation contention.

DIGESTS
ISSUANCES OF THE NUCLEAR REGULATORY COMMISSION

- P Once a hearing is granted under Subpart L, the Commission's rules require an informal hearing on the merits, except in the limited circumstances described in 10 C.F.R. § 2.1206. Prior to 2004, the Commission's rules of practice prescribed that hearings held under Subpart L — as this hearing would have been — were to be informal "paper hearings," with oral presentations permitted only upon a determination by the presiding officer that such presentations were necessary to create an adequate record for decision. The Commission's 2004 changes to the rules, however, expressly did away with this format in its entirety, shifting the focus of Subpart L to oral hearings. Although the Board has broad authority to regulate the conduct of the proceeding before it, it is beyond the Board's discretion to abrogate the Commission's oral hearing rule entirely, and proceed as though the prior rules were still in effect.
- CLI-10-19 ENTERGY NUCLEAR OPERATIONS, INC. (Indian Point, Units 2 and 3), Docket Nos. 50-247-LR, 50-286-LR; LICENSE RENEWAL; July 8, 2010; MEMORANDUM AND ORDER
- A The Commission addresses a certified question by the Atomic Safety and Licensing Board on the admissibility of proposed contentions involving the Waste Confidence Rule.
- B Challenges to the Waste Confidence Rule (10 C.F.R. § 51.23) must be made in the context of a rulemaking, not in the context of an adjudicative proceeding.
- C Under longstanding NRC policy, licensing boards should not accept in individual license proceedings contentions which are (or are about to become) the subject of general rulemaking by the Commission.
- CLI-10-20 U.S. ARMY INSTALLATION COMMAND (Schofield Barracks, Oahu, Hawaii, and Pohakuloa Training Area, Island of Hawaii, Hawaii), Docket No. 40-9083; MATERIALS LICENSE; August 12, 2010; MEMORANDUM AND ORDER
- A In a materials licensing case, a petitioner must show more than that he lives or works within a certain distance of the site where materials will be located — he must show a plausible mechanism through which those materials could harm him. *See USEC Inc.* (American Centrifuge Plant), CLI-05-11, 61 NRC 309, 311 (2005).
- B In cases not involving nuclear power reactors, whether a petitioner could be affected by the licensing action must be determined on a case-by-case basis, taking into account the petitioner's distance from the source, the nature of the licensed activity, and the significance of the radioactive source. *American Centrifuge Plant*, CLI-05-11, 61 NRC at 311. *See also Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Georgia), CLI-95-12, 42 NRC 111, 116 (1995).
- C NRC boards have established the "proximity-plus" test to establish standing in materials cases, where the petitioner must show: (1) that the proposed licensing action involves a "significant source" of radiation, which has (2) an "obvious potential for offsite consequences." *Sequoyah Fuels Corp. and General Atomic*s (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 75 n.22 (1994). *See also U.S. Army* (Jefferson Proving Ground Site), LBP-00-9, 51 NRC 159, 160-61 (2000) (standing found for organization representing three members living "in close proximity" to decommissioning site, who expressed concern that DU materials could affect a waterway abutting the property of two members).
- D As a rule, *pro se* petitioners are held to less rigid pleading standards, so that parties with a clear — but imperfectly stated — interest in the proceeding are not excluded. *Public Service Electric and Gas Co.* (Salem Nuclear Generating Station, Units 1 and 2), ALAB-136, 6 AEC 487 (1973); *International Uranium (USA) Corp.* (White Mesa Uranium Mill), LBP-01-8, 53 NRC 204, 207-08 (2001); *Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), LBP-06-14, 63 NRC 568, 581 (2006).
- E Unsupported arguments that posited a mechanism for dispersal of radioactive material were insufficient to demonstrate the potential for offsite consequences where the licensee provided evidence that the posited scenario would not occur. Petitioner's argument that high-explosive munitions could fall onto DU, pulverizing and igniting the DU and generating aerosols that might travel through the air, providing an inhalation pathway for offsite exposure was not supported and was contradicted by the Army's statement that it does not employ high-impact explosives in the area where DU is present. Army regulations prohibit firing high-explosive munitions into areas containing DU. Petitioners' claims were "bare conjecture," and insufficient to support standing.
- F The Board did not err in declining to find standing on the basis of unsupported assertions. The Board did not err in refusing to assume that the license applicant will stop following applicable Department of Defense guidance and disregard its representation to the Board that high-explosive munitions will not be used in the DU areas at Pohakuloa or Schofield. The Commission need not assume that the license applicant will act contrary to applicable law, guidance, or the strictures of its license in the future. *Private*

DIGESTS

ISSUANCES OF THE NUCLEAR REGULATORY COMMISSION

- Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-01-9, 53 NRC 232, 235 (“in the absence of evidence to the contrary, the NRC does not presume that a licensee will violate agency regulations wherever the opportunity arises”).
- CLI-10-21 SOUTH CAROLINA ELECTRIC & GAS COMPANY and SOUTH CAROLINA PUBLIC SERVICE AUTHORITY (also referred to as SANTEE COOPER) (Virgil C. Summer Nuclear Station, Units 2 and 3), Docket Nos. 52-027-COL, 52-028-COL; COMBINED LICENSE; August 27, 2010; MEMORANDUM AND ORDER
- A In exercising our appellate responsibilities, we defer to a licensing board’s rulings on contention admissibility unless an appeal points to an error of law or abuse of discretion.
- B Our contention admissibility requirements are deliberately strict, and we will reject any contention that does not satisfy them.
- CLI-10-22 ENTERGY NUCLEAR GENERATION COMPANY and ENTERGY NUCLEAR OPERATIONS, INC. (Pilgrim Nuclear Power Station), Docket No. 50-293-LR; LICENSE RENEWAL; August 27, 2010; MEMORANDUM AND ORDER
- A The Commission reviews an intervenor’s motion for disqualification of an Atomic Safety and Licensing Board judge. The Commission agrees with the judge’s determination that the motion did not provide any ground warranting disqualification.
- B Under NRC regulations, if an Atomic Safety and Licensing Board member declines to grant a party’s recusal motion, the motion is referred to the Commission to determine the sufficiency of the grounds alleged.
- CLI-10-23 DAVID GEISEN, Docket No. IA-05-052; ENFORCEMENT; August 27, 2010; MEMORANDUM AND ORDER
- A For purposes of determining whether an actor has deliberately submitted statements to the NRC which he knows are inaccurate or incomplete, “knowledge” of a fact requires not only an awareness of that fact but also an understanding of its significance. The Commission approves the Board majority’s finding that “knowledge” does not necessarily follow simply from previous exposure to individual facts. Instead, to have knowledge, an individual must have a current appreciation of those facts and of what those facts mean in the circumstances presented.
- B In explaining the factors considered in deciding the factual issue whether the target of a Staff enforcement action had acted knowingly, the Board did not create a new legal “test” requiring that the Staff contradict all factors that the Board considered. The Board’s determination of the “knowledge” question was a finding of fact, not of law.
- C To show clear error, the appellant must demonstrate that the Board’s factual findings are “not even plausible in light of the record viewed in its entirety.” *Tennessee Valley Authority* (Watts Bar Nuclear Plant, Unit 1; Sequoyah Nuclear Plant, Units 1 and 2; Browns Ferry Nuclear Plant, Units 1, 2, and 3), CLI-04-24, 60 NRC 160, 189 (2004) (internal quotation marks omitted) (quoting *Kenneth G. Pierce* (Shorewood, Illinois), CLI-95-6, 41 NRC 381, 382 (1995) (in turn quoting *Anderson v. Bessemer City*, 470 U.S. 564, 573-76 (1985))).
- D The Commission will not lightly overturn a Board’s finding of fact, particularly where much of the evidence is subject to varied interpretation.
- E The Board did not commit clear error in finding that an enforcement action target did not “know” certain facts despite Staff’s showing that the target was the recipient list of documents and e-mails that included those facts.
- F The Board did not commit clear error in believing the explanations given by the target of an enforcement action as to why he did not think that information he provided the NRC was false. The enforcement target claimed that he had relied on other people to verify the accuracy of certain information; that he had focused only on his own area of responsibility in verifying the technical accuracy of the correspondence sent to NRC; and that he had focused his attention on responding to the NRC’s request for other information than that found to be false. While none of these circumstances necessarily “proved” that the enforcement target did not know that the information provided was false, the Board could plausibly find the target’s testimony credible.
- G The Board did not hold, as a matter of law, that a person cannot be held responsible for knowingly concurring in materially incomplete and inaccurate representations as long as he can point to someone more directly responsible for the representations. Rather, the Board found, as a matter of fact, that the

DIGESTS
ISSUANCES OF THE NUCLEAR REGULATORY COMMISSION

particular enforcement target did not know the truth because he relied on others to verify statements within their area of responsibility.

H That the majority gave greater weight to the enforcement action target's evidence than to the Staff's evidence is not a basis for overturning the majority's findings of fact. Such weighing of evidence and testimony is inherent in, and at the very heart of, adjudicatory fact-finding — an area where the Commission has traditionally deferred to the licensing boards. *See, e.g., AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-09-7, 69 NRC 235, 259 (2009).

I Regardless of whether the Commission would have made the same findings as the majority in its position, it recognized that the Board's factual analysis and findings were detailed, thorough, internally consistent, and supported by record evidence. *See Watts Bar*, CLI-04-24, 60 NRC at 189 (“We will not overturn a hearing judge’s findings simply because we might have reached a different result.”) (quoting *Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), CLI-98-3, 47 NRC 77, 93-94 (1998) (in turn quoting *General Public Utilities Nuclear Corp.* (Three Mile Island Nuclear Station, Unit 1), ALAB-881, 26 NRC 465, 473 (1987))). Further, the Board had the significant advantage of observing the witnesses firsthand and judging their demeanor and credibility. For these reasons, the Commission declined to overturn the Board's findings of fact.

J That the majority assigned less weight to circumstantial evidence showing that the enforcement target knew the falsity of his statements than to the target's direct testimony that he did not know of its falsity did not amount to a legal determination that circumstantial evidence must be disregarded. Had the Board actually made *that* determination, it would have committed legal error for the reasons set forth by the Staff.

K The weight the Board assigns to various evidence falls squarely within the bounds of a factual finding related to weighing evidence to which the Commission defers.

L The Board erred in relying on a report submitted during the sanctions portion of the hearing when it had committed not to rely on that evidence in considering the existence of a violation. But where the appellant failed to show how it was harmed by the error, the error cannot be found to have been prejudicial.

M The Board did not err in refusing to apply collateral estoppel to a prior criminal conviction where the NRC Staff conceded that the standard of knowledge — “deliberate ignorance” — that was applied in the criminal action is broader than the standard of knowledge applied in the Commission enforcement action.

N Before it can apply collateral estoppel, a Board must determine that the issue decided in the prior action is identical to the issue to be decided in the matter before it.

O In determining whether to apply collateral estoppel, a board should not look into the jury trial to determine whether the verdict was “correct.” *Toledo Edison Co.* (Davis-Besse Nuclear Power Station, Units 1, 2, and 3), ALAB-378, 5 NRC 557, 562-63 (1977). *See also Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-02-20, 56 NRC 169, 182 (2002) (“The correctness of the prior decision is not . . . a public policy factor upon which the application of the doctrine of collateral estoppel depends.”). The Board did not err in declining to examine the evidence presented in the jury trial to try to determine what issue the jury actually decided when that determination is rendered unclear by a special verdict.

CLI-10-24 SOUTH TEXAS PROJECT NUCLEAR OPERATING COMPANY (South Texas Project, Units 3 and 4), Docket Nos. 52-012-COL, 52-013-COL; COMBINED LICENSE; September 29, 2010; MEMORANDUM AND ORDER

A Our rules permit an appeal as of right by the NRC Staff on the question whether a request for access to SUNSI should have been denied in whole or in part. We review the Board's determination *de novo*.

B Once a petition to intervene has been granted, issues involving access to documents for use in the proceeding are governed by our discovery rules. In a Subpart L proceeding, we look to the mandatory disclosure provisions of 10 C.F.R. § 2.336.

C The purpose of the Access Order is to provide an avenue for access to documents through which potential parties already would have been accorded access but for their containing SUNSI or Safeguards Information.

D We have long held that discovery is not permitted before a petition to intervene has been granted.

E We have long held that petitioners or intervenors may request and, where appropriate, obtain — under protective order or other measures — information withheld from the general public for proprietary or security reasons.

DIGESTS
ISSUANCES OF THE NUCLEAR REGULATORY COMMISSION

- CLI-10-25 LUMINANT GENERATION COMPANY, LLC (Comanche Peak Nuclear Power Plant, Units 3 and 4), Docket Nos. 52-034-COL, 52-035-COL; COMBINED LICENSE; September 29, 2010; MEMORANDUM AND ORDER
- A Once a petition to intervene has been granted, issues involving access to documents are governed by our discovery rules. In a Subpart L proceeding, we look to the mandatory disclosure provisions of 10 C.F.R. § 2.336.
- CLI-10-26 TENNESSEE VALLEY AUTHORITY (Bellefonte Nuclear Plant, Units 1 and 2), Docket Nos. 50-438-CP, 50-439-CP; CONSTRUCTION PERMIT; September 29, 2010; MEMORANDUM AND ORDER
- A In the interest of efficient case management and prompt resolution of adjudications, we generally have enforced the 10-day deadline for appeals strictly, excusing it only in unavoidable and extreme circumstances. Unfamiliarity with NRC’s Rules of Practice is not a sufficient excuse for late filings, particularly where the challenged order expressly advised the petitioner of the time within which appellate rights had to be exercised.
- B The fact that a party may have other obligations does not relieve that party of its NRC hearing obligations — specifically its obligation to file pleadings in a timely manner.
- C We disfavor motions for extensions of time that are themselves filed out-of-time, such as the one at issue here. Indeed, we generally expect parties to file motions for extensions of time so that they are received by the NRC well before the time specified expires.
- D Reinstatement of the construction permits did not authorize construction of the reactors. Rather, the effect of the reinstatement was to place the facility in a terminated plant status.
- CLI-10-27 NORTHERN STATES POWER COMPANY (Prairie Island Nuclear Generating Plant, Units 1 and 2), Docket Nos. 50-282-LR, 50-306-LR; LICENSE RENEWAL; September 30, 2010; MEMORANDUM AND ORDER
- A A “Green” inspection finding indicates that the deficiency in licensee performance has a very low risk significance and has little or no impact on safety. By contrast, “White,” “Yellow,” and “Red” inspection findings indicate increasingly serious safety problems. “White” findings denote a “low to moderate” safety significance.
- B The issues here are “significant,” have “potentially broad impact,” and “may well recur in the likely license renewal proceedings for other plants.” Therefore, although we deny the interlocutory appeals, we nonetheless exercise our inherent supervisory authority over adjudications to take *sua sponte* review of the Board Order.
- C License renewal should not include a new, broad-scoped inquiry into compliance that is separate from and parallel to our ongoing compliance oversight activity. We specifically indicated that other broad-based issues akin to safety culture — such as operational history, quality assurance, quality control, management competence, and human factors — were beyond the bounds of a license renewal proceeding. This is because these *conceptual* issues fall outside the bounds of the passive, safety-related *physical* systems, structures, and components that form the scope of our license renewal review.
- D We define safety culture broadly.
- E If the Commission were to permit fundamentally routine inspection findings and regulatory determinations to form the basis for safety culture contentions, this result could lead to a potentially neverending stream of minitrials on operational issues, in which the applicant would be required to demonstrate how each issue was satisfactorily resolved.
- F Our regulatory process continually reassesses whether there is a need for additional oversight or regulations to protect public health and safety. We have taken, and continue to take, measures to include the monitoring of safety culture in its oversight programs and internal management processes.
- G Our license renewal proceedings focus on the potential impacts of an additional 20 years of nuclear power plant operation, not on everyday operational issues — even those that might be age-related. Those issues are effectively addressed and maintained by ongoing agency oversight, review, and enforcement.
- H If a stakeholder believes that immediate action is needed to remedy an ailing safety culture at a licensed facility, then that matter should be brought immediately to the attention of the agency via 10 C.F.R. § 2.206.
- I The Board concluded that the new contention was not based on specific new facts (“any single event or any single piece of information”) but rather on “the history of [Northern States’] ‘deficient performance and dereliction of its obligations to promptly and effectively correct deficient conditions’” — a “history . . .

DIGESTS
ISSUANCES OF THE NUCLEAR REGULATORY COMMISSION

outlined for the first time in the . . . SER [Safety Evaluation Report].” The Board stated that it would not expect the petitioner to “piece together” mere “fragments” or “shreds of information” and that, therefore, the petitioner’s delay in filing its contention until the issuance of the SER was justified. We disagree. Based on our review of the record, we see no indication that the SER added a “last piece” of information or in any way addressed the “safety culture” at Prairie Island. Rather, the SER merely compiled and organized certain preexisting information regarding one issue raised by PIIC — the refueling cavity leakage issue — into a single document.

J The Board’s ruling would effectively allow a petitioner or intervenor to delay filing a contention until a document becomes available that collects, summarizes, and places into context the facts supporting that contention. This interpretation, however, turns on its head the regulatory requirement that new contentions be based on “information . . . not previously available.” Further, such an interpretation is inconsistent with our longstanding policy that a petitioner has an “iron-clad obligation to examine the publicly available documentary material . . . with sufficient care to enable it to uncover any information that could serve as the foundation for a specific contention.”

K Where the pieces of information underpinning a late-filed contention were publicly available between 2-1/2 and 10 months prior to the contention’s filing, the filing was untimely.

CLI-10-28 ENTERGY NUCLEAR GENERATION COMPANY and ENTERGY NUCLEAR OPERATIONS, INC. (Pilgrim Nuclear Power Station), Docket No. 50-293-LR; LICENSE RENEWAL; November 5, 2010; MEMORANDUM AND ORDER

A The Board has the authority to regulate the course of the proceeding, and the Commission generally defers to the Board on case management decisions.

CLI-10-29 TENNESSEE VALLEY AUTHORITY (Watts Bar Nuclear Plant, Unit 2), Docket No. 50-391-OL; OPERATING LICENSE; November 30, 2010; MEMORANDUM AND ORDER

A We previously have held that licensing board decisions denying a petition for waiver are interlocutory and not immediately reviewable. Such decisions generally are not appealable until the board has issued a final decision resolving the case, unless a party seeking review shows that one of the grounds for interlocutory review has been met.

B Imminent mootness of an issue has been cause for taking interlocutory review in other proceedings. In those proceedings, however, the very issue sought to be reviewed would have become moot by the time the board issued a final decision. In such cases, the issue must be reviewed now or not at all.

C We assume administrative regularity in the regulatory process, and review of the operating license application takes place independently of that associated with plant construction. There is no reason to assume that completion of construction would in any way force the Commission’s hand in making adjudicatory decisions on operating license issues, including NEPA issues, at the appropriate time. To find otherwise would eviscerate our two-step construction permit/operating license review process.

CLI-10-30 ENTERGY NUCLEAR OPERATIONS, INC. (Indian Point, Units 2 and 3), Docket Nos. 50-247-LR, 50-286-LR; LICENSE RENEWAL; November 30, 2010; MEMORANDUM AND ORDER

A The Commission denies petitions for interlocutory review of an Atomic Safety and Licensing Board decision that admitted new and amended contentions.

B Pursuant to 10 C.F.R. § 2.341(f)(2), the Commission may, at its discretion, grant a party’s request for interlocutory review of a Board decision. A petition for interlocutory review will be granted only if the party seeking review demonstrates that the issue for which it seeks review (i) threatens the party with immediate and serious irreparable impact which, as a practical matter, could not be alleviated through a petition for review of the presiding officer’s final decision; or (ii) affects the basic structure of the proceeding in a pervasive or unusual manner.

C Unreviewed Board decisions lack precedential effect.

D Parties should not seek interlocutory review by invoking the grounds under which the Commission might exercise its supervisory authority.

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- LBP-06-1 HYDRO RESOURCES, INC. (P.O. Box 777, Crownpoint, New Mexico 87313), Docket No. 40-8968-ML (ASLBP No. 95-706-01-ML); MATERIALS LICENSE; January 6, 2006; PARTIAL INITIAL DECISION (Phase II Radiological Air Emissions Challenges to In Situ Leach Uranium Mining License)
- A In this Phase II decision resolving the third category of challenges by multiple intervenors to a license application by Hydro Resources, Inc. (HRI) to perform in situ leach (ISL) uranium mining at three sites in McKinley County, New Mexico, the Board finds that HRI has demonstrated that the Intervenor’s challenges relating to radiological air emissions do not provide a basis for invalidating or amending HRI’s license.
- B Pursuant to the rule of the last antecedent, “qualifying words, phrases and clauses must be applied to the words or phrases immediately preceding them and are not to be construed as extending to and including others more remote.” *Demko v. United States*, 216 F.3d 1049, 1053 (Fed. Cir. 2000) (quoting *Wilshire Westwood Associates v. Atlantic Richfield Corp.*, 881 F.2d 801, 804 (9th Cir. 1989)). However, this rule is not to be applied inflexibly without regard for the intent of the drafters. In the regulatory definition of “background radiation,” because the regulatory words “source, byproduct, [and] special nuclear materials” (10 C.F.R. § 20.1003) “are followed by a clause which is applicable as much to the first and other words as to the last, the natural construction of the language demands that the clause be read as applicable to all.” *Porto Rico Railway, Light & Power Co. v. Mor*, 253 U.S. 345, 348 (1920).
- C Pursuant to the law of the case doctrine — which is a rule of repose designed to promote judicial economy and jurisprudential integrity — the decision of an appellate tribunal should ordinarily be followed in all subsequent phases of that case, provided that the particular question in issue was “actually decided or decided by necessary implication.” *Safety Light Corp.* (Bloomsburg Site Decontamination), CLI-92-9, 35 NRC 156, 159-60 & n.5 (1992).
- D The Commission’s denial of review in a proceeding is not a decision on the merits. It simply indicates that the appealing party “identified no ‘clearly erroneous’ factual finding or important legal error requiring Commission correction.” *Hydro Resources, Inc.* (P.O. Box 15910, Rio Rancho, NM 87174), CLI-00-12, 52 NRC 1, 3 (2000) (citing 10 C.F.R. § 2.786(b)(4)).
- E That a licensing board’s decision is not affirmed by the Commission does not mean that its analysis is perforce wholly without precedential value. *Cf. Sequoyah Fuels Corp.*, CLI-95-2, 41 NRC 179, 190 (1995) (“Licensing Board decisions . . . have no precedential effect beyond the immediate proceeding in which they were issued”). Rather, it means that the precedential value of its analysis is limited to its power to persuade.
- F An intervenor may not attempt to use a license application proceeding to rewrite Commission regulations. *See Baltimore Gas & Electric Co.* (Calvert Cliffs Nuclear Power Plant), 4 AEC 243, 244 (1969); 10 C.F.R. § 2.335. To the extent that an intervenor disagrees with a regulation, its recourse is to petition the Commission for rulemaking to change it. 10 C.F.R. § 2.802.
- G “Cumulative impacts analysis looks to whether the impacts from a proposed project will combine with the existing, residual impacts in the area to result in a significant ‘cumulative’ impact — where, in other words, the new impact is significantly enhanced by already existing environmental effects.” *Hydro Resources, Inc.* (P.O. Box 15910, Rio Rancho, NM 87174), CLI-01-4, 53 NRC 31, 61-62 (2001).
- H As relevant here, for “tailings or wastes” to fall within the definition of byproduct material, the plain statutory and regulatory language requires that such tailings or wastes be “produced” from ore that has been “processed” for its source material content (42 U.S.C. § 2014(e)(2); 10 C.F.R. § 20.1003). *See also* 57 Fed. Reg. 20,525 (May 13, 1992) (“[f]or the tailings and waste . . . to qualify as 11e(2) byproduct material, the ore must be processed primarily for its source-material content”). In other words, byproduct

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

material occurs as a result of a *processing* activity that *extracts* uranium from ore or otherwise renders the uranium ore into a purer state of uranium. See 10 C.F.R. § 40.4 (defining “unrefined and unprocessed ore” as “ore in its natural form prior to any processing, such as grinding, roasting or beneficiating, or refining”); cf. 42 U.S.C. § 7911(8) & 40 C.F.R. § 192.01(m) (Uranium Mill Tailings Radiation Control Act of 1978 and EPA regulation define “tailings” as “the remaining portion of a metal-bearing ore after some or all of such metal, such as uranium, has been extracted”).

I Section 20.1301(a)(1) of 10 C.F.R. requires a licensee to ensure that the total effective dose equivalent (TEDE) “to individual members of the public from the licensed operation” does not exceed 0.1 rem per year “exclusive of the dose contributions from background radiation” and other specified sources (10 C.F.R. § 20.1301(a)(1)). Significantly, the phrase “from the licensed operation” appears to serve as a limitation on what is to be included in the TEDE calculation.

J When a term lacks a statutory or regulatory definition, it should be construed in accord with its “ordinary or natural meaning.” *Smith v. United States*, 508 U.S. 223, 228 (1993).

K The meaning of the term “naturally occurring radioactive material” or NORM, which is not defined in the Atomic Energy Act or Commission regulations, is informed by regulatory and industry usage and practice. NORM is accorded a broad, commonsensical meaning. It consists of materials that contain primordial radioisotopes (e.g., uranium and its progeny) which are present naturally in rocks, soils, water, and minerals, and that are not regulated by the Commission. This broad definition of NORM includes radioactive materials that are undisturbed in nature, as well as radioactive materials that, as a result of human activities, are no longer in their natural state. For example, NORM includes the following industrial wastes that are not regulated by the Commission: uranium mining overburden, phosphate waste, water treatment waste, petroleum production waste, mineral processing waste, and geothermal energy production waste.

L Around 1998, as a result of regulatory and industry practice, the subset of NORM whose radionuclides have become concentrated and/or exposed as a result of human activities became known as “technologically enhanced naturally occurring radioactive materials,” or TENORM. The National Academy of Sciences (NAS) defines TENORM as “any naturally occurring material not subject to regulation under the Atomic Energy Act whose radionuclide concentrations or potential for human exposure have been increased above levels encountered in the natural state by human activities” (National Research Council of the [NAS] and National Academy of Engineering, “Evaluation of Guidelines for Exposures to [TENORM],” at 19 (1999)).

M In the definition of “background radiation” (10 C.F.R. § 20.1003), the phrase “not under the control of the licensee” was added in 1997 when the Commission amended the definition to include fallout from past nuclear accidents such as Chernobyl (62 Fed. Reg. 39,058, 39,087 (July 21, 1997)). The regulatory history of this amendment indicates that the phrase “not under the control of the licensee” was intended only to apply to Chernobyl-like fallout, not to the antecedent phrase “naturally occurring radioactive materials.” See 59 Fed. Reg. 43,200, 43,217 (Aug. 22, 1994).

N “Background radiation” is defined as “naturally occurring radioactive material, including radon (except as a decay product of source or special nuclear material)” (10 C.F.R. § 20.1003) (emphasis added). The radon parenthetical was designed to except only radon that is a decay product of source and special nuclear materials that are regulated by the Commission. This conclusion is supported by regulatory history, which indicates that the Commission intended to include “ambient radon levels” within the definition of “background radiation.” See 56 Fed. Reg. 23,360, 23,365 (May 21, 1991). To interpret the radon parenthetical as applying to radon from *all* source and special nuclear materials would essentially exclude all radon from background radiation, thus negating the Commission’s stated purpose of including radiological emissions from “ambient radon” in background radiation. Cf. *Exxon Nuclear Co.* (Nuclear Fuel Recovery and Recycling Center), ALAB-447, 6 NRC 873, 878 (1977) (“[i]t is an elementary canon of construction that we ‘cannot interpret federal statutes to negate their own stated purposes’”) (quoting *New York State Department of Social Services v. Dublino*, 413 U.S. 405, 419-20 (1973)).

LBP-06-2 DAVID H. HAWES (Reactor Operator License for Vogtle Electric Generating Plant), Docket No. 55-22685-SP (ASLBP No. 05-840-01-SP); SPECIAL PROCEEDING; January 9, 2006; ORDER (Approving Settlement Agreement and Terminating Proceeding)

A Having previously raised the possibility of a settlement that might both promote safe plant operation and make allowance for Petitioner’s military service in Iraq that interrupted his operator license testing, the Licensing Board commends and approves parties’ settlement agreement that achieves those ends.

DIGESTS

ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- LBP-06-3 ENTERGY NUCLEAR VERMONT YANKEE, LLC, and ENTERGY NUCLEAR OPERATIONS, INC. (Vermont Yankee Nuclear Power Station), Docket No. 50-271-OLA (ASLBP No. 04-832-02-OLA); OPERATING LICENSE AMENDMENT; January 17, 2006; MEMORANDUM AND ORDER (Ruling on Deliberative Process Privilege Claims)
- A With the exception of the factual portions of one document, the Board denies a motion to compel production of fifteen documents by the Department of Public Service of the State of Vermont because the documents qualify for the deliberative process privilege and the State has failed to show an immediate need for the documents that outweighs the privilege.
- B The deliberative process privilege requires that the information be both predecisional and deliberative.
- C The deliberative process privilege is a qualified privilege, meaning a board has the discretion to compel production of a document upon a finding that the need for the evidence outweighs the interests that support the privilege.
- D In ruling on the qualified nature of the deliberative process privilege, the following factors are relevant in balancing the need for the documents against the government's interest in nondisclosure: (i) the relevance of the evidence; (ii) the availability of other evidence; (iii) the seriousness of the litigation and the issues involved; (iv) the role of the government in the litigation; and (v) the possibility of future timidity by government employees who will be forced to recognize that their secrets are violable.
- E Documents that contain the analysis, opinions, and recommendations of NRC Staff members regarding an applicant's response to prior requests for additional information (RAIs) or the formulation of new RAIs are deliberative and thus may qualify for the deliberative process privilege.
- F NRC Staff communications are factual in nature and are not protected by the deliberative process privilege when the communications summarize the procedural aspects of Staff projects or report on the status of Staff work.
- G A showing of relevance alone is not sufficient for a party seeking a deliberative process privilege document to demonstrate that its need for the document outweighs the need to protect the document.
- H NRC Staff communications concerning the appropriate wording and scope of a potential license condition are deliberative and thus may qualify for the deliberative process privilege.
- I NRC Staff communications concerning whether a potential license condition should be imposed are deliberative and thus may qualify for the deliberative process privilege.
- J The fact that deliberative process privilege documents contain important new analyses that are relevant to admitted contentions weighs in favor of their disclosure.
- K In a proceeding that involves assuring the safety of a proposed 20% increase in the power of a nuclear power reactor, the "seriousness of the litigation and the issues involved" factor weighs in favor of disclosing deliberative process documents.
- L When the NRC Staff is a party in a proceeding and not merely an indifferent bystander to private party litigation, the role of the government in the litigation weighs in favor of disclosure.
- M The imminent availability of the NRC Staff's authoritative position on the subject that is discussed in the deliberative process documents constitutes "other evidence" such that the immediate need for the documents does not outweigh the deliberative process privilege.
- LBP-06-4 PA'INA HAWAII, LLC, Docket No. 30-36974-ML (ASLBP No. 06-843-01-ML); MATERIALS LICENSE; January 24, 2006; MEMORANDUM AND ORDER (Ruling on Petitioner's Standing and Environmental Contentions)
- A In this proceeding regarding the application of Pa'ina Hawaii, LLC, to build and operate a commercial pool-type industrial irradiator, the Licensing Board finds that the Concerned Citizens of Honolulu (Petitioner) has established standing to intervene and has proffered at least one admissible contention, and therefore grants the Petitioner's request for a hearing.
- B When assessing whether a petitioner has set forth a sufficient interest to intervene under 10 C.F.R. 2.309, the Commission applies traditional judicial concepts of standing; specifically, a petitioner must demonstrate "a concrete and particularized injury that is fairly traceable to the challenged action and is likely to be redressed by a favorable decision" (i.e., (1) injury, (2) causation, and (3) redressability). *Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Georgia), CLI-95-12, 42 NRC 111, 115 (1995); *Portland General Electric Co.* (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 612 (1976).

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- C A threatened unwanted exposure to radiation, even a minor one, is sufficient to establish an injury. *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Unit 2), CLI-03-14, 58 NRC 207, 216 (2003).
- D In addition to the traditional requirements for standing, the Commission has recognized that a petitioner may have standing based upon its geographical proximity to a particular facility. *Florida Power & Light Co.* (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325, 329-30 (1989).
- E In appropriate circumstances, a petitioner's proximity to the facility in question provides for a so-called presumption that "a petitioner has standing to intervene without the need specifically to plead injury, causation, and redressability if the petitioner lives within, or otherwise has frequent contacts with, the zone of possible harm from the nuclear reactor or other source of radioactivity." *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-01-6, 53 NRC 138, 146 (2001), *aff'd on other grounds*, CLI-01-17, 54 NRC 3 (2001).
- F Demonstrating so-called proximity presumption standing requires a "determination that the proposed action involves a significant source of radioactivity producing an obvious potential for offsite consequences." *Georgia Tech*, CLI-95-12, 42 NRC at 116; *Sequoyah Fuels Corp. and General Atomics* (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 75 n.22 (1994).
- G Each contention must: (1) provide a specific statement of the issue of law or fact to be raised or controverted; (2) provide a brief explanation of the basis for the contention; (3) demonstrate that the issue raised in the contention is within the scope of the proceeding; (4) demonstrate that the issue raised in the contention is material to the findings the NRC must make to support the action that is involved in the proceeding; (5) provide a concise statement of the alleged facts or expert opinion that support the petitioner's position and on which the petitioner intends to rely at hearing, including references to specific sources and documents that will be relied upon to support its position on the issue; and (6) provide sufficient information to show that a genuine dispute on a material issue of law or fact exists with the applicant, which consists of either (a) references to specific portions of the application (including the applicant's environmental and safety reports) that are disputed and the reasons supporting the dispute, or (b) identification of each instance where the application purportedly fails to contain information on a relevant matter as required by law and the reasons supporting the allegation. *See* 10 C.F.R. 2.309(f)(1)(i)-(vi).
- H The petitioner is not required to provide an exhaustive discussion in its proffered contention, so long as it meets the Commission's admissibility requirements.
- I The resolution of factual disputes is not the appropriate subject of inquiry at the contention admissibility stage of the proceeding.
- J The regulatory history of the special circumstances exception to the categorical exclusions in 10 C.F.R. 51.22(b) indicates that the location of an irradiator may be a circumstance in which the exclusion might not apply.
- K An agency must affirmatively provide a reasoned explanation of the applicability of a categorical exclusion when special circumstances are alleged. *Alaska Center for the Environment v. U.S. Forest Service*, 189 F.3d 851, 859 (9th Cir. 1999); *Jones v. Gordon*, 792 F.2d 821, 828 (9th Cir. 1986); *Steamboaters v. Federal Energy Regulatory Commission*, 759 F.2d 1382 (9th Cir. 1985).
- L The Commission has found contentions asserting that the risks associated with terrorist attacks require that the agency prepare an Environmental Assessment or an Environmental Impact Statement to be outside the scope of agency NEPA review and inadmissible.
- LBP-06-5 ENTERGY NUCLEAR VERMONT YANKEE, LLC, and ENTERGY NUCLEAR OPERATIONS, INC. (Vermont Yankee Nuclear Power Station), Docket No. 50-271-OLA (ASLBP No. 04-832-02-OLA); OPERATING LICENSE AMENDMENT; January 31, 2006; MEMORANDUM AND ORDER (Denying Motion for Summary Disposition of New England Coalition Contention 3)
- A The Board denies a motion by Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc., for summary disposition of New England Coalition Contention 3 because the motion failed to show that there are no genuine issues of material fact in dispute, as required by 10 C.F.R. §§ 2.1205(c) and 2.710(d)(2).
- B In a Subpart L proceeding, the Board must apply the summary disposition standard set forth in Subpart G. 10 C.F.R. § 2.1205(c). Under the Subpart G standard, summary disposition is proper only "if the filings in the proceeding, depositions, answers to interrogatories, and admissions on file, together with the statements of the parties and the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a decision as a matter of law." 10 C.F.R. § 2.710(d)(2).

DIGESTS

ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- C Although there is no right to reply to an answer to a motion for summary disposition, if the answer contains an allegation that is plainly and factually incorrect, the moving party can request the opportunity to respond and to correct the record. *See* 10 C.F.R. § 2.323(c).
- D The fact that the NRC Staff may agree with the moving party's factual or technical positions, either informally or in a formal document such as a Safety Evaluation Report, does not "resolve" the dispute or mean that there is no genuine issue of material fact in dispute.
- E When conflicting expert opinions are involved, summary disposition is rarely appropriate. *See, e.g., Phillips v. Cohen*, 400 F.3d 388, 399 (6th Cir. 2005). At the summary disposition stage, it is not proper for a board "to untangle the expert affidavits and decide 'which experts are more correct.'" *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-01-39, 54 NRC 497, 510 (2001) (citation omitted). Factual disputes of this nature are to be resolved at an evidentiary hearing, where the Board has the opportunity to examine witnesses, probe the documents, and *weigh* the evidence.
- F The rule that a presiding officer may not "untangle the expert affidavits and decide 'which experts are more correct'" does not apply if an expert asserts a factual or technical position that is so patently incorrect or absurd (e.g., that the world is flat) that a presiding officer must reject that position as constituting a genuine dispute.
- G Recognizing that our rules require that the opponent of a motion for summary disposition respond to each of the "material facts" listed by the movant, admitting or denying each of them, and must set forth specific facts, by affidavit or otherwise, showing that there are genuine issues of fact, *see* 10 C.F.R. § 2.710(a)-(b), it is an abuse of the adjudicatory process to use a motion for summary disposition as a subterfuge for the filing of interrogatories, requests for admission, or other discovery; as a mechanism for exhausting an impecunious litigant; or for any other extraneous purpose. If a party believes that stipulations or admissions would materially expedite or facilitate the proceeding, the party is encouraged to propose such a course to us directly, and the Board will act accordingly. *See* 10 C.F.R. § 2.319.
- H Compliance with the 10 C.F.R. § 2.323(b) requirement that a movant make a "sincere effort to contact other parties in the proceeding and to resolve the issues raised in the motion" can only be determined from the objective reasonableness of the movant's efforts, as shown by all the facts and circumstances, not by his or her subjective intent.
- I Where a party had 10 months within which to prepare a motion, the last-minute timing of a consultation telephone call, on the last day that the motion could be filed, strongly indicates that there was no sincere effort, as is required by 10 C.F.R. § 2.323(b), to resolve the issues before filing the motion.
- J Even if the party moving for summary disposition thinks that the effort might be futile (i.e., that there would be little or no chance that the other party would agree to abandon its contention), some reasonable effort at consultation is required by 10 C.F.R. § 2.323(b).
- K The following technical issue is discussed: Large Transient Testing.
- LBP-06-6 U.S. ARMY (Jefferson Proving Ground Site), Docket No. 40-8838-MLA (ASLBP No. 00-776-04-MLA); MATERIALS LICENSE AMENDMENT; February 2, 2006; MEMORANDUM AND ORDER (Granting Hearing Request and Deferring Hearing)
- LBP-06-7 AMERGEN ENERGY COMPANY, LLC (Oyster Creek Nuclear Generating Station), Docket No. 50-0219-LR (ASLBP No. 06-844-01-LR); LICENSE RENEWAL; February 27, 2006; MEMORANDUM AND ORDER (Denying New Jersey's Request for Hearing and Petition To Intervene, and Granting NIRS's Request for Hearing and Petition To Intervene)
- A Commission regulations implementing the statutory standing requirement (42 U.S.C. § 2239(a)(1)(A)) establish that a State has standing when a proceeding involves a "facility located within [the State's] boundaries" (10 C.F.R. 2.309(d)(2)(i)). Thus, when a State advises a Licensing Board that a proceeding involves a facility within its borders, the Board "shall not require a further demonstration of standing" (*id.* § 2.309(d)(2)(ii)).
- B For an organization to establish representational standing, it must: (1) show that at least one of its members may be affected by the licensing action and, accordingly, would have standing to sue in his or her own right; (2) identify that member by name and address; and (3) show that the organization is authorized to request a hearing on behalf of that member. *See GPU Nuclear, Inc.* (Oyster Creek Nuclear Generating Station), CLI-00-6, 51 NRC 193, 202 (2000).
- C Ordinarily, for an individual to establish standing, he must show injury in fact that can fairly be traced to the challenged action and that is likely to be redressed by a favorable decision (*Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 323 (1999)). However, an

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- individual satisfies these requirements by showing that his residence is within the geographical area that might be affected by an accidental release of fission products. The “rule of thumb” in reactor licensing proceedings is that persons who reside within a 50-mile radius of a reactor plant are presumed to have standing (*Sequoyah Fuels Corp. and General Atomics* (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 75 n.22 (1994)).
- D The radioactive “source” posing the danger in a reactor license renewal case is the identical “source” giving rise to the 50-mile proximity presumption rule for reactor construction permit and operating license proceedings. The Commission has endorsed a 50-mile rule in the latter context (*Sequoyah Fuels Corp.*, CLI-94-12, 40 NRC at 75 n.22), and we find that the same 50-mile presumption should apply in reactor license renewal cases.
- E The scope of a license renewal proceeding is cabined by 10 C.F.R. Part 54. 60 Fed. Reg. 22,461 (May 8, 1995). In particular, issues relating to a plant’s “current licensing basis” (10 C.F.R. 54.3(a)) are ordinarily beyond the scope of a license renewal review, because “those issues already [are] monitored, reviewed, and commonly resolved as needed by ongoing regulatory oversight” (*Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 8 (2001)).
- F A petitioner that fails to submit a reply brief is foreclosed from challenging the assertions advanced by the licensee and the NRC Staff in their answers, unless it put such assertions in issue in its petition. *See Blackwell v. Cole Taylor Bank*, 152 F.3d 666, 673 (7th Cir. 1998) (“silence about facts . . . constitute[s] a waiver of the specific factual contentions made by the opposing party in a brief filed earlier”); *Consumers Power Co.* (Midland Plant, Units 1 and 2), ALAB-123, 6 AEC 331, 334-35 (1973) (Licensing Board is authorized to accept assertions of the applicant and Staff that have not been controverted by a party).
- G The scope of the NRC’s public health and safety review in the context of a license renewal proceeding ordinarily is limited to “a review of the plant structures and components that will require an aging management review for the period of extended operation and the plant’s systems, structures, and components that are subject to an evaluation of time-limited aging analyses” (*Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-26, 56 NRC 358, 363-64 (2002) (quoting *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-01-20, 54 NRC 211, 212 (2001))).
- H The scope of the NRC’s environmental review in the context of a license renewal proceeding is limited by 10 C.F.R. Part 51. The Commission has determined that a number of environmental issues that might otherwise be relevant to license renewal shall be resolved generically for all plants, and such issues — which are classified in 10 C.F.R. Part 51, Subpart A, Appendix B as “Category 1” issues — are normally “beyond the scope of a license renewal hearing” (*Turkey Point*, CLI-01-17, 54 NRC at 15).
- I Issues in Appendix B, designated as “Category 2” issues — issues for which (1) the applicant must make a plant-specific analysis of environmental impacts in its Environmental Report and (2) the NRC Staff must prepare a supplemental Environmental Impact Statement — ordinarily are deemed to be within the scope of license renewal proceedings. *See Turkey Point*, CLI-01-17, 54 NRC at 11-13.
- J Agencies generally are free to exercise their discretion in determining whether to formulate policy through rulemaking or adjudication (*Heckler v. Campbell*, 461 U.S. 458, 467 (1983)). Where the Commission has initiated rulemaking proceedings that apply to the facility in question and that directly implicate a proposed contention, a board ordinarily should refrain from admitting that contention. *See Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 345 (1999) (licensing boards “should not accept in individual license proceedings contentions which are (or are about to become) the subject of general rulemaking by the Commission”) (quoting *Potomac Electric Power Co.* (Douglas Point Nuclear Generating Station, Units 1 and 2), ALAB-218, 8 AEC 79, 85 (1974)).
- K Absent evidence to the contrary, a licensing board will not assume licensee will act in derogation of its formal commitments to the NRC Staff. *See Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-03-2, 57 NRC 19, 29 (2003) (Commission has “long declined to assume that licensees will refuse to meet their obligations”).
- L A contention will be ruled inadmissible where the petitioner has offered “only ‘bare assertions and speculation’” (*Fansteel, Inc.* (Muskogee, Oklahoma Site), CLI-03-13, 58 NRC 195, 203 (2003)).
- M Absent evidence to the contrary, the Commission will not “assume that licensees will contravene our regulations” (*GPU Nuclear, Inc.* (Oyster Creek Nuclear Generating Station), CLI-00-6, 51 NRC 193, 207 (2000)).

DIGESTS

ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- N A petitioner that fails to develop an argument in its petition is foreclosed from doing so in the first instance in its reply brief. *See Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-04-25, 60 NRC 223, 225 (2004).
- O Section 2.309(f)(1)(v) of 10 C.F.R. — which requires a “concise statement of the alleged facts or expert opinions” that support its position — does not require the submission of an expert opinion, nor does it require that an expert opinion be submitted in the form of admissible evidence (*Statement of Policy on Conduct of Adjudicatory Proceedings*, CLI-98-12, 48 NRC 18, 22 n.1 (1998)). The contention admissibility rules are *not* designed to erect an onerous evidentiary hurdle, but rather “help[] to ensure that full adjudicatory hearings are triggered only by those able to proffer at least some minimal factual and legal foundation in support of their contentions” (*Oconee*, CLI-99-11, 49 NRC at 334).
- P The Commission has stated that at the contention filing stage, “the factual support necessary to show that a genuine dispute exists need not be in formal evidentiary form, nor be as strong as that necessary to withstand a summary disposition motion” (*Gulf States Utilities Co.* (River Ben Station, Unit 1), CLI-94-10, 40 NRC 43, 51 (1994)). Rather, the petitioner need simply make “a minimal showing that the material facts are in dispute, thereby demonstrating that an inquiry in depth is appropriate” (*ibid.*).
- Q Every participant in the adjudicative process has an obligation to fully develop its arguments. “Our adversarial system relies on the advocates to inform the discussion and raise [and develop] the issues” (*Independent Towers of Washington v. Washington*, 350 F.3d 925, 929 (9th Cir. 2003)).
- R Where a petitioner’s contention does not challenge the licensee’s current, ongoing operations or programs conducted under an existing license, but rather focuses on the licensee’s aging management programs for the period of extended operation, asserting that such monitoring activities may not be sufficient to identify and control the effects of aging that will occur during the 20-year renewal period, such contention falls squarely within the scope of a license renewal proceeding.
- S At the contention admissibility stage of a proceeding, a Licensing Board will not adjudicate merits-related issues. *See Mississippi Power and Light Co.* (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-130, 6 AEC 423, 426 (1973) (“in passing upon the question as to whether an intervention petition should be granted, it is not the function of a licensing board to reach the merits of any contention contained therein”). The sole question presented is whether the petitioner has submitted the requisite “minimal factual and legal foundation” (*Oconee*, CLI-99-11, 49 NRC at 334) to support its contention.
- LBP-06-8 LOUISIANA ENERGY SERVICES, L.P. (National Enrichment Facility), Docket No. 70-3103-ML (ASLBP No. 04-826-01-ML); MATERIALS LICENSE; March 3, 2006; SECOND PARTIAL INITIAL DECISION (Environmental Impacts of Disposal of Depleted Uranium)
- A In this 10 C.F.R. Part 70 proceeding regarding the application of Louisiana Energy Services, L.P., for authorization to possess and use source, byproduct, and special nuclear material to enrich natural uranium by the gas centrifuge process at its planned National Enrichment Facility (NEF) to be built near Eunice, New Mexico, the Licensing Board rules in favor of the NRC Staff regarding portions of a National Environmental Policy Act (NEPA)-related environmental contention proffered by Intervenor Nuclear Information and Resource Service and Public Citizen that challenges the adequacy of the Staff’s discussion in the Final Environmental Impact Statement (FEIS) of the environmental impacts of near-surface disposal of depleted uranium associated with the NEF.
- B NEPA, and the corresponding NRC regulations implementing the agency’s responsibilities pursuant to that Act, *see* 42 U.S.C. §§ 4321 *et seq.*, 10 C.F.R. Part 51, require a license applicant to describe and the Staff to consider the potential environmental effects of the proposed agency action (i.e., issuance of a license).
- C The Council on Environmental Quality (CEQ) has implemented regulations providing guidance on agency compliance with NEPA, which may help to direct the Staff’s NEPA review. *See* 40 C.F.R. Part 1500. While the CEQ regulations are not binding on the NRC when the agency has not expressly adopted them, they are entitled to considerable deference. *See Limerick Ecology Action, Inc. v. NRC*, 869 F.2d 719, 725, 743 (3d Cir. 1989).
- D As a general matter, NEPA imposes procedural restraints on agencies, requiring that they take a “hard look” at the environmental impacts of a proposed action and reasonable alternatives to that action. *See Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), CLI-98-3, 47 NRC 77, 87-88 (1998). This “hard look” is subject to a “rule of reason” in that the agency’s environmental review need only account for those impacts that have some likelihood of occurring or are reasonably foreseeable. *See, e.g., Long Island Lighting Co.* (Shoreham Nuclear Power Station), ALAB-156, 6 AEC 831, 836 (1973).

DIGESTS

ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- E Agencies have considerable discretion in determining the extent to which a particular subject is analyzed, *see Claiborne*, CLI-98-3, 47 NRC at 103, and may decline to examine “remote and speculative” or “inconsequentially small” impacts, *see Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), ALAB-919, 30 NRC 29, 44 (1989) (citing *Limerick Ecology Action*, 869 F.2d at 739). In the words of the Commission, “NEPA does not call for certainty or precision, but an *estimate* of anticipated (not unduly speculative) impacts.” CLI-05-20, 62 NRC at 536 (emphasis in original).
- F When the agency reviews an application filed by a private entity, as opposed to a project initiated by the federal government, it may accord substantial weight to the applicant’s preferences with regard to consideration of alternatives, including choices regarding site selection and project design. *See Hydro Resources, Inc.* (P.O. Box 15910, Rio Rancho, NM 87174), CLI-01-4, 53 NRC 31, 55 (2001) (citing *Citizens Against Burlington v. Busey*, 938 F.2d 190, 197 (D.C. Cir. 1991)); *Claiborne*, CLI-98-3, 47 NRC at 104 (quoting *City of Grapevine v. Department of Transportation*, 17 F.3d 1502, 1506 (D.C. Cir. 1994)).
- G The CEQ regulations state that an agency environmental impact statement (EIS) must address both direct and indirect, or secondary, effects of an action. *See* 40 C.F.R. §§ 1502.16, 1508.8. Direct effects are those caused by, and occurring at the same time and place as, the federal action, while indirect effects are caused by the action at a later time or more distant place, yet still are reasonably foreseeable. *See id.* § 1508.8. An agency is not required to discuss indirect effects it considers remote or speculative. *See Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 435 U.S. 519, 551 (1978).
- H In conducting its environmental review, an agency has discretion to rely on data, analyses, or reports prepared by persons or entities other than agency staff, including competent and responsible state authorities. *See, e.g., Public Service Co. of Oklahoma* (Black Fox Station, Units 1 and 2), LBP-78-28, 8 NRC 281, 282 (1978). The Staff must, however, independently evaluate and take responsibility for the pertinent information before relying on it in an EIS. *See* 10 C.F.R. § 51.70(b). In other words, the Staff need not replicate the work done by another entity, but rather must independently review and find relevant and scientifically reasonable any outside reports or analyses on which it intends to rely.
- I NEPA and Part 51 require that a “record of decision” accompany any Commission decision on “any action for which a final environmental impact statement has been prepared.” 10 C.F.R. § 51.102(a). Typically under Part 51, the Staff prepares the record of decision on an action, *see id.* § 51.102(b), but when a hearing is held on the proposed action, the Licensing Board’s initial decision on that action constitutes the record of decision, *see id.* § 51.102(c). In addition, section 51.103(c) states that the record of decision may in fact incorporate by reference any material contained in the relevant FEIS. Thus, the FEIS and Board initial decisions (and any subsequent final decision by the Commission) together form the record of decision in a contested proceeding. *See Claiborne*, CLI-98-3, 47 NRC at 89.
- J When a Board decision supplements or differs from the findings of the Staff as set forth in its FEIS, the FEIS is deemed modified by the Board’s decision to that extent. *See, e.g., HRI*, CLI-01-4, 53 NRC at 53; *see also* CLI-05-20, 62 NRC at 537 n.59 (“[a]ny Board ‘impacts’ findings will be added to the NEPA record of decision”).
- K Part 61 of 10 C.F.R. sets forth the NRC’s regulations for the disposal of low-level radioactive waste in a land disposal facility, including certain “performance objectives” and “technical requirements” that must be met before waste can be disposed of at a particular site. *See generally* 10 C.F.R. Part 61, Subparts C & D.
- L Although the Part 61 requirements are directed at the Staff, the Atomic Energy Act of 1954 (AEA), 42 U.S.C. §§ 2011 *et seq.*, permits the NRC to delegate certain regulatory authority to individual states. Specifically, AEA § 274 authorizes the Commission “to enter into agreements with the Governor of any State providing for discontinuance of the regulatory authority of the Commission” with respect to byproduct materials, source materials, and small quantities of special nuclear materials, including the disposal of such materials. *See id.* § 2021(b). Those “Agreement States” have the authority, for the duration of the agreement, “to regulate the materials covered by the agreement for the protection of the public health and safety from radiation hazards.” *Id.* Before it is granted authority to participate in the Agreement State program, a state must pass legislation establishing the authority for that state to conduct a radiation control program, and must further assume and implement that authority through the promulgation of state regulations. *See id.* § 2021(d), (o). At bottom, the state must show its willingness to assume regulatory responsibility for the materials covered by the proposed agreement under a regulatory regime that is equivalent to or more stringent than Part 61. *See id.* § 2021(d)(1), (o)(2).

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- M Section 274 also imposes certain requirements that the Commission must fulfill before it enters into an agreement with any state. Specifically, the Commission is required to find the state radiation control program “compatible” in certain respects with that of the NRC, and must further find that program “adequate to protect the public health and safety with respect to the materials covered by the proposed agreement.” 42 U.S.C. § 2021(d)(2). Among those regulations for which compatibility must be found are the performance objectives and technical requirements set forth in Subparts C and D, respectively, of the Part 61 regulations. *See* Office of State & Tribal Programs (STP), NRC, STP Procedure SA-200, Compatibility Categories and Health and Safety Identification for NRC Regulations and Other Program Elements (Oct. 8, 2004) at 6-7, App. A at 125-26 (ADAMS Accession No. ML042820600).
- N Once the Commission and a state enter into an agreement pursuant to section 274, the NRC retains only oversight authority over the specific activities covered by the agreement, *see* 42 U.S.C. § 2021(j), while the Agreement State assumes all active regulatory authority with regard to those specified activities, *see id.* § 2021(b). In its oversight capacity, the NRC is required to conduct regular reviews of a state’s radiation control program, intended to ensure Agreement State programs remain compatible and provide adequate protection of public health and safety. The NRC further retains the power to terminate or suspend an agreement with any state under certain circumstances if it determines that such action is required to ensure public health and safety. *See id.* § 2021(j); *see also* Statement of Principles and Policy for the Agreement State Program; Policy Statement on Adequacy and Compatibility of Agreement State Programs (62 Fed. Reg. 46,517, 46,520-21 (Sept. 3, 1997)).
- O When an Intervenor’s challenges in an admitted contention are directed at a draft EIS because the FEIS has not yet been issued by the Staff, the contention can be construed as a challenge to the FEIS without the need for further modification. *See, e.g., Claiborne*, CLI-98-3, 47 NRC at 84 (Board appropriately deemed environmental contentions based on applicant’s environmental report as challenges to the FEIS).
- P Part 61 of 10 C.F.R. sets forth the licensing requirements for land disposal of low-level radioactive waste (LLRW). A “land disposal facility” includes any “land, building, and structures, and equipment which are intended to be used for the disposal of radioactive wastes,” but does not include “geologic repository” disposal. 10 C.F.R. § 61.2. Subpart D of Part 61 sets forth the “technical requirements” for LLRW land disposal facilities, and “specif[ies] the minimum characteristics a disposal site must have to be acceptable for use as a near-surface disposal facility.” *Id.* § 61.50(a). Part 61 defines a “near-surface disposal facility” as “a land disposal facility in which radioactive waste is disposed of in or within the upper 30 meters of the earth’s surface.” *Id.* § 61.2. A primary purpose of the Subpart D technical requirements is to ensure that the Subpart C performance objectives for a land disposal facility are met. *Id.* § 61.50(a). The Subpart C “performance objectives,” in turn, must be met regardless of the classification of the waste involved, and are specifically intended to (1) protect the general public from releases of radioactivity, *id.* § 61.41; (2) protect individuals from inadvertent intrusion at any time after active institutional controls over a disposal site are removed, *id.* § 61.42; (3) protect individuals from radiation exposures during operation of a facility, *id.* § 61.43; and (4) ensure the long-term stability of the disposal site after closure, *id.* § 61.44.
- Q The determination about whether near-surface disposal is appropriate for a particular type of radioactive waste turns in large part on how that waste is classified. Section 61.55 of 10 C.F.R. sets forth a classification system for evaluating whether a particular LLRW can be disposed of in a near-surface facility based on the long-lived and/or short-lived radionuclides present in the waste. *See id.* § 61.55(a)(3)-(5), tbls. 1 & 2. Class A, B, and C wastes are generally appropriate for near-surface disposal, *see id.* § 61.55(a)(2)(i)-(iii), while wastes having a greater radioactivity than Class C, i.e., “greater than Class C” waste, are typically not appropriate for near-surface disposal, *see id.* § 61.55(a)(2)(iv). If a particular radioactive waste does not contain any of the radionuclides listed in that section, it is, by default, designated Class A waste. *See id.* § 61.55(a)(6).
- R Part 61 contains flexibility to deal with the occurrence of new waste streams or disposal methods that were not included in the Part 61 rulemaking. Specifically, 10 C.F.R. § 61.58 states: “The Commission may, upon request or on its own initiative, authorize other provisions for the classification and characteristics of waste on a specific basis, if, after evaluation, of the specific characteristics of the waste, disposal site, and method of disposal, it finds reasonable assurance of compliance with the performance objectives in subpart C of this part.”
- S A distinction must be drawn between the particular classification of depleted uranium waste pursuant to 10 C.F.R. § 61.55(a), and the appropriateness of land disposal of that waste according to the Part

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- 61 performance objectives. The appropriateness of near-surface disposal of large quantities of depleted uranium from an enrichment facility depends on whether such disposal would comply with the Part 61 performance objectives, and such compliance, in turn, depends on the specific characteristics of a particular disposal site, or, in the case of a generic analysis, assumptions regarding specific-site characteristics. In other words, some near-surface disposal facilities may not be capable of accepting large quantities of depleted uranium from enrichment operations, and dose pathway analyses should be performed on a site-specific basis to ensure compliance with Part 61, Subpart C.
- T Compliance with regulations of other federal agencies, such as Environmental Protection Agency drinking water contamination limits, are issues beyond a Board's jurisdiction and outside the scope of the proceeding. *See Hydro Resources, Inc.* (2929 Coors Road, Suite 101, Albuquerque, NM 87120), CLI-98-16, 48 NRC 119, 121-22 (1998) (licensing boards do not have jurisdiction over matters properly before other regulatory bodies).
- U The Part 61 regulations establish dose limitations to protect members of the public from releases of radioactivity from land disposal facilities. Specifically, 10 C.F.R. § 61.41 establishes whole body and organ dose limits, requiring that radioactive material released to the environment in ground or surface water, air, soil, plants, or animals "must not result in an annual dose exceeding an equivalent of 25 millirems to the whole body, 75 millirems to the thyroid, and 25 millirems to any other organ of any member of the public." Section 61.42 refers to protection of the "inadvertent intruder," and requires that "[d]esign, operation, and closure of the land disposal facility must ensure protection of any individual inadvertently intruding into the disposal site and occupying the site or contacting the waste at any time after active institutional controls over the disposal site are removed." Taken together, then, the performance objectives for a near-surface disposal facility require that the relevant licensing entity examine whether, at any particular time after active institutional controls are removed, the section 61.41 dose limitations will be met for the inadvertent intruder.
- V Absent particular circumstances that provide a foundation for excluding intruder scenarios in evaluating compliance with the Part 61 regulations, intruder scenarios and intruder dose must be considered by the licensing entity at the time of initial licensing or any subsequent license amendment. Consideration and evaluation of intruder scenarios and related intruder dose would then be part of the "hard look" NEPA requires the Staff to take at the environmental impacts associated with a particular licensing action.
- W The Staff is ultimately responsible for the work undertaken, or not undertaken, by its contractors; therefore, a Staff NEPA analysis is not necessarily insufficient if, in the face of a deficiency on the part of its contractor, a responsible Staff official has "stepped into the breach" and conducted the necessary review and analysis.
- X In evaluating environmental impacts for NEPA purposes, it is appropriate for the Staff to make a determination that, because of the specific circumstances under consideration, certain scenarios, such as Part 61 intruder scenarios, are so unlikely, i.e., so unduly speculative, as to fall outside the scope of the Staff's NEPA review. Such a determination is a proper exercise of NEPA's "rule of reason."
- Y NEPA requires the Staff to take a hard look at all reasonably foreseeable environmental consequences of construction and operation of a proposed facility, including those secondary or indirect consequences of disposal of the waste generated by that facility. These secondary effects cannot, and need not for the purposes of satisfying the agency's NEPA obligation, *see* CLI-05-20, 62 NRC at 536, be examined with particularity when a specific disposal site has not yet been identified.
- Z The following technical issues are discussed: environmental impacts of land disposal of depleted uranium waste; low-level radioactive waste classification.
- LBP-06-9 LOUISIANA ENERGY SERVICES, L.P. (National Enrichment Facility), Docket No. 70-3103-ML (ASLBP No. 04-826-01-ML); MATERIALS LICENSE; March 3, 2006; MEMORANDUM AND ORDER (Ruling on Summary Disposition Cross-Motions Relating to Remand from CLI-05-20)
- A In this 10 C.F.R. Part 70 proceeding regarding the application of Louisiana Energy Services, L.P., for authorization to possess and use source, byproduct, and special nuclear material to enrich natural uranium by the gas centrifuge process at its planned National Enrichment Facility (NEF) to be built near Eunice, New Mexico, the Licensing Board grants an NRC Staff motion for summary disposition and denies a cross-motion by Intervenor Nuclear Information and Resource Service/Public Citizen regarding the adequacy of the Staff's National Environmental Policy Act (NEPA) environmental impact statement

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

(EIS)-related discussion of estimated doses arising from depleted uranium (DU) disposal in a geological repository.

- B The well-established standard governing the grant of summary disposition under 10 C.F.R. § 2.710 has been described as follows: “[S]ummary disposition may be entered with respect to any matter (or all of the matters) in a proceeding if the motion, along with any appropriate supporting material, shows that there is ‘no genuine issue as to any material fact and that the moving party is entitled to a decision as a matter of law.’ The movant bears the initial burden of making the requisite showing that there is no genuine issue as to any material fact, which it attempts to do by means of a required statement of material facts not at issue and any supporting materials (including affidavits, discovery responses, and documents) that accompany its dispositive motion. An opposing party must counter each adequately supported material fact with its own statement of material facts in dispute and supporting materials, or the movant’s facts will be deemed admitted. See *Advanced Medical Systems, Inc.* (One Factory Row, Geneva, Ohio 44041), CLI-93-22, 38 NRC 98, 102-03 (1993).” *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-02-20, 56 NRC 169, 180 (2002).
- C Failure to raise any challenge to a Staff EIS correction essentially renders that aspect of an intervenor challenge moot, as the intervenor has failed to raise a litigable challenge to the previously identified error. See *Advanced Medical Systems, Inc.* (One Factory Row, Geneva, Ohio 44041), CLI-94-6, 39 NRC 285, 306-07 (1994) (something more than suspicions or bald assertions are necessary as the basis for any purported material factual disputes), *aff’d sub nom. Advanced Medical Systems, Inc. v. NRC*, 61 F.3d 903 (Table) (6th Cir. 1995) (per curiam).
- D A draft or final EIS is not considered deficient per se simply because its various NEPA findings do not include an explanation that is sufficient on its face to enable independent verification of any scientific results that underlie those findings.
- E The Commission has previously determined that the Staff in preparing an EIS for a uranium enrichment facility could rely upon the analyses in two Department of Energy (DOE) final EISs regarding environmental impacts expected from a DU hexafluoride conversion facility upon the basis that (1) the documents were publicly available; and (2) the Staff’s expert had “assessed the reasonableness of the DOE assumptions, calculations, and conclusions, even though he did not redo its underlying calculations.” CLI-05-28, 62 NRC 721, 730 (2005). In so doing, the Commission recognized that redoing calculations from these DOE EISs “would [be] a duplication of resources not required by law.” *Id.* This reasoning applies with equal force to Staff reliance on a generic deep disposal dose impact analysis in a previous, Staff-prepared final EIS for another proposed uranium enrichment facility that was (1) publicly available; and (2) shown to be subject to independent assessment by Staff experts who prepared the NEF EIS.
- LBP-06-10 NUCLEAR MANAGEMENT COMPANY, LLC (Palisades Nuclear Plant), Docket No. 50-255-LR (ASLBP No. 05-842-03-LR); LICENSE RENEWAL; March 7, 2006; MEMORANDUM AND ORDER (Ruling on Standing, Contentions, and Other Pending Matters)
- A In this license renewal proceeding the Licensing Board rules on various pending matters, finds that Petitioners have established interests sufficient to confer standing, but also finds that they have not submitted an admissible contention as necessary for the granting of a hearing, and therefore terminates the proceeding.
- B A petitioner’s standing, or right to participate in a Commission licensing proceeding, is grounded in section 189a of the Atomic Energy Act (AEA), which requires the NRC to provide a hearing “upon the request of any person whose interest may be affected by the proceeding,” and which has been implemented in Commission regulations as 10 C.F.R. 2.309.
- C Judicial concepts of standing, to which licensing boards are to look in ruling on standing, provide the following guidance in determining whether a petitioner has established the necessary “interest” under 10 C.F.R. 2.309(d)(1): To qualify for standing a petitioner must allege (1) a concrete and particularized injury that is (2) fairly traceable to the challenged action and (3) likely to be redressed by a favorable decision, criteria commonly referred to, respectively, as “injury in fact,” causality, and redressability. The injury may be either actual or threatened, but must lie arguably within the “zone of interests” protected by the statutes governing the proceeding — here, either the Atomic Energy Act (AEA) or the National Environmental Policy Act (NEPA).
- D Individual Petitioners living within 50 miles of a nuclear power plant established standing based on the longstanding “proximity presumption” principle in NRC adjudicatory proceedings.

DIGESTS

ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- E Public interest group petitioners established “representational” standing to proceed as intervenor parties based upon affected members authorizing the petitioner organizations to represent them in this proceeding.
- F In ruling on admissibility of contentions, the Licensing Board did not consider anything not found in Petitioners’ original contentions, but provided in Petitioners’ Reply to NRC Staff’s and Applicant’s Answers to Petition, except to the extent that it constituted “legitimate amplification” of original contentions or properly late-filed material.
- G All counsel have a continuing duty to update a tribunal “of any development which may conceivably affect the outcome” of litigation, and NRC precedent also requires all parties to NRC proceedings to alert adjudicatory bodies to information relevant to matters being adjudicated.
- H Counsel have both an obligation to assure that representations made in all pleadings “to the best of [their] knowledge, information and belief . . . are true,” and an ethical responsibility *not* to knowingly “make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer.”
- I There were no grounds to stay the proceeding to permit Petitioners’ Counsel to depose Staff Counsel; depositions of opposing trial or litigation counsel are permitted only if “no other means exist to obtain the information,” and the “information sought is relevant and non-privileged,” and “crucial to the preparation of the case,” none of which conditions existed in this case.
- J Staff Counsel had a duty to inform the Board of a telephone call from a former expert witness of Petitioners because she knew that this information was “conceivably” relevant to a ruling on a contention. Expert support for a contention raising a technical issue can clearly be relevant to its admissibility (and by extension to the outcome) not only of a ruling on the admission of a contention, but also, through such a ruling, of the proceeding itself, since the failure to proffer an admissible contention will result in denial of a hearing petition. Nor did Counsel’s imparting of the information violate any ethical prohibitions, as the expert in question was not represented by Petitioners’ Counsel, the call was initiated by the expert, and no deception or coercion was in any way involved.
- K There was no requirement that the information provided by Staff Counsel be in the form of a motion, and Petitioners’ Motion To Strike Counsel’s e-mail notification was therefore not granted; the information was placed in the record, all parties were appropriately apprised of it, and Counsel was seeking no action on the part of the Board.
- L To intervene in an NRC proceeding, a petitioner must, in addition to demonstrating standing, submit at least one contention meeting the requirements of 10 C.F.R. 2.309(f)(1). Failure of a contention to meet any of the requirements of section 2.309(f)(1) is grounds for its dismissal.
- M The “strict contention rule serves multiple interests,” including, first, focusing the hearing process on real disputes susceptible of resolution in an adjudication (for example, a petitioner may not demand an adjudicatory hearing to attack generic NRC requirements or regulations, or to express generalized grievances about NRC policies); second, by requiring detailed pleadings, putting other parties in the proceeding on notice of the Petitioners’ specific grievances and thereby giving them a good idea of the claims they will be either supporting or opposing; and, third, helping to ensure that full adjudicatory hearings are triggered only by those able to proffer at least some minimal factual and legal foundation in support of their contentions.
- N Although the February 2004 revision of NRC procedural rules no longer incorporates provisions formerly found in 10 C.F.R. 2.714(a)(3), (b)(1) (2003), which permitted the amendment and supplementation of petitions and filing of contentions after the original filing of petitions, they contain essentially the same substantive admissibility standards for contentions.
- O Sections 2.309(f)(1)(i) and (ii) require that a petitioner must, for each contention, “[p]rovide a specific statement of the issue of law or fact to be raised or controverted,” and “[p]rovide a brief explanation of the basis for the contention.” An “admissible contention must explain, with specificity, particular safety or legal reasons requiring rejection of the contested [application],” and demonstrate “that there has been sufficient foundation assigned for it to warrant further exploration.” The contention rules “bar contentions where petitioners have only ‘what amounts to generalized suspicions, hoping to substantiate them later.’”
- P Petitioners must, under section 2.309(f)(1)(iii), “[d]emonstrate that the issue raised in the contention is within the scope of the proceeding.” A contention must allege facts “sufficient to establish that it falls directly within the scope” of a proceeding. Contentions are necessarily limited to issues that are germane to the application pending before the Board, and are not cognizable unless they are material to matters that

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- fall within the scope of the proceeding for which the licensing board has been delegated jurisdiction as set forth in the Commission's notice of opportunity for hearing.
- Q Under section 2.309(f)(1)(iv), a petitioner must "[d]emonstrate that the issue raised in the contention is material to the findings the NRC must make to support the action that is involved in the proceeding"; a material issue has been defined by the Commission as one in which "resolution of the dispute would make a difference in the outcome of the licensing proceeding."
- R Section 2.309(f)(1)(v), which requires that a petitioner "[p]rovide a concise statement of the alleged facts or expert opinions which support the requestor's/petitioner's position on the issue and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the requestor/petitioner intends to rely to support its position on the issue," does "not call upon the intervenor to make its case at [the contention] stage of the proceeding, but rather to indicate what facts or expert opinions, be it one fact or opinion or many, of which it is aware at that point in time which provide the basis for its contention." The requirement "generally is fulfilled when the sponsor of an otherwise acceptable contention provides a brief recitation of the factors underlying the contention or references to documents and texts that provide such reasons." But contentions will be screened out when Petitioners "have no particular expertise — or expert assistance — and no particularized grievance, but are hoping something will turn up later as a result of NRC Staff work."
- S Section 2.309(f)(1)(v) requires a petitioner to "provide the analyses and expert opinion showing why its bases support its contention," and to "provide documents or other factual information or expert opinion that set forth the necessary technical analysis to show why the proffered bases support its contention."
- T A licensing board "may not make factual inferences on [a] petitioner's behalf." However, a board should also bear in mind the "general admonition that technical perfection is not an essential element of contention pleading." The "[s]ounder practice is to decide issues on their merits, not to avoid them on technicalities."
- U Section 2.309(f)(1)(vi) requires that a petitioner, for each contention, "[p]rovide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact. This information must include references to specific portions of the application (including the applicant's environmental report and safety report) that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief." Under this requirement, a petitioner must "read the pertinent portions of the license application, including the Safety Analysis Report and the Environmental Report, state the applicant's position and the petitioner's opposing view," and explain why it disagrees with the applicant.
- V Under section 2.309(f)(1)(vi), if a petitioner does not believe the application addresses a relevant issue, the petitioner is to "explain why the application is deficient." A contention that does not directly controvert a position taken by the applicant in the application is subject to dismissal. An allegation that some aspect of a license application is "inadequate" or "unacceptable" does not give rise to a genuine dispute unless it is supported by facts and a reasoned statement of why the application is unacceptable in some material respect.
- W Under section 2.309(f)(1)(vi), a petitioner "does not become entitled to an evidentiary hearing merely on request, or on a bald or conclusory allegation that . . . a dispute exists. The [petitioner] must make a minimal showing that material facts are in dispute, thereby demonstrating that an 'inquiry in depth' is appropriate." However, notwithstanding the burden the contention admissibility rules impose on petitioners to put forth a sufficient factual basis, this "does not shift the ultimate burden of proof from the applicant to the petitioner." Nor do the contention admissibility rules require a petitioner to "prove its case at the contention stage. For factual disputes, a petitioner need not proffer facts in 'formal affidavit or evidentiary form,' sufficient 'to withstand a summary disposition motion.' . . . On the other hand, a petitioner 'must present sufficient information to show a genuine dispute' and reasonably 'indicating that a further inquiry is appropriate.'"
- X The regulatory authority relating to license renewal is found in 10 C.F.R. Parts 51 and 54. Part 54 concerns the "Requirements for Renewal of Operating Licenses for Nuclear Power Plants," and addresses safety-related issues in license renewal proceedings. Part 51, concerning "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions," addresses the environmental aspects of license renewal.

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- Y The NRC license renewal safety review is focused “upon those potential detrimental effects of aging that are not routinely addressed by ongoing regulatory oversight programs,” which the Commission considers “the most significant overall safety concern posed by extended reactor operation.”
- Z The Commission has framed the focus of license renewal review as being on “plant systems, structures, and components for which current [regulatory] activities and requirements may not be sufficient to manage the effects of aging in the period of extended operation.” An issue can be related to plant aging and still not warrant review at the time of a license renewal application, if an aging-related issue is “adequately dealt with by regulatory processes” on an ongoing basis. For example, if a structure or component is already required to be replaced “at mandated, specified time periods,” it would fall outside the scope of license renewal review.
- AA Issues identified as “Category 1,” or “generic,” issues in Appendix B to Subpart A of Part 51 are not within the scope of a license renewal proceeding. On these issues the Commission found that it could draw “generic conclusions applicable to all existing nuclear power plants, or to a specific subgroup of plants,” based on its conclusion that these issues involve “environmental effects that are essentially similar for all plants,” and that they thus “need not be assessed repeatedly on a site-specific basis, plant-by-plant.” Accordingly, under Part 51, license renewal applicants may in their site-specific ERs refer to and adopt the generic environmental impact findings found in Table B-1, Appendix B for all Category 1 issues.
- BB Issues identified as “Category 2,” or “plant specific,” issues in Appendix B to Subpart A are within the scope of license renewal; the Commission was not able to make generic environmental findings on these issues, and therefore applicants must provide a plant-specific review of all these Category 2 environmental issues. These issues are characterized by the Commission as involving environmental impact severity levels that “might differ significantly from one plant to another,” or impacts for which additional plant-specific mitigation measures should be considered.
- CC As required under 10 C.F.R. 51.95(c), the Commission in 1996 adopted a “Generic Environmental Impact Statement for License Renewal of Nuclear Plants” (GEIS), published as NUREG-1437, which provides data supporting the table of Category 1 and 2 issues in Appendix B. Issuance of the 1996 GEIS was part of an amendment of the requirements of Part 51 undertaken by the Commission to establish environmental review requirements for license renewals “that were both efficient and more effectively focused.”
- DD Section 51.103 defines the requirements for the “record of decision” relating to any license renewal application, including the standard that the Commission, in making such a decision pursuant to Part 54, “shall determine whether or not the adverse environmental impacts of license renewal are so great that preserving the option of license renewal for energy planning decisionmakers would be unreasonable.”
- EE Embrittlement of the reactor pressure vessel is a very serious topic, within the scope of license renewal.
- FF It is reasonable to require enough specificity in the explanation offered in the basis for a contention such that a matter relating to a particular facility is stated in sufficient detail that it clearly states an issue that is susceptible to litigation with regard to that facility. Petitioners failed to achieve this in their contention on embrittlement.
- GG Petitioners provided no expert support for any allegation specific to the plant at issue (even viewing the contention as being “merely inartfully drafted”), referred to no documents or other sources on which they planned to rely at any hearing, and did not provide enough to warrant “further inquiry.” Nor were any sections or specific contents of the application referenced to identify any specific inadequacy, and the asserted “failure to address” embrittlement was not explained with any specificity or tied in any way to the actual application.
- HH The Board recognizes that the new rule’s omission of comparable provisions for amendment of petitions as of right, as permitted under prior rules, might in certain circumstances place some petitioners in a difficult position, particularly those pressed for opportunity and time to research and develop relevant technical and legal issues and arguments, or lacking easy access to experts or counsel competent in NRC practice, to assist them in timely drafting contentions meeting the strict contention admissibility requirements. But no request for extension to address any such concerns was made in this proceeding.
- II Contentions regarding alleged radiological and nonradiological contamination of drinking water were found to be outside the scope of license renewal because they involved no aging-related issues and because “radiation exposures to the public (license renewal term),” as well as the discharge of chlorine or other

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

biocides, sanitary waste and minor chemical spills, and certain metals in wastewater, are identified as a Category 1, or generic, issues under 10 C.F.R. Part 51, Appendix B.

JJ A contention regarding storage of spent fuel was ruled inadmissible because it was outside the relatively narrow scope of a license renewal proceeding as defined by the Commission in its rules and relevant case law.

KK Under Commission authority, a contention raising environmental justice issues was found to be inadmissible because no sufficiently specific disproportionate effects with a “nexus to the physical environment,” falling on low-income and minority communities, were alleged or shown; although some serious issues were raised, these were found to be outside the jurisdiction of the licensing board.

LBP-06-11 AMERGEN ENERGY COMPANY, LLC (Oyster Creek Nuclear Generating Station), Docket No. 50-0219-LR (ASLBP No. 06-844-01-LR); LICENSE RENEWAL; March 22, 2006; MEMORANDUM AND ORDER (Denying NIRS’s Motion for Leave To Add Contentions or Supplement the Basis of the Original Contention)

A After the regulatory time limit has expired for filing a petition to intervene, a petitioner may submit a new or amended contention only with leave of the presiding officer upon a showing that: (1) the information on which the amended or new contention is based was not previously available; (2) the information is materially different than information previously available; and (3) the amended or new contention was submitted in a timely fashion based on the availability of the subsequent information (10 C.F.R. § 2.309(f)(2)).

B Petitioners seeking to admit new or amended contentions under 10 C.F.R. § 2.309(f)(2) must also satisfy the standard admissibility requirements in 10 C.F.R. § 2.309(f)(1).

C If a newly presented contention fails to satisfy 10 C.F.R. § 2.309(f)(2), it will be deemed nontimely and must satisfy 10 C.F.R. § 2.309(c) to be admitted. *Baltimore Gas & Electric Co.* (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), CLI-98-25, 48 NRC 325, 347 (1998).

D Statements made by NRC Staff members during an informal conference call with industry representatives were not declarations of programmatic policy or regulatory conclusions that, for example, might be analogized to conclusions in an Environmental Impact Statement, which could trigger a petitioner’s right to amend or file new contentions under 10 C.F.R. § 2.309(f)(2). Rather, the conference call was analogous to a Staff-issued Request for Additional Information, which ordinarily may not be used to support admission of a new contention, because such a request, standing alone, generally does not give rise to a genuine dispute on material issues. *Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 337 (1999).

E As a general rule, the NRC Staff’s mere interest in an issue, its solicitation of public input on an issue, or its proposed revision to a generic guidance document will not — standing alone and lacking an articulated plant-specific safety concern — suffice as a contention’s cornerstone (*Calvert Cliffs*, CLI-98-25, 48 NRC at 350).

F It has long been established that “the introduction of essentially generic issues, not unique to any given reactor, would be inappropriate in an individual reactor licensing proceeding” absent evidence that the generic issue applied to that particular proceeding (*Long Island Lighting Co.* (Shoreham Nuclear Power Station), ALAB-99, 6 AEC 53, 55 (1973)).

LBP-06-12 PA’INA HAWAII, LLC, Docket No. 30-36974-ML (ASLBP No. 06-843-01-ML); MATERIALS LICENSE; March 24, 2006; MEMORANDUM AND ORDER (Ruling on Petitioner’s Safety Contentions)

A In this proceeding on the application of Pa’ina Hawaii, LLC, to build and operate a commercial pool-type industrial irradiator (i.e., a possession and use materials license), the Licensing Board finds that the Petitioner, Concerned Citizens of Honolulu, has proffered three admissible safety contentions. Previously, in LBP-06-4, 63 NRC 99 (2006), the Board found that the Petitioner had established its standing to intervene and had proffered two admissible environmental contentions and granted the Petitioner’s request for a hearing.

B The Commission’s contention admissibility requirements are rigorous, and “demand a level of discipline and preparedness on the part of petitioners, who must examine the publicly available material and set forth their claims and the support for their claims at the outset.” *Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-04-25, 60 NRC 223, 224-25 (2004) (emphasis added) (quoting *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-03-17, 58 NRC 419, 428-29 (2003)). A petitioner may not ignore this burden when submitting its contentions, and then rectify their inadequacies in its reply.

DIGESTS

ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- C The Commission's regulations and rulings require that the petitioner's reply be "narrowly focused on the legal or logical arguments presented in the applicant/licensee or NRC staff answer." 69 Fed. Reg. 2182, 2203 (Jan. 14, 2004).
- D The pleading requirements of 10 C.F.R. § 2.309(f)(1)(v), calling for a recitation of facts or expert opinion supporting the issue raised, are inapplicable to a contention of omission beyond identifying the regulatively required missing information.
- E The scope of a proceeding generally is defined by the Commission's notice of opportunity for hearing. *See Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Georgia), CLI-95-12, 42 NRC 111, 118 (1995).
- LBP-06-13 DAVID GEISEN, Docket No. IA-05-052 (ASLBP No. 06-845-01-EA); ENFORCEMENT; May 19, 2006; MEMORANDUM AND ORDER (Denying Government's Request To Delay Proceeding)
- A In this proceeding concerning a Nuclear Regulatory Commission (NRC) Staff immediately effective enforcement order prohibiting the involvement of David Geisen in NRC-licensed activities, the Licensing Board denies a motion by the NRC Staff to hold the proceeding in abeyance indefinitely, pending the parallel criminal prosecution against Mr. Geisen in federal district court.
- B The Government's motion seeking an indefinite enforcement hearing delay must be denied where the Government's theory for seeking the delay of the hearing fails to show that, in actual practice, the prompt conduct of the NRC hearing process would interfere with the Government's prosecution of the criminal charges against the subject of the enforcement order and where the subject of the order has shown that delaying his opportunity to challenge the immediately effective enforcement order would continue the harm of depriving him of his chosen livelihood and its anticipated income.
- C In determining whether there is good cause to delay a proceeding challenging an immediately effective license suspension order, the NRC evaluates the facts of each particular case in the process of weighing the following five factors: (1) the length of the delay, (2) the reason for the delay, (3) the risk that the ruling erroneously deprived the subject of its license (or other right in issue), (4) the subject's assertion of his or her right to a hearing, and (5) the prejudice to the subject.
- D The NRC has stressed that the pendency of a criminal trial does not automatically toll the time for instituting a civil proceeding because it is necessary to look at the facts of a particular proceeding. In doing so, a Licensing Board must separate remedial theories that find particularized support in the circumstances presented from those that do not.
- E In considering the reason for the requested delay of a civil proceeding, it is important to consider which party initiated the civil action and which party is seeking relief from its going forward.
- F The party requesting a delay must provide detailed and specific reasons demonstrating some type of cognizable harm would result absent that relief. Absent a determination that some type of specific harm would result from allowing the proceeding or discovery to continue, delays are routinely denied.
- G The critical issues to be determined when deciding an abeyance motion involve "relative harm," that is focusing on (1) whether, and if so to what extent, the moving party (here, the Government) has shown that not granting a delay of the length being sought will harm it, versus (2) whether, and if so to what extent, granting that same delay will harm the movant's opponent (here, the subject of the enforcement order).
- H Given that the critical issues to be determined when deciding an abeyance motion involve determining where the "relative harm" lies, the other factors (i.e., "assertion of hearing right," and "risk of erroneous deprivation") would typically be given less weight unless, for example, the assertion was dilatory or perfunctory, or — based on some unusual early but abbreviated insight into the merits — the risk can be shown to be either quite high or vanishingly low.
- I Although the passage of time might threaten to cut away at the quality of the evidence, as witnesses pass on, become forgetful, or otherwise become unable to present testimony as lucid as they might have earlier, where the party opposing a motion to stay an enforcement proceeding does not express undue concern that delay will diminish the quality of the evidence, that possibility may be put aside as nonspecific and not credited as prejudicing the subject of the order, notwithstanding the concern that — to protect the probative value of the underlying fact-based evidence — delaying the full discovery and presentation of that evidence in an already long-drawn-out proceeding should be avoided where possible.
- J There is theoretical validity to the Government's arguments that the civil discovery process could lead to the tainting of evidence in a criminal case and that the civil discovery process could lead to the defendant's obtaining access to evidence that would provide him an unfair advantage over the Government.

DIGESTS

ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

But no matter how serious the concerns underlying those theories, they must be shown by the moving party to have some practical applicability to the particular circumstances of the case in order for it to obtain the delay sought.

- K Allowing certain civil cases to go forward might create the potential to harm the search for truth in a related criminal case by tainting the evidence otherwise expected to be available therein. For example, allowing prospective Government witnesses to be deposed (or even to be identified) by those in position to intimidate them explicitly or implicitly — through threats of physical violence, of workplace demotion or harassment, or of some other form of physical, financial, or emotional retaliation — might lead to the witness tailoring or limiting his testimony, professing an inability to remember the incidents in question, or disappearing from view entirely.
- L The natural predeposition unease — i.e., the transitory discomfort, just from having to testify at all, that is always inherent in the discovery or trial process — has nothing to do with the kind of particularized, forceful intimidation involving threats of extra-deposition retaliation that the law is concerned with, threats that could be communicated, subtly or otherwise, as part of the run-up to, or conduct of, the deposition, with the specific intent of causing the subsequent tainting, alteration, or disappearance of substantive evidence.
- M Civil discovery can lead to perjury in the criminal case, via enabling a defendant to tailor his testimony, and that of his confederates, to jibe with, or to work around, what he learns about the state of the Government's knowledge. But in this case, the Government has already completed years of investigatory work, including numerous interviews of the defendant and of his coworkers. Given the number of their statements already on the record, then regardless of what they might now learn about the Government's case, any opportunity for them — undetected — to adjust their testimony by perjuring themselves is obviously long past.
- N Saying the Government needs to demonstrate the potential for the tainting of evidence is not the equivalent of insisting that the Government establish that perjury or intimidation would necessarily take place. Rather, what the Government, as movant, must establish is at least that conditions exist in the proceeding that would allow the defendant, were perjury or intimidation on his mind, to proceed into the civil discovery process with some chance of success in that regard.
- O The serious concern about evidence tampering stems from the possibility that — after learning in a civil proceeding about the nature of the Government's evidence of his possible crime — the defendant would be able to alter evidence in his possession or control to provide a defense to the charges, or to undercut the evidence against him. This concern would be particularly troubling, for example, where a defendant was, and still is, the Chief Executive Officer, the Chief Financial Officer, or the Chief Information Officer (or some other functionary with access to, or control over, company files), at an organization associated with the alleged criminal activity.
- P The tampering theory is entirely inapplicable where the defendant has not been employed at the relevant organization for several years, and the Government gives no indication as to how the defendant might employ knowledge gained through civil discovery to alter paper documents or electronic files that he has no control over whatsoever and which the Government has long-since obtained through its several-year-long investigation.
- Q When a defendant is scheduled to receive more discovery, and earlier in the trial, than the Federal Rules of Criminal Procedure contemplate by virtue of the U.S. Attorney's voluntary adoption of an "open file" discovery process, then the Government's own conduct undercuts any complaint that allowing civil discovery to proceed would alter the usual balance as to just how much discovery a defendant can obtain.
- R Where the Government has investigated for at least 3 years the circumstances surrounding an incident that was meticulously documented, in the files of both the NRC Staff and of the highly regulated nuclear plant operating organization under whose aegis the alleged offenses occurred (and which presumably had to make all its records available to the Government) and, as a result, the Government is in possession of some 19,000 documents related to the activities that underlie the civil and criminal charges, and has already interviewed the alleged perpetrators, as well as their co-employee witnesses, several times (and has not advised that on any of those occasions the targets declined to answer any of the inquiries), and the targets of the investigations are no longer employed in the organization within which their alleged misdeeds occurred, and the Government did not even allege that the targets' information base is anything other than paltry compared to the Government's, the information balance is already skewed heavily in favor of the Government. Thus, allowing the target of criminal and civil proceedings brought against him

DIGESTS

ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

by the Government to obtain — in the course of challenging expeditiously the immediately effective civil enforcement order — information he would not receive in defending against the criminal indictment, does not alter the information balance to any degree that might properly be called unfair to the Government or that to any degree puts the Government at a disadvantage.

S The happenstance that, in defending themselves against the serious civil charges that another Government agency has chosen to file against them, the targets obtain certain ordinary discovery that will also be helpful in the defense of their criminal case, creates no cognizable harm to the Government beyond its desire to maintain a tactical advantage.

T Courts have occasionally granted the Government's request to delay a civil proceeding when that proceeding has been brought, not by the Government in furtherance of the public interest, but by the accused criminal defendant for the express or transparent purpose of creating a discovery opportunity he would not otherwise have.

U The Commission's long-established policy of deferring to the Department of Justice (DOJ) when it seeks a delay of a parallel enforcement proceeding, and of not lightly second-guessing DOJ's views on whether, and how, premature disclosures might affect its criminal prosecutions, does not remove the need for DOJ to come forward, in public or if necessary in secret, with views of substance that are tailored to the circumstances of the case at hand.

V The right to hold specific private employment and to follow a chosen profession free from unreasonable Governmental interference comes within the liberty and property concepts of the Fifth Amendment.

W The fact of an indictment and the failure to challenge the immediate effectiveness of the order count in favor of the Government's stay request because they reduce the likelihood of erroneous deprivation. Moreover, the weight to be given this factor may be increased by the consideration that the Government saw fit to indict the defendant but not certain other coworkers who were also the subject of enforcement orders.

X Under the erroneous deprivation factor, the fact that a defendant turned down a deferred prosecution offer from the DOJ that would have guaranteed him no prison time if he would admit to the acts alleged, demonstrates that the defendant has some belief in his innocence, or at least in his ability to keep the Government from establishing his guilt before a jury, and in his ability in this forum to redeem his career, and thus entitles him to receive some credit for this factor.

Y The Government's rote incantation of important principles and serious concerns that have applicability and force in other contexts does not mean they bear on the circumstances presented here. Where the Government's sole argument was the unsupported and nonparticularized assertion that the enforcement proceeding should be delayed to protect DOJ's pending criminal prosecution, the matter is controlled by the Commission's admonition that the Staff's mere assertion that it wishes to protect DOJ's pending criminal prosecution does not, without more, justify holding our parallel administrative proceeding in abeyance. Such a "mere assertion" being essentially all that was provided here to counter the serious harm to the subject, the Government's motion therefore had to be denied.

LBP-06-14 ENTERGY NUCLEAR VERMONT YANKEE, LLC, and ENTERGY NUCLEAR OPERATIONS, INC. (Vermont Yankee Nuclear Power Station), Docket No. 50-271-OLA (ASLBP No. 04-832-02-OLA); OPERATING LICENSE AMENDMENT; May 25, 2006; MEMORANDUM AND ORDER (Ruling on Admissibility of Three Additional Contentions)

A Three regulations govern the admissibility of additional contentions after an adjudicatory hearing has commenced. The first, 10 C.F.R. § 2.309(f)(2), deals with the admission of timely contentions based on new information. The second, 10 C.F.R. § 2.309(c)(1), deals with the admission of nontimely contentions. The third, 10 C.F.R. § 2.309(f)(1), establishes six basic criteria that all contentions must meet.

B If new and materially different information becomes available after the commencement of an adjudicatory proceeding and if a new non-NEPA contention is submitted in a timely fashion based on that new information, then such a contention is considered "timely" under 10 C.F.R. § 2.309(f)(2)(iii) and, upon leave of the presiding officer, may be admitted if it also satisfies the general contention admissibility standards contained in 10 C.F.R. § 2.309(f)(1).

C If new and materially different information becomes available after the commencement of an adjudicatory proceeding and if a new non-NEPA contention is submitted in a timely fashion based on that new information, then such a contention is considered "timely" under 10 C.F.R. § 2.309(f)(2)(iii)

DIGESTS

ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

and, upon leave of the presiding officer, may be admitted, without being subject to the eight additional requirements applicable to “nontimely” contentions under 10 C.F.R. § 2.309(c)(1).

D If a proposed new contention is not timely, it may be admitted if the petitioner shows a favorable balance among the eight factors governing nontimely filing that are found in 10 C.F.R. § 2.309(c)(1). Each of the eight factors needs to be considered only to the extent that it applies to the particular nontimely filing.

E The six basic contention admissibility standards contained in 10 C.F.R. § 2.309(f)(1)(i)-(vi) must be met by all contentions, whether they are filed at the outset of the proceeding, are filed in a timely fashion when material new information arises, or are untimely filings.

F When new and material information is revealed in a piecemeal fashion, the foundation for a new contention may not be reasonably apparent until the later pieces fall into place. In such a case the timeliness of a new contention based thereon depends on a determination about when, as a cumulative matter, the separate pieces of the information “puzzle” were sufficiently in place to make the particular concerns expressed in the contention reasonably apparent.

G While pleadings submitted by a petitioner acting *pro se* are not always expected to meet the same standards as pleadings drafted by lawyers, late filing of documents is not condoned.

LBP-06-15 LOUISIANA ENERGY SERVICES, L.P. (National Enrichment Facility), Docket No. 70-3103-ML (ASLBP No. 04-826-01-ML); MATERIALS LICENSE; May 31, 2006; THIRD PARTIAL INITIAL DECISION (Safety-Related Contentions)

A In this 10 C.F.R. Part 70 proceeding regarding the application of Louisiana Energy Services, L.P. (LES), for authorization to possess and use source, byproduct, and special nuclear material to enrich natural uranium by the gas centrifuge process at its planned National Enrichment Facility (NEF) to be built near Eunice, New Mexico, relative to safety-related challenges to the LES application posed by contentions submitted by Intervenor Nuclear Information and Resource Service and Public Citizen (NIRS/PC), the Licensing Board finds that although LES carried its burden of proof to demonstrate the adequacy of its application regarding the plausibility of its challenged private depleted uranium (DU) dispositioning strategy and certain aspects of the cost estimates associated with the deconversion and disposal of DU tails generated by the NEF, LES’s failure to carry its burden in connection with NIRS/PC contentions contesting LES’s cost estimate for private sector deconversion and near-surface disposal of DU from the NEF requires that for the purpose of fulfilling the NRC’s financial assurance/decommissioning funding plan (DFP) requirements, agency licensing of the NEF should be based on the cost estimates applicable under the plausible strategy associated with the United States Department of Energy (DOE) providing dispositioning services in accordance with section 3113 of the USEC Privatization Act, 42 U.S.C. § 2297h-11.

B The NRC’s regulations require an applicant seeking a license to construct and operate a uranium enrichment facility to submit with its application a proposed decommissioning funding plan. *See* 10 C.F.R. §§ 70.22(a)(9), 70.25(a); *see also id.* §§ 30.35, 40.36 (imposing the same or substantially similar requirements on applicants for a license to possess and use byproduct material and source material, respectively). The purpose of the DFP is to ensure an applicant has (1) considered the decommissioning activities that may be required at the proposed facility over time; (2) presented a credible, site-specific cost estimate for conducting those activities; and (3) provided the NRC with financial assurance to cover those estimated costs should a third party have to take responsibility for facility decommissioning. *See* NUREG-1520, “Standard Review Plan for the Review of a License Application for a Fuel Cycle Facility” (Mar. 2002) at 10-1 [hereinafter SRP].

C Section 70.25(e) of Title 10 of the *Code of Federal Regulations* (C.F.R.) requires that a DFP “contain a cost estimate for decommissioning and a description of the method of assuring funds for decommissioning . . . including means for adjusting cost estimates and associated funding levels periodically over the life of the facility,” i.e., at least triennially. The DFP must also include a certification by the applicant that financial assurance for decommissioning has been provided in an amount equal to the decommissioning cost estimate, and furnish a signed original or appropriate duplicate of the applicant’s financial assurance instrument. *See id.*

D Section 70.25(f) of Title 10 of the C.F.R. discusses the methods by which financial assurance may be provided by a private applicant, namely (1) prepayment into a segregated account, such as a trust or escrow account, prior to the start of facility operations; (2) a surety method, insurance, or other guarantee method; or (3) an external sinking fund, such as a trust or escrow account, into which annual deposits are

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- made, coupled with a surety method or insurance, the value of which decreases by the amount accrued in the sinking fund. *See id.* § 70.25(f)(1)-(3).
- E According to the Commission, the purpose of the triennial adjustments to an applicant's decommissioning cost estimates and associated financial assurance levels is to "help ensure that financial assurance obtained by licensees will not become inadequate as a result of changing disposal prices or other factors," such as inflation or changes in the scope of operations. *See* 68 Fed. Reg. 57,327, 57,332 (Oct. 3, 2003). Therefore, the triennial adjustments required by section 70.25 are intended to account for changes in a licensee's cost estimates regardless of the cause, and to ensure that adequate financial assurance is provided by the licensee at any given time.
- F The initial cost estimates provided in an applicant's DFP must encompass those foreseeable activities associated with decommissioning, including radioactive waste disposal, and must present a reasonably accurate estimate of the direct and indirect costs involved in decommissioning under routine facility conditions. *See* SRP at 10-1; NUREG-1757, "Consolidated NMSS Decommissioning Guidance," vol. 3 (Sept. 2003) at 4-9, A-26 [hereinafter NUREG-1757]. Thus, the availability of the periodic adjustment mechanism should have no bearing on the robustness of the initial decommissioning cost estimate, in that it is not meant to provide a backstop for underestimation, but rather to account for costs unforeseen at the time of licensing.
- G NRC Staff guidance documents generally do not constitute legally binding interpretations of agency regulations. *See Hydro Resources, Inc.* (P.O. Box 15910, Rio Rancho, NM 87174), CLI-04-33, 60NRC 581, 596 (2004). NUREG-1757, "Consolidated NMSS Decommissioning Guidance," is, however, particularly instructive for the purposes of interpreting the agency's financial assurance and decommissioning cost estimate regulations.
- H Pursuant to NUREG-1757, the NRC Staff reviews an applicant's decommissioning cost estimate to ensure it is "based on documented and reasonable assumptions" so as to provide sufficient funds to allow a third party to take responsibility for facility decommissioning if a licensee is unable to do so. *See* NUREG-1757, at 4-9. Section 4.1 sets forth minimum criteria that a cost estimate must meet before the Staff can find it acceptable. Specifically, the cost estimate must: (1) meet all applicable regulatory requirements; (2) be based on documented and reasonable assumptions; (3) use unit cost factors that are reasonable and consistent with NRC cost estimation reference documents; (4) include costs for labor, equipment and supplies, overhead and contractor profit, sampling and laboratory analysis, and other miscellaneous expenses (e.g., license fees); (5) apply a contingency factor of at least 25% to the sum of all estimated costs; (6) take no credit for salvage value from the sale of potential assets or reduced taxes based on payment of decommissioning or site control and maintenance costs; (7) identify adequate means for adjusting the cost estimate and associated funding level over the life of the facility and any storage or surveillance period; (8) reflect decommissioning under normal facility conditions; and (9) include costs for all major decommissioning and site control and maintenance activities, including (a) planning and preparation, (b) decontamination and/or dismantling of facility components, (c) packaging, shipment, and disposal of radioactive wastes, (d) a final radiation survey, (e) restoration of contaminated areas on facility grounds, if necessary, and (f) site stabilization and long-term surveillance, if necessary. *See id.* at 4-10.
- I The Staff also reviews the financial assurance mechanisms specified in an applicant's DFP, specifically to (1) determine whether the proposed mechanisms are acceptable and (2) ensure the certification specifies the correct amount of financial assurance and attests compliance with the appropriate regulatory requirements. *See* NUREG-1757, at 4-6.
- J Certain licensees are also required, at the end of a facility's license period, to submit a decommissioning plan (DP) for Staff approval prior to beginning decommissioning activities. The purpose of the DP is in part to ensure that, as is envisioned in the DFP, the licensee has maintained adequate funding and financial assurance through the term of the license. *See* NUREG-1757, at 4-4. A DP must include (1) an updated, detailed cost estimate for decommissioning; (2) a comparison of that estimate with the amount of funds presently set aside for decommissioning; and (3) a plan for assuring the availability of adequate funds to complete decommissioning activities. *See id.* at 4-5. The DP must also specify at least one financial assurance mechanism, including supporting documentation, that the Staff will again review for adequacy. *See id.* at 4-6.
- K Discussing the concept of a "plausible strategy" for dispositioning DU tails, the Commission has stated that "[w]hile a 'plausible strategy' for private conversion of the tails does not mean a definite or

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- certain strategy, to include completion of all necessary contractual arrangements, it must represent more than mere speculation." *See* CLI-04-25, 60 NRC 223, 226 (2004).
- L "While the concepts of technical feasibility of a particular strategy and the costs of implementing such a strategy might arguably be linked in the common term 'plausible' . . . the cost of implementation of a particular strategy has no bearing upon whether any particular strategy is technically [feasible]." *See* Licensing Board Memorandum and Order (Ruling on Late-Filed Contentions) (Nov. 22, 2004) at 13 (unpublished). Accordingly, the sufficiency of a decommissioning cost estimate rests, at least in part, on whether a particular strategy is plausible, that is, a finding that a particular strategy is "plausible" is a necessary precursor to a finding that a cost estimate is "documented and reasonable."
- M The mere fact that a strategy is "plausible" does not establish that sufficiently documented and reasonable cost estimates can be developed for that strategy. Thus, the question of whether an applicant has presented a plausible strategy, although related to disposition costs, is an inquiry distinct from and precedent to the question of the adequacy of an applicant's dispositioning cost estimates.
- N The Commission has determined that transfer of DU from enrichment operations to DOE for deconversion and disposal constitutes a "plausible strategy" for dispositioning. *See* 69 Fed. Reg. at 5877; CLI-05-5, 61 NRC 22, 34 (2005).
- O The primary purpose of the requirement that an applicant demonstrate a "plausible strategy" for dispositioning DU waste is to provide a foundation upon which to build reasonable cost estimates for various elements related to ultimate decommissioning of the proposed facility. A proposed strategy may well be "plausible," yet the related cost estimates lack a sufficient footing in "documented and reasonable assumptions," *see* NUREG-1757, at 4-10, so as to afford reasonable assurance there will be sufficient future funds to support decommissioning and so provide an adequate foundation for a DFP. The combination of "documented" and "reasonable" assumptions reflects an overall concept of "reliability," that is, an estimate that is sufficiently trustworthy and dependable to be utilized as a basis for making the requisite financial assurance findings.
- P Section 3113 of the USEC Privatization Act, 42 U.S.C. § 2297h-11, requires DOE to accept for dispositioning DU from a private uranium enrichment facility upon request of the facility operator (or appropriate third party). When acting pursuant to that statutory authority/obligation, DOE can set its costs or cost estimates at whatever level it determines is appropriate. In other words, while section 3113 requires DOE to accept DU for deconversion and disposal at the request of an NRC-licensed uranium enrichment facility operator, it also gives DOE the exclusive authority to determine the amount of reimbursement required for disposition of that DU waste. Neither an intervenor nor an applicant/licensee (nor seemingly the NRC) has the authority to challenge or direct DOE's estimates of the fees it will charge to a uranium enrichment facility that requests DOE to disposition its DU waste. *See, e.g., Philadelphia Electric Co.* (Limerick Generating Station, Units 1 and 2), ALAB-836, 23 NRC 479, 499 (1986) (licensing boards do not undertake review of whether another federal agency complied with its own regulations); *Arizona Public Service Co.* (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), LBP-82-117A, 16 NRC 1964, 1991 (1982) (licensing boards should not entertain collateral attacks upon the actions of other federal agencies on a matter over which the Commission has no jurisdiction).
- Q When DOE acts pursuant to section 3113 in setting disposition costs or providing cost estimates, the situation is somewhat analogous to a circumstance in which an applicant and/or the Staff are entitled to rely on statements of third-party market participants. *See, e.g., LBP-05-13*, 61 NRC 385, 440, 444-45 (2005) (applicant can rely on public statements of market participants regarding plans to close old enrichment facilities or open new ones). In that sense, DOE cost estimates represent an arm's-length, third-party estimate of the cost of doing business, albeit in an instance when the party offering the estimate is statutorily bound to provide that service. Accordingly, cost estimates provided relative to the DOE "plausible strategy" are sufficiently reliable to provide the basis for an initial estimate of the portion of decommissioning funding associated with disposition of DU waste.
- R An applicant may provide cost estimates for each of the elements of its DFP by obtaining estimates of the actual cost of providing a service from experienced third parties. Such an estimate would be sufficiently reliable for establishing the initial estimate of decommissioning funding associated with those elements.
- S Obtaining a cost estimate from an experienced third-party vendor is not the only way for an applicant to demonstrate that its cost estimate is documented and reasonable, although it clearly is one way to reach that end.

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- T Whether a particular waste dispositioning strategy is “plausible” relates to, but is not dispositive of, the issue whether a decommissioning cost estimate is sufficiently reliable to be used as a foundation for determining the appropriate size of an applicant/licensee’s decommissioning fund. For a strategy to be “plausible” it must be more than merely technically feasible, but a strategy can be plausible and still not appropriately developed and documented to provide a sound footing on which to rest the public health and safety. In other words, the existence of a “plausible strategy” for dispositioning DU is a necessary condition to a demonstration that an applicant has presented a reliable decommissioning cost estimate (i.e., one that is based on “documented and reasonable assumptions”), but is not, in and of itself, sufficient to satisfy that threshold.
- U A memorandum of understanding between an applicant and another entity with regard to the potential construction and operation of a private DU deconversion facility, demonstrating the anticipation of both those parties that an appropriate facility could be constructed to meet the applicant’s timing and throughput requirements, provides the additional indicia of feasibility necessary to demonstrate that the associated private deconversion strategy is more than “mere speculation” and falls well within the realm of a plausible proposed strategy. This is particularly so when the applicant has identified a specific entity with pertinent, proven technology and experience as the basis for its private deconversion strategy.
- V Although the estimated cost of constructing and operating a deconversion facility may be developed based on prior experience with a similar facility, such estimates must include the entirety of expected costs to the applicant or a third party by, for example, providing a thorough analysis such as would typically be developed and used for any new project.
- W Having a third-party estimate for decommissioning costs is not necessarily mandated by the relevant NRC regulations and guidance; nonetheless, having such a cost estimate adds significantly to the reliability of that estimate, *see, e.g.*, NUREG-1827, “Safety Evaluation Report for the [NEF] in Lea County, New Mexico” (June 2005) at 10-11 to -12.
- X To provide a reliable estimate of the costs of deconverting DU from enrichment operations, an applicant can follow one of two paths: (1) obtain an estimate from a knowledgeable, experienced third party of what that third party would charge to provide deconversion services for the applicant/licensee based on its projected deconversion needs; or (2) obtain a thorough analysis from a qualified, credible source of what it would cost either the applicant/licensee or a third party to build, own, operate, and decommission a deconversion facility at an appropriate site. In the former circumstance, a summary bid or price quote from an experienced third-party vendor would suffice. For the latter scenario, the same detailed cost analysis would be required regardless of whether the actual construction and operation of the deconversion facility was completed by the applicant/licensee or a third party, though the cost figures resulting from such an analysis would undoubtedly differ.
- Y An applicant is not required, as a basis for its initial decommissioning funding cost estimate, to make projections or otherwise speculate about what events may or may not occur in the distant future. The initial decommissioning cost estimate thus is appropriately based on demonstrable *current* market conditions, and any future changes in the market that would impact cost estimates should be accounted for as part of the periodic update process.
- Z An applicant’s withdrawal of an individual as a witness and potential deponent, in the face of the remaining witness’s admission that he has no expertise in the specific subject matter at issue, does not provide a basis for disqualifying or disregarding the information obtained from the withdrawn witness when that witness was identified as the source of the information and, notwithstanding his removal from the applicant’s witness list, seemingly could have been subjected to discovery and compelled to provide testimony before the Board, *see* 10 C.F.R. §§ 2.702(a), 2.706(a). Under these circumstances, there is no compelling basis for discounting the disputed hearsay information as unreliable. *Compare Tennessee Valley Authority* (Hartsville Nuclear Plant, Units 1A, 2A, 1B, and 2B), ALAB-367, 5 NRC 92, 121 (1977) (non-expert’s testimony based on what he was told by anonymous expert stricken as unreliable hearsay).
- AA A cost estimate that lacks a reliable basis is not one that can be endorsed as the basis for a DFP. Although, as the Commission has made apparent, Licensing Boards are not to be involved simply in “formalistic” redrafting in connection with such a plan, *see Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-96-1, 43 NRC 1, 9 (1996), if an applicant’s cost estimate lacks sufficient support regarding the direct and indirect costs involved, then the availability of the periodic adjustment should not be the basis, in and of itself, for passing the plan forward with the hope that its deficiencies will be rectified at some point in the future.

DIGESTS

ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- BB To the degree future developments impact upon the cost of otherwise foreseeable items, regardless of the size of the change or revision that is needed, the cost estimates, and the decommissioning funding for which they provide the basis, would be modified as they become apparent through the periodic adjustment process.
- CC The following technical issues are discussed: decommissioning (adequacy of cost estimates); plausible strategy for disposition of depleted uranium; decommissioning (contingency factor); decommissioning (transportation costs).
- LBP-06-16 AMERGEN ENERGY COMPANY, LLC (Oyster Creek Nuclear Generating Station), Docket No. 50-0219-LR (ASLBP No. 06-844-01-LR); LICENSE RENEWAL; June 6, 2006; MEMORANDUM AND ORDER (Contention of Omission Is Moot, and Motions Concerning Mandatory Disclosure Are Moot)
- A Licensee's written commitments that are "docketed and in effect" constitute part of the "current licensing basis," which is the "set of NRC requirements applicable to a specific plant" (10 C.F.R. § 54.3(a)). A licensee must "comply with its licensing basis unless the licensing basis is properly changed or the license is formally excused by the NRC from compliance" (Nuclear Power Plant License Renewal, 56 Fed. Reg. 64,943, 64,951 (Dec. 13, 1991)).
- B There is a difference between contentions that, on the one hand, allege that a license application suffers from an improper omission, and contentions that, on the other hand, raise a specific substantive challenge to how particular information or issues have been discussed in a license application. In the former situation, "[w]here a contention alleges the omission of particular information or an issue from an application, and the information is later supplied by the applicant . . . , the contention is moot" (*Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-28, 56 NRC 373, 383 (2002)).
- C Generally, the plain language of a contention will reveal whether the contention is (1) a claim of omission, (2) a specific substantive challenge to an application, or (3) a combination of both. In some instances, "it may be necessary to examine the language of the bases to determine the contention's scope" (*McGuire/Catawba*, CLI-02-28, 56 NRC at 383 n.45).
- D When a contention of omission has been rendered moot, the intervenor — if it wishes to raise specific challenges regarding the new information — may timely file a new contention that addresses the admissibility factors in 10 C.F.R. § 2.309(f)(1). Otherwise an "original contention alleging simply a failure to address a subject could readily be transformed — without basis or support — into a broad series of disparate new claims. This approach effectively would circumvent NRC contention-pleading standards and defeat the contention rule's purposes" (*McGuire/Catawba*, CLI-02-28, 56 NRC at 383).
- LBP-06-17 LOUISIANA ENERGY SERVICES, L.P. (National Enrichment Facility), Docket No. 70-3103-ML (ASLBP No. 04-826-01-ML); MATERIALS LICENSE; June 23, 2006; FINAL PARTIAL INITIAL DECISION (Mandatory Hearing/Uncontested Issues)
- A In this 10 C.F.R. Part 70 proceeding regarding the application of Louisiana Energy Services, L.P. (LES), for authorization to possess and use source, byproduct, and special nuclear material to enrich natural uranium by the gas centrifuge process at its planned National Enrichment Facility (NEF) to be built near Eunice, New Mexico, the Licensing Board sets forth its findings on certain uncontested safety/technical and environmental matters relative to the LES application, and authorizes the NRC Staff to issue a Part 70 license for the NEF, effective immediately.
- B The source of the mandatory hearing requirement for uranium enrichment facilities is section 193(b)(1) of the Atomic Energy Act (AEA), 42 U.S.C. § 2243(b)(1), which provides, in relevant part, that "[t]he Commission shall conduct a single hearing on the record with regard to the licensing of the construction and operation of a uranium enrichment facility . . ." Sections 70.23a and 70.31(e) of Title 10 of the *Code of Federal Regulations* implement this mandate, declaring that before a uranium enrichment facility can be licensed, a hearing is required to be held on that license application.
- C The matters of fact and law to be considered in a proceeding on an application for a license to construct and operate a uranium enrichment facility are whether the application satisfies the applicable standards in 10 C.F.R. §§ 30.33, 40.32, and 70.23, and whether the requirements of 10 C.F.R. Part 51 have been met. *See* CLI-04-3, 59 NRC 10, 13 (2004).
- D If a proceeding on an application for a 10 C.F.R. Part 70 license is not a contested proceeding, as defined by 10 C.F.R. § 2.4, the licensing board will determine the following, without conducting a de novo evaluation of the application: (1) whether the application and record of the proceeding contain sufficient information and whether the Staff's review of the application has been adequate to support findings to be

DIGESTS

ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

made by the Director of the Office of Nuclear Materials Safety and Safeguards (NMSS), with respect to the applicable standards in 10 C.F.R. §§ 30.33, 40.32, and 70.23; and (2) whether the review conducted by the Staff pursuant to 10 C.F.R. Part 51 has been adequate. *See* CLI-04-3, 59 NRC at 13; *see also* 10 C.F.R. § 2.104(b)(1)(i)-(iv) and (b)(2)(i).

E Regardless of whether a proceeding on an application for a 10 C.F.R. Part 70 license is contested or uncontested, the licensing board will, in its initial decision, in accordance with Subpart A of 10 C.F.R. Part 51: (1) determine whether the requirements of sections 102(2)(A), (C), and (E) of the National Environmental Policy Act (NEPA) and Subpart A of Part 51 have been complied with in the proceeding; (2) independently consider the final balance among conflicting factors contained in the record of proceeding with a view to determining the appropriate action to be taken; and (3) determine whether a license should be issued, denied, or conditioned to protect the environment. *See* CLI-04-3, 59 NRC at 13; *see also* 10 C.F.R. § 2.104(b)(2)(ii).

F If the proceeding on such an application becomes a contested proceeding, the licensing board shall make findings of fact and conclusions of law on admitted contentions. Moreover, with respect to matters relating to the applicable standards of 10 C.F.R. §§ 30.33, 40.32, and 70.23, and the adequacy of the Staff's review pursuant to Part 51, but not covered by admitted contentions, the Board will determine, without conducting a de novo evaluation of the application, whether: (1) the application and record of the proceeding contain sufficient information and whether the Staff's review of the application has been adequate to support findings to be made by the Director of NMSS with respect to the applicable standards in sections 30.33, 40.32, and 70.23; and (2) the review conducted by the Staff pursuant to Part 51 has been adequate. *See* CLI-04-3, 59 NRC at 13; *see also* 10 C.F.R. § 2.104(b)(1)(i)-(iv) and (b)(2)(i).

G The Commission has provided interpretative guidance for licensing boards conducting mandatory hearings. *See* CLI-05-17, 62 NRC 5 (2005). Addressing the question of whether proceedings should be treated in their entirety as "contested" or "uncontested," as the plain language of agency regulations seemed to imply, the Commission held that "the contested and uncontested designations apply issue-by-issue, and not to proceedings-at-large." *Id.* at 34. The net effect of this ruling is to eliminate the possibility that admission of a single, relatively minor contention would negate the need to conduct a separate mandatory hearing.

H In accord with 10 C.F.R. § 2.104(b)(2)(i), in a proceeding on an application for a license to construct and operate a uranium enrichment facility, a licensing board is to determine, with respect to safety matters, "whether the application and record of the proceeding contain sufficient information and whether the NRC Staff's review of the application has been adequate to support findings to be made . . . with respect to [10 C.F.R. §§ 30.33, 40.32, and 70.23]," and that these determinations are to be made "without conducting a de novo evaluation of the application." CLI-04-3, 59 NRC at 12. Because a true de novo review would involve *complete* repetition of the Staff's work, this stated limitation does little to clarify the scope of review contemplated by the charge to determine whether the record supports an affirmative Staff finding.

I The Commission has clearly delineated the respective roles of a licensing board and the Staff, advising that a board's task is "to constitute a check on the understanding of the staff." *See* CLI-05-17, 62 NRC at 40 (internal quotation marks and footnote omitted). The Commission cautioned that "'truly independent review' . . . does not mean that multiple reviews of the same *uncontested* issues — first by the NRC Staff, then by the [Advisory Committee on Reactor Safeguards], and finally by a licensing board — would be necessary to serve this purpose [of constituting a check on the understanding of the Staff]," *id.*, and summarized by noting that "boards should conduct a simple 'sufficiency' review of uncontested issues . . .," *id.* at 39. Nonetheless, to ensure that this guidance was not mistaken as Commission permission for licensing boards to engage in a relatively cursory effort, speaking again to uncontested portions of the proceeding, the Commission defined precisely its view of a licensing board's task, stating "when considering safety and environmental matters not subject to the adversarial process . . . *boards should inquire whether the NRC Staff performed an adequate review and made findings with reasonable support in logic and fact.*" *Id.* (emphasis added). Thus, the scope of a licensing board's review has been clearly defined; i.e., it must identify, investigate, and comprehend the facts underlying, and the logic of, the Staff's central legal, technical, and environmental determinations to develop the basis for the licensing board's ultimate findings regarding the adequacy of the record and the sufficiency of the Staff's review.

J In further clarifying how a licensing board is to approach its review task, the Commission noted that "as a general matter licensing boards should review contested and uncontested issues differently, giving the NRC Staff considerably more deference on uncontested issues." CLI-05-17, 62 NRC at 36 (emphasis

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

omitted). Moreover, with respect to uncontested matters, even regarding the three “baseline” NEPA issues for which a licensing board is required to make its own independent judgment, “the NRC Staff’s underlying technical and factual findings are not open to board reconsideration unless, after a review of the record, the board finds the NRC Staff review inadequate or its findings insufficient.” *Id.* at 39-40. Finally, the Commission again emphasized, this was “not to say that we expect our licensing boards to follow a cursory, hands-off approach On the contrary . . . , we anticipate that our boards will carefully probe those findings by asking appropriate questions and by requiring supplemental information when necessary” *Id.* at 40.

K In sum, the Commission has provided two governing principles for a licensing board’s mandatory hearing review process: (1) relative to the Staff’s cardinal legal, technical, and environmental determinations, a licensing board should inquire whether the Staff performed an adequate review and made findings that have reasonable logical and factual support; and (2) the factual findings underlying the Staff’s legal, technical, and environmental determinations are not subject to licensing board reconsideration unless the board finds the Staff review inadequate or its findings insufficient.

L In examining the principal applicant and Staff review documents in the record relative to its mandatory hearing consideration of uncontested safety matters, the board’s focus should be upon areas in which the Staff indicated that its prescriptive process was incomplete or was not followed, or instances when the board’s review of the safety evaluation report (SER) and other safety-related documents led it to believe further exploration of a particular item was necessary. The board would not, however, undertake any independent review of or attempt to verify technical results presented in the application or in the Staff’s SER. Accordingly, for the purposes of determining whether the Staff had a reasonable basis for its stated conclusions on safety matters, the board would review the record based on the assumption that such a reasonable basis would be present if (1) the applicable standard review plan (SRP) and regulatory guides (along with other pertinent guidance documents) were specifically followed; or (2) the facts underlying a Staff determination were clear and the Staff’s decision logically flowed from those facts and the applicable regulatory guidance.

M In performing its mandatory hearing review of uncontested safety matters, the licensing board sought information on three topics relative to the general conduct of the Staff’s safety review for the uranium enrichment facility application: (1) how the generic SRP for fuel cycle facilities (NUREG-1520) was adapted to the enrichment facility application; (2) what regulatory guides were found applicable and why; and (3) in situations in which a regulatory guide would, in a customary fuel cycle facility application, have been applicable but was not appropriate for the proposed facility, how the Staff addressed (and directed the applicant to address) such matters. More specifically, relative to these inquires the board requested that the Staff provide a written presentation indicating those subsections of the SRP that directly applied to the enrichment facility application as well as a description of how, when a particular subsection of the SRP did not directly apply to the application, the guidance in that subsection was adapted to apply to the application, along with the rationale for that particular adaptation. In addition, the board requested that the Staff identify each regulatory guide used relative to the application, the subsections of the SRP toward which it was applied, and the Staff’s rationale for indicating to the applicant, or for finding, that such a regulatory guide was applicable. Finally, the board asked that the Staff indicate each SRP subsection to which no regulatory guide applied and how the Staff addressed (and directed the applicant to address) those matters. The purpose of this approach was to enable the board to accomplish two critical objectives: (1) to identify those areas of review where the SRP was precisely followed, thereby providing a logical and reasonable basis for the board to conclude, giving due deference to the Staff, that no further scrutiny would be required for that area of review; and (2) to identify those areas of review that warranted additional scrutiny, either because there was a deviation from the SRP or the applicable regulatory guidance, or because no existing regulatory guidance directly applied to the application.

N Pursuant to 10 C.F.R. § 70.25(a)(1), an applicant seeking a license to construct and operate a uranium enrichment facility is required to provide the Staff with a decommissioning funding plan (DFP), which essentially consists of a site-specific estimate of the costs for decommissioning the facility, and a description and certification of the means by which funds for decommissioning will be assured, *see id.* § 70.25(e). The purpose of the financial assurance requirement is to provide reasonable assurance that adequate funds will be available, through appropriate mechanisms, for facility decommissioning should a licensee be unable or unwilling to complete decommissioning. *See* NUREG-1757, “Consolidated NMSS Decommissioning Guidance,” vol. 3 (Sept. 2003), at 4-1 [hereinafter NUREG-1757].

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- O Section 70.25(f) of 10 C.F.R. sets forth a variety of methods by which an applicant may provide financial assurance, including (1) prepayment of funds into a segregated account prior to the start of facility operations; (2) a surety method, insurance, or other guarantee method; and (3) annual deposits into a segregated account coupled with a surety method or insurance, whereby the surety value decreases over time by the amount accrued in the segregated account. *See* 10 C.F.R. § 70.25(f)(1)-(3).
- P Section 70.25(e) of 10 C.F.R. requires an applicant to adjust its cost estimates and associated financial assurance levels at least once every 3 years. The purpose of this periodic adjustment mechanism is to “help ensure that financial assurance obtained by licensees will not become inadequate as a result of changing disposal prices or other factors,” such as inflation or changes in facility operations. *See* 68 Fed. Reg. 57,327, 57,332 (Oct. 3, 2003). This periodic adjustment process is intended to capture changes to a licensee’s estimated decommissioning costs regardless of the cause, and to ensure that adequate financial assurance is provided by the licensee at any given time. It has no bearing on the initial cost estimate and associated financial assurance, but rather establishes a process by which the licensee and the NRC account for costs that are not foreseeable at the time of facility licensing.
- Q NUREG-1757, which provides guidance to the Staff and applicants/licensees regarding, among other things, financial assurance requirements and the related funding mechanisms, describes a surety bond as follows: “A *payment surety bond* (or *surety bond*) is a guarantee by a surety company (or surety) that it will fund decommissioning activities if the principal (i.e., the licensee) fails to do so. In issuing a surety bond, the surety company becomes ‘jointly and severally’ liable for the guaranteed payment, meaning that the surety assumes the licensee’s obligation to fund decommissioning as its own and can be sued jointly with the licensee for the obligation. Consequently, most surety bonds include an indemnification provision that requires the principal to reimburse the surety for costs incurred in satisfaction of the principal’s obligations.” NUREG-1757, at A-88. A surety bond must be funded in an amount greater than or equal to the decommissioning cost estimate set forth in the licensee’s DFP. *See* 10 C.F.R. § 70.25(e).
- R Section 70.25(f) sets forth several additional conditions that must be included in any such surety bond. First, the surety bond must either be open-ended or written for a specified term subject to automatic renewal, and must specify that the full face value will be automatically paid to the NRC prior to expiration if the licensee does not provide an acceptable replacement mechanism within a specified period of time. *See* 10 C.F.R. § 70.25(f)(2)(i). Second, the surety bond must be directly payable to an acceptable standby trust that will be used to fund decommissioning if the licensee defaults on its decommissioning obligation. *See id.* § 70.25(f)(2)(ii); *see also* NUREG-1757, at A-88. Finally, the surety bond must remain in effect until license termination. *See* 10 C.F.R. § 70.25(f)(2)(iii).
- S Subpart H of 10 C.F.R. Part 70 requires an applicant for authorization “to possess greater than a critical mass of special nuclear material, and engage[] in . . . uranium enrichment,” to comply with certain performance requirements regarding nuclear criticality safety (NCS). *See* 10 C.F.R. § 70.60. Specifically, 10 C.F.R. § 70.61(a) requires an applicant to evaluate, in its integrated safety analysis (ISA) performed in accordance with 10 C.F.R. § 70.62, its compliance with performance requirements set forth in section 70.61(b) through (d). Section 70.61(b) requires an applicant to limit, through the application of engineered and/or administrative controls, the risk of credible high-consequence events so as to make them “highly unlikely,” or to make their consequences less severe than certain established dose and exposure limits set forth in section 70.61(b)(1)-(4). For its part, section 70.61(c) imposes similar requirements with regard to limitation of the risk posed by each credible intermediate-consequence event so as to make the event “unlikely” or its consequences less severe than dose and exposure limits set forth in section 70.61(c)(1)-(4).
- T In addition, section 70.61(d) requires that the risks of criticality accidents be limited by assuring that all nuclear processes are subcritical under normal and credible abnormal conditions, including the use of an approved margin of subcriticality, and mandates that preventive measures be the primary means of protection against criticality accidents. Moreover, section 70.61(e) requires that each engineered or administrative control/control system necessary to comply with paragraphs (b) through (d) be designated an item relied on for safety (IROFS). Finally, 10 C.F.R. § 70.64(a)(9) mandates that the design of new facilities “provide for criticality control including adherence to the double contingency principle,” i.e., that “process designs should incorporate sufficient factors of safety to require at least two unlikely, independent, and concurrent changes in process conditions before a criticality accident is possible,” *id.* § 70.4. An applicant must provide documentation of its compliance with the section 70.61 performance

DIGESTS

ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- requirements in its ISA Summary. *See id.* § 70.65(b)(4); *see also* [NEF ISA] Summary, vols. 1 & 2 (Apr. 2005).
- U Two Staff guidance documents, though not legally binding, provide further information regarding the relevant criticality safety regulations. The Staff published an interim Staff guidance (ISG) document, “Nuclear Criticality Safety Performance Requirements and Double Contingency Principle,” to provide additional information about the relationship between the various subsections of 10 C.F.R. § 70.61. *See* ISG-03, [NCS] Performance Requirements and Double Contingency Principle (Feb. 17, 2005). ISG-03 explains that, due to the risk-informed, performance-based nature of section 70.61(b) and (c), in theory a facility operator could have an inadvertent criticality, but still be in compliance with the dose limits set forth in paragraphs (b) and (c). Thus, the guidance explains, the purpose of section 70.61(d) is to ensure that all nuclear processes are designed to remain subcritical under normal and credible abnormal conditions. *See id.* at 2, 4-5.
- V Chapter 3 of the SRP provides additional guidance concerning the content of the ISA Summary and how an applicant can comply with section 70.65(b)(4), which, as noted above, requires an applicant to present information that demonstrates compliance with section 70.61. *See* NUREG-1520, “[SRP] for the Review of a License Application for a Fuel Cycle Facility,” ch. 3 (Mar. 2002). Stated generally, an applicant must identify and assess all credible accident sequences and identify appropriate mitigation measures, commonly referred to as IROFS, to prevent or mitigate the consequences of such accidents. *See id.* at 3-4. In addition, SRP section 5.4.3.4.4 provides guidance with regard to section 70.61(d) compliance, and essentially states that an applicant’s commitment to comply with regulatory requirements, including use of appropriate controls, standards, and subcritical limits, as well as its implementation of a double contingency protection program, should be considered acceptable for the purpose of meeting section 70.61(d) standards. *See id.* at 5-15 to -16.
- W Under the agency’s NEPA regulations, the Staff’s draft and final environmental impact statements are to include a “statement [that] will briefly describe and specify the need for the proposed action.” 10 C.F.R. Part 51, Subpart A, App. A, § 4.
- X Regardless of whether a proceeding is contested or uncontested, in proceedings for which a mandatory hearing is required, a licensing board is required to make the following “baseline” determinations regarding NEPA issues: “(i) Determine whether the requirements of section 102(2)(A), (C), and (E) of [NEPA] and subpart A of part 51 . . . have been complied with in the proceeding; (ii) Independently consider the final balance among conflicting factors contained in the record of the proceeding with a view to determining the appropriate action to be taken; and (iii) Determine whether the construction permit should be issued, denied, or appropriately conditioned to protect environmental values.” *See* 10 C.F.R. § 2.104(b)(3); *see also* CLI-04-3, 59 NRC at 12-13. Regarding the appropriate standard of review to be used by a licensing board when making these “baseline” NEPA determinations, the Commission stated that “licensing boards must reach their own independent determination on uncontested NEPA ‘baseline’ questions — i.e., whether the NEPA process ‘has been complied with,’ what is the appropriate ‘final balance among conflicting factors,’ and whether the ‘construction permit should be issued, denied or appropriately conditioned.’” CLI-05-17, 62 NRC at 45. In reaching these independent determinations, “boards should not second-guess underlying technical or factual findings by the NRC Staff,” and “[t]he only exceptions to this would be if the reviewing board found the Staff review to be incomplete or the Staff findings to be insufficiently explained in the record.” *Id.*
- Y The Commission further directed licensing boards to follow the approach set forth in *Calvert Cliffs’ Coordinating Committee, Inc. v. AEC*, in which the United States Court of Appeals for the District of Columbia Circuit stated: “The Commission’s regulations provide that in an uncontested proceeding the hearing board shall on its own determine whether the application and the record of the proceeding contain sufficient information, and the review of the application by the Commission’s regulatory staff has been adequate, to support affirmative findings on various nonenvironmental factors. NEPA requires at least as much automatic consideration of environmental factors. In uncontested hearings, the board need not necessarily go over the same ground covered in the detailed [environmental impact] statement. But it must at least examine the statement carefully to determine whether the review . . . by the Commission’s regulatory staff has been adequate. And it must independently consider the final balance among conflicting factors that is struck in the staff’s recommendation.” 449 F.2d 1109, 1118 (D.C. Cir. 1971) (footnote and internal quotation marks omitted).
- Z NEPA § 102(2)(A) requires all federal agencies to “utilize a systematic, interdisciplinary approach

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decision-making which may have an impact on man's environment." 42 U.S.C. § 4332(2)(A).

- AA Section 102(2)(C) of NEPA requires a federal agency to address in its environmental impact statement: (1) the environmental impact of the proposed action; (2) any unavoidable adverse impacts associated with implementation of the proposed action; (3) alternatives to the proposed action; (4) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity; and (5) any irreversible and irretrievable commitment of resources that might result from the proposed action. *See id.* § 4332(2)(C).
- BB NEPA § 102(2)(C) also requires that an agency "consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved." *Id.*
- CC Section 102(2)(E) of NEPA requires a federal agency to "study, develop, and describe appropriate alternatives to the recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources." *Id.* § 4332(2)(E).
- DD The following technical issues are discussed: financial qualifications (decommissioning); decommissioning (adequacy of cost estimates); decommissioning (financial assurance); decommissioning (funding methods); nuclear criticality safety; materials compatibility; fire safety; consideration of purpose and need; depleted uranium cylinder rupture accident.
- LBP-06-18 ENTERGY NUCLEAR VERMONT YANKEE, LLC, and ENTERGY NUCLEAR OPERATIONS, INC. (Vermont Yankee Nuclear Power Station), Docket No. 50-271-OLA (ASLBP No. 04-832-02-OLA); OPERATING LICENSE AMENDMENT; June 23, 2006; MEMORANDUM AND ORDER (Approving Settlement Agreement, Granting Dismissal of Contentions, and Accepting Withdrawal of Vermont Department of Public Service)
- A In this proceeding concerning an application for a power increase to the operating license of the Vermont Yankee Nuclear Power Station, the Board finds that the submission by the Department of Public Service of the State of Vermont (State) is a settlement agreement that is subject to, and that satisfies, the requirements of 10 C.F.R. § 2.338 and therefore, the Board approves the settlement agreement, dismisses State Contentions 1 and 2, and accepts the State's withdrawal with prejudice. The Board also denies New England Coalition's request that the Board act *sua sponte* and continue the litigation on the State's contentions.
- B A notice of withdrawal combined with an attached memorandum of understanding whereby the Applicant agrees to perform certain actions and testing, in return for which the Intervenor agrees to withdraw, with prejudice, from the litigation, constitutes a *quid pro quo* arrangement which is a settlement agreement within the meaning of 10 C.F.R. § 2.338.
- C The form, content, and board approval provisions of 10 C.F.R. § 2.338 are not limited to settlement agreements achieved via alternative dispute resolution (ADR), but apply to all settlement agreements that purport to be binding on the proceeding and that are submitted to a board after the notice of hearing. The plain language of 10 C.F.R. § 2.338(a), (g), (h), and (i) simply uses the terms "settlement" or "settlement agreement" and makes no reference or suggestion that these provisions and requirements are limited to that small subset of settlements achieved via ADR. Rather the regulatory history supports the view that section 2.338 is a regulation of general applicability, stating that "Section 2.338 is a new provision that consolidates and amplifies the previous rules pertaining to settlement (10 CFR 2.203, 2.759, 2.1241)." Final Rule: "Changes to Adjudicatory Process," 69 Fed. Reg. 2182, 2225 (Jan. 14, 2004). Nothing in these previous regulations limited their application to settlement agreements reached through a third-party neutral.
- D A *quid pro quo* settlement agreement that is submitted to the Board and that would result in the withdrawal, with prejudice, of a party, is an agreement that would be "binding in the proceeding" within the meaning of 10 C.F.R. § 2.338(i).
- E Any settlement agreement that would have a binding effect on the proceeding and that is reached after the notice of hearing must be in the form specified in 10 C.F.R. § 2.338(g), must have the content specified in 10 C.F.R. § 2.338(h), and must be submitted to the presiding officer for his or her approval under 10 C.F.R. § 2.338(i).
- F The opponents of a settlement may not simply object to settlement in order to block it, but must show some substantial basis for disapproving the settlement or the existence of some material issue that requires

DIGESTS

ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

resolution. The burden is on the opponent of a settlement to come forward and show that the public interest requires the rejection of the settlement and the adjudication of the issues. This is aptly expressed in the current formulation of the rule, which states that the presiding officer “may order the adjudication of the issues [if it is] required in the public interest.” 10 C.F.R. § 2.338(i).

G The Commission has set forth the following factors to be considered when deciding whether a settlement in an enforcement proceeding is in the public interest: (1) whether, in view of the risks and benefits of further litigation, the settlement result appears unreasonable; (2) whether the terms of the settlement appear incapable of effective implementation and enforcement; (3) whether the settlement jeopardizes the public health and safety; and (4) whether the settlement approval process deprives interested parties of meaningful participation. See *Sequoyah Fuels Corp. and General Atomics* (Gore, Oklahoma Site), CLI-97-13, 46 NRC 195, 209-23 (1997). We apply the *Sequoyah Fuels* factors in determining whether the proposed settlement in this licensing proceeding is in the public interest.

H The silence of 10 C.F.R. § 2.338(i) as to the process for determining whether a proposed settlement is in the “public interest” indicates that the Commission intended to leave it to the discretion of the Board to determine how to make this determination.

LBP-06-19 HYDRO RESOURCES, INC. (P.O. Box 777, Crownpoint, New Mexico 87313), Docket No. 40-8968-ML (ASLBP No. 95-706-01-ML); MATERIALS LICENSE; August 21, 2006; FINAL PARTIAL INITIAL DECISION (Phase II Challenges to In Situ Leach Mining Materials License Regarding Adequacy of Environmental Impact Statement)

A The National Environmental Policy Act, 42 U.S.C. §§ 4321-4370f, has two principal objectives. First, it ensures that an agency considers every significant aspect of the environmental impact of a proposed action (*Baltimore Gas & Electric Co. v. Natural Resources Defense Council, Inc.* 462 U.S. 87, 97 (1983)). Second, it ensures that the agency informs the public that it has, in fact, considered environmental concerns in its decisionmaking process (*ibid.*).

B NEPA requires a federal agency, before taking any action “significantly affecting the quality of the human environment,” to prepare a “detailed statement” (i.e., an environmental impact statement) — which must be made available to the public — discussing, *inter alia*, the environmental impact of the proposed action and possible alternatives (42 U.S.C. § 4332(2)(C) (2000)).

C The NRC’s regulations implementing NEPA are contained in 10 C.F.R. Part 51 and provide detailed instructions governing the preparation of a draft environmental impact statement and a final environmental impact statement. The Council on Environmental Quality (CEQ) also has promulgated regulations addressing NEPA compliance (42 U.S.C. § 4342 (2000); 40 C.F.R. Parts 1500-1518). Although the Commission is “not bound by CEQ regulations that it has not expressly adopted, [it] gives those regulations ‘substantial deference’” (*Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-02-25, 56 NRC 340, 348 n.22 (2002)).

D NEPA does “not require agencies to elevate environmental concerns over other appropriate considerations; rather, it require[s] only that the agency take a ‘hard look’ at the environmental consequences before taking a major action” (*Baltimore Gas & Elec. Co. v. NRDC*, 462 U.S. at 97). “If the adverse environmental effects of the proposed action are adequately identified and evaluated, the agency is not constrained by NEPA from deciding that other values outweigh the environmental costs” (*Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989)). Thus, “[NEPA] does not mandate particular results, but simply prescribes the necessary process” (*ibid.*).

E Cumulative impacts analysis has two possible prongs. First, it looks to whether “the proposed action’s impacts will be significantly enhanced by already existing environmental effects from prior actions” (*Hydro Resources, Inc.* (P.O. Box 15910, Rio Rancho, NM 87174), CLI-01-4, 53 NRC 31, 60 (2001)). Pursuant to this approach, a “cumulative impacts review examines ‘the impact on the environment which results from the incremental impact of the action, when added to other past, present, and reasonably foreseeable future actions’” (*ibid.*) (quoting 40 C.F.R. § 1508.7). Second, cumulative impacts analysis may look to whether the proposed action’s impacts will have interregional synergistic effects (*id.* at 57). This approach may be implicated “[w]hen several proposals for . . . actions that will have a cumulative or synergistic environmental impact upon a region are pending concurrently before an agency” (*ibid.*) (quoting *Kleppe v. Sierra Club*, 427 U.S. 390, 410 (1976)).

F Arguments that an intervenor fails — in derogation of 10 C.F.R. § 2.1233(c) — adequately to develop are treated as waived. See *Hydro Resources, Inc.* (P.O. Box 777, Crownpoint, New Mexico 87313), LBP-05-17, 62 NRC 77, 98 n.14 (2005); *accord, e.g., Williams v. Eastside Lumberyard and Supply Co.*,

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- 190 F. Supp. 2d 1104, 1114 (S.D. Ill. 2001); *Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant), ALAB-843, 24 NRC 200, 204 (1986).
- G Intervenor may not blithely incorporate by reference arguments that are ill-defined or undeveloped. It is not the duty of an adjudicative body to “dig through the reams of paper which [litigants] have deposited” to construct and develop their arguments (*HRI*, LBP-05-17, 62 NRC at 99 n.14).
- H The “adjudicatory record and Board decision (and, of course, any Commission appellate decisions) become, in effect, part of the [Final Environmental Impact Statement]” (*HRI*, CLI-01-4, 53 NRC at 53 (quoting *Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), CLI-98-3, 47 NRC 77, 89 (1998))).
- I Although the NRC Staff inadvertently omitted information regarding background radiation from the Final Environmental Impact Statement (FEIS), since the information was made available to the public in the Draft Environmental Impact Statement and was taken into account by the Staff in performing its NEPA analysis in the FEIS, the Intervenor was not prejudiced nor was the correctness of the Staff’s analysis undermined.
- J Pursuant to environmental justice principles, each agency should “identify and address, as appropriate, any ‘disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations’” (*HRI*, CLI-01-4, 53 NRC at 64).
- K That the Intervenor would have preferred that the Final Environmental Impact Statement (FEIS) contain additional details on any particular issue is not, standing alone, probative of the FEIS’s adequacy. “One can always flyspeck an FEIS to come up with more specifics and more areas of discussion that conceivably could have been included” (*HRI*, CLI-01-4, 53 NRC at 71). The salient question is whether the FEIS took the required “hard look” at the relevant environmental consequences (*see ibid.*).
- L The Final Environmental Impact Statement is required to include a description of the “underlying purpose and need” of a proposed project (40 C.F.R. § 1502.13). The benefits described by the project’s purpose and need are among the factors that are weighed against the project’s costs in striking the cost-benefit balance required by NEPA. *See Public Service Co. of Oklahoma* (Black Fox Station, Units 1 and 2), ALAB-573, 10 NRC 775, 804 (1979).
- M Subject to limited exceptions, “legal determinations made on appeal in a case are controlling precedent, becoming the ‘law of the case,’ for all later decisions in the same case” (*Hydro Resources, Inc.* (P.O. Box 777, Crownpoint, New Mexico 87313), CLI-06-11, 63 NRC 483, 488 (2006)).
- N The statement of purpose and need is independent of any specific project area. Therefore, a prior decision of the Commission adjudicating an intervenor’s challenge to the statement of purpose and need applies with equal force to all areas of a proposed project.
- O The proper inquiry for determining the sufficiency of the purpose and need statement is whether the Final Environmental Impact Statement, read as a whole, includes a correct and adequate description of the purpose and need of the “proposed action” (10 C.F.R. Part 51, Subpart A, App. A, § 4; *see HRI*, CLI-01-4, 53 NRC at 47).
- P The Final Environmental Impact Statement must contain a discussion of alternatives, which is considered to be “the heart of the environmental impact statement” (10 C.F.R. Part 51, Subpart A, App. A, § 5). This discussion shall identify “reasonable alternatives” and present the “environmental impacts of the proposal and the alternatives in comparative form” (*ibid.*). It also shall “include a final recommendation on the action to be taken” (*ibid.*).
- Q “When the purpose [of a proposed action] is to accomplish one thing, it makes no sense to consider the alternative ways by which another thing might be achieved” (*City of Angoon v. Hodel*, 803 F.2d 1016, 1021 (9th Cir. 1986), *cert. denied*, 484 U.S. 870 (1987)).
- R Because blending down highly enriched uranium for reactor fuel would not promote the primary purpose of HRI’s project — maintaining the viability of a dwindling domestic uranium industry — it is outside the scope of reasonable alternatives that must be considered under NEPA. *See Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), CLI-05-29, 62 NRC 801, 808 (2005) (NEPA imposes no obligation to “examine [alternatives] that would do nothing to satisfy this particular project’s goals”).
- S When an agency is asked to approve a private applicant’s proposed project, the agency may — taking into account the applicant’s economic goals — accord appropriate deference to the applicant’s proposed siting and design plans (*HRI*, CLI-01-4, 53 NRC at 55-56).
- T The adequacy of the no-action alternative discussion in a Final Environmental Impact Statement is governed by a rule of reason (*Claiborne*, CLI-98-3, 47 NRC at 97). The discussion “need not be

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

exhaustive or inordinately detailed” (*ibid.* (quoting *Farmland Preservation Ass’n v. Goldschmidt*, 611 F.2d 233, 239 (8th Cir. 1979))). “It is most simply viewed as maintaining the status quo” (*HRI*, CLI-01-4, 53 NRC at 54).

U Although the Intervenor would prefer the no-action alternative, “NEPA imposes no obligation to select the most environmentally benign alternative” (*HRI*, CLI-01-4, 53 NRC at 55 (citing *Robertson v. Methow Valley Citizens Council*, 490 U.S. at 350)).

V The environmental impact statement must provide a cost-benefit analysis among alternatives that, *inter alia*, “considers and weighs the environmental effects of the proposed action [and the] alternatives available for reducing or avoiding adverse environmental effects” (10 C.F.R. § 51.71(d)).

W When preparing an environmental impact statement, in addition to considering the adverse environmental impacts of a proposed action (42 U.S.C. § 4332(C)(ii)), the NRC Staff must consider measures to mitigate such impacts by examining “alternatives available for reducing or avoiding adverse environmental effects” (10 C.F.R. § 51.71(d)). “Mitigation must be discussed in sufficient detail to ensure that environmental consequences have been fairly evaluated” (*Neighbors of Cuddy Mountain v. United States Forest Service*, 137 F.3d 1372, 1380 (9th Cir. 1998)).

X The NRC Staff shall supplement an environmental impact statement (EIS) if: (1) “[t]here are substantial changes in the proposed action that are relevant to environmental concerns;” or (2) “[t]here are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.” 10 C.F.R. §§ 51.72(a), 51.92(a). “A Supplemental [EIS] is not necessary ‘every time new information comes to light after the EIS is finalized.’ . . . The new information must present ‘a seriously different picture of the environmental impact of the proposed project from what was previously envisioned.’” (*Hydro Resources, Inc.* (2929 Coors Road, Suite 101, Albuquerque, NM 87120), CLI-99-22, 50 NRC 3, 14 (1999) (quoting *Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 373 (1989), and *Sierra Club v. Froehelke*, 816 F.2d 205, 210 (5th Cir. 1987))).

Y Performance-based licensing “is fully consistent with . . . sound NEPA practice” (*HRI*, CLI-99-22, 50 NRC at 17), and “does not run counter to any agency mandate contained in the Atomic Energy Act or any established Commission regulation” (*id.* at 16). “It is simply an additional means through which the NRC can decrease the administrative burden of regulation while ensuring the continued protection of public health and safety” (*id.* at 16-17).

Z It is well established that “the [Final Environmental Impact Statement (FEIS)], in response to comments received, may supplement, refine, or otherwise adapt the project alternatives” (*HRI*, CLI-01-4, 53 NRC at 53). The Staff’s addition of mitigation measures to an FEIS is, thus, not only permissible, it is properly viewed as the Staff’s conscientious performance of its NEPA responsibilities. *See ibid.* (“[t]he FEIS . . . might typically add ‘mitigation measures’ to an alternative”).

AA Although federal permits and exemptions must be mentioned in the FEIS (10 C.F.R. §§ 51.90 and 51.71(c)), the absence of such mention does not perforce render the FEIS invalid.

LBP-06-20 ENTERGY NUCLEAR VERMONT YANKEE, LLC, and ENTERGY NUCLEAR OPERATIONS, INC. (Vermont Yankee Nuclear Power Station), Docket No. 50-271-LR (ASLBP No. 06-849-03-LR); LICENSE RENEWAL; September 22, 2006; MEMORANDUM AND ORDER (Ruling on Standing, Contentions, Hearing Procedures, State Statutory Claim, and Contention Adoption)

A In construing 10 C.F.R. § 51.53(c)(3)(i) and (iv), the Commission has stated: “even where the GEIS has found that a particular impact applies generically (Category 1), the applicant must still provide additional analysis in its Environmental Report if new and significant information may bear on the applicability of the Category 1 finding at its particular plant.” *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 11 (2001) (emphasis added). Likewise, “the applicant must provide additional analysis of even a Category 1 issue if new and significant information has surfaced.” *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-14, 55 NRC 278, 290 (2002).

B When preparing the Supplemental EIS, the Staff must consider any significant new information related to Category 1 issues. *See* 10 C.F.R. §§ 51.92(a)(2), 51.95(c)(3); Final Rule: “Environmental Review for Renewal of Nuclear Power Plant Operating Licenses,” 61 Fed. Reg. 28,467, 28,470 (June 5, 1996).

C The Commission has stated that the Staff’s final Supplemental EIS must take account of public comments concerning new and significant information on Category 1 findings. *See Turkey Point*, CLI-01-17, 54 NRC at 12; *McGuire/Catawba*, CLI-02-14, 55 NRC at 290-91.

DIGESTS

ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- D Even assuming that the petitioner's information regarding the dangers of high-density racking of spent fuel constitutes known "new and significant information," the Commission's decision in *Turkey Point*, CLI-01-17, 54 NRC 3, compels the Board to conclude that the failure of an applicant to include such new and significant information concerning a Category 1 issue in its environmental report, in violation of 10 C.F.R. § 51.53(c)(3)(iv), does not give rise to an admissible contention.
- E Even assuming that petitioner's information regarding the risks of terrorism related to the high-density racking of spent fuel in pools is "new and significant information" concerning a Category 1 matter and the failure of the applicant to include the information violates 10 C.F.R. § 51.53(c)(3)(iv), the same result obtains — the contention is not adjudicable under *Turkey Point*. If the petitioner wants to raise its concerns on this issue, it should pursue one of the three paths specified by the Commission. See *Turkey Point*, CLI-01-17, 54 NRC at 12.
- F The State of Vermont's citation to specific and potentially inconsistent portions of Entergy's documents, together with the declaration of its unchallenged expert, the State's official nuclear engineer, that "the concrete surface behind the steel shell will closely match the drywell ambient temperature" provide us with alleged "facts or expert opinion," which are "sufficient" to meet the requirements of 10 C.F.R. § 2.309(f)(1)(v) and (vi). The fact that Mr. Sherman's opinion is simple, straightforward, and fact-based does not mean that it is bald or conclusory.
- G At the contention admission stage, which is a lesser threshold than a merits determination or even a summary disposition ruling, the Board's purpose in applying 10 C.F.R. § 2.309(f)(1) is only to "ensure that the adjudicatory process is used to address real, concrete, specific issues that are appropriate for litigation." Final Rule: "Changes to the Adjudicatory Process," 69 Fed. Reg. 2182, 2202 (Jan. 14, 2004). The State of Vermont's Contention 1 meets this criterion, and its factual allegations and attached expert opinion suffice under 10 C.F.R. § 2.309(f)(1)(v) and (vi).
- H The State of Vermont's contention, presenting what it characterizes as "new and significant information" related to the timeline for the opening of a federal high-level waste geologic repository such as Yucca Mountain, is inadmissible because, although 10 C.F.R. § 51.53(c)(3)(iv) requires an applicant to include any new and significant information concerning Category 1 issues that it is aware of, the failure of an applicant to do so is simply not litigable, absent a waiver under 10 C.F.R. § 2.335. We need not, and do not, decide whether the information proffered by the State of Vermont is indeed "new and significant," or whether Entergy was, or should have been, aware of it.
- I Issues related to the environmental impact of onsite spent fuel storage after the license renewal term are covered by NRC's Waste Confidence Rule, 10 C.F.R. § 51.23(a) which specifies that the "Commission believes there is reasonable assurance that at least one mined geologic repository will be available within the first quarter of the twenty-first century, and sufficient repository capacity will be available within 30 years beyond the licensed life for operation of any reactor to dispose of the commercial high-level waste and spent fuel originating in such reactor and generated up to that time." Such issues are outside the scope of a license renewal proceeding because under 10 C.F.R. § 2.335(a) contentions may not challenge a regulation. See *Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 344-45 (1999).
- J The State of Vermont contention that the applicant has failed to identify non-safety-related systems, structures, and components in the security area whose failure could prevent satisfactory accomplishment of the functions of safety-related systems, structures, and components under 10 C.F.R. § 54.4(a)(2) is not admissible because, under controlling Commission rulings, security-related issues are not within the scope of a license renewal proceeding under 10 C.F.R. § 2.309(f)(1)(iii). See *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-26, 56 NRC 358, 364 (2002), and *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 1 and 2), CLI-04-36, 60 NRC 631, 638 (2004).
- K A petitioner has no right or need to request a "reservation of rights" to file additional contentions later. To the extent that the draft or final SEIS contains data or conclusions that differ significantly from the data or conclusions in the applicant's environmental report or in the GEIS, a petitioner is entitled to use 10 C.F.R. § 2.309(f)(2) as the grounds to file a new or amended contention. However, should the petitioner later file an environmental contention that is *not* based on new information, the contention can only be admitted upon a favorable balancing of the factors found in 10 C.F.R. § 2.309(c).
- L NRC will consider the fact that an applicant is subject to, and compliant with, other environmental laws and permits, such as a RCRA permit, Clean Air Act permit, or NPDES permit, but this does not

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- obviate the NEPA mandate that, prior to any major federal action significantly affecting the environment, NRC must perform an environmental impact statement assessing these subjects under 10 C.F.R. § 51.71(d).
- M We reject the assertion that section 511(c) of the Federal Water Pollution Control Act bars a contention alleging that the applicant or NRC failed to adequately assess water quality impacts of a proposed license amendment. While section 511(c) bars NRC from imposing or second-guessing effluent limitations or water quality certification requirements imposed by EPA or an authorized state, it does not bar NRC from addressing water quality matters in its assessment of the environmental impact of the license renewal. To the contrary, NEPA requires the NRC to do so.
- N The contention, which raises the question as to whether an NPDES permit that will expire before the proposed 20-year NRC license renewal would even take effect satisfies the requirements of 10 C.F.R. § 51.53(c)(3)(ii)(B), raises an admissible and material issue of law and fact.
- O The contention, which raises the question as to whether requirements of 10 C.F.R. § 51.53(c)(3)(ii)(B) supplement the more general requirements of 10 C.F.R. §§ 51.45(c) and 51.53(c), or instead displace and supplant the latter requirements, raises an admissible and material issue of interpretation and construction of the regulations.
- P The contention, which alleges that the applicant's plan to manage metal fatigue is too vague and is really only a "plan to develop a plan," raises an admissible and material issue as to whether the applicant has met the 10 C.F.R. § 54.21(c)(1)(iii) and (a)(3) requirement to "demonstrate that the effects of aging . . . will be adequately managed."
- Q The contention alleging that the applicant's proposed monitoring techniques are not adequate because they are based on computer models that were not benchmarked, which is supported by a sworn statement by an unchallenged expert who described his professional reasoning, satisfies the requirement that the petitioner provide sufficient evidence to show that there is a genuine dispute concerning a material issue, as required by 10 C.F.R. § 2.309(f)(1)(vi) and is not "bald or conclusory."
- R A reply may respond to any legal, logical, or factual arguments presented in an answer. While a petitioner who fails to satisfy the requirements of 10 C.F.R. § 2.309(f)(1) in its initial contention submission may not use its reply to rectify those inadequacies or to raise new arguments, a petitioner may use the reply to flesh out contentions that have already met the pleading requirements.
- S At the contention admissibility stage, the petitioner is not required to prove its contention or to provide all the evidence for its contention that may be required later in the proceeding. Rather, a petitioner is only required to provide sufficient information that "the Applicants are sufficiently put on notice so that they will know at least generally what they will have to defend against or oppose, and that there has been sufficient foundation assigned to warrant further exploration of [the] contention." *Kansas City Gas & Electric Co.* (Wolf Creek Generating Station, Unit 1), LBP-84-1, 19 NRC 29, 34 (1984).
- T The portions of the reply that respond to legal, logical, and factual arguments raised in the answers, such as Entergy's allegation that the treatment and resolution of the flow-accelerated corrosion issue during NRC's separate review of the extended power uprate application, are appropriate and the motion to strike them is denied.
- U Emergency planning concerns are not within the scope of a license renewal proceeding and therefore any such contention is not admissible under 10 C.F.R. § 2.309(f)(1)(iii). See, e.g., *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-05-24, 62 NRC 551, 560-61 (2005).
- V The selection of appropriate hearing procedures under 10 C.F.R. § 2.310 is a contention-by-contention matter, dependent on the nature of the specific issues involved in the contention. Thus, for example, a single adjudicatory proceeding may include some contentions litigated under Subpart L and others litigated under Subpart G or N.
- W Section 274(l) of the AEA does not give a state an absolute right of cross-examination, but states only that "the Commission . . . shall afford *reasonable opportunity* for State representatives to . . . interrogate witnesses." 42 U.S.C. § 2021(l) (emphasis added).
- X The Commission's statement in *Citizens Awareness Network, Inc. v. United States*, 391 F.3d 338 (1st Cir. 2004), that a petitioner's right to cross-examination (in Subpart L proceedings) whenever it "is necessary to ensure the development of an adequate record for decision," 10 C.F.R. § 2.1204(b)(3), is equivalent to a party's right to cross-examination under 5 U.S.C. § 556(d), leads the Board to conclude that Subpart L proceedings satisfy the AEA requirement that State representatives be given a "reasonable opportunity . . . to . . . interrogate witnesses." 42 U.S.C. § 2021(l).

DIGESTS

ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- Y Subpart L is not the automatic default procedure for adjudicatory hearings. If the provisions of 10 C.F.R. § 2.310(c)-(j) do not mandate the use of a specific procedure, then 10 C.F.R. § 2.310(b) specifies that the Board “may” use the Subpart L procedures. In this circumstance the Board, in its sound discretion, must determine the type of hearing procedures most appropriate for the specific contentions before it.
- Z We reject the assertion that section 247(l) of the AEA gives a state a right to offer evidence and interrogate witnesses, even if no hearing is otherwise being held and no party has submitted an admissible contention.
- AA It is sufficient for our purposes to hold that if a notice of adoption of a contention is filed under 10 C.F.R. § 2.309(f)(3) within a reasonable time (such as 20 days) after the contention has been filed and admitted, then it is deemed timely and is not subject to the nontimely factors specified in 10 C.F.R. § 2.309(c). Accordingly, we find that the DPS and NEC adoption notices were timely and the adoptions are granted.
- BB We have serious reservations about requiring the adopting party to demonstrate an independent ability to litigate a contention. No such requirement is imposed under new 10 C.F.R. § 2.309(f)(3). No such requirement is imposed on the original petitioner under 10 C.F.R. § 2.309(f)(1). Further, it is not clear how a Board could determine, in advance, whether an adopter has the “independent ability to litigate a contention” without impermissibly inquiring into the party’s finances and membership list. Any such requirement may not comport with section 189a of the AEA.
- CC As provided in 10 C.F.R. § 2.315(c), any interested state, local governmental body, and affected, federally recognized Indian Tribe that has not been admitted as a party under 10 C.F.R. § 2.309 will be given a reasonable opportunity to participate in any hearing conducted in this proceeding. The only timing requirement for giving notice of such participation states that a “representative shall identify those contentions on which it will participate in advance of any hearing held.”
- LBP-06-21 DALE L. MILLER, Docket No. IA-05-053 (ASLBP No. 06-846-02-EA); ENFORCEMENT; September 29, 2006; ORDER (Approving Proposed Settlement and Dismissing Proceeding)
- A In this challenge to an NRC Staff immediately effective enforcement order prohibiting a former Davis-Besse employee from working in NRC-licensed activities for 5 years, the Licensing Board finds a proposed settlement to be in the public interest, so that no adjudication is required.
- B In approving a proposed settlement between the NRC Staff and the subject of a very stringent enforcement order, the Board found no reason — where Staff had taken aggressive enforcement action in related respects — to look behind the Staff’s newly emerged judgment that lesser measures as to this individual are now seen as adequate for compliance and enforcement purposes.
- LBP-06-22 AMERGEN ENERGY COMPANY, LLC (Oyster Creek Nuclear Generating Station), Docket No. 50-0219-LR (ASLBP No. 06-844-01-LR); LICENSE RENEWAL; October 10, 2006; MEMORANDUM AND ORDER (Granting Petition To File a New Contention)
- A Petitioners who seek to introduce a new or amended contention based on allegedly new information that was previously unavailable must show that: (1) the information upon which the amended or new contention is based was not previously available; (2) the information upon which the amended or new contention is based is materially different than information previously available; and (3) the amended or new contention has been submitted in a timely fashion based on the availability of the subsequent information (10 C.F.R. § 2.309(f)(2)).
- B A petitioner’s failure to satisfy 10 C.F.R. § 2.309(f)(2) will mandate the rejection of a late-filed contention as nontimely, unless the petitioner demonstrates that the eight-factor balancing test in 10 C.F.R. § 2.309(c) militates in favor of considering the admissibility of the nontimely contention.
- C A petitioner who without reason fails to argue that a nontimely contention satisfies the eight-factor balancing test in 10 C.F.R. § 2.309(c) may be deemed as having waived that argument.
- LBP-06-23 ENTERGY NUCLEAR GENERATION COMPANY and ENTERGY NUCLEAR OPERATIONS, INC. (Pilgrim Nuclear Power Station), Docket No. 50-293-LR (ASLBP No. 06-848-02-LR); LICENSE RENEWAL; October 16, 2006; MEMORANDUM AND ORDER (Ruling on Standing and Contentions of Petitioners Massachusetts Attorney General and Pilgrim Watch)
- A In this license renewal proceeding the Licensing Board rules that the public interest organization, Pilgrim Watch, and the Massachusetts Attorney General, both of which have petitioned to intervene, have standing to participate in the proceeding; that Pilgrim Watch has submitted two admissible contentions and is therefore admitted as a party; but that the Attorney General has failed to submit an admissible contention and is therefore not admitted as a party to the proceeding.

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- B** A petitioner's standing, or right to participate in a Commission licensing proceeding, is grounded in section 189a of the Atomic Energy Act (AEA), which requires the NRC to provide a hearing "upon the request of any person whose interest may be affected by the proceeding," and which has been implemented in Commission regulations at 10 C.F.R. § 2.309.
- C** Judicial concepts of standing, to which licensing boards are to look in ruling on standing, provide the following guidance in determining whether a petitioner has established the necessary "interest" under 10 C.F.R. § 2.714(d)(1): To qualify for standing a petitioner must allege (1) a concrete and particularized injury that is (2) fairly traceable to the challenged action and (3) likely to be redressed by a favorable decision, criteria commonly referred to, respectively, as "injury in fact," causality, and redressability. The injury may be either actual or threatened, but must lie arguably within the "zone of interests" protected by the statutes governing the proceeding — here, either the AEA or the National Environmental Policy Act (NEPA).
- D** Individual petitioners living within 50 miles of a nuclear power plant may establish standing based on a longstanding "proximity presumption" principle in NRC adjudicatory proceedings, under which the elements of standing will be presumed to be satisfied if an individual lives within the zone of possible harm from a significant source of radioactivity, in the geographical area that might be affected by an accidental release of fission products, which has been defined in proceedings involving nuclear power plants as being within a 50-mile radius of such a plant.
- E** An organization that wishes to establish standing to intervene may do so by demonstrating either organizational standing or representational standing. In order to establish organizational standing it must show that the interests of the organization will be harmed by the proceeding. To establish representational standing it must (1) demonstrate that the interests of at least one of its members may be affected by the licensing action and would have standing to sue in his or her own right, (2) identify that member by name and address, and (3) show that the organization is authorized to request a hearing on behalf of that member. Public interest group Petitioner Pilgrim Watch is found to have established representational standing under these criteria.
- F** Under 10 C.F.R. § 2.309(d)(2) a State that wishes to be a party in a proceeding for a facility located within its boundaries need not address the standing requirements, and the Massachusetts Attorney General is therefore found to have standing to participate as the representative of the State of Massachusetts.
- G** To intervene in an NRC proceeding, a petitioner must, in addition to demonstrating standing, submit at least one contention meeting the requirements of 10 C.F.R. § 2.309(f)(1). Failure of a contention to meet any of the requirements of section 2.309(f)(1) is grounds for its dismissal.
- H** The "strict contention rule serves multiple interests," including, first, focusing the hearing process on real disputes susceptible of resolution in an adjudication (for example, a petitioner may not demand an adjudicatory hearing to attack generic NRC requirements or regulations, or to express generalized grievances about NRC policies); second, by requiring detailed pleadings, putting other parties in the proceeding on notice of the petitioner's specific grievances and thereby giving them a good idea of the claims they will be either supporting or opposing; and, third, helping to ensure that full adjudicatory hearings are triggered only by those able to proffer at least some minimal factual and legal foundation in support of their contentions.
- I** Although the February 2004 revision of the NRC procedural rules no longer incorporates provisions formerly found in 10 C.F.R. § 2.714(a)(3), (b)(1), which permitted the amendment and supplementation of petitions and filing of contentions after the original filing of petitions, they contain essentially the same substantive admissibility standards for contentions, which are now found in 10 C.F.R. § 2.309(f), and which are discussed in an Appendix to the Memorandum and Order that also addresses various case law interpreting the requirements in question.
- J** The regulatory authority relating to license renewal is found in 10 C.F.R. Parts 51 and 54. Part 54 concerns the "Requirements for Renewal of Operating Licenses for Nuclear Power Plants," and addresses safety-related issues in license renewal proceedings. Part 51, concerning "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions," addresses the environmental aspects of license renewal.
- K** As described by the Commission in the license renewal adjudicatory proceeding of *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3 (2001), the NRC license renewal safety review is focused "upon those potential detrimental effects of aging that are not routinely addressed by ongoing regulatory oversight programs," which the Commission considers

DIGESTS

ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

“the most significant overall safety concern posed by extended reactor operation,” and on “plant systems, structures, and components for which current [regulatory] activities and requirements may not be sufficient to manage the effects of aging in the period of extended operation.” An issue can be related to plant aging and still not warrant review at the time of a license renewal application, if an aging-related issue is “adequately dealt with by regulatory processes” on an ongoing basis. For example, if a structure or component is already required to be replaced “at mandated, specified time periods,” it would fall outside the scope of license renewal review.

- L The regulatory provisions relating to the environmental aspects of license renewal arise out of the requirement that the National Environmental Policy Act (NEPA), 42 U.S.C. § 4332(C), places on federal agencies to “include in every recommendation or report on . . . major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on . . . the environmental impact of the proposed action” As noted by the Supreme Court in *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989), the “statutory requirement that a federal agency contemplating a major action prepare such an environmental impact statement [EIS] serves NEPA’s ‘action-forcing’ purpose in two important respects. . . . It ensures that the agency, in reaching its decision, will have available, and will carefully consider, detailed information concerning significant environmental impacts; it also guarantees that the relevant information will be made available to the larger audience that may also play a role in both the decisionmaking process and the implementation of that decision.”
- M Although the requirements of NEPA are directed to federal agencies and thus the primary duties of NEPA fall on the NRC Staff in NRC proceedings, the initial requirement to analyze the environmental impacts of an action, including license renewal, is directed to applicants, and 10 C.F.R. § 51.53(c) requires a license renewal applicant to submit with its application an environmental report (ER), which “must contain a description of the proposed action, including the applicant’s plans to modify the facility or its administrative control procedures as described in accordance with § 54.21,” and “describe in detail the modifications directly affecting the environment or affecting plant effluents that affect the environment.”
- N Environmental issues identified as “Category 1,” or “generic,” issues in Appendix B to Subpart A of Part 51 are not within the scope of a license renewal proceeding. On these issues the Commission found that it could draw generic conclusions that are applicable to nuclear power plants generally. Thus these issues need not be repeatedly assessed on a plant-by-plant basis, and license renewal applicants may in their ERs refer to and adopt the generic environmental impact findings found in Table B-1, Appendix B, for all Category 1 issues, with the following exception: as required by 10 C.F.R. § 51.53(c)(3)(iv), ERs must also contain “any new and significant information regarding the environmental impacts of license renewal of which the applicant is aware,” even if this concerns a Category 1 issue.
- O The Commission was not able to make generic environmental findings on issues identified as “Category 2,” or “plant specific,” issues in Appendix B to Subpart A, and thus these issues are within the scope of license renewal, and applicants must provide a plant-specific review of them. These issues are characterized by the Commission as involving environmental impact severity levels that could differ significantly from plant to plant, or impacts for which additional plant-specific mitigation measures should be considered.
- P As required under 10 C.F.R. § 51.95(c), the Commission in 1996 adopted a “Generic Environmental Impact Statement for License Renewal of Nuclear Plants” (GEIS), published as NUREG-1437, which provides data supporting the table of Category 1 and 2 issues in Appendix B. Issuance of the 1996 GEIS was part of an amendment of the requirements of Part 51 undertaken by the Commission to establish environmental review requirements for license renewals “that were both efficient and more effectively focused.”
- Q Section 51.103 of 10 C.F.R. defines the requirements for the “record of decision” relating to any license renewal application, including the standard that the Commission, in making such a decision pursuant to Part 54, “shall determine whether or not the adverse environmental impacts of license renewal are so great that preserving the option of license renewal for energy planning decisionmakers would be unreasonable.”
- R Contentions that the Applicant’s ER fails to satisfy NEPA because it does not address the environmental impacts of severe spent fuel pool accidents, and fails to address severe accident mitigation alternatives (SAMAs) that would reduce the potential for spent fuel pool water loss and fires, are found inadmissible, on two grounds, neither of which is addressed by relevant rules, but both of which are mandated by relevant Commission precedent in the *Turkey Point* license renewal proceeding. First, the

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

Commission interpreted the term, "severe accidents," to encompass only reactor accidents and not spent fuel pool accidents, which fall within the analysis of the generic Category 1 issue of onsite storage of spent fuel. Second, the Commission has stated, notwithstanding the responsibility of an applicant in its ER (and the NRC Staff in the supplemental EIS that it must prepare) to address "new and significant information" relating even to Category 1 issues, that an alleged failure to address such "new and significant information" does not give rise to an admissible contention, absent a waiver of the rule in 10 C.F.R. § 51.53(c)(3)(i) that Category 1 issues need not be addressed in a license renewal, and no waiver was requested, because the matters at issue were not considered to involve "special circumstances with respect to the subject matter of the particular proceeding," as required by 10 C.F.R. § 2.335(b).

S A contention, that Applicant's aging management program is inadequate with regard to aging management of buried pipes and tanks that contain radioactively contaminated water because it does not provide for monitoring wells that would detect leakage, is admitted, based on its being within the scope of license renewal, and sufficiently supported as required under the contention admissibility standards of 10 C.F.R. § 2.309(f)(1). In litigation of this contention, scientific articles and reports, as well as the existence of leaks at other facilities and the response to those leaks, may, along with whatever other evidence and expert testimony is provided, be relevant evidence on the factual issues of whether Applicant's aging management program for underground pipes and tanks is satisfactory or deficient, and whether as a result the sort of monitoring wells that Petitioner seeks should be included in this program.

T A contention, that Applicant's aging management program fails to adequately assure the continued integrity of the drywell liner for the requested license extension, is denied, because it fails to meet the requirement of 10 C.F.R. § 2.309(f)(vi) that sufficient information be shown to demonstrate that a genuine dispute exists with the Applicant on a material issue of law or fact. Applicant provided a detailed application amendment on how it addressed the matter, and Petitioner failed to state with any specificity or provide information showing how the actions and proposed actions of the Applicant do not comply with the Interim Staff Guidance that Petitioner relied on in support of its contention. A licensing board is not permitted to draw any inferences on behalf of a petitioner, and in the absence of any more specific statement than has been provided, showing how the specific actions of Applicant fall short, or some nexus with problems at other plants, the contention is found to be lacking in its failure to show any genuine dispute on a material issue of fact relating to the matters at issue.

U A contention, that Applicant's severe accident mitigation alternatives (SAMA) analysis for the plant is deficient regarding input data on evacuation times, economic consequences, and meteorological patterns, resulting in incorrect conclusions about the costs versus benefits of possible mitigation alternatives such that further analysis is called for, is admitted. SAMAs are within the scope of license renewal as a Category 2 issue; Petitioner is found to have raised questions about input data that are material in these three areas because they concern significant health and safety issues that affect the outcome of the proceeding; and Petitioner is found to have adequately supported its contention under the contention admissibility standards of 10 C.F.R. § 2.309(f)(1).

V That some of the information provided by Petitioner on evacuation-related issues is apparently in conflict with some of the data taken by Applicant from the plant's emergency plan is found not to preclude its being considered, because, while emergency planning has been found in the *Turkey Point* proceeding to be "one of the *safety issues* that need not be re-examined within the context of license renewal," what is challenged in this contention is whether particular bits of information taken from such a plan are sufficiently accurate for use in computing the health and safety consequences of an accident, as an *environmental issue*. Because this challenge is focused upon the accuracy of certain assumptions and input data used in the SAMA computations and how they affect the validity of the SAMA analysis under NEPA, it is found to be appropriate in the three areas admitted.

W A contention, that new and significant information about cancer rates in communities around the plant shows that another 20 years of operations may result in greater offsite radiological impacts on human health than was previously known, is denied, because it attempts to challenge both generic findings made in the GEIS, and NRC dose limit rules, without a waiver. Petitioner conceded that it was not suggesting that radiological releases from the plant are greater than currently allowed by the NRC regulations, and thus its contention regarding radiological releases must necessarily be construed as a challenge to the current NRC dose limit regulations found in 10 C.F.R. Part 20, and without a waiver under 10 C.F.R. § 2.335, no request for which was submitted, such a challenge is impermissible in an adjudication proceeding.

DIGESTS

ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- LBP-06-24 DOMINION NUCLEAR NORTH ANNA, LLC (Early Site Permit for North Anna ESP Site), Docket No. 52-008-ESP (ASLBP No. 04-822-02-ESP); EARLY SITE PERMIT; October 24, 2006; MEMORANDUM AND ORDER (Granting Summary Disposition and Terminating Contested Proceeding)
- A Given the Applicant's amendment to its environmental report whereby it changed its cooling method for the proposed reactor from a once-through cooling water system that discharges heated water into the receiving water body to a no-discharge cooling system that uses a combination of wet and dry cooling towers, there remains no genuine dispute that there will be essentially no discharge of heated water, and therefore the Applicant is entitled to summary disposition as a matter of law.
- B The grant of the motion for summary disposition on the Intervenor's sole remaining contention terminates the contested portion of this proceeding for an Early Site Permit under Part 52. As an ESP permit is a type of construction permit, a mandatory hearing is required by Atomic Energy Act § 189a and thus the case will continue as an uncontested proceeding.
- LBP-06-25 DAVID GEISEN, Docket No. IA-05-052 (ASLBP No. 06-845-01-EA); ENFORCEMENT; October 31, 2006; MEMORANDUM AND ORDER (Ruling on Motion To Compel Production)
- A The NRC barred David Geisen, a former employee of the Davis-Besse Nuclear Power Station, from engaging in NRC-licensed activities for 5 years, effective immediately. After Mr. Geisen requested a hearing before the Licensing Board to contest the validity of that enforcement order, the NRC Staff gave him a copy of the Office of Investigations (OI) 2003 Report regarding the incident at issue, but redacted parts of the report, claiming "deliberative process" and law enforcement "personal privacy" privileges. On Mr. Geisen's motion to compel the Staff to produce the full, unredacted version, the Board (1) upholds the Staff's claim with respect to the deliberative process privilege but (2) rejects it as to the personal privacy privilege (because a protective order can fully preserve the modest privacy interests implicated).
- B Parties in NRC adjudications are generally entitled to obtain, through discovery and other pretrial activities, "the fullest possible knowledge of the issues and facts before trial." *Hickman v. Taylor*, 329 U.S. 495, 501 (1947). *See also* 10 C.F.R. § 2.705(b)(1).
- C Qualified privilege materials may be excluded from discovery, depending on the particular circumstances presented. The greater the interest protected by the privilege, the more compelling the need and the other circumstances must be to overcome it.
- D An assertion that material can be withheld must expressly state the specific privilege being claimed. A privilege which is not claimed is waived.
- E When materials are withheld from discovery, "sufficient information for assessing the claim of privilege or protected status of the documents" must be provided to the requesting party. 10 C.F.R. § 2.336(b)(5). Failure to do so in the future might well lead to consideration of rejection of the claimed privilege.
- F The general purpose of the deliberative process privilege is to protect frank agency deliberations from public scrutiny and thus to "prevent injury to the quality of agency decisions." *National Labor Relations Board v. Sears, Roebuck & Co.*, 421 U.S. 132, 151 (1975).
- G Purely factual material is not generally protected by the deliberative process privilege, but exceptions exist. These include (1) factual materials too intertwined with deliberative discussions and (2) summaries of factual materials compiled to assist in agency decisionmaking.
- H In order to earn recognition for the deliberative process privilege, a sufficiently high-ranking person must sign the affidavit asserting the privilege.
- I The affidavit asserting the deliberative process privilege should provide the basis for the withholding and a statement of specific harm, applicable to the circumstances of the case, that would result from disclosure.
- J The NRC's regulatory scheme for balancing privacy interests (arising in a law enforcement context) against the need for party discovery combines elements of both FOIA and the Federal Rules of Civil Procedure. Privacy interests are defined using FOIA's language but their weight is tempered by the capability in the discovery process of making limited disclosure to a litigant under a protective order instead of public disclosure. The privacy interest that would remain threatened after surrounding it with a protective order is weighed against the other party's need for disclosure.
- K The subject of the enforcement action has a property interest in his employment-related license sufficient to invoke the procedural protections of the Due Process Clause, the vindication of which invokes a public interest. *See Barry v. Barchi*, 443 U.S. 55, 64 (1979).

DIGESTS

ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- L There is an important public interest in the proper resolution of all aspects of what occurred at a nuclear facility when serious safety and communication issues are involved.
- M Although an initial position of protecting privacy may be founded on mere theoretical constructs, when a fact-based challenge is made, concrete or specific analysis is needed to effectively counter the challenge and to establish the privacy interests involved.
- N Where a protective order precludes public disclosure, the strength of the privacy interest diminishes because any threatened harm in releasing the information can be virtually eliminated.
- O With a confidential protection order in place, weighing the privacy invasion from public disclosure against a party's need for the materials is no longer appropriate. Instead, there is an assumption that disclosure only to the other parties will only minimally, if at all, harm that interest.
- P Both federal courts and NRC Boards will normally assume that protective orders will not be breached; to counter that assumption, the withholding party must show evidence of the likelihood of a breach.
- Q The universal understanding of relevance, applicable to the NRC Staff and others, includes matters that "appear[] reasonably calculated to lead to the discovery of admissible evidence." 10 C.F.R. § 2.705(b)(1). *See also* Fed. R. Civ. P. 26(b)(1).
- R The chilling effect upon frank government discussions can be just as great when the release is limited only to those involved in particular litigation as when the documents are released publicly.
- S Deliberative process protects several strong interests, including an agency's interest in preserving the integrity of its consultative functions and the public's interest in good government. These protected interests are so strong that federal courts and NRC adjudicators are generally unwilling to compel discovery of deliberative materials unless there is a particular and compelling reason for the privilege to be suspended.
- T The law generally recognizes a personal privacy interest not to have allegations of unlawful activity publicly disseminated after they have been shown to be insubstantial. But a privacy interest does not exist as a generalized theory; instead, it depends on such specific factors as the impact of the information's disclosure upon particular individuals and in particular circumstances.
- U When the investigation is open and notorious, the interview transcripts are not confidential, and the public has constructive knowledge that those interviewed had a sufficient relationship to the root problem to warrant being interviewed, the right of personal privacy being asserted is weak compared to the privacy rights in other "unsubstantiated allegation" circumstances.
- V The privacy interests for which protection is sought can be amply preserved by a protective order that limits the disclosures to those involved in this litigation and thus having a need to know.
- W Where the privilege and the need may be equally weak, but the privilege can be protected by other means, we return to the norms of full and open discovery, so that relevancy, not need, becomes the determinative standard.
- X The subject of an enforcement order may benefit from more knowledge and perspective about others' roles in an incident because it might help him put his actions in a transactional context that would lessen or eliminate his responsibility for any missteps.
- Y Although the subject of an NRC enforcement proceeding may attempt to take advantage of his discovery rights in the civil proceeding to obtain information also useful in his criminal proceeding, that is no reason to deny him that discovery because he asserted his Fifth Amendment right not to respond to discovery requests directed to him, even if other procedural consequences might flow from that action.
- LBP-06-26 STEVEN P. MOFFITT, Docket No. IA-05-054 (ASLBP No. 06-847-03-EA); ENFORCEMENT; December 13, 2006; ORDER (Approving Proposed Settlement and Dismissing Proceeding)
- A In this challenge to an NRC Staff immediately effective enforcement order prohibiting a former Davis-Besse employee from working in NRC-licensed activities for 5 years, the Licensing Board finds a proposed settlement to be in the public interest, so that no adjudication is required.
- B In order for a licensing board to review a settlement agreement for compliance with agency regulations, including 10 C.F.R. §§ 2.203 and 2.338, and to evaluate whether the agreement is plainly in the public interest, the wording of the agreement must be clear enough for the board to ascertain unambiguously what its terms signify.
- C The apparent inconsistency created by an unexplained lapse of several years between the Staff's completion of a thorough investigation and its initiation of an immediately effective enforcement order may jeopardize both public confidence in government decisionmaking and public protection from asserted safety threats, and may require an explanation if the immediate effectiveness of the order were to be challenged.

DIGESTS

ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- LBP-06-27 U.S. ARMY (Jefferson Proving Ground Site), Docket No. 40-8838-MLA (ASLBP No. 00-776-04-MLA); MATERIALS LICENSE AMENDMENT; December 20, 2006; MEMORANDUM AND ORDER (Determining Scope of Evidentiary Hearing)
- A Neither the Rules of Practice nor Commission precedent mandates the consideration at the threshold of every basis assigned for every contention advanced by the hearing requestor.
- B The Commission has made it clear that “[t]he adequacy of the applicant’s license application, not the NRC staff’s safety evaluation, is the safety issue in any licensing proceeding, and under longstanding decisions of the agency, contentions on the adequacy of the [content of the Safety Evaluation Report] are not cognizable in a proceeding.” 69 Fed. Reg. 2182, 2202 (Jan. 14, 2004).
- C The National Environmental Policy Act requires the preparation of an Environmental Impact Statement (EIS) for all “major Federal actions significantly affecting the quality of the human environment.” 42 U.S.C. § 4332(2)(C) (2000). Council on Environmental Quality regulations state that, in determining whether to prepare an EIS, the Federal agency shall prepare an Environmental Assessment, which will “briefly provide sufficient evidence and analysis for determining whether to prepare an [EIS] or a finding of no significant impact.” 40 C.F.R. § 1508.9(a)(1).
- D It might well be that, in order for a petitioner to raise an admissible contention with respect to a Staff finding of no significant impact, it need not demonstrate that there will in fact be a significant environmental impact as a consequence of the proposed action; however, it must “allege[] facts which, if true, show that the proposed project *may* significantly degrade some human environmental factor.” *Steamboaters v. FERC*, 759 F.2d 1382, 1392 (9th Cir. 1985).
- LBP-06-28 EXELON GENERATION COMPANY, LLC (Early Site Permit for Clinton ESP Site), Docket No. 52-007-ESP (ASLBP No. 04-821-01-ESP); EARLY SITE PERMIT; December 28, 2006; INITIAL DECISION (Uncontested Issues)
- A In this proceeding regarding the application of Exelon Generation Company, LLC (Exelon) for an Early Site Permit, under 10 C.F.R. Part 52, for its site in DeWitt County, Illinois, the Licensing Board sets forth its findings on certain uncontested safety and environmental matters relative to the Exelon application and authorizes the Director of Nuclear Reactor Regulation to issue Exelon an early site permit for the Clinton ESP site.
- B As provided in 10 C.F.R. § 52.39, an ESP allows a future applicant for a construction permit (“CP”), an operating license (“OL”), or a combined license (“CL” or “COL”), to seek early NRC review and approval of some siting and environmental issues, and therefore, to “bank” a site for up to 20 years in anticipation of its future reference in an application for a CP or COL. *See* 10 C.F.R. § 52.27.
- C Section 52.17 of 10 C.F.R. sets forth the required content of an ESP application. Section 52.17 also allows an ESP applicant to make a number of choices regarding the scope, and therefore the content, of its ESP application. One such choice relates to the development of an emergency plan (“EP”). Section 52.17(b)(2) states that an ESP applicant may propose for review and approval by the NRC (i) major features of its emergency plan, or (ii) a complete and integrated emergency plan.
- D An applicant may also, according to 10 C.F.R. § 52.17, choose to submit “a plan for redress of the site,” which if accepted as part of an approved ESP would allow an applicant to perform certain preconstruction activities (as defined by 10 C.F.R. § 50.10(e)(1)) at the site, without additional authorization.
- E The genesis of the mandatory hearing requirement is section 189a(1)(A) of the Atomic Energy Act of 1954 (AEA), which provides, in relevant part, that “[t]he Commission shall hold a hearing after thirty days’ notice and publication once in the Federal Register, on each application . . . for a construction permit for a [production or utilization] facility.” 42 U.S.C. § 2239(a). In the context of an Early Site Permit, Commission regulations implement the mandatory hearing requirement of section 189a through 10 C.F.R. § 52.21, which provides, in relevant part, that the Board shall “determine whether, taking into consideration the site criteria contained in 10 CFR part 100, a reactor, or reactors, having characteristics that fall within the parameters for the site[, and which meets the terms and conditions proposed by the Staff in the SER,] can be constructed and operated without undue risk to the health and safety of the public.” Additionally, 10 C.F.R. § 2.104(b) sets forth the Commission’s procedural regulations specifying the issues to be addressed in uncontested proceedings.
- F For *uncontested* license applications, section 52.21 and the notice requirements of section 2.104(b)(2) (and the Notice of Hearing itself) outline the Board’s obligation to “determine”: “(i) Without conducting a de novo evaluation of the application, whether the application and the record of the proceeding contain sufficient information, and the review of the application by the Commission’s staff has been adequate to

DIGESTS

ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

support affirmative findings on (b)(1)(i) through (iii) specified in [10 C.F.R. § 2.104] and a negative finding on (b)(1)(iv) specified in [10 C.F.R. § 2.104] proposed to be made and the issuance of the construction permit proposed by the Director of Nuclear Reactor Regulation or Director of Nuclear Material Safety and Safeguards, as appropriate, and (ii) If the application is for a construction permit for a nuclear power reactor, a testing facility, a fuel processing plant, a uranium enrichment facility, or other facility whose construction or operation has been determined by the Commission to have a significant impact on the environment, whether the review conducted by the Commission pursuant to the National Environmental Policy Act (NEPA) has been adequate.” 10 C.F.R. § 2.104(b)(2).

G Section 51.105(a)(1)(3) and the notice requirements of section 2.104(b)(3) (and the Notice of Hearing itself) outline the three NEPA-related matters the Board is required to address: “(i) Determine whether the requirements of section 102(2) (A), (C), and (E) of [NEPA] and subpart A of part 51 of this chapter have been complied with in the proceeding; (ii) Independently consider the final balance among conflicting factors contained in the record of the proceeding with a view to determining the appropriate action to be taken; and (iii) Determine whether the construction permit should be issued, denied, or appropriately conditioned to protect environmental values.” See 10 C.F.R. § 2.104(b)(3).

H Our regulations require the licensing board to perform two types of inquiries with respect to safety matters: *first*, “whether the application and the record of the proceeding contain sufficient information, . . . to support a negative finding on Safety Issue 1 (whether the issuance of an ESP will be inimical to the common defense and security or to the health and safety of the public), and an affirmative finding on Safety Issue 2 (whether, taking into consideration the site criteria contained in 10 CFR Part 100, a reactor, or reactors, having characteristics that fall within the parameters for the site, can be constructed and operated without undue risk to the health and safety of the public),” and *second*, “whether . . . the review of the application by the Commission’s staff has been adequate to support” those same findings. 68 Fed. Reg. 69,426, 69,427 (Dec. 12, 2003); see also CLI-05-17, 62 NRC 5, 39 (2005); 10 C.F.R. § 2.104(b).

I The Commission (a) advised that a board’s task is “to constitute a check on the understanding of the staff,” (b) cautioned that “‘truly independent review’ . . . does not mean that multiple reviews of the same *uncontested* issues — first by the NRC Staff, then by the ACRS, and finally by a licensing board — would be necessary to serve this purpose [of constituting a check on the understanding of the Staff],” and (c) summarized that “boards should conduct a simple ‘sufficiency’ review of uncontested issues.” CLI-05-17, 62 NRC at 39-40.

J Further clarifying how we are to approach this task, the Commission noted that with respect to uncontested proceedings — even as to the three “baseline” NEPA issues on which a Board is required under our regulations to make its own independent judgment — “the NRC Staff’s underlying technical and factual findings are not open to board reconsideration unless, after a review of the record, the board finds the NRC Staff review inadequate or its findings insufficient.” CLI-05-17, 62 NRC at 39-40. The Commission reminded the Boards that, although we are to ensure that the Staff made findings with reasonable support in logic and in fact, “[t]his is not to say that we expect our licensing boards to follow a cursory, hands-off approach On the contrary, . . . we anticipate that our boards will carefully probe those findings by asking appropriate questions and by requiring supplemental information when necessary” *Id.* at 40.

K We have interpreted our charge to be to determine whether the record enables us to conclude that the Staff had a reasonable basis for its conclusions, assuming that such a reasonable basis would be present where the Standard Review Plan (SRP) and applicable Regulatory Guides (or other guidance documents) were specifically followed, and where the facts underlying its determinations were clear and its decision logically flowed from those facts and the applicable regulatory guidance. Where the SRP had not been followed, no specific Regulatory Guide was applicable, a Regulatory Guide required adaptation, or the Staff’s logic was incomplete or unclear, the Board sought a thorough explanation of the Staff’s rationale for the process it ultimately adopted along with its conclusions, and examined that process and those conclusions to ensure they were well founded in fact and logic.

L By identifying areas of the Staff’s Standard Review Plan that were precisely, prescriptively followed, because following that prescriptive process would be reasonable and logical for both the Staff and the Applicant, and by giving reasonable deference to Staff determinations (as the Commission has advised, see CLI-05-17, 62 NRC at 34, 36) when that process was indeed followed, this Board was able, in the absence of obvious gaps in the logic of the Staff as set out in the record, to conclude for those areas that no further scrutiny would be required. In contrast, identification of those areas where there was (1) a deviation

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

from an SRP or from the methodologies set out in an ordinarily prescribed regulatory guidance document, or (2) no applicable regulatory guidance document, required that we more closely scrutinize the factual underpinnings of the Staff's and the Applicant's documentation and their conclusions.

M The Commission directed, in this regard, that "licensing boards must reach their own independent determination on uncontested NEPA 'baseline' questions — i.e., whether the NEPA process 'has been complied with,' what is the appropriate 'final balance among conflicting factors,' and whether the 'construction permit should be issued, denied or appropriately conditioned.'" CLI-05-17, 62 NRC at 45. In reaching these independent determinations, however, "boards should not second-guess underlying technical or factual findings by the NRC Staff," and "[t]he only exceptions to this would be if the reviewing board found the Staff review to be incomplete or the Staff findings to be insufficiently explained in the record." *Id.*

N Section 102(2)(A) of NEPA requires all federal agencies to "utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment." 42 U.S.C. § 4332(2)(A).

O Section 102(2)(C) of NEPA requires a federal agency to address in its environmental impact statement: (1) the environmental impact of the proposed action; (2) any adverse environmental effects which cannot be avoided should the proposal be implemented; (3) alternatives to the proposed action; (4) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity; and (5) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented. 42 U.S.C. § 4332(2)(C).

P NEPA section 102(2)(C) also requires that an agency "consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved." 42 U.S.C. § 4332(2)(C).

Q Section 102(2)(E) of NEPA requires a federal agency to "study, develop, and describe appropriate alternatives to the recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources." 42 U.S.C. § 4332(2)(E). At the ESP stage, NRC regulations expressly excuse an applicant from examination, in its environmental report, of the benefits of the proposed project, e.g., the need for power, or analysis regarding energy alternatives, and provide that the relevant regulations "may not be construed to require that . . . the draft or final environmental impact statement include an assessment of the benefits of the proposed action." 10 C.F.R. § 52.21.

LBP-07-1 SYSTEM ENERGY RESOURCES, INC. (Early Site Permit for Grand Gulf ESP Site), Docket No. 52-009-ESP (ASLBP No. 04-823-03-ESP); EARLY SITE PERMIT; January 26, 2007; INITIAL DECISION (Authorizing the Issuance of the Grand Gulf Early Site Permit)

A Under section 189a of the Atomic Energy Act (AEA), the Commission "shall hold a hearing . . . on each application under Section 103 or 104b for a construction permit for a facility." 42 U.S.C. § 2239(a)(1)(A) (2000). NRC regulations define Early Site Permits as "partial construction permits" and, as such, they are subject to the hearing requirements that are mandated under section 189a of the AEA and "to all procedural requirements in 10 C.F.R. Part 2 which are applicable to construction permits." 10 C.F.R. § 52.21.

B When a proceeding involving an application for a construction permit is uncontested the Board will not conduct a "*de novo* review"; rather it "conduct[s] a simple 'sufficiency' review of [the] uncontested issues." *Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), CLI-05-17, 62 NRC 5, 39 (2005). The Board will "inquire whether the NRC Staff performed an adequate review and made findings with reasonable support in logic and fact." *Id.*

C The Board "must narrow its inquiry to those topics or sections in [NRC] Staff documents that it deems most important and should concentrate on portions of the documents that do not on their face adequately explain the logic, underlying facts, and applicable regulations and guidance." *Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), CLI-06-20, 64 NRC 15, 21-22 (2006).

D With respect to matters involving safety — i.e., issues pursuant to the Atomic Energy Act — the Board will determine whether the application and the record of the proceeding contain sufficient information and the review of the application by the NRC Staff has been adequate to assure that: (1) the issuance of an ESP will not be inimical to the common defense and security or to the health and safety of the public (Safety Issue 1); and (2) taking into consideration the site criteria contained in 10 C.F.R. Part 100, a reactor, or reactors, having characteristics that fall within the parameters for the site, can be

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

constructed and operated without undue risk to the health and safety of the public (Safety Issue 2). 69 Fed. Reg. 2636 (Jan. 16, 2004).

E With respect to matters involving the environment — i.e., issues arising from the National Environmental Policy Act (NEPA) — the Board will: (1) determine whether the requirements of section 102(2)(A), (C), and (E) of NEPA and Subpart A of 10 C.F.R. Part 51 have been complied with in the proceeding; (2) independently consider the final balance among conflicting factors contained in the record of the proceeding with a view to determining the appropriate action to be taken; (3) determine, after considering reasonable alternatives, whether the ESP should be issued, denied, or appropriately conditioned to protect environmental values; (4) determine whether the record of these proceedings contains sufficient information to conclude that the NEPA review conducted by the NRC Staff has been adequate. 69 Fed. Reg. 2636 (Jan. 16, 2004).

F For purposes of the Environmental Impact Statement, the potential construction and operation of the Early Site Permit plant or plants is the proposed action that must be the focus of the Board’s review under the National Environmental Policy Act (42 U.S.C. § 4332(2)(C)).

G The NRC Staff is required to prepare an Environmental Impact Statement (EIS) during its review of an Early Site Permit (ESP) application (10 C.F.R. § 52.18) in accordance with 10 C.F.R. Part 51. The EIS must focus on the environmental effects of construction and operation of reactors that have the characteristics of the postulated site parameters, and must include an evaluation of alternatives to determine whether there are any obviously superior options to the proposed action. The Staff’s EIS analysis for the ESP need not, however, include an assessment of the benefits (e.g., need for power). *See* 10 C.F.R. §§ 52.17, 52.18.

H Even where an Early Site Permit does not authorize any construction activity, the NRC Staff is required by Council on Environmental Quality regulations to consider actions that are related to other actions that could lead to a significant impact on the environment. *See* 40 C.F.R. § 1508.27(b)(7); *see also* 10 C.F.R. § 51.10.

I The Board — in reaching its determinations on the “baseline” National Environmental Policy Act issues — will not second-guess the underlying technical or factual findings of the NRC Staff. When, however, the reviewing Board finds that the Staff’s review is incomplete or that the Staff findings lack sufficient explanation, it will make its own determination of technical and factual findings.

J Under section 102(2)(A) of the National Environmental Policy Act, agencies are required to use a “systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man’s environment.” 42 U.S.C. § 4332(2)(A).

K Under section 102(2)(C) of the National Environmental Policy Act, agencies are required to include a detailed statement on: (1) “the environmental impact of the proposed action”; (2) “any [unavoidable] adverse environmental effects”; (3) “alternatives to the proposed action”; (4) “the relationship between local short-term uses of man’s environment and the maintenance and enhancement of long-term productivity”; and (5) “irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.” 42 U.S.C. § 4332(2)(C)(i)-(v).

L Under section 102(2)(E) of the National Environmental Policy Act, agencies are required to “study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources.” 42 U.S.C. § 4332(E).

M In an uncontested proceeding for an Early Site Permit (ESP), the Board will independently consider the final balance among the conflicting factors, which include: (1) relative magnitude of the environmental impacts of the proposed action (i.e., construction and operation of one or more ESP base load nuclear plants at the proposed site) as compared to other energy, plant design, and site alternatives; (2) unavoidable adverse environmental impacts during construction and operation of the plant or plants and the mitigative actions proposed to minimize their effects; (3) potential cumulative impacts in the context of past, present, and future actions at the proposed site; (4) magnitude of the irreversible and irretrievable commitment of resources; and (5) relationship between short-term uses and long-term productivity of the human environment.

LBP-07-2 ENTERGY NUCLEAR VERMONT YANKEE, LLC, and ENTERGY NUCLEAR OPERATIONS INC. (Vermont Yankee Nuclear Power Station), Docket No. 50-271-OLA (ASLBP No. 04-832-02-OLA); OPERATING LICENSE AMENDMENT; February 26, 2007; INITIAL DECISION (Ruling on NEC Contention 3)

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- A Criterion XI of Appendix B to 10 C.F.R. Part 50 and 10 C.F.R. § 50.54(a)(1) require that each nuclear power plant implement a quality assurance program that includes “all testing required to demonstrate that the structures, systems and components will perform satisfactorily in service” and, pursuant to these requirements, the Staff normally requires that an applicant perform two large transient tests (a main steam isolation valve test and a generator load rejection test) before an extended power uprate can be granted. See NUREG-0800, “Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants,” Draft Revision 0 (Dec. 2002), § 14.2. In this case, the Intervenor challenged the Staff’s decision to exempt the Applicant from large transient testing. After hearing all of the evidence, the Board is persuaded that these large transient tests are not required to demonstrate that the structures, systems, and components of the Vermont Yankee Nuclear Power Station will perform satisfactorily in uprated service. Thus, the contention is denied.
- LBP-07-3 SOUTHERN NUCLEAR OPERATING COMPANY (Early Site Permit for Vogtle ESP Site), Docket No. 52-011-ESP (ASLBP No. 07-850-01-ESP-BD01); EARLY SITE PERMIT; March 12, 2007; MEMORANDUM AND ORDER (Ruling on Standing and Contentions)
- A In this 10 C.F.R. Part 52 proceeding regarding the application of Southern Nuclear Operating Company (SNC) for an early site permit (ESP) for an additional two reactors at the Vogtle Electric Generating Plant site, ruling on a petition filed jointly by five public interest organizations seeking to intervene to contest the SNC ESP request, the Licensing Board concludes that, having established the requisite standing and proffering two admissible environmental contentions, each of the Petitioners is admitted as a party to the proceeding.
- B In determining whether an individual or organization should be granted party status in a proceeding based on standing “as of right,” the agency has applied contemporaneous judicial standing concepts that require a participant to establish (1) it has suffered or will suffer a distinct and palpable injury that constitutes injury-in-fact within the zones of interests arguably protected by the governing statutes (e.g., the Atomic Energy Act of 1954 (AEA), the National Environmental Policy Act of 1969 (NEPA)); (2) the injury is fairly traceable to the challenged action; and (3) the injury is likely to be redressed by a favorable decision. See *Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-96-1, 43 NRC 1, 6 (1996).
- C In cases involving the possible construction or operation of a nuclear power reactor, proximity to the proposed facility has been considered sufficient to establish the requisite standing elements. See *Florida Power & Light Co.* (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325, 329 (1989).
- D When an entity seeks to intervene on behalf of its members, that entity must show it has an individual member who can fulfill all the necessary standing elements and who has authorized the organization to represent his or her interests. See *Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), CLI-00-20, 52 NRC 151, 163 (2000).
- E In assessing a petition to determine whether these elements are met, which a presiding officer must do even though there are no objections to a petitioner’s standing, the Commission has indicated that a presiding officer is to “construe the petition in favor of the petitioner.” *Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Georgia), CLI-95-12, 42 NRC 111, 115 (1995).
- F Section 2.309(f) of the Commission’s rules of practice specifies the requirements that must be met if a contention is to be deemed admissible. Specifically, a contention must provide (1) a specific statement of the legal or factual issue sought to be raised; (2) a brief explanation of its basis; (3) a concise statement of the alleged facts or expert opinions, including references to specific sources and documents, that support the petitioner’s position and upon which the petitioner intends to rely at hearing; and (4) sufficient information demonstrating that a genuine dispute exists in regard to a material issue of law or fact, including references to specific portions of the application that the petitioner disputes, or in the case when the application is alleged to be deficient, the identification of such deficiencies and supporting reasons for this belief. See 10 C.F.R. § 2.309(f)(1)(i), (ii), (v), and (vi). In addition, the petitioner must demonstrate that the issue raised in the contention is both “within the scope of the proceeding” and “material to the findings the NRC must make to support the action that is involved in the proceeding.” *Id.* § 2.309(f)(1)(iii)-(iv). Failure to comply with any of these requirements is grounds for dismissing a contention. See *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 325 (1999); see also *Arizona Public Service Co.* (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), CLI-91-12, 34 NRC 149, 155-56 (1991).
- G An adjudication is not the proper forum for challenging applicable statutory requirements or the basic structure of the agency’s regulatory process. *Philadelphia Electric Co.* (Peach Bottom Atomic Power

DIGESTS

ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20, *aff'd in part on other grounds*, CLI-74-32, 8 AEC 217 (1974). Similarly, a contention that attacks a Commission rule, or which seeks to litigate a matter that is, or clearly is about to become, the subject of a rulemaking, is inadmissible. *See* 10 C.F.R. § 2.335; *Potomac Electric Power Co.* (Douglas Point Nuclear Generating Station, Units 1 and 2), ALAB-218, 8 AEC 79, 85, 89 (1974). This includes contentions that advocate stricter requirements than agency rules impose or that otherwise seek to litigate a generic determination established by a Commission rulemaking. *See Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-01-6, 53 NRC 138, 159 (2001); *Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), LBP-93-1, 37 NRC 5, 29-30 (1993); *Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), LBP-82-106, 16 NRC 1649, 1656 (1982); *see also Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-96-7, 43 NRC 235, 251 (1996); *Arizona Public Service Co.* (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), LBP-91-19, 33 NRC 397, 410, *aff'd in part and rev'd in part on other grounds*, CLI-91-12, 34 NRC 149 (1991). By the same token, a contention that simply states the petitioner's views about what regulatory policy should be does not present a litigable issue. *See Peach Bottom*, ALAB-216, 8 AEC at 20-21 & n.33.

H All proffered contentions must be within the scope of the proceeding as defined by the Commission in its initial hearing notice and order referring the proceeding to the Licensing Board. *See* 10 C.F.R. § 2.309(f)(1)(iii); *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-00-23, 52 NRC 327, 329 (2000); *Duke Power Co.* (Catawba Nuclear Station, Units 1 and 2), ALAB-825, 22 NRC 785, 790-91 (1985). As a consequence, any contention that falls outside the specified scope of the proceeding must be rejected. *See Portland General Electric Co.* (Trojan Nuclear Plant), ALAB-534, 9 NRC 287, 289 n.6 (1979).

I It is the petitioner's obligation to present factual information and/or expert opinion necessary to support its contention. *See* 10 C.F.R. § 2.309(f)(1)(v); *Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Georgia), LBP-95-6, 41 NRC 281, 305, *vacated in part and remanded on other grounds*, CLI-95-10, 42 NRC 1, and *aff'd in part*, CLI-95-12, 42 NRC 111 (1995). While a Board may appropriately view a petitioner's supporting information in a light favorable to the petitioner, failure to provide such information regarding a proffered contention requires that the contention be rejected. *See Palo Verde*, CLI-91-12, 34 NRC at 155. In this connection, neither mere speculation nor bare or conclusory assertions, even by an expert, alleging that a matter should be considered will suffice to allow the admission of a proffered contention. *See Fansteel, Inc.* (Muskogee, Oklahoma Site), CLI-03-13, 58 NRC 195, 203 (2003). If a petitioner neglects to provide the requisite support for its contentions, it is not within the Board's power to make assumptions of fact that favor the petitioner, nor may the Board supply information that is lacking. *See Palo Verde*, CLI-91-12, 34 NRC at 155; *Duke Cogema Stone & Webster* (Savannah River Mixed Oxide Fuel Fabrication Facility), LBP-01-35, 54 NRC 403, 422 (2001); *Georgia Tech Research Reactor*, LBP-95-6, 41 NRC at 305.

J Providing any material or document as a basis for a contention, without setting forth an explanation of its significance, is inadequate to support the admission of the contention. *See Fansteel*, CLI-03-13, 58 NRC at 205. Along these lines, any supporting material provided by a petitioner, including those portions of the material that are not relied upon, is subject to licensing board scrutiny. *See Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), LBP-96-2, 43 NRC 61, 90 (1996), *rev'd in part on other grounds*, CLI-96-7, 43 NRC 235 (1996). Thus, the material provided in support of a contention will be carefully examined by a licensing board to confirm that it does indeed supply an adequate basis for the contention as asserted by the petitioner. *See Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), ALAB-919, 30 NRC 29, 48 (1989), *vacated in part on other grounds and remanded*, CLI-90-4, 31 NRC 333 (1990).

K Simply attaching material or documents as a basis for a contention, without setting forth an explanation of that information's significance, is inadequate to support the admission of the contention. *See Fansteel*, CLI-03-13, 58 NRC at 204-05. Along these lines, any supporting material provided by a petitioner, including those portions of the material that are not relied upon, is subject to Board scrutiny. *See Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), LBP-96-2, 43 NRC 61, 90 (1996), *rev'd in part on other grounds*, CLI-96-7, 43 NRC 235 (1996). Thus, the material provided in support of a contention will be carefully examined by the Board to confirm that on its face it does supply an adequate basis for the contention. *See Vermont Yankee Nuclear Power*

DIGESTS

ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- Corp.* (Vermont Yankee Nuclear Power Station), ALAB-919, 30 NRC 29, 48 (1989), *vacated in part on other grounds and remanded*, CLI-90-4, 31 NRC 333 (1990).
- L To be admissible, the regulations require that all contentions assert an issue of law or fact that is material to the outcome of a licensing proceeding, meaning that the subject matter of the contention must impact the grant or denial of a pending license application. See 10 C.F.R. § 2.309(f)(1)(iv). This requirement of materiality often dictates that any contention alleging deficiencies or errors in an application also indicate some significant link between the claimed deficiency and either the health and safety of the public or the environment. See *Yankee Nuclear*, LBP-96-2, 43 NRC at 75-76; see also *Pacific Gas and Electric Co.* (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), LBP-02-23, 56 NRC 413, 439-41 (2002), *petition for review denied*, CLI-03-12, 58 NRC 185, 191 (2003).
- M All properly formulated contentions must focus on the license application in question, challenging either specific portions of or alleged omissions from the application (including the Safety Analysis Report and the Environmental Report) so as to establish that a genuine dispute exists with the applicant on a material issue of law or fact. See 10 C.F.R. § 2.309(f)(1)(vi). Any contention that fails directly to controvert the application or that mistakenly asserts the application does not address a relevant issue can be dismissed. See *Sacramento Municipal Utility District* (Rancho Seco Nuclear Generating Station), LBP-93-23, 38 NRC 200, 247-48 (1993), *review declined*, CLI-94-2, 39 NRC 91 (1994); *Texas Utilities Electric Co.* (Comanche Peak Steam Electric Station, Unit 2), LBP-92-37, 36 NRC 370, 384 (1992).
- N Although licensing boards generally are to litigate “contentions” rather than “bases,” it has been recognized that “[t]he reach of a contention necessarily hinges upon its terms coupled with its stated bases.” *Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), ALAB-899, 28 NRC 93, 97 (1988), *aff’d sub nom. Massachusetts v. NRC*, 924 F.2d 311 (D.C. Cir.), *cert. denied*, 502 U.S. 899 (1991); see also *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-28, 56 NRC 373, 379 (2002).
- O A National Environmental Policy Act (NEPA) analysis relating to aquatic impacts must, as a practical matter, have a baseline from which to operate. See *American Rivers v. Federal Energy Regulatory Commission*, 201 F.3d 1186, 1195 n.15 (9th Cir. 2000). It is equally apparent, however, that nothing in the agency’s 10 C.F.R. Part 51 NEPA regulations, see 10 C.F.R. § 51.45(b) (environmental report (ER) must contain “description of the environment affected”), or the Staff’s ER preparation guidance regarding providing a description of the local environment, see Office of Standards Development, U.S. Nuclear Regulatory Commission [(NRC)], Preparation of [ERs] for Nuclear Power Stations, Regulatory Guide 4.2, at 2-3 to -4 (rev. 2, July 1976) (ADAMS Accession No. ML003739519), indicates exactly how, as a general matter, such a baseline is to be established.
- P The appropriate scope of the baseline for a project is a functional concept: an applicant must provide enough information and in sufficient detail to allow for an evaluation of important impacts. See Office of Nuclear Reactor Regulation, [NRC], “Standard Review Plans for Environmental Reviews for Nuclear Power Plants,” NUREG-1555, at 4.3.2-1 to -2 (Oct. 1999); Office of Nuclear Regulatory Research, [NRC], General Site Suitability Criteria for Nuclear Power Stations, Regulatory Guide 4.7, at 4.7-14 to -15 (rev 2, Apr. 1998) (ADAMS Accession No. ML003739894).
- Q No-action alternative discussions can be brief and can incorporate by reference other sections of an ER discussing the project’s adverse consequences. See *Hydro Resources, Inc.* (P.O. Box 15910, Rio Rancho, NM 87174), CLI-01-4, 53 NRC 31, 54 (2001) (“[f]or the ‘no action’ alternative, there need not be much discussion”); *Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), CLI-98-3, 47 NRC 77, 98 (1998) (“[w]e do not find the [final environmental impact statement’s (FEIS)] incorporation by reference approach unreasonable as such”).
- R Established case law teaches that, except for its overall NEPA balancing, the NRC can limit its analysis of aquatic impacts to those determined by the Environmental Protection Agency (EPA), see *New England Coalition on Nuclear Pollution v. NRC*, 582 F.2d 87, 98 (1st Cir. 1978), when EPA has analyzed an alternative technology extensively and made conclusions as to its suitability.
- S The NRC has made a commitment as part of its NEPA review process to strive to reach the environmental justice goals described in Executive Order 12898. See 69 Fed. Reg. 52,040, 52,041-42 (Aug. 24, 2004) (final Commission environmental justice policy statement). As the Commission previously has noted in reviewing environmental justice claims, “[a]dverse impacts that fall heavily on minority and impoverished citizens call for particularly close scrutiny.” *Claiborne Enrichment Center*, CLI-98-3, 47 NRC at 106. There are, however, two requirements necessary to implicate this close environmental justice

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

scrutiny. First, support must be presented regarding the alleged existence of adverse impacts or harm on the physical or human environment. Second, a supported case must be made that these purported adverse impacts could disproportionately affect poor or minority communities in the vicinity of the facility at issue. See 69 Fed. Reg. at 52,047.

- T The NRC requires that environmental justice contentions be based on the specific characteristics of a particular minority community. See *Claiborne Enrichment Center*, CLI-98-3, 47 NRC at 100.
- U It being well established that the Board cannot be expected to sift through reams of data to determine whether a contention is admissible, see *Georgia Tech Research Reactor*, LBP-95-6, 41 NRC at 305; *International Uranium (USA) Corp.* (Receipt of Material from Tonawanda, New York), LBP-98-21, 48 NRC 137, 142 n.7 (1998); *Tennessee Valley Authority* (Browns Ferry Nuclear Plant, Units 1 and 2), LBP-76-10, 3 NRC 209, 216 (1976), a nonselective citation is not consistent with the obligation to provide analyses and expert opinion supporting a contention.
- V NRC has expressed a commitment to considering cumulative impacts in its environmental justice analysis, making nearby nuclear facility-related harm an appropriate issue to consider cumulatively with any impacts from proposed reactors. See 69 Fed. Reg. at 52,042-43.
- W In accord with the environmental justice executive order, the NRC has obligated itself to address only the disproportionate distribution of “high and adverse” effects in its NEPA analysis. See *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-02-20, 56 NRC 147, 154 (2002).
- X While one of the central purposes of NEPA is information gathering and disclosure, information immaterial to the proceeding does not necessarily need to be included. See *Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), CLI-05-29, 62 NRC 801, 811 (2005) (“There may, of course, be mistakes in the [draft environmental impact statement (DEIS)], but in an NRC adjudication, it is intervenors’ burden to show their significance and materiality. Our boards do not sit to ‘flyspeck’ environmental documents or to add details or nuances.”); see also *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-02-25, 56 NRC 340, 349 (2002) (“NEPA does not call for examination of every conceivable aspect of federally licensed projects” (internal quotes omitted)).
- Y A challenge to an agency rule is not permitted in an agency adjudication. See 10 C.F.R. § 2.335(a); see also *Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), CLI-07-3, 65 NRC 13, 20 (2007) (contention seeking ER analysis of long-term effects of high-density pool spent fuel storage inappropriately challenges rule-based generic environmental findings for reactor life extension proceedings). The agency’s procedural rules do, however, offer an opportunity to request a waiver or exception to the application of a rule in a particular adjudicatory proceeding. See 10 C.F.R. § 2.335(b); see also *Vermont Yankee*, CLI-07-3, 65 NRC at 20.
- Z The Commission has the authority to enter case-specific procedural orders to facilitate the efficient resolution of issues before a licensing board. See *Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), CLI-88-9, 28 NRC 567, 569 (1988) (noting “the Commission’s inherent supervisory authority over the conduct of adjudicatory proceedings”); see also, e.g., *Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-04-3, 59 NRC 10, 16-21 (2004) (establishing general schedule for proceeding).
- AA Any Licensing Board merits litigation-based findings have the effect of amending or supplementing the FEIS. See *Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-06-15, 63 NRC 687, 707 n.91 (2006).
- BB If admitted contentions are resolved before the FEIS is issued so as to conclude the contested portion of a proceeding, an intervenor (or anyone else) could timely seek to litigate contentions regarding FEIS data or conclusions that differ significantly from the ER or the DEIS. See 10 C.F.R. § 2.309(c), (f)(2).
- LBP-07-4 PPL SUSQUEHANNA LLC (Susquehanna Steam Electric Station, Units 1 and 2), Docket Nos. 50-387-LR, 50-388-LR (ASLBP No. 07-851-01-LR-BD01); LICENSE RENEWAL; March 22, 2007; MEMORANDUM AND ORDER (Ruling on Standing and Contentions of Petitioner Eric Joseph Epstein)
- A In this license renewal proceeding the Licensing Board finds that Petitioner has standing to intervene but has not submitted an admissible contention, and that the proceeding must therefore be terminated.
- B A petitioner’s standing, or right to participate in a Commission licensing proceeding, is derived from section 189a of the Atomic Energy Act (AEA), which requires the NRC to provide a hearing “upon the request of any person whose interest may be affected by the proceeding,” and which has been implemented in Commission regulations as 10 C.F.R. § 2.309.

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- C Judicial concepts of standing, to which licensing boards are to look in ruling on standing, provide the following guidance in determining whether a petitioner has established the necessary “interest” under 10 C.F.R. § 2.309(d)(1): To qualify for standing a petitioner must allege (1) a concrete and particularized injury that is (2) fairly traceable to the challenged action and (3) likely to be redressed by a favorable decision, criteria commonly referred to, respectively, as “injury in fact,” causality, and redressability. The injury may be either actual or threatened, but must lie arguably within the “zone of interests” protected by the statutes governing the proceeding — here, either the Atomic Energy Act (AEA) or the National Environmental Policy Act (NEPA).
- D Individual petitioners living within 50 miles of a nuclear power plant may establish standing based on a longstanding “proximity presumption” principle in NRC adjudicatory proceedings, under which the elements of standing will be presumed to be satisfied if an individual lives within the zone of possible harm from a significant source of radioactivity, in the geographical area that might be affected by an accidental release of fission products; this has been defined in proceedings involving nuclear power plants as being within a 50-mile radius of such a plant. Petitioner is found to have established individual standing because, although he resides 6 miles outside the 50-mile zone, his work regularly takes him within the area and will likely continue to do so in view of his residence so close to the area.
- E An organization that wishes to establish standing to intervene may do so by demonstrating either organizational or representational standing. To establish organizational standing it must be shown that the interests of the organization will be harmed by the proceeding. To establish representational standing, (1) it must be demonstrated that the interests of at least one member who has standing to sue in his or her own right may be affected by the licensing action; (2) that member must be identified by name and address; and (3) it must be shown that the organization is authorized to request a hearing on behalf of that member. Petitioner is found not to have established standing on behalf of public interest group TMI Alert because (1) general policy interests alone are insufficient to establish organizational standing, and (2) although the group asserted to have members living within 50 miles of the plant, none were identified by name and address, and no showing was made that any such individuals authorized the organization or Petitioner to act on their behalf.
- F Petitioner’s motion to compel Applicant to take certain actions prior to license renewal application is denied on its merits; had Petitioner consulted with the other parties prior to filing his motion, as required under 10 C.F.R. § 2.323(b), this step would have corrected his oversight of the true situation regarding subjects of motion.
- G In ruling on Applicant’s motion to strike portions of Petitioner’s reply to Applicant’s and NRC Staff’s answers to the petition, the Licensing Board would not “strike from the record” any portions of the Petitioner’s reply, because any part of a record, whether or not appropriately considered in making any rulings, may become relevant in an appeal. The Board would not, however, in making contention admissibility rulings, consider any new issues or claims raised in the reply, unless they would constitute timely filings under 10 C.F.R. § 2.309(c), (f)(2); the Board would consider only “legitimate amplification” of the original contention that focused on the legal, logical, and factual arguments presented in the answers of the Applicant and Staff.
- H To intervene in an NRC proceeding, a petitioner must, in addition to demonstrating standing, submit at least one contention meeting the requirements of 10 C.F.R. § 2.309(f)(1). Failure of a contention to meet any of the requirements of section 2.309(f)(1) is grounds for its dismissal.
- I The “strict contention rule serves multiple interests,” including (1) focusing the hearing process on real disputes susceptible of resolution in an adjudication (for example, a petitioner may not demand an adjudicatory hearing to attack generic NRC requirements or regulations, or to express generalized grievances about NRC policies); (2) by requiring detailed pleadings, putting other parties in the proceeding on notice of the petitioners’ specific grievances and thereby giving them a good idea of the claims they will be either supporting or opposing; and (3) helping to ensure that full adjudicatory hearings are triggered only by those able to proffer at least some minimal factual and legal foundation in support of their contentions.
- J Although the February 2004 revision of the NRC procedural rules no longer incorporates all of the prior provisions, including some of those formerly found in 10 C.F.R. § 2.714(a)(3), (b)(1), which in the past permitted the amendment and supplementation of petitions and filing of contentions after the original filing of petitions, the new rules contain essentially the same substantive admissibility standards for contentions.

DIGESTS

ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- K Under 10 C.F.R. § 2.309(f)(1)(vi), requiring the provision of sufficient information to show a genuine dispute with the applicant on a material issue of law or fact, a petitioner must read pertinent portions of the license application, including the safety analysis report and the environmental report (ER); state the applicant's position and the petitioner's opposing view; and explain why petitioner disagrees with the applicant. If a petitioner does not believe these materials address a relevant issue, petitioner must explain why the application is deficient. A contention must directly controvert a position taken by the applicant in the application, and an allegation that some aspect of a license application is "inadequate" or "unacceptable" does not give rise to a genuine dispute unless it is supported by facts and a reasoned statement of why the application is unacceptable in some material respect.
- L Under 10 C.F.R. § 2.309(f)(1)(iv), a petitioner must demonstrate that the issue raised in the contention is material to the findings the NRC must make to support the action that is involved in the proceeding; the standards defining the findings the NRC must make to support a license renewal are set forth in 10 C.F.R. § 54.29.
- M Under 10 C.F.R. § 2.309(f)(1)(iii), a contention must allege facts sufficient to establish that it falls directly within the scope of a proceeding. The scope of a license renewal proceeding is addressed, with regard to safety-related issues, in 10 C.F.R. Part 54, and, with regard to environmental issues, in 10 C.F.R. Part 51.
- N A contention that challenges any Commission rule or applicable statutory requirement is outside the scope of the proceeding. A petitioner may, however, within the adjudicatory context submit a request for waiver of a rule under 10 C.F.R. § 2.335, and outside the adjudicatory context file a petition for rulemaking under 10 C.F.R. § 2.802 or a request that the NRC Staff take enforcement action under 10 C.F.R. § 2.206.
- O As addressed in 10 C.F.R. Part 54 and described by the Commission in *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3 (2001), the NRC license renewal safety review is focused "upon those potential detrimental effects of aging that are not routinely addressed by ongoing regulatory oversight programs" (*id.* at 7), which the Commission considers "the most significant overall safety concern posed by extended reactor operation" (*id.*), and on "plant systems, structures, and components for which current [regulatory] activities and requirements may not be sufficient to manage the effects of aging in the period of extended operation" (*id.* at 10). An issue can be related to plant aging and still not warrant review at the time of a license renewal application, if an aging-related issue is "adequately dealt with by regulatory processes" on an ongoing basis. For example, if a structure or component is already required to be replaced "at mandated, specified time periods," it would fall outside the scope of license renewal review.
- P The regulatory provisions of 10 C.F.R. Part 51, relating to the environmental aspects of license renewal, arise out of the requirement that the National Environmental Policy Act (NEPA), 42 U.S.C. § 4332(C), places on federal agencies to "include in every recommendation or report on . . . major federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on . . . the environmental impact of the proposed action . . ." As noted in *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989), the "statutory requirement that a federal agency contemplating a major action prepare such an environmental impact statement [EIS] serves NEPA's 'action-forcing' purpose in two important respects. . . . It ensures that the agency, in reaching its decision, will have available, and will carefully consider, detailed information concerning significant environmental impacts; it also guarantees that the relevant information will be made available to the larger audience that may also play a role in both the decisionmaking process and the implementation of that decision."
- Q Although the requirements of NEPA are directed to federal agencies and thus the primary duties of NEPA fall on the NRC Staff in NRC proceedings, the initial requirement to analyze the environmental impacts of an action, including license renewal, is directed to applicants, and 10 C.F.R. § 51.53(c) requires a license renewal applicant to submit with its application an environmental report (ER), which "must contain a description of the proposed action, including the applicant's plans to modify the facility or its administrative control procedures as described in accordance with § 54.21," and "describe in detail the modifications directly affecting the environment or affecting plant effluents that affect the environment."
- R Environmental issues identified as "category 1," or "generic," issues in 10 C.F.R. Part 51, Subpart A, Appendix B, are not within the scope of a license renewal proceeding. On these issues the Commission found that it could draw generic conclusions that are applicable to nuclear power plants generally. Thus these issues need not be repeatedly assessed on a plant-by-plant basis, and license renewal applicants may in their ERs refer to and adopt the generic environmental impact findings found in Table B-1, Appendix

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- B, for all Category 1 issues, with the following exception: As required by 10 C.F.R. § 51.53(c)(3)(iv), ERs must also contain “any new and significant information regarding the environmental impacts of license renewal of which the applicant is aware,” even if this concerns a Category 1 issue; but this is not a proper subject for a contention absent a waiver of the rule in 10 C.F.R. § 51.53(c)(3)(i) that Category 1 issues need not be addressed in a license renewal.
- S The Commission was not able to make generic environmental findings on issues identified as “Category 2,” or “plant specific,” issues in 10 C.F.R. Part 51, Subpart A, Appendix B, and thus these issues are within the scope of license renewal, and applicants must provide a plant-specific review of them. These issues are characterized by the Commission as involving environmental impact severity levels that could differ significantly from plant to plant, or impacts for which additional plant-specific mitigation measures should be considered.
- T As required under 10 C.F.R. § 51.95(c), the Commission in 1996 adopted a “Generic Environmental Impact Statement for License Renewal of Nuclear Plants” (GEIS), published as NUREG-1437, which provides data supporting the table of Category 1 and 2 issues in Appendix B. Issuance of the 1996 GEIS was part of an amendment of the requirements of Part 51 undertaken by the Commission to establish environmental review requirements for license renewals “that were both efficient and more effectively focused.”
- U Section 51.103 of 10 C.F.R. defines the requirements for the “record of decision” relating to any license renewal application, including the standard that the Commission, in making such a decision pursuant to Part 54, “shall determine whether or not the adverse environmental impacts of license renewal are so great that preserving the option of license renewal for energy planning decisionmakers would be unreasonable.”
- V A contention that Applicant failed to provide requisite data necessary to show it could maintain and service financial obligations inherited from the prior owner of a plant is denied, because Petitioner did not demonstrate that it met the scope, materiality, and genuine dispute requirements of 10 C.F.R. § 2.309(f)(1)(iii), (iv), and (vi), and the contention did not take into account financial assurances Applicant was required to provide as part of an earlier license transfer proceeding.
- W A contention that Applicant failed to address various water use and indigenous aquatic issues is denied, because it was unsupported by any discussion of the sections of the ER addressing consumptive use of water, and because it did not show any specific or genuine dispute with these or any other section of the Application. Moreover, the plant in question is not the type of plant for which any Category 2 “aquatic ecology” items apply.
- X The mere posing of questions does not provide sufficient support to demonstrate a genuine dispute under 10 C.F.R. § 2.309(f)(1)(vi).
- Y A contention that Applicant’s demographic profile was flawed and incomplete and failed to consider the aging population and workforce and impacts on social services, emergency planning, and other matters, is denied, because it did not address any issues involving the aging of any relevant plant systems, structures, or components, or any aging-management issues, nor did it fall within any Category 2 environmental issue, or controvert or challenge in any way the portion of the ER that addressed asserted Category 2 offsite land use issues.
- Z A contention alleging flawed tax analysis is denied because it is not within the scope of license renewal.
- AA A contention asserting violation of various emergency planning issues is denied because it is not within the scope of license renewal. Although some input data for severe accident mitigation alternatives analysis relating to emergency evacuation issues may be challenged in a license renewal proceeding, in this case Petitioner did not provide sufficient information on any such issues to show a genuine dispute with the Applicant.
- BB Judges are ethically required to base their rulings solely on the facts and law applicable in any given case, and thus, while licensing boards may reasonably accommodate *pro se* petitioners who are not technically perfect in their pleading, such parties must still meet the basic requirements of the contention admissibility rules, and if these are not met boards may not “fill in” any missing support but rather are legally required to deny such contentions. A board’s responsibility to make contention admissibility rulings based on existing law and on what is provided by a petitioner in support of a contention is not suspended when a petitioner may have failed to comply with all relevant requirements as a result of not having a lawyer and not being skilled in the law himself, in part also because of requirements that a petitioner show

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

“at least some minimal factual and legal foundation” for a hearing focused on “real disputes susceptible of resolution in an adjudication.”

LBP-07-5 SHIELDALLOY METALLURGICAL CORPORATION (Amendment Request for Decommissioning of the Newfield, New Jersey Facility), Docket No. 40-7102-MLA (ASLBP No. 07-852-01-MLA-BD01); MATERIALS LICENSE AMENDMENT; March 28, 2007; MEMORANDUM AND ORDER (Ruling on Hearing Requests)

A A hearing requestor must demonstrate the existence of the requisite standing to raise questions regarding the acceptability of the particular proposal at hand. To that end, the Rules require that the requestor set forth, *inter alia*, his or her interest in the proceeding, as well as the possible effect that any order or decision entered therein might have upon that interest. 10 C.F.R. § 2.309(d)(1).

B The Commission has long applied the test that is employed in the federal courts in resolving standing issues — i.e., the requestor must allege “a concrete and particularized injury that is fairly traceable to the challenged action and is likely to be redressed by a favorable decision.” *Cleveland Electric Illuminating Co.* (Perry Nuclear Power Plant, Unit 1), CLI-93-21, 38 NRC 87, 92 (1993) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992)).

C In the case of governmental entities, status as a party is not a condition precedent to participation in NRC adjudicatory proceedings. By virtue of 10 C.F.R. § 2.315(c), an interested state or political subdivision thereof that has not become a party to the proceeding must be accorded a reasonable opportunity to participate, through a single representative, in the hearing of one or more of the admitted contentions.

D Although it is clearly established in the Commission’s regulations and case law that a state or local governmental body has standing to intervene in a proceeding for a facility that is located within its boundaries, the same does not hold true for individual legislators wishing to participate as a party on behalf of unnamed constituents. Rather, licensing boards have consistently ruled that one does not acquire standing as a consequence of being a member of a legislative tribunal. See *Babcock & Wilcox* (Apollo, Pennsylvania Fuel Fabrication Facility), LBP-92-35, 36 NRC 355, 358 n.9 (1992); *Combustion Engineering, Inc.* (Hematite Fuel Fabrication Facility), LBP-89-23, 30 NRC 140, 145 (1989); *General Electric Co.* (GE Test Reactor, Vallecitos Nuclear Center), LBP-79-28, 10 NRC 578, 582-83 (1979).

E As the Commission has stressed on numerous occasions, “the contention rule is strict by design” (*Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 NRC 349, 358 (2001); *Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP site), CLI-05-29, 62 NRC 801, 808 (2005)), and does “not permit the filing of a vague, unparticularized contention, unsupported by affidavit, expert, or documentary support.” *North Atlantic Energy Service Corp.* (Seabrook Station, Unit 1), CLI-99-6, 49 NRC 201, 219 (1999) (citation and internal quotation marks omitted).

F While it is true that, at the time contentions are filed, a petitioner is not required to have developed the entire factual record on which it intends to rely at a hearing, even in the case of a *pro se* litigant some level of factual or expert support must be furnished.

LBP-07-6 USEC INC. (American Centrifuge Plant), Docket No. 70-7004-ML (ASLBP No. 05-838-01-ML); MATERIALS LICENSE; April 13, 2007; INITIAL DECISION (Authorizing the Issuance of the American Centrifuge Plant License)

A Section 193(b)(1) of the Atomic Energy Act of 1954, as amended, requires that for license applications for uranium enrichment facilities, “the [Nuclear Regulatory] Commission shall conduct a single adjudicatory hearing on the record with regard to the licensing of the construction and operation of a uranium enrichment facility.” 42 U.S.C. § 2243(b) (2000). Sections 70.23a and 70.31(e) of 10 C.F.R. implement this mandate.

B When a proceeding involving an application for a construction permit is uncontested the Board will not conduct a “*de novo* review,” rather it “conduct[s] a simple ‘sufficiency’ review of [the] uncontested issues.” *Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), CLI-05-17, 62 NRC 5, 39 (2005). The Board will “inquire whether the NRC Staff performed an adequate review and made findings with reasonable support in logic and fact.” *Id.*

C The Board “must narrow its inquiry to those topics or sections in [NRC] Staff documents that it deems most important and should concentrate on portions of the documents that do not on their face adequately explain the logic, underlying facts, and applicable regulations and guidance.” *Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), CLI-06-20, 64 NRC 15, 21-22 (2006).

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- D With respect to matters involving safety — i.e., issues pursuant to the Atomic Energy Act — Boards must determine whether the application and the record of the proceeding contain sufficient information and the review of the application by the NRC Staff has been adequate to support findings pursuant to 10 C.F.R. §§ 30.33, 40.32, and 70.23. 69 Fed. Reg. 61,411 (Oct. 18, 2004).
- E With respect to matters involving the environment — i.e., issues arising from the National Environmental Policy Act (NEPA) — Boards must: (1) determine whether the review conducted by the NRC Staff pursuant to 10 C.F.R. Part 51 has been adequate; (2) determine whether the requirements of section 102(2)(A), (C), and (E) of NEPA and Subpart A of 10 C.F.R. Part 51 have been complied with in the proceeding; (3) independently consider the final balance among conflicting factors contained in the record of the proceeding with a view to determining the appropriate action to be taken; and (4) determine whether a license should be issued, denied, or appropriately conditioned to protect the environment. 69 Fed. Reg. 61,411-12 (Oct. 18, 2004).
- F Nuclear Regulatory Commission Issuances (NUREG) and Regulatory Guides (RG) serve as guidance and do not prescribe requirements. They are not substitutes for regulations and are not binding authority. *See Curators of the University of Missouri* (TRUMP-S Project), CLI-95-1, 41 NRC 71, 98 (1995); *Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant), ALAB-852, 24 NRC 532, 544-45 (1986). A Board's review focuses on compliance with the regulations, not compliance with a particular NUREG or RG.
- G In accordance with 10 C.F.R. §§ 40.14 and 70.17, an exemption can be granted if it is authorized by law and will not endanger life or property or the common defense and security, and is otherwise in the public interest.
- H It may be inferred that an exemption is implicitly "authorized by law" if all of the conditions for granting the exemption are met (i.e., will not endanger life or property or the common defense and security, and is otherwise in the public interest) and no other provision prohibits, or otherwise restricts, its application. To do otherwise would render these two exemption provisions meaningless, which violates elementary rules of construction that the language of a regulation should not be read to destroy itself (*Citizens Bank of Maryland v. Strumpf*, 516 U.S. 16, 20 (1995)) and a provision should not be read in a way that is inconsistent with its purpose. *Eli Lilly & Co. v. Medtronic, Inc.*, 496 U.S. 661, 668-69 (1990); *Gwaltney of Smithfield, Ltd. v. Chesapeake Bay Foundation, Inc.*, 484 U.S. 49, 59 (1987).
- I The NRC has traditionally read the language "authorized by law" to be the functional equivalent of "not prohibited by law." *See Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), DD-90-8, 32 NRC 469, 488 (1990); *Cleveland Electric Illuminating Co.* (Perry Nuclear Power Plant, Units 1 and 2), ALAB-841, 24 NRC 64, 99 (1986); *United States Department of Energy* (Clinch River Breeder Reactor Plant), CLI-82-83, 16 NRC 412, 422-25 (1982); *Washington Public Power Supply System* (WPPSS Nuclear Project Nos. 3 and 5), CLI-77-11, 5 NRC 719, 722 (1977).
- J Pursuant to 10 C.F.R. Part 51, the NRC Staff's Environmental Impact Statement (EIS) must discuss the potential environmental impacts of the proposed American Centrifuge Plant, including an evaluation of alternatives to determine whether there are any obviously superior options to the proposed action. In addition, the EIS analysis must compare the environmental costs of the facility to the Staff's assessment of the benefits derived from the additional domestic supply of enriched uranium and the presence of upgraded enrichment technology in the United States.
- K For purposes of the Environmental Impact Statement, the potential construction, operation, and decommissioning of the American Centrifuge Plant is the proposed action that must be the focus of the Board's review under the National Environmental Policy Act (42 U.S.C. § 4332(2)(C)).
- L Under section 102(2)(A) of the National Environmental Policy Act, agencies are required to use a "systematic, interdisciplinary, approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment." 42 U.S.C. § 4332(2)(A).
- M Under section 102(2)(C) of the National Environmental Policy Act, agencies are required to include a detailed statement on: (1) "the environmental impact of the proposed action"; (2) "any [unavoidable] adverse environmental effects"; (3) "alternatives to the proposed action"; (4) "the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity"; and (5) "irreversible and ir retrievable commitments of resources which would be involved in the proposed action should it be implemented." 42 U.S.C. § 4332(2)(C)(i)-(v).

DIGESTS

ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- N Under section 102(2)(E) of the National Environmental Policy Act, agencies are required to “study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources.” 42 U.S.C. § 4332(2)(E).
- O In performing its National Environmental Policy Act review, the Board will independently consider the final balance among the conflicting factors, which include: (1) the relative magnitude of the environmental impacts of the American Centrifuge Plant (ACP) as compared to other site locations, enrichment technologies, and depleted uranium conversion and disposal alternatives; (2) unavoidable adverse environmental impacts during construction and operation of the ACP and the mitigative actions proposed to minimize their effects; (3) potential cumulative impacts in the context of past, present, and future actions for both local (place-based) and national activities; (4) the magnitude of the irreversible and irretrievable commitments of resources; and (5) the relationship between short-term uses and long-term productivity of the human environment.
- P The Licensing Board’s Initial Decision directing the issuance of a license to construct and operate a uranium enrichment facility is immediately effective. 10 C.F.R. § 2.340.
- LBP-07-7 U.S. ARMY (Jefferson Proving Ground Site), Docket No. 40-8838-MLA (ASLBP No. 00-776-04-MLA); MATERIALS LICENSE AMENDMENT; May 1, 2007; MEMORANDUM AND ORDER (Denying Motion of Save the Valley, Inc. To Admit Additional Contention and Supporting Bases)
- LBP-07-8 SHIELDALLOY METALLURGICAL CORPORATION (License Amendment Request for Decommissioning of the Newfield, New Jersey Facility), Docket No. 40-7102-MLA (ASLBP No. 07-852-01-MLA-BD01); MATERIALS LICENSE AMENDMENT; June 18, 2007; MEMORANDUM AND ORDER (Addressing Filings of the Parties Directed by Commission in CLI-07-20)
- LBP-07-9 DOMINION NUCLEAR NORTH ANNA, LLC (Early Site Permit for North Anna ESP Site), Docket No. 52-008-ESP (ASLBP No. 04-822-02-ESP); EARLY SITE PERMIT; June 29, 2007; INITIAL DECISION
- A The role of the Board in complying with the mandate of the Atomic Energy Act § 189 is to independently evaluate the record and the adequacy of the Staff’s review and then to decide six fundamental issues that are specified by the law and regulations.
- B For three issues (two under AEA and one under the NEPA) the Board must review the *sufficiency of the record* and the *sufficiency of the NRC Staff’s review*, and decide if they are *adequate to support the Staff’s proposed findings*. See 10 C.F.R. § 2.104(b)(2). For these issues, the Board’s role is analogous to that of an appellate court applying the “substantial evidence” test. *Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), CLI-05-17, 62 NRC 5, 39 (2005) (*Clinton I*).
- C For the “NEPA Baseline Issues,” the Board has a “special responsibility” and the scope of the Board’s review is significantly different. *Clinton I*, 62 NRC at 30. For these issues the Board is not merely reviewing the sufficiency of the record and the adequacy of the Staff’s review and findings, but instead “must reach [its] own independent determination of uncontested NEPA ‘baseline’ questions.” *Id.* at 45.
- D For all six fundamental issues the Board is to make its decisions without conducting a “*de novo*” review. This means that “the NRC Staff’s underlying *technical and factual findings* are not open to board reconsideration unless, after a review of the record, the board finds the NRC Staff review inadequate or its findings insufficient.” *Clinton I*, 62 NRC at 39-40 (emphasis added). The “no *de novo* review” approach, however, does not change the Board’s responsibility to independently interpret and apply the *law* and to decide the six ultimate issues in an uncontested ESP case such as this.
- E While generally accepting the technical and factual findings of the Staff, the Board must independently decide (a) whether NEPA §§ 102(2)(A), (C), and (E) have been complied with, (b) the final balance among conflicting factors, and (c) whether the ESP should be issued, denied, or appropriately conditioned.
- F The first of the six fundamental decisions that a board must make in a mandatory hearing is whether the application and the record of the proceeding contain sufficient information, and the review of the application by the NRC Staff has been adequate, to support a negative finding on the question of whether the issuance of the ESP will be inimical to the common defense and security or to the health and safety of the public. *Clinton I*, 62 NRC at 33 n.32. A decision on this issue, referred to as “AEA Safety Issue 1,” is mandated by section 103d of the AEA and 10 C.F.R. § 50.40(c).
- G The second of the six fundamental decisions that a board must make in a mandatory hearing is whether the application and the record of the proceeding contain sufficient information, and the review of the application by the NRC Staff has been adequate, to support a positive finding that, taking into consideration the site criteria contained in 10 C.F.R. Part 100, a reactor or reactors having the characteristics

DIGESTS

ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

that fall within the parameters of the site, can be constructed without undue risk to the health and safety of the public. *Clinton I*, 62 NRC at 33 n.32. A decision on this issue, referred to as "AEA Safety Issue 2," is mandated by 10 C.F.R. § 52.21.

H The third of the six fundamental decisions that a board must make in a mandatory hearing is whether the review conducted by the Commission pursuant to NEPA, has been adequate. *Clinton I*, 62 NRC at 33 n.34. A decision on this issue, referred to as the "Overriding NEPA Issue," is required by *Calvert Cliffs' Coordinating Committee, Inc. v. AEC*, 449 F.2d 1109 (D.C. Cir. 1971) and 10 C.F.R. § 51.105(a)(4).

I The fourth of the six fundamental decisions that a board must make in a mandatory hearing is whether the requirements of section 102(2)(A), (C), and (E) of NEPA and the regulations in 10 C.F.R. Part 51 have been met. A decision on this issue, referred to as the "NEPA Baseline Issue 1," is required by *Calvert Cliffs' Coordinating Committee, Inc. v. AEC*, 449 F.2d 1109 (D.C. Cir. 1971) and 10 C.F.R. § 51.105(a)(1).

J The fifth of the six fundamental decisions that a board must make in a mandatory hearing is to independently consider the final balance among conflicting factors contained in the record of the proceeding with a view to determining the appropriate action to be taken. A decision on this issue, referred to as the "NEPA Baseline Issue 2," is required by *Calvert Cliffs*, 449 F.2d 1109 and 10 C.F.R. § 51.105(a)(2).

K The sixth of the six fundamental decisions that a board must make in a mandatory hearing is to determine whether the construction permit should be issued, denied, or appropriately conditioned to protect environmental values. A decision on this issue, referred to as the "NEPA Baseline Issue 3," is required by *Calvert Cliffs*, 449 F.2d 1109 and 10 C.F.R. § 51.105(a)(3).

L The fact that an ESP holder cannot commence construction of the proposed nuclear reactors without obtaining an additional license from the NRC does not mean that an ESP is not an important permit. Once the ESP is issued, the proposed site for the nuclear reactors is "banked" or approved and the regulations applicable to the site are frozen as of the date that the ESP is issued. Once the ESP is issued, "the Commission may not impose new requirements . . . on . . . the site," 10 C.F.R. § 52.39(a)(1), unless they are "necessary . . . to assure adequate protection of the public health and safety or the common defense and security." *Id.*

M Although unresolved issues exist and may be addressed if and when Dominion actually applies to construct Unit 3 and/or 4, the Board concludes that the application and the record contain information that is sufficient, and the review by the NRC Staff has been adequate, to support a finding that the issuance of the ESP would not be inimical to the common defense and security or to the health and safety of the public, subject to the permit conditions, COL Action Items, site characteristics and bounding parameters contained in Appendix A to the FSER, and the conditions specified in the Draft Permit.

N After studying the site criteria that the issue specifically refers to, i.e., 10 C.F.R. Part 100, which establishes numerous factors to consider when evaluating a proposed site, the Board concludes, with reference to AEA Safety Issue 2, that Dominion's application and the record of this proceeding contain sufficient information, and the review of the application by the NRC Staff has been adequate, to support a positive finding.

O NEPA § 102(2)(A) requires that the NRC use a "systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment." The Board has no difficulty in concluding that NEPA § 102(2)(A) has been satisfied.

P The majority of this Board concludes that the FEIS satisfies the requirements of NEPA § 102(2)(C). NEPA § 102(2)(C) requires that, for every major Federal action significantly affecting the quality of the human environment, the NRC must issue a detailed statement by the responsible official on (i) the environmental impact of the proposed action, (ii) any unavoidable adverse environmental effects, (iii) alternatives to the proposed action, (iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and (v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented. NEPA § 102(2)(C)(i)-(v), 42 U.S.C. § 4332(2)(C)(i)-(v).

Q While the FEIS did not address one possible environmental impact, i.e., groundwater contamination (and resulting lake impacts) from proposed Units 3 and 4, proposed Permit Condition 4 requires measures to preclude such impacts and, in any event, it is clear that the issue of groundwater impacts must be addressed at the COL stage. In addition, although we have raised the question as to whether the Staff's investigation and discussion of the impacts on minority and low-income populations satisfies the Commission's policy

DIGESTS

ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- on environmental justice, we believe, on balance, that the FEIS discussion on this matter did not violate NEPA § 102(2)(i).
- R The FEIS provides a sufficient statement of “any adverse environmental impacts which cannot be avoided.” 42 U.S.C. § 4332(2)(C)(ii). The issuance of the ESP alone would not authorize construction of Units 3 and 4, but would instead only authorize site preparation and preliminary preparatory work under a 10 C.F.R. § 50.10(e) limited work authorization. If a COL or CP is never issued or ultimately denied, Dominion would be required to redress even such limited site preparation activities and restore the site. 10 C.F.R. § 50.17(c).
- S While requiring that “all reasonable alternatives will be identified” and considered by the agency, *see* 10 C.F.R. Part 51, App. A, § 5; 40 C.F.R. § 1502.14, federal courts and the NRC use a “rule of reason” in identifying alternatives and do not require that unreasonable alternatives be examined.
- T A project’s goals will determine which alternatives are considered reasonable. *City of New York v. U.S. Department of Transportation*, 715 F.2d 732, 742 (2d Cir. 1983). The agency’s alternatives analysis should be based around the applicant’s goals, including the applicant’s economic goals. *City of Grapevine v. U.S. Department of Transportation*, 17 F.3d 1502, 1506 (D.C. Cir.), *cert. denied*, 513 U.S. 1043 (1994).
- U Based on the record in this proceeding, the majority of the Board concludes that the NRC Staff’s alternative sites description and analysis satisfies NEPA § 102(2)(C)(iii), providing a “detailed statement” of “the alternatives to the proposed action.” 42 U.S.C. § 4332(2)(C)(iii). Having excluded unreasonable alternatives not in keeping with Dominion’s economic goals, the ER and the EIS presented an adequate survey of the reasonable or feasible alternatives, as required. *See Westlands Water District v. U.S. Department of Interior*, 376 F.3d 853, 868 (9th Cir. 2004).
- V It was not reasonable or necessary to consider, as a system design alternative to the application for an ESP for Units 3 and 4, the imposition of water conservation measures on preexisting Units 1 and 2.
- W We agree with the Staff that discussion of the “relationship between local short-term uses of man’s environment and the maintenance and enhancement of long-term productivity,” NEPA § 102(2)(C)(iv), should be performed if and when the ESP holder applies for a construction permit or combined operating license.
- X Because the granting of the ESP would not, in itself, authorize any activity that would have any such irreversible or irretrievable commitments, NEPA § 102(2)(C)’s required description of “any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented” has been met.
- Y NEPA Baseline Issue 2 requires the Board to “independently consider [and decide] the final balance among conflicting factors contained in the record of the proceeding with a view to determining the appropriate action to be taken.” 10 C.F.R. § 51.105(a)(2). While we cannot do a NEPA *cost-benefit* analysis, or final *balance* among conflicting factors at this time, this Board has considered, probed, and independently balanced such factors as are covered within the limited ambit of the ESP FEIS, and determines that the appropriate action to be taken is to issue the proposed ESP with the proposed permit conditions contained in Staff Exhibit 17.
- Z NEPA Baseline Issue 3 requires the Board to “determine . . . whether the construction permit . . . should be issued, denied, or appropriately conditioned to protect environmental values. We believe that our answer to NEPA Baseline Issues 1 and 2 suffices here and that the ESP should be issued, with the conditions that we have specified.
- AA Within the limitations of the ESP environmental analysis, e.g., no assessment of benefits or cost-benefit analysis, and recognizing that there are various unresolved issues under 10 C.F.R. § 52.39 that must be addressed if and when a COL or CP is sought, we conclude that the NEPA review by the NRC Staff was adequate.
- BB The paucity of Environmental Justice analysis, investigation, and information in the FEIS raises doubts as to whether the Staff has complied with the NRC EJ Policy that requires that the Staff provide an EJ analysis “in greater detail” when the low-income or minority population thresholds are met. Under these circumstances, and given that the Commission will necessarily review any initial ESP decision such as this one, the Board suggests that the Commission consider addressing the somewhat novel question as to what it expects the Staff to do when, under the NRC EJ Policy, an EJ analysis “in greater detail” is required.
- CC When an applicant is proposing to locate additional reactors on a site where a different licensee already operates two nuclear reactors that already exist, it is important to understand how the various

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

regulatory limits apply to each reactor, licensee, and site, and how these limits are allocated as between the existing and new reactors and licenses.

DD Regulatory gaps arise from the multiplicity of reactor designs included within Dominion's PPE. It is unclear how we should assess whether the applicant's gas-cooled reactor designs (i.e., the Pebble Bed Modular Reactor design and the Gas Turbine-Modular Helium Reactor design) satisfy AEA safety standards, when the main safety standards issued by NRC deal only with a fundamentally different design — light-water-cooled reactors.

EE NRC regulations are unclear as to how the 25-mrem limit in 40 C.F.R. § 190.10 and 10 C.F.R. § 20.1301(e) is to be allocated between an existing licensee on a site (VEPCO/ODEC) and an applicant considering the construction of additional nuclear reactors on the same site (Dominion). It is also unclear what rational principle and legal standard the NRC Staff will use in allocating legal liability if the 25-mrem standard is exceeded. As a matter of regulatory clarity for the licensees and the public, it might be prudent for NRC to articulate this rational principle and/or allocate the 25-mrem limit of 10 C.F.R. § 190.10 in a permit condition at the outset.

FF While an ESP applicant is not required to provide "detailed design" information concerning each of the types of reactor designs covered by the application and may provide a "plant parameter envelope" instead, problems may arise when the ESP application does not include significant PPE values. It is unclear how this would meet the requirement that an ESP applicant provide "adequate information" or NRC's bar on "partial ESPs." It is also unclear how many holes or "unresolved issues" there can be in a PPE before it runs afoul of the Commission's policy and when the Staff should decline to issue an ESP and advise the applicant to instead consider an Early Partial Decision on Site Suitability pursuant to 10 C.F.R. Part 2, Subpart F.

LBP-07-10 PPL SUSQUEHANNA LLC (Susquehanna Steam Electric Station, Units 1 and 2), Docket Nos. 50-387-OLA, 50-388-OLA (ASLBP No. 07-854-01-OLA-BD01); OPERATING LICENSE AMENDMENT; July 27, 2007; MEMORANDUM AND ORDER (Ruling on Standing and Contentions)

A In this 10 C.F.R. Part 50 operating license amendment proceeding regarding the application of PPL Susquehanna LLC (PPL) to increase the current maximum authorized power level for each of the two units at its Susquehanna Steam Electric Station through an extended power uprate (EPU), ruling on a hearing petition filed by Eric Joseph Epstein seeking to intervene to contest the PPL EPU request, the Licensing Board concludes that although this *pro se* petitioner made a showing that is minimally sufficient to establish his standing as of right, he failed to proffer an admissible contention.

B In determining whether an individual or organization should be granted party status in a proceeding based on standing "as of right," the agency has applied contemporaneous judicial standing concepts that require a participant to establish (1) it has suffered or will suffer a distinct and palpable injury that constitutes injury-in-fact within the zones of interests arguably protected by the governing statutes (e.g., the Atomic Energy Act of 1954 (AEA), the National Environmental Policy Act of 1969 (NEPA)); (2) the injury is fairly traceable to the challenged action; and (3) the injury is likely to be redressed by a favorable decision. *See Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-96-1, 43 NRC 1, 6 (1996).

C In cases involving the possible construction or operation of a nuclear power reactor, the Commission has created a presumption that residing or regularly conducting activities within a 50-mile proximity of the proposed facility is considered sufficient to establish the requisite injury, causation, and redressability elements. *See Florida Power & Light Co.* (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325, 329 (1989). In other cases, such as operating license amendment cases, a petitioner must (1) assert an injury-in-fact associated with the challenged license amendment, not simply a general objection to the facility; and (2) in the absence of a showing that the proposed action obviously entails an increased potential for offsite consequences, base its standing upon more than residence or activities within a particular proximity of the plant by making a showing of a plausible chain of events that would result in offsite radiological consequences posing a distinct new harm or threat to the participant. *See Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 and 2), CLI-99-4, 49 NRC 185, 188, 191-92 (1999). Moreover, even in those nonreactor construction permit/operating license cases involving an increased potential for offsite consequences in which proximity can be the primary basis for establishing standing, the distance at which a petitioner can be presumed to be affected must take into account the nature of the proposed action and the significance of the radioactive source. *See Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Georgia), CLI-95-12, 42 NRC 111, 116 (1995); *see also Consumers Energy Co.* (Big Rock Point Independent Spent Fuel Storage Installation), CLI-07-21, 65

DIGESTS

ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- NRC 519, 522-23 (2007) (difference in potential risk between independent spent fuel storage installation (ISFSI) and operating reactor justifies treating ISFSI and license transfer cases differently in terms of potential proximity presumption).
- D In assessing a hearing petition to determine whether the standing elements are met, which a presiding officer must do even if there are no objections to a petitioner's standing, *see Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), LBP-04-27, 60 NRC 530, 542 n.3 (2004) (even if undisputed, jurisdictional nature of standing requires independent examination by presiding officer), the Commission has indicated that we are to "construe the petition in favor of the petitioner." *Georgia Tech Research Reactor*, CLI-95-12, 42 NRC at 115.
- E A petitioner bears the burden of establishing its standing to intervene in a proceeding. *See Babcock & Wilcox Co.* (Apollo, Pennsylvania Fuel Fabrication Facility), LBP-93-4, 37 NRC 72, 81, *appeal dismissed*, CLI-93-9, 37 NRC 190 (1993).
- F The benefits of the proximity presumption are not limited to those who reside within the area in which the presumption applies, but can be extended to those who conduct everyday activities or visit within that area. *See Big Rock Point*, CLI-07-21, 65 NRC at 523-24; *see also Zion*, CLI-99-4, 49 NRC at 191; *Gulf States Utilities Co.* (River Bend Station, Units 1 and 2), ALAB-183, 7 AEC 222, 226 (1974). Nonetheless, as is sometimes the case regarding the degree to which someone "resides" in the requisite area, *see Georgia Power Co.* (Vogtle Electric Generating Plant, Units 1 and 2), CLI-93-16, 38 NRC 25, 35 (1993) (regular but intermittent residence 1 week a month in house 35 miles from facility sufficient for standing purposes), there may be issues about the extent to which those activities and contacts are sufficient to invoke the presumption.
- G The relevant concern in determining if the proximity presumption applies in a particular case to afford standing as of right is whether the record reflects information that adequately demonstrates (1) the obvious potential for offsite consequences such that a proximity presumption would be applicable in the proceeding; (2) the scope of the area within which the presumption would apply; and (3) whether the petitioner has shown it has sufficient contacts within that area to establish the applicability of the presumption.
- H Showing that estimated dose consequences associated with operation under EPU conditions can be expected to increase by the 20% power level change establishes that the proposed EPU creates an obvious potential for offsite consequences. *See Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), LBP-04-28, 60 NRC 548, 553-54 (2004) (EPU amendment involves increase in reactor core radioactivity with obvious potential for offsite consequences); *see also Tennessee Valley Authority* (Sequoyah Nuclear Plant, Units 1 and 2; Watts Bar Nuclear Plant, Unit 1), LBP-02-14, 56 NRC 15, 25 (2002) (obvious offsite consequences from technical specification change that would add tens of millions of curies of radioactive gas to already significant core inventory).
- I Given that an EPU is directly associated with continuing reactor operation, the potential geographic scope of the consequences of EPU operation can be considered to be similar to that which supported the creation of a 50-mile presumption for construction permit and operating license proceedings. *See Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), LBP-98-33, 48 NRC 381, 385 n.1 (1998) (50-mile presumption should apply to life extension cases because reactor operation over additional period subject to same equipment failure and personnel errors), *aff'd*, CLI-99-11, 49 NRC 328 (1999); *see also Big Rock Point*, CLI-07-21, 65 NRC at 522-23 (in determining application of potential proximity presumption, potential risk difference between a reactor and an independent spent fuel storage installation (ISFSI) justifies treating the ISFSI differently).
- J There is agency case law indicating that a petitioner's showing establishing standing in one proceeding need not be repeated to establish standing in another proceeding regarding that same facility. *See U.S. Army* (Jefferson Proving Ground Site), LBP-04-1, 59 NRC 27, 29 (2004); *Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Georgia), LBP-95-23, 42 NRC 215, 217 (1995). Nonetheless, given that a Board in one proceeding is not constrained to follow the rulings of another Board (absent explicit affirmation by the Commission), *see Cleveland Electric Illuminating Co.* (Perry Nuclear Power Plant, Unit 1), LBP-92-4, 35 NRC 114, 125-26 (1992), *rev'd on other grounds*, CLI-93-21, 38 NRC 87 (1993), the better practice for a petitioner is to submit a fully developed showing regarding standing in each proceeding in which it seeks to intervene, regardless of whether it has previously been found to have standing relative to the facility that is the locus of the proceedings.

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- K A Licensing Board's ruling regarding a petitioner's standing does not constitute dicta simply because the Board also concluded that the petitioner had failed to proffer an admissible contention. Because a petitioner's failure to establish its standing is a jurisdictional flaw that likewise is fatal to its attempt to gain party status, any discussion of its failure to proffer an admissible contention would be every bit as deserving of a "dicta" label. To suggest that a Board's decision on one of these admission elements necessarily renders any discussion of the other superfluous fails to acknowledge that, as a practical matter, a decision addressing only one of these two items creates the potential for significant delay if that single determination is later overturned on appeal.
- L A finding regarding whether a petitioner has established proximity presumption-based standing must be based on the factual circumstances presented by the information before the Licensing Board regarding the petitioner's activities, which, as the Commission has noted in the past, may include consideration of the proximity (i.e., is the activity within the presumption zone), timing, and duration of those activities. See *Big Rock Point*, CLI-07-21, 65 NRC at 523-24; *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 324 (1999).
- M The process of sifting and weighing the participants' factual proffers often calls upon a Licensing Board to make difficult choices, so that a petitioner who fails to provide specific information regarding the geographic proximity or the timing and duration of its visits only complicates matters for itself. See *Private Fuel Storage*, CLI-99-10, 49 NRC at 325.
- N In accord with 10 C.F.R. § 2.337(f), a Licensing Board can take official notice of the locations and the distances to the various locations specified by a petitioner as denominated on Mapquest (<http://www.mapquest.com>) and an American Automobile Association road map.
- O Somewhat greater latitude generally is afforded *pro se* petitioners in drafting their intervention petitions. See *Public Service Electric and Gas Co.* (Salem Nuclear Generating Station, Units 1 and 2), ALAB-136, 6 AEC 487, 489 (1973).
- P Standing depends on the petitioner's present circumstances (or the extent to which activities in the recent past reflect a likely pattern of future conduct).
- Q In seeking to establish standing to intervene in a licensing adjudication based on regular activities within a proximity zone (including business, recreational, or personal activities), a petitioner, whether *pro se* or otherwise, is best served by accurately delineating in as much detail as practicable the particulars associated with the proximity, timing, and duration of those activities.
- R Discretionary standing will not lie in the absence of a finding that one intervening participant has standing as of right. See 10 C.F.R. § 2.309(e) (discretionary standing only appropriate when one petitioner has been shown to have standing as of right and an admissible contention so that a hearing will be conducted).
- S Section 2.309(f) of the Commission's rules of practice specifies the requirements that must be met if a contention is to be deemed admissible. Specifically, a contention must provide (1) a specific statement of the legal or factual issue sought to be raised; (2) a brief explanation of its basis; (3) a concise statement of the alleged facts or expert opinions, including references to specific sources and documents, that support the petitioner's position and upon which the petitioner intends to rely at hearing; and (4) sufficient information demonstrating that a genuine dispute exists with regard to a material issue of law or fact, including references to specific portions of the application that the petitioner disputes, or in the case when the application is alleged to be deficient, the identification of such deficiencies and supporting reasons for this belief. See 10 C.F.R. § 2.309(f)(1)(i), (ii), (v), and (vi). In addition, the petitioner must demonstrate that the issue raised in the contention is both "within the scope of the proceeding" and "material to the findings the NRC must make to support the action that is involved in the proceeding." *Id.* § 2.309(f)(1)(iii), (iv). Failure to comply with any of these requirements is grounds for dismissing a contention. See *Private Fuel Storage*, CLI-99-10, 49 NRC at 325; see also *Arizona Public Service Co.* (Palo Verde Nuclear Station, Units 1, 2, and 3), CLI-91-12, 34 NRC 149, 155-56 (1991).
- T An adjudication is not the proper forum for challenging applicable statutory requirements or the basic structure of the agency's regulatory process. *Philadelphia Electric Co.* (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20, *aff'd in part on other grounds*, CLI-74-32, 8 AEC 217 (1974). Similarly, a contention that attacks a Commission rule, or which seeks to litigate a matter that is, or clearly is about to become, the subject of a rulemaking, is inadmissible. See 10 C.F.R. § 2.335; *Potomac Electric Power Co.* (Douglas Point Nuclear Generating Station, Units 1 and 2), ALAB-218, 8 AEC 79, 85, 89 (1974). This includes contentions that advocate stricter requirements than agency rules impose or that

DIGESTS

ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

otherwise seek to litigate a generic determination established by a Commission rulemaking. *See Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-01-6, 53 NRC 138, 159, *aff'd*, CLI-01-17, 54 NRC 3 (2001); *Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), LBP-93-1, 37 NRC 5, 29-30 (1993); *Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), LBP-82-106, 16 NRC 1649, 1656 (1982); *see also Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-96-7, 43 NRC 235, 251 (1996); *Arizona Public Service Co.* (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), LBP-91-19, 33 NRC 397, 410, *aff'd in part and rev'd in part on other grounds*, CLI-91-12, 34 NRC 149 (1991). By the same token, a contention that simply states the petitioner's views about what regulatory policy should be does not present a litigable issue. *See Peach Bottom*, ALAB-216, 8 AEC at 20-21 & n.33.

U All proffered contentions must be within the scope of the proceeding as defined by the Commission in its initial hearing notice and order referring the proceeding to the Licensing Board. *See* 10 C.F.R. § 2.309(f)(1)(iii); *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-00-23, 52 NRC 327, 329 (2000); *Duke Power Co.* (Catawba Nuclear Station, Units 1 and 2), ALAB-825, 22 NRC 785, 790-91 (1985). As a consequence, any contention that falls outside the specified scope of the proceeding must be rejected. *See Portland General Electric Co.* (Trojan Nuclear Plant), ALAB-534, 9 NRC 287, 289 n.6 (1979).

V It is the petitioner's obligation to present factual information and/or expert opinion necessary to support its contention. *See* 10 C.F.R. § 2.309(f)(1)(v); *Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Georgia), LBP-95-6, 41 NRC 281, 305, *vacated in part and remanded on other grounds*, CLI-95-10, 42 NRC 1, and *aff'd in part*, CLI-95-12, 42 NRC 111 (1995). While a Licensing Board may appropriately view a petitioner's supporting information in a light favorable to the petitioner, failure to provide such information regarding a proffered contention requires the contention be rejected. *See Palo Verde*, CLI-91-12, 34 NRC at 155. In this connection, neither mere speculation nor bare or conclusory assertions alleging that a matter should be considered will suffice to allow the admission of a proffered contention. *See Fansteel, Inc.* (Muskogee, Oklahoma Site), CLI-03-13, 58 NRC 195, 203 (2003). If a petitioner neglects to provide the requisite support for its contentions, it is not within the Board's power to make assumptions of fact that favor the petitioner, nor may the Board supply information that is lacking. *See Palo Verde*, CLI-91-12, 34 NRC at 155; *Duke Cogema Stone & Webster* (Savannah River Mixed Oxide Fuel Fabrication Facility), LBP-01-35, 54 NRC 403, 422 (2001), *rev'd in part on other grounds*, CLI-02-24, 56 NRC 335 (2002); *Georgia Tech Research Reactor*, LBP-95-6, 41 NRC at 305.

W Simply attaching material or documents as a basis for a contention, without setting forth an explanation of that information's significance, is inadequate to support the admission of the contention. *See Fansteel*, CLI-03-13, 58 NRC at 204-05. Along these lines, any supporting material provided by a petitioner, including those portions of the material that are not relied upon, is subject to Licensing Board scrutiny. *See Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), LBP-96-2, 43 NRC 61, 90, *rev'd in part on other grounds*, CLI-96-7, 43 NRC 235 (1996). Thus, the material provided in support of a contention will be carefully examined by the Board to confirm that on its face it does supply an adequate basis for the contention. *See Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), ALAB-919, 30 NRC 29, 48 (1989), *vacated in part on other grounds and remanded*, CLI-90-4, 31 NRC 333 (1990).

X To be admissible, the regulations require that all contentions assert an issue of law or fact that is material to the outcome of a licensing proceeding, meaning that the subject matter of the contention must impact the grant or denial of a pending license application. *See* 10 C.F.R. § 2.309(f)(1)(iv). This requirement of materiality often dictates that any contention alleging deficiencies or errors in an application also indicate some significant link between the claimed deficiency and either the health and safety of the public or the environment. *See Yankee Nuclear*, LBP-96-2, 43 NRC at 75-76; *see also Pacific Gas and Electric Co.* (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), LBP-02-23, 56 NRC 413, 439-41 (2002), *petition for review denied*, CLI-03-12, 58 NRC 185, 191 (2003).

Y All properly formulated contentions must focus on the license application in question, challenging either specific portions of or alleged omissions from the application (including the Safety Analysis Report and the Environmental Report) so as to establish that a genuine dispute exists with the applicant on a material issue of law or fact. *See* 10 C.F.R. § 2.309(f)(1)(vi). Any contention that fails directly to controvert the application or that mistakenly asserts the application does not address a relevant issue can be dismissed. *See Sacramento Municipal Utility District* (Rancho Seco Nuclear Generating Station), LBP-93-23, 38

DIGESTS

ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

NRC 200, 247-48 (1993), *review declined*, CLI-94-2, 39 NRC 91 (1994); *Texas Utilities Electric Co.* (Comanche Peak Steam Electric Station, Unit 2), LBP-92-37, 36 NRC 370, 384 (1992), *appeals dismissed as moot*, CLI-93-10, 37 NRC 192 (1993).

- Z As the Commission has made apparent in other contexts, *see Hydro Resources, Inc.* (2929 Coors Road, Suite 101, Albuquerque, NM 87120), CLI-98-16, 48 NRC 119, 121-22 (1998), absent some need for resolution to meet the agency's statutory responsibilities, the agency's adjudicatory process is not a forum for litigating matters that are primarily the responsibility of other federal or state/local regulatory agencies.
- AA Assertions regarding purported water fouling incidents by members of the applicant's corporate family who are not NRC licensees fall far short of what is required to establish circumstances that would create a genuine material dispute regarding the potential for such activities by the Applicant, which is an NRC licensee, during the course of facility operation. *See* 10 C.F.R. § 2.309(f)(1)(v); *see also GPU Nuclear, Inc.* (Oyster Creek Nuclear Generating Station), CLI-00-6, 51 NRC 193, 207 (2000) (absent evidence to the contrary, it is assumed NRC licensees will not contravene agency regulations).
- BB As the agency's rules state, "[n]o petition or other request for review on the staff's significant hazards consideration determination will be entertained by the Commission. The staff's determination is final, subject only to the Commission's discretion on its own initiative, to review the determination." 10 C.F.R. § 50.58(b)(6); *see also Duke Energy Corp.* (Catawba Nuclear Station, Units 1 and 2), CLI-05-14, 61 NRC 359, 361 n.2 (2005).
- CC A reply pleading is an improper place to attempt to introduce a new argument to establish a contention's admissibility. *See Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-04-25, 60 NRC 223, 225, *reconsideration denied*, CLI-04-35, 60 NRC 619, 623-24 (2004).
- DD The following technical issue is discussed: power uprates.
- LBP-07-11 CAROLINA POWER & LIGHT COMPANY (Shearon Harris Nuclear Power Plant, Unit 1), Docket No. 50-400-LR (ASLBP No. 07-855-02-LR-BD01); LICENSE RENEWAL; August 3, 2007; MEMORANDUM AND ORDER (Ruling on Standing and Contentions of Petitioners North Carolina Waste Awareness and Reduction Network and Nuclear Information and Resource Service)
- A In this license renewal proceeding the Licensing Board finds that Petitioners have standing to intervene but have not submitted a contention that is admissible in the current circumstances, and that the proceeding must therefore be terminated at this time.
- B A petitioner's standing, or right to participate in a Commission licensing proceeding, is derived from section 189a of the Atomic Energy Act (AEA), which requires the NRC to provide a hearing "upon the request of any person whose interest may be affected by the proceeding," and which has been implemented in Commission regulations as 10 C.F.R. § 2.309(d)(1).
- C Judicial concepts of standing, to which licensing boards are to look in ruling on standing, provide the following guidance in determining whether a petitioner has established the necessary "interest" under 10 C.F.R. § 2.309(d)(1): To qualify for standing a petitioner must allege (1) a concrete and particularized injury that is (2) fairly traceable to the challenged action and (3) likely to be redressed by a favorable decision, criteria commonly referred to, respectively, as "injury in fact," causality, and redressability. The injury may be either actual or threatened, but must lie arguably within the "zone of interests" protected by the statutes governing the proceeding — here, either the Atomic Energy Act (AEA) or the National Environmental Policy Act (NEPA).
- D Individual petitioners living within 50 miles of a nuclear power plant may establish standing based on a longstanding "proximity presumption" principle in NRC adjudicatory proceedings, under which the elements of standing will be presumed to be satisfied if an individual lives within the zone of possible harm from a significant source of radioactivity, in the geographical area that might be affected by an accidental release of fission products; this has been defined in proceedings involving nuclear power plants as being within a 50-mile radius of such a plant.
- E An organization that wishes to establish standing to intervene may do so by demonstrating either organizational or representational standing. To establish organizational standing it must be shown that the interests of the organization will be harmed by the proceeding. To establish representational standing, (1) it must be demonstrated that the interests of at least one member who has standing to sue in his or her own right may be affected by the licensing action; (2) that member must be identified by name and address; and (3) it must be shown that the organization is authorized to request a hearing on behalf of that member. Petitioner organizations that provided affidavits of seven members who lived within 50 miles of plant were

DIGESTS

ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- found to have established standing on behalf of such public interest groups; even though affidavits did not explicitly authorize organizations to represent them, this was implicit in their providing the affidavits, and in any event this matter was cured after objection was raised.
- F To intervene in an NRC proceeding, a petitioner must, in addition to demonstrating standing, submit at least one contention meeting the requirements of 10 C.F.R. § 2.309(f)(1). Failure of a contention to meet any of the requirements of section 2.309(f)(1) is grounds for its dismissal.
- G The “strict contention rule serves multiple interests,” including (1) focusing the hearing process on real disputes susceptible of resolution in an adjudication (for example, a petitioner may not demand an adjudicatory hearing to attack generic NRC requirements or regulations, or to express generalized grievances about NRC policies); (2) by requiring detailed pleadings, putting other parties in the proceeding on notice of the Petitioners’ specific grievances and thereby giving them a good idea of the claims they will be either supporting or opposing; and (3) helping to ensure that full adjudicatory hearings are triggered only by those able to proffer at least some minimal factual and legal foundation in support of their contentions.
- H Although the February 2004 revision of the NRC procedural rules no longer incorporates all of the prior provisions, including some of those formerly found in 10 C.F.R. § 2.714(a)(3), (b)(1), which in the past permitted the amendment and supplementation of petitions and filing of contentions after the original filing of petitions, the new rules contain essentially the same substantive admissibility standards for contentions.
- I Under 10 C.F.R. § 2.309(f)(1)(iii), a contention must allege facts sufficient to establish that it falls directly within the scope of a proceeding. The scope of a license renewal proceeding is addressed, with regard to safety-related issues, in 10 C.F.R. Part 54, and, with regard to environmental issues, in 10 C.F.R. Part 51.
- J A contention that challenges any Commission rule or applicable statutory requirement is outside the scope of the proceeding. A petitioner may, however, within the adjudicatory context submit a request for waiver of a rule under 10 C.F.R. § 2.335, and outside the adjudicatory context file a petition for rulemaking under 10 C.F.R. § 2.802 or a request that the NRC Staff take enforcement action under 10 C.F.R. § 2.206.
- K Under 10 C.F.R. § 2.309(f)(1)(iv), a petitioner must demonstrate that the issue raised in the contention is material to the findings the NRC must make to support the action that is involved in the proceeding; the standards defining the findings the NRC must make to support a license renewal are set forth in 10 C.F.R. § 54.29.
- L Under 10 C.F.R. § 2.309(f)(1)(vi), requiring the provision of sufficient information to show a genuine dispute with the applicant on a material issue of law or fact, a petitioner must read pertinent portions of the license application, including the safety analysis report and the environmental report (ER); state the applicant’s position and the petitioner’s opposing view; and explain why petitioner disagrees with the applicant. If a petitioner does not believe these materials address a relevant issue, petitioner must explain why the application is deficient. A contention must directly controvert a position taken by the applicant in the application, and an allegation that some aspect of a license application is “inadequate” or “unacceptable” does not give rise to a genuine dispute unless it is supported by facts and a reasoned statement of why the application is unacceptable in some material respect.
- M As addressed in 10 C.F.R. Part 54 and described by the Commission in *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3 (2001), the NRC license renewal safety review is focused “upon those potential detrimental effects of aging that are not routinely addressed by ongoing regulatory oversight programs,” which the Commission considers “the most significant overall safety concern posed by extended reactor operation,” and on “plant systems, structures, and components for which current [regulatory] activities and requirements may not be sufficient to manage the effects of aging in the period of extended operation.” An issue can be related to plant aging and still not warrant review at the time of a license renewal application, if an aging-related issue is “adequately dealt with by regulatory processes” on an ongoing basis. For example, if a structure or component is already required to be replaced “at mandated, specified time periods,” it would fall outside the scope of license renewal review.
- N The regulatory provisions of 10 C.F.R. Part 51, relating to the environmental aspects of license renewal, arise out of the requirement that the National Environmental Policy Act (NEPA), 42 U.S.C. § 4332(2)(C), places on federal agencies to “include in every recommendation or report on . . . major federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on . . . the environmental impact of the proposed action” As noted in *Robertson*

DIGESTS

ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

v. Methow Valley Citizens Council, 490 U.S. 332, 349 (1989), the “statutory requirement that a federal agency contemplating a major action prepare such an environmental impact statement [EIS] serves NEPA’s ‘action-forcing’ purpose in two important respects. . . . It ensures that the agency, in reaching its decision, will have available, and will carefully consider, detailed information concerning significant environmental impacts; it also guarantees that the relevant information will be made available to the larger audience that may also play a role in both the decisionmaking process and the implementation of that decision.”

O Although the requirements of NEPA are directed to federal agencies and thus the primary duties of NEPA fall on the NRC Staff in NRC proceedings, the initial requirement to analyze the environmental impacts of an action, including license renewal, is directed to applicants, and 10 C.F.R. § 51.53(c) requires a license renewal applicant to submit with its application an environmental report (ER), which “must contain a description of the proposed action, including the applicant’s plans to modify the facility or its administrative control procedures as described in accordance with § 54.21,” and “describe in detail the modifications directly affecting the environment or affecting plant effluents that affect the environment.”

P Environmental issues identified as “category 1,” or “generic,” issues in 10 C.F.R. Part 51, Subpart A, Appendix B, are not within the scope of a license renewal proceeding. On these issues the Commission found that it could draw generic conclusions that are applicable to nuclear power plants generally. Thus these issues need not be repeatedly assessed on a plant-by-plant basis, and license renewal applicants may in their ERs refer to and adopt the generic environmental impact findings found in Table B-1, Appendix B, for all category 1 issues, with the following exception: As required by 10 C.F.R. § 51.53(c)(3)(iv), ERs must also contain “any new and significant information regarding the environmental impacts of license renewal of which the applicant is aware,” even if this concerns a category 1 issue; but this is not a proper subject for a contention absent a waiver of the rule in 10 C.F.R. § 51.53(c)(3)(i) that category 1 issues need not be addressed in a license renewal.

Q The Commission was not able to make generic environmental findings on issues identified as “category 2,” or “plant specific,” issues in 10 C.F.R. Part 51, Subpart A, Appendix B, and thus these issues are within the scope of license renewal, and applicants must provide a plant-specific review of them. These issues are characterized by the Commission as involving environmental impact severity levels that could differ significantly from plant to plant, or impacts for which additional plant-specific mitigation measures should be considered.

R As required under 10 C.F.R. § 51.95(c), the Commission in 1996 adopted a “Generic Environmental Impact Statement for License Renewal of Nuclear Plants” (GEIS), published as NUREG-1437, which provides data supporting the table of category 1 and 2 issues in Appendix B. Issuance of the 1996 GEIS was part of an amendment of the requirements of Part 51 undertaken by the Commission to establish environmental review requirements for license renewals “that were both efficient and more effectively focused.”

S Section 51.103 defines the requirements for the “record of decision” relating to any license renewal application, including the standard that the Commission, in making such a decision pursuant to Part 54, “shall determine whether or not the adverse environmental impacts of license renewal are so great that preserving the option of license renewal for energy planning decisionmakers would be unreasonable.”

T A contention that the license should not be renewed for an additional 20 years until the plant comes into compliance with fire safety requirements, although it raises a significant issue, is found not to be admissible at this time, based on binding Commission case law precedent, that issues already the focus of ongoing regulatory processes do not come within the NRC’s safety review of a license renewal application, and based on the circumstance that licensee was required by NRC Staff to file a license amendment application indicating how it intended to come into compliance with relevant fire safety requirements by May 2008, prior to scheduled final action on the license renewal application, which would seem to allow for such processes to provide “reasonable assurance that the activities authorized by the renewed license will continue to be conducted in accordance with the current licensing basis,” as required under 10 C.F.R. § 54.29(a) — provided Staff addresses whether the new proposed fire protection program effectively addresses all relevant aging issues. Though the contention is denied at this time, petitioners might file a new petition in a license amendment proceeding and/or at a later point in this license renewal proceeding, provided relevant requirements of 10 C.F.R. § 2.309(c), (f)(1), and/or (f)(2) are met.

U Contentions that the license renewal application fails to satisfy NEPA, because it does not address environmental impacts of attack by deliberate and malicious crash of aircraft into the plant, must be

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

denied based on binding Commission case law precedent that NEPA imposes no duty on NRC to consider intentional malevolent acts in a license renewal proceeding.

- V A contention that the plant's evacuation plan does not adequately protect the health and safety of public and plant workers must be denied based on binding Commission case law precedent that emergency planning is not within the scope of license renewal as a safety issue, and because, as an environmental issue, petitioners did not challenge specific input data to the severe accident mitigation alternatives (SAMA) analysis, which might have brought the contention within the scope of license renewal.

LBP-07-12 ENTERGY NUCLEAR GENERATION COMPANY and ENTERGY NUCLEAR OPERATIONS, INC. (Pilgrim Nuclear Power Station), Docket No. 50-293-LR (ASLBP No. 06-848-02-LR); LICENSE RENEWAL; October 17, 2007; MEMORANDUM AND ORDER (Ruling on Entergy's Motion for Summary Disposition of Pilgrim Watch Contention 1, Regarding Adequacy of Aging Management Program for Buried Pipes and Tanks and Potential Need for Monitoring Wells To Supplement Program)

- A In this license renewal proceeding the Licensing Board denies the Applicant's motion for summary disposition of a contention involving whether leak detection through monitoring wells is necessary as part of the plant's aging management program to ensure that relevant components perform their intended safety functions during the license renewal period, but limits issues for litigation.

- B Section 2.1205(a) of 10 C.F.R. permits a party in a Subpart L proceeding to submit a motion for summary disposition; under section 2.1205(c), resolution of such a motion is governed by the standards for summary disposition set forth in Subpart G of 10 C.F.R. Part 2, which provides in section 2.710(d)(2) that a moving party shall be granted summary disposition "if the filings in the proceeding, . . . together with the statements of the parties and the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a decision as a matter of law."

- C Because motions for summary disposition are analogous to motions for summary judgment under Rule 56 of the Federal Rules of Civil Procedure, they are generally evaluated according to the same standards used by Federal District Courts in ruling on motions for summary judgment. *Advanced Medical Systems, Inc.* (One Factory Row, Geneva, Ohio 44041), CLI-93-22, 38 NRC 98, 102 (1993).

- D The moving party for summary disposition in an NRC proceeding "bears the burden of showing the absence of a genuine issue as to any material fact," and a licensing board ruling on a motion "must view the record in the light most favorable to the party opposing such a motion" and deny the motion if the moving party fails to meet its burden, even in the face of an inadequate response. *Advanced Med. Sys.*, CLI-93-22, 38 NRC at 102.

- E Facts are "material" if they will "affect the outcome of [a proceeding] under the governing law." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

- F If the filings demonstrate the existence of a genuine material fact, the evidence submitted in support of a motion fails to show the nonmoving party's position is a sham or fails to foreclose the possibility of a factual dispute, or there is an issue as to the credibility of the moving party's evidentiary material, a moving party will be found to have failed to meet its burden. *Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), LBP-06-5, 63 NRC 116, 122 (2006); 10A Charles Alan Wright et al., *Federal Practice & Procedure* § 2727 (3d ed. 1998).

- G If the proponent of the motion meets its burden, an opponent must "set forth specific facts showing that there is a genuine issue," and may not rely on "mere allegations or denials." The opposing party does not have to show that it would prevail on the issues, but must "demonstrate that there is a genuine factual issue to be tried." Any fact not controverted will be deemed admitted. *Advanced Med. Sys.*, CLI-93-22, 38 NRC at 102-03.

- H If a movant satisfies its initial burden and supports its motion by affidavit, "the opposing party must either proffer rebutting evidence or submit an affidavit explaining why it is impractical to do so," and "[i]f the presiding officer determines from affidavits filed by the opposing party that the opposing party cannot present by affidavit the facts essential to justify its opposition, the presiding officer may order a continuance to permit such affidavits to be obtained, or may take other appropriate action." *Advanced Med. Sys.*, CLI-93-22, 38 NRC at 103; 10 C.F.R. § 2.710(c).

- I Even if the basic facts are uncontroverted, summary disposition is "inappropriate when the evidence is susceptible of different interpretations or inferences." *Hunt v. Cromartie*, 526 U.S. 541, 553 (1999).

- J Summary disposition is not "a tool for trying to convince a Licensing Board to decide, on written submissions, genuine issues of material fact that warrant resolution at a hearing." *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-01-39, 54 NRC 497, 509 (2001).

DIGESTS

ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- K It is inappropriate at the summary disposition stage for a Board to attempt “to untangle the expert affidavits and decide ‘which experts are more correct.’” *Duke Cogema Stone & Webster* (Savannah River Mixed Oxide Fuel Fabrication Facility), LBP-05-4, 61 NRC 71, 80 (2005).
- L While “‘wholly conclusory statements for which no supporting evidence is offered’ need not be taken as true for summary judgment purposes,” a court “may not make credibility determinations or weigh the evidence” at the summary judgment stage. *Banks v. District of Columbia*, 377 F. Supp. 2d 85, 89 (D.D.C. 2005).
- M Summary disposition may be a useful device to eliminate the need for the time and cost of a hearing if the truth on a contested issue is clear and there is no genuine issue on any material fact, *Poller v. Columbia Broadcasting System, Inc.*, 368 U.S. 464, 467 (1962); but “if there is doubt as to whether the parties should be required to proceed further, [a motion for summary disposition] should be denied.” *Savannah River*, LBP-05-4, 61 NRC at 79.
- N Licensing board finds there are “genuine issues of material fact” that have been controverted by Intervenor and denies motion for summary disposition, but limits issues remaining to be litigated. In hearing on contention asserting that leak detection through monitoring wells is necessary as part of plant’s aging management program to ensure that relevant components perform their intended safety functions during the license renewal period, not in dispute and not to be litigated are (a) issues relating to any health effects of leaking radioactive liquid, and (b) any leakage from the spent fuel pool. Also, (c) leakage events at other plants are not directly relevant; while these events may provide relevant information regarding the potential usefulness of monitoring wells in detecting leaks, what is relevant is the uniqueness of the Pilgrim plant and what may be required with regard to it.
- LBP-07-13 ENTERGY NUCLEAR GENERATION COMPANY and ENTERGY NUCLEAR OPERATIONS, INC. (Pilgrim Nuclear Power Station), Docket No. 50-293-LR (ASLBP No. 06-848-02-LR); LICENSE RENEWAL; October 30, 2007; MEMORANDUM AND ORDER (Ruling on Motion To Dismiss Petitioners’ Contention 3 Regarding Severe Accident Mitigation Alternatives)
- A In this license renewal proceeding the Licensing Board grants the Applicant’s motion for summary disposition of a contention involving the Applicant’s handling of its Severe Accident Mitigation Alternatives (SAMA) analysis concerning (1) evacuation times, (2) economic consequences, and (3) meteorological patterns.
- B The determinative factor in a summary disposition motion is whether there is any genuine issue of *material* fact remaining in dispute — and that determination is made through examination of the filings in respect of the motion. The determination as to materiality in any given instance is controlled by the governing law for the particular issue involved. “As to materiality, the substantive law will identify which facts are material. Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) (citing generally 10A C. Wright, A. Miller, & M. Kane, *Federal Practice & Procedure* § 2727, at 93-95 (1983)).
- C For this Agency the inquiry becomes whether or not there is at issue any fact which can materially influence the determination the NRC (resting upon the technical evaluation by the Staff) must make. We believe, therefore, that the regulations of the NRC (which are the governing law for this case and what *Anderson* requires guide us) clearly teach that a fact cannot be “material” to *our* ruling here unless its consideration could materially affect the decision of the NRC vis-a-vis implementation of any particular SAMA.
- D NRC regulations require specificity and support for the positions parties take in their filings. *See, e.g.*, 10 C.F.R. § 2.710(b) (requiring that affidavits “set forth facts which would be admissible in evidence,” and that opponents may not rest their arguments on “mere allegations or denials”); *compare* 10 C.F.R. § 2.309(f) (establishing the minimum required support for original contention admissibility). In our view, the conditions set out in 10 C.F.R. § 2.309(f) serve as minimum specificity standards for “specific facts showing there is a genuine issue of fact” (as described in 10 C.F.R. § 2.710(b)).
- E Of course, a party is not required to prove its case in making or opposing a motion for summary disposition. But if the support a party offers to demonstrate that a genuine dispute exists as to a material fact indicates that, after expanding that support to its logical limits, it cannot support a finding of fact material to the determination the Agency must make, that party’s position cannot prevail. The rendering of a determination regarding any motion for summary disposition thus requires a thorough examination of the potential materiality of the support offered by the Parties for their positions.

DIGESTS

ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- F “There is no issue for trial unless there is sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party. . . . If th[at] evidence . . . is not significantly probative, summary judgement may be granted.” *Anderson*, 477 U.S. at 249. Furthermore, “the judge must ask himself . . . whether a fair minded jury could return a verdict for the [nonmovant] on the evidence presented[.]” *id.* at 252, and “if there is no evidence upon which a reasonable mind might fairly conclude [for the nonmovant], the motion must be granted.” *Id.* at 253. Finally, “we agree . . . that the trial judge must direct a verdict (*i.e.* grant summary disposition) if, under the governing law, there can be but one reasonable conclusion as to the verdict.” *Id.* at 250. Formerly, it was held that where there was a “*scintilla* of evidence in support of a [nonmovant’s] case, the judge was bound to leave it to the jury, but recent decisions . . . have established a more reasonable rule that . . . there is a preliminary question for the judge . . . whether there is any [evidence] upon which a jury could properly proceed to find a verdict for the [nonmovant].” *Id.*
- G A licensing board cannot make a determination of whether there is a genuine issue of material fact without carefully examining the evidence presented in the parties’ affidavits. “For example, there is no genuine issue if the evidence presented in the opposing affidavits is of insufficient caliber or quantity to allow a rational finder of fact to find [for the nonmovant].” *Anderson*, 477 U.S. at 254.
- H NRC Regulations require, at the operating license renewal stage, that “[i]f the staff has not previously considered severe accident mitigation alternatives for the applicant’s plant in an environmental impact statement or related supplement or in an environmental assessment, a consideration of alternatives to mitigate severe accidents must be provided.” 10 C.F.R. § 51.53(c)(3)(ii)(L).
- I The SAMA analysis is an obligation of the Staff in fulfillment of its National Environmental Policy Act (NEPA) obligations, and, therefore it is set out in the environmental portions of NRC regulations, and, because it is part of an environmental effects analysis, the requirement is that the Staff accurately characterize and “consider” these alternatives. That Part 51 is a part of this Agency’s efforts to satisfy its NEPA obligations is made crystal clear by 10 C.F.R. § 51.2, as well as the fact that the required finding is set out in Table B-1 of Appendix B to Subpart A of Part 51, entitled “Summary of Findings on NEPA Issues for License Renewal of Nuclear Power Plants.”
- J The requirement for SAMA analysis is made more explicit in Table B-1 of Appendix B to Subpart A of Part 51 in the section entitled “Postulated Accidents,” wherein NRC regulations require an analysis of “[t]he probability weighted consequences of atmospheric releases, fallout onto open bodies of water, releases to ground water, and societal and economic impacts from severe accidents . . .,” and consideration of “alternatives to mitigate” these sorts of accidents; thus our regulations require the use of probabilistic (as opposed to deterministic) methodology.
- K The underlying SAMA analyses require modeling of extremely complex time- and physical condition-dependent phenomena, which all those familiar with the field know are generally not amenable to accurate modeling. Therefore, this Agency has wisely determined that these effects and potential benefits of mitigation be examined using “probability weighted consequences.”
- L It is necessary for the Staff to take a uniform approach to its review of such analyses by license applicants and for performance of its own analyses, and it would be imprudent for the Staff to do otherwise without sound technical justification. Where these analyses are customarily prepared using the MACCS2 code, and where this code has been widely used and accepted as an appropriate tool in a large number of similar instances, the Staff is fully justified in finding, after due consideration of the manner in which the code has been used, that analysis using this code is an acceptable method for performance of SAMA analysis.
- M The manner in which this Agency meets its obligation to “consider” these alternatives is to perform a cost-benefit analysis, comparing the estimated equivalent dollar amount of computed reduction in the risk of a severe accident associated with implementation of a particular mitigation alternative with the estimated potential cost of implementation of that alternative.
- N In addressing the Motion and the opposition thereto, we must examine the substance of the information provided by the parties, for, at its heart, such a motion rests upon whether or not there is evidence upon which a trier of fact might reasonably find for the nonmoving party.
- O For a fact to be “material” in the present context, we have taken our guidance from the procedures for contention admissibility, which provide that the issue proffered by a petitioner must be “material to the findings the NRC must make to support the action that is involved in the proceeding.” 10 C.F.R. § 2.309(f)(1)(iv).

DIGESTS

ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- P We find foundation for our threshold criteria regarding the level of support required for summary disposition in those same contention admissibility provisions — requiring a proponent of a position to provide facts or expert support for its position. *See, e.g.*, 10 C.F.R. § 2.309(f)(1)(v).
- Q For the express purposes of summary disposition, mere allegations are insufficient — and we take that to include allegations which are in the nature of speculation or bare conclusory statements by an expert. *See, e.g.*, 10 C.F.R. § 2.710(b).
- R Where it is shown that even with no evacuation a SAMA is still not cost-effective it clearly demonstrates that any errors in assumptions regarding the evacuation time or pattern cannot reasonably be expected to rise to a level necessary to cause implementation of any SAMA to become cost-effective. Thus it is clear that a trier of fact could not reasonably find that the result of this Agency’s determination regarding whether or not any (not implemented) SAMA is cost-effective could be affected by errors in assumptions regarding evacuation.
- S We note that for a fact to be material with regard to the SAMA analysis, it must be a fact which can reasonably be expected to impact the Staff’s conclusion that any particular mitigation alternative may (or may not) be cost-effective.
- LBP-07-14 SHAW AREVA MOX SERVICES (Mixed Oxide Fuel Fabrication Facility), Docket No. 70-3098-MLA (ASLBP No. 07-856-02-MLA-BD01); MATERIALS LICENSE AMENDMENT; October 31, 2007; MEMORANDUM AND ORDER (Ruling on Standing and Contentions)
- A In this proceeding regarding the application of Shaw AREVA MOX Services (MOX Services) for a license to possess and use byproduct, source, and special nuclear material at the planned Mixed Oxide Fuel Fabrication Facility (MFFF, or the MOX facility) that it is building for the U.S. Department of Energy (DOE) on the federal government’s Savannah River Site (SRS), the Licensing Board — ruling on a hearing petition filed by Blue Ridge Environmental Defense League (BREDL), Nuclear Watch South (NWS), and the Nuclear Information and Resource Service (NIRS) (collectively “Petitioners”) seeking to intervene to contest the MOX Services Application — concludes that the Petitioners have standing to intervene and have proffered two admissible contentions.
- B The Board declines to impose a requirement that Petitioners perform an independent technical analysis at the standing phase of a proceeding, especially in a case where the chain of plausible causation that could lead to offsite doses is abundantly clear.
- C Where the NRC’s standard review plan for a facility requires applicants to include measures to prevent nuclear criticality, an applicant’s assertion that petitioners have not demonstrated that the facility involves “a significant source of radioactivity with an obvious potential for offsite consequences” does not stand up.
- D Given the information known about the nature of the facility and the available radioactive and chemical materials at risk, and the resulting potential for offsite consequences in the event of inadvertent release, criticality accident, or chemical explosion, there is no need for *pro se* petitioners to plead these matters more specifically.
- E For purposes of determining whether there is potential for offsite consequences at specific sites, licensing boards have authority to infer obvious intermediate steps in a chain of causation that could lead to offsite doses. The standard in these matters is that offsite consequences need only be plausible, not that they be probable or likely, and thus standing can be based on plausible but unlikely scenarios.
- F Petitioners are not required to demonstrate their asserted injury with “certainty,” nor to “provide extensive technical studies” in support of their standing argument. Resolving standing questions is an entirely different matter than adjudicating the ultimate merits of a contention. At the standing stage, petitioners should not be burdened with conducting extensive technical studies.
- G A petitioner awarded standing in one proceeding need not restate all of its case to establish standing in another proceeding related to the same facility. Where the standing in the prior proceeding is, however, based on an issue that is outside the scope of the new proceeding it cannot serve as the basis for standing in the new proceeding.
- H In evaluating the specificity of petitioners’ standing arguments, a licensing board must take into account the information provided by the applicant and the NRC Staff in the EIS. If the two federal agencies themselves, with the resources at their disposal, do not see fit to calculate projected doses at several different distances from the facility and to differentiate areas that might receive radiation doses from those that will not, it is hardly reasonable, or fair, to expect petitioners to do better.

DIGESTS

ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- I Because of the nature of a two-step structure where environmental issues are dealt with in a separate proceeding, environmental contentions are beyond the scope of the current proceeding unless they meet requirements beyond the ordinary contention admissibility tests of 10 C.F.R. § 2.309(f)(1). In that circumstance, petitioners' pleadings must contain more systematic support for contention admissibility than a passing reference to new information and to 10 C.F.R. § 51.92.
- J The fact that a given guidance document upon which an applicant relied was withdrawn does not suffice to support a contention. The applicant's analysis itself must be challenged, and the fact that it does or does not match the requirements of a specific guidance document — or matches the guidance of a withdrawn document — is only one factor to consider in evaluating the challenge.
- K When a Notice of Hearing, intended to provide an opportunity to challenge aspects of a facility's construction or subsequent operation, is issued before construction is commenced, it is to be fully expected that additional petitions to intervene, or statements of contentions, will need to be filed as construction unfolds and (hypothetically) reveals attendant shortcomings.
- L Instead of establishing a sorting system containing only two bins — "premature" and "nontimely" — into which a prospective intervenor's proffered contentions must be placed, a licensing board, in determining whether the proffered contentions are appropriate, must apply prematurity norms in a manner that fits the circumstances; and must consider whether to condition rejection of such contentions so as to preserve the opportunity for them to be re-presented later, if their concerns come to fruition, without having to overcome higher pleading hurdles.
- M The fundamental purpose served by a Notice of Hearing, one which is so obvious it might be overlooked, is to provide facility opponents a fair opportunity to be heard.
- N If any safety contentions filed before construction begins would be considered premature and/or speculative, NRC hearing opportunities could soon come to be viewed as chimerical — a result that would seem to be the opposite of what Commissioners past and present have said is their goal. For in an "early notice" situation it would never be possible for a petitioner to have a contention admitted if potentially legitimate safety concerns about actual construction practices, or upcoming operational procedures, were automatically rejected, without recourse, because they were filed before construction had either commenced at all or proceeded any distance. It would be paradoxical to let that situation label the challenge, rather than the notice, as premature, thus ending the process and eliminating ready later opportunities to raise construction-practice matters freely.
- O A license to possess and to use special nuclear materials at this facility is the functional equivalent of an operating license for more standard facilities, such as nuclear power plants. Traditionally, operating license applications for such facilities were neither docketed nor noticed for hearing until substantial progress had been made under the previously awarded construction permit, as a crucial issue at the operating license stage was whether the facility had indeed been constructed in accordance with the permit.
- P A classic "contention of omission" occurs when petitioners allege that certain necessary safety-related steps or analyses have not been taken. Responding that the actions will be taken later does not defeat the contention for prematurity — the uncertain or speculative nature of the situation cuts against an applicant, not against a petitioner. Facility proponents may later bring forward, as they routinely do, a solution that allegedly cures the deficiency; they then move to dismiss the contention, triggering in turn a period during which petitioners can amend the original contention to challenge the solution's substance.
- Q There is an apparent inconsistency between two portions of the Commission's rules establishing a framework for considering contentions filed after the initial petition was due. Any new contentions filed by petitioners — whose original petition was timely and who have demonstrated their standing — that are attributable to the applicant's construction activity or change of plans or design, should be governed by the basic provisions of 10 C.F.R. § 2.309(f)(2) rather than by the more restrictive elements of 10 C.F.R. § 2.309(c) applicable to "nontimely filings." When new contentions are based on breaking developments or information, they are to be treated as "new or amended," not as "nontimely."
- R After the initial filing, permission of the licensing board must be sought to file new or amended safety contentions. Such permission is to be given only if (i) the contention is based on information which "was not previously available"; (ii) that information is "materially different than information previously available"; and (iii) the contention was submitted "*in a timely fashion*" in terms of "the availability of the subsequent information." 10 C.F.R. § 2.309(f)(2)(i)-(iii).
- S A party may be sanctioned, including losing the opportunity to participate in a proceeding, when it absents itself from a scheduled session without first requesting that it be excused. The Board emphasizes

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

that parties are obligated (unless excused) to attend scheduled sessions as well as to communicate readily and cooperatively with each other when the conduct of adjudicatory business requires it.

LBP-07-15 ENTERGY NUCLEAR VERMONT YANKEE, LLC, and ENTERGY NUCLEAR OPERATIONS, INC. (Vermont Yankee Nuclear Power Station), Docket No. 50-271-LR (ASLBP No. 06-849-03-LR); LICENSE RENEWAL; November 7, 2007; MEMORANDUM AND ORDER (Ruling on NEC Motions To File and Admit New Contention)

A The proposed new contention, challenging the adequacy of the applicant's recently issued metal fatigue calculations, meets the three-factor test of 10 C.F.R. § 2.309(f)(2)(i)-(iii) because it was filed in a timely manner soon after this new and materially different information became available. It also meets the six-factor test of 10 C.F.R. § 2.309(f)(1). It is therefore admissible.

B The first step in assessing the admissibility of a new contention in an ongoing proceeding is to determine if it is timely under 10 C.F.R. § 2.309(f)(2)(iii). Timely new (non-NEPA) contentions are subject to a three-factor test under 10 C.F.R. § 2.309(f)(2). Nontimely new contentions are subject to a more stringent standard — the eight-factor balancing test specified in 10 C.F.R. § 2.309(c).

C A new non-NEPA contention is admissible under 10 C.F.R. § 2.309(f)(2)(i)-(iii) if it is based on information that was not previously available, if the new information is materially different from previously available information, and if the contention is submitted in a timely manner once the new information becomes available. In this case, the applicant's release of a revised metal fatigue analysis constitutes new and materially different information.

D NRC regulations do not provide a specific deadline for determining whether a new contention is timely for purposes of 10 C.F.R. § 2.309(f)(2)(iii). A specific rule may be established by a licensing board in the initial scheduling order for a case. Many boards have established a 30-day rule in this way.

E The six-factor contention admissibility test in 10 C.F.R. § 2.309(f)(1) applies regardless of whether a contention is submitted at the beginning of a proceeding, as a timely new contention under 10 C.F.R. § 2.309(f)(2), or as a nontimely new contention under 10 C.F.R. § 2.309(c).

F In a license renewal proceeding, safety contentions must focus on topics related to the detrimental effects of aging and related time-limited issues mentioned in 10 C.F.R. Part 54. Metal fatigue is an example of age-related degradation that properly falls within the scope of a license renewal proceeding.

G Under 10 C.F.R. § 2.310(a), upon admission of a new contention, the Board must identify the specific hearing procedures to be used. The Board makes this determination on a contention-by-contention basis, selecting the hearing procedure most appropriate for each contention.

H Absent any mandatory hearing procedure under 10 C.F.R. § 2.310(b)-(h), the Board must exercise its discretion under 10 C.F.R. § 2.310(a) and select the hearing procedure most appropriate for a newly admitted contention. There is no mandatory or automatic "default" to Subpart L.

LBP-07-16 NUCLEAR FUEL SERVICES, INC. (Special Nuclear Facility), Docket No. 70-143-CO (ASLBP No. 07-857-01-CO-BD01) (Confirmatory Order); ENFORCEMENT; December 13, 2007; MEMORANDUM AND ORDER (Denying Requests for Hearing)

A By Commission design, the scope of an enforcement proceeding is narrow and is expressly restricted by the *Federal Register* Notice of Opportunity for Hearing which initiates the proceeding. In past enforcement proceedings, the Commission has limited the scope of the proceeding to whether an enforcement order should be sustained. As provided in longstanding Commission policy, this means that a petitioner must show that he, she, or it would be adversely affected by the enforcement order as it exists, not that they are harmed by the failure of the Commission to impose a hypothetical order the petitioner asserts would be an improvement. *Alaska Department of Transportation and Public Facilities*, CLI-04-26, 60 NRC 399, 404-06 (2004).

B "Boards are not to consider whether [enforcement] orders need strengthening." *Alaska Dep't of Transp. & Pub. Facilities*, CLI-04-26, 60 NRC at 406. To the extent a request for hearing seeks to enhance the enforcement measures already outlined in an enforcement order, this is outside the scope of the proceeding, and accordingly, the request for hearing must be denied.

C To establish standing, a petitioner must show an injury in fact that is fairly traceable to the challenged action, and that is likely to be redressed by a favorable decision. *Maine Yankee Atomic Power Co.* (Maine Yankee Atomic Power Station), CLI-04-5, 59 NRC 52, 57 n.16 (2004) (citing *Sequoyah Fuels Corp. and General Atomics* (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 71-72 (1994)). This three-part inquiry is conducted by reviewing the alleged injury stemming from the regulatory action at issue, not that asserted to arise generally from the operation of the facility or the actions of the licensee involved in the proceeding.

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

See Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), LBP-92-27, 36 NRC 196, 198 (1992).

D To establish standing, a petitioner must show an injury in fact that is fairly traceable to the challenged action, and that is likely to be redressed by a favorable decision. *Maine Yankee*, CLI-04-5, 59 NRC at 57 n.16 (citing *Sequoyah Fuels Corp. & General Atomics*, CLI-94-12, 40 NRC at 71-72). Because a petitioner must show an injury, the issue of standing is directly related to the issue of the scope of the proceeding. If there is no injury, i.e., no adverse effect, the petitioner's request for hearing is not within the scope of the proceeding. *Alaska Dep't of Transp. & Pub. Facilities*, CLI-04-26, 60 NRC at 405-06. Consequently, the petitioner also has not established standing. *Id.* For these reasons, the hearing request must be denied. *Id.*

E To establish standing, a petitioner must show an injury in fact that is fairly traceable to the challenged action, and that is likely to be redressed by a favorable decision. *Maine Yankee*, CLI-04-5, 59 NRC at 57 n.16 (citing *Sequoyah Fuels Corp. & General Atomics*, CLI-94-12, 40 NRC at 71-72). If a petitioner "requests a remedy that is beyond the scope of the [proceeding], then the hearing request must be denied" because the request is incapable of being redressed by a favorable decision. This is because the Board does not have the authority to review the request. *Alaska Dep't of Transp. & Pub. Facilities*, CLI-04-26, 60 NRC at 405.

F Although a proximity presumption has been invoked when resolving issues of standing for cases involving reactor licensing, in a case involving an enforcement order, the standing requirement is based on an alleged adverse effect stemming from the promulgation of the order. Therefore, something in addition to the distance of the petitioner from the facility is necessary to establish standing — a link between the order and the alleged harm to the petitioner. *Sequoyah Fuels Corp. & General Atomics*, CLI-94-12, 40 NRC at 75 n.22; *Alaska Dep't of Transp. & Pub. Facilities*, CLI-04-26, 60 NRC at 406.

G The admissibility of contentions is set out in 10 C.F.R. § 2.309(f)(1). An admissible contention must (1) provide a specific statement of the legal or factual issue sought to be raised; (2) "provide a brief explanation of the basis for the contention"; (3) demonstrate that the issue raised is within the scope of the proceeding; (4) "[d]emonstrate that the issue raised . . . is material to the findings the NRC must make to support the action that is involved in the proceeding"; (5) provide a concise statement of the alleged facts or expert opinions, including references to specific sources and documents, that support the petitioner's position and upon which the petitioner intends to rely at the hearing; and (6) provide sufficient information to show that a genuine dispute exists with regard to a material issue of law or fact, including references to specific portions of the application that the petitioner disputes, or in the case when the application is alleged to be deficient, the identification of such deficiencies and supporting reasons for this belief. 10 C.F.R. § 2.309(f)(1)(i)-(vi). Failure to comply with any of these requirements is grounds for the dismissal of the contention. 69 Fed. Reg. 2182, 2202 (Jan. 14, 2004).

H If a petitioner fails to show that his or her contention is within the scope of the proceeding, it must be denied for failure to meet the requirements of 10 C.F.R. § 2.309(f)(1)(iii).

I The Commission has instructed that the scope of a reply filed pursuant to 10 C.F.R. § 2.309(h)(2) "should be narrowly focused on the legal or logical arguments presented in the applicant/licensee or NRC staff answer." 69 Fed. Reg. at 2203. Replies that are not so limited, that raise additional arguments not raised in a petitioner's hearing request or addressed by the applicant/licensee or the NRC Staff in their respective answers, are not properly before the Board.

J A hearing request that is filed after the period designated in the Notice of Opportunity for Hearing published in the *Federal Register*, which was not filed pursuant to an extension of time granted under 10 C.F.R. § 2.307(a), and which does not address the factors that the Board is required to balance in its determination on the admissibility of a nontimely filing, must be denied. *See* 10 C.F.R. § 2.309(c).

LBP-07-17 AMERGEN ENERGY COMPANY, LLC (Oyster Creek Nuclear Generating Station), Docket No. 50-0219-LR (ASLBP No. 06-844-01-LR); LICENSE RENEWAL; December 18, 2007; INITIAL DECISION (Rejecting Citizens' Challenge to AmerGen's Application To Renew Its Operating License for the Oyster Creek Nuclear Generating Station)

A In conducting Subpart L hearings under 10 C.F.R. Part 2, Board members pose questions to the parties' witnesses in those areas that, in the Board's judgment, require additional clarification and development (10 C.F.R. § 2.1207(b)(6)). Boards are assisted in this endeavor by proposed written questions that the parties provide prior to, and during the course of, the hearing (10 C.F.R. § 2.1207(a)(3); 10 C.F.R. § 2.1207(b)(6)). Proposed questions that are proffered to the Board for this purpose "must be kept by the [Board] in confidence until they are either propounded by the [Board], or until issuance of the initial decision on the

DIGESTS

ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- issue being litigated” (10 C.F.R. § 2.1207(a)(3)(iii)). After the Board issues its initial decision, the Board must provide these questions “to the Commission’s Secretary for inclusion in the official record of the proceeding” (*ibid.*).
- B The scope of license renewal proceedings is limited. Such proceedings are “not intended to ‘duplicate the Commission’s ongoing review of operating reactors’” (*Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 7 (2001) (quoting Final Rule: “Nuclear Power Plant License Renewal,” 56 Fed. Reg. 64,943, 64,946 (Dec. 13, 1991)). Rather, they focus on the “potential detrimental effects of aging that are not routinely addressed by ongoing regulatory oversight programs” (*ibid.*).
- C Intervenor may not challenge a licensee’s current licensing basis. The Commission has determined that such issues: (1) are not germane to aging management concerns; (2) previously have been the subject of thorough review and analysis; and, accordingly (3) need not be revisited in a license renewal proceeding. See *Turkey Point*, CLI-01-17, 54 NRC at 8-9. Additionally, arguments challenging the derivation of criteria encompassed in the current licensing basis are effectively an attack on the adequacy of the current licensing basis and must be rejected as beyond the scope of the proceeding.
- D A challenge to a licensee’s current compliance with its current licensing basis is outside the scope of a license renewal proceeding, because the Commission’s ongoing regulatory process — which includes inspection and enforcement activities — seeks to ensure a licensee’s current compliance with the current licensing basis. See 10 C.F.R. § 54.30; 60 Fed. Reg. 22,461, 22,473 (May 8, 1995). Challenges to a licensee’s current compliance with its current licensing basis or other operational requirements may be raised via a 10 C.F.R. § 2.206 petition.
- E Applicants for license renewal must “demonstrate how their [aging management] programs will be effective in managing the effects of aging during the proposed period of extended operation” (*Turkey Point*, CLI-01-17, 54 NRC at 8) (citing 10 C.F.R. § 54.21(a)). The Applicant must demonstrate, by a preponderance of the evidence, that its aging management program provides “reasonable assurance” that activities authorized by the renewed license will be conducted in a manner consistent with the current licensing basis, and that the effects of aging will be detected and corrected (*Commonwealth Edison Co.* (Zion Station, Units 1 and 2), ALAB-616, 12 NRC 419, 421 (1980); *Turkey Point*, CLI-01-17, 54 NRC at 8; 60 Fed. Reg. at 22,469).
- F The “reasonable assurance” standard is not susceptible to formalistic quantification or mechanistic application. Rather, whether the reasonable assurance standard is satisfied is based on sound technical judgment applied on a case-by-case basis. See *Union of Concerned Scientists v. NRC*, 880 F.2d 552, 558 (D.C. Cir. 1989); see also *North Anna Environmental Coalition v. NRC*, 533 F.2d 655, 667 (D.C. Cir. 1973).
- G A touchstone for determining whether the reasonable assurance standard is satisfied is compliance with Commission regulations. See *Maine Yankee Atomic Power Co.* (Maine Yankee Atomic Power Station), ALAB-161, 6 AEC 1003, 1009 (1973). Additionally, in the context of license renewal proceedings, whether the reasonable assurance standard is satisfied is directly linked to an assessment of the adequacy of the aging management program — i.e., whether an applicant can show that it is able to timely identify and correct degraded conditions. See *Turkey Point*, CLI-01-17, 54 NRC at 8; 60 Fed. Reg. at 22,469.
- H A licensee’s written commitments that are “docketed and in effect” constitute part of the “current licensing basis,” which is the “set of NRC requirements applicable to a specific plant” (10 C.F.R. § 54.3(a)).
- I A licensee’s discretionary use of testing and assessment criteria that are more conservative than those in the current licensing basis does not transform the former criteria into part of the current licensing basis. A contrary conclusion would be at odds with the regulatory definition of “current licensing basis.” See 10 C.F.R. § 54.3.
- J Pursuant to Commission case law, requests for extension of time to file a petition for review are to be determined by the relevant appellate body, and accordingly, must be directed to that body. See *Consolidated Edison Co. of New York* (Indian Point, Unit 3), ALAB-281, 2 NRC 6, 7 n.2 (1975).
- LBP-08-1 U.S. DEPARTMENT OF ENERGY (High-Level Waste Repository), Docket No. PAPO-00 (ASLBP No. 04-829-01-PAPO); PRE-LICENSE APPLICATION MATTERS; January 4, 2008; MEMORANDUM (Setting Forth Full Reasoning for Denying Nevada’s Motion To Strike)
- A In the pre-license application phase of the High-Level Waste Proceeding, the Pre-License Application Presiding Officer (PAPO) Board earlier denied the State of Nevada’s motion to strike the Department of

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

Energy's certification that it had made all its documentary material available on the Licensing Support Network (LSN) and the Board now sets forth its full reasoning for denying the motion.

B The duty to produce "all documentary material . . . generated by, or at the direction of, or acquired by, a potential party" pursuant to 10 C.F.R. § 2.1003(a)(1) applies to extant documentary material and does not require that the potential party delay its initial certification until all documentary material that it intends to rely on is finished and complete.

C The language, structure, and history of Subpart J regulations demonstrate that the duty to produce documentary material pursuant to 10 C.F.R. § 2.1003(a)(1) applies to extant documentary material. The regulations speak predominately in the past tense and refer to documents currently in existence.

D The duty to supplement the initial document production with "material created after the time of . . . initial certification" imposed by 10 C.F.R. § 2.1003(e), demonstrates that the initial certification is limited to extant documentary material because this regulation would be superfluous if all documentary material needed to be finished and produced at the time of the initial certification.

E Answers to a motion to strike are limited to legal or factual issues raised by the motion, and new issues should be raised in a separate motion.

LBP-08-2 SOUTHERN NUCLEAR OPERATING COMPANY (Early Site Permit for Vogtle ESP Site), Docket No. 52-011-ESP (ASLBP No. 07-850-01-ESP-BD01); EARLY SITE PERMIT; January 15, 2008; MEMORANDUM AND ORDER (Ruling on Dispositive Motion and Associated Motions To Strike Regarding Environmental Contention 1.2)

A In this 10 C.F.R. Part 52 proceeding regarding the application of Southern Nuclear Operating Company (SNC) for an early site permit (ESP) for an additional two reactors at the Vogtle Electric Generating Plant site, ruling on an SNC motion seeking summary disposition regarding environmental contention (EC) 1.2, Environmental Report (ER) Fails To Identify and Consider Cooling System Impacts on Aquatic Resources, the Licensing Board (1) grants the motion as to that portion of the contention challenging the SNC ER as omitting a discussion of the amount of facility chemical discharges, finding that this assertion was subject to dismissal as moot in light of the discussion in the NRC Staff's draft environmental impact statement (DEIS); and (2) denies the motion as to those portions of the contention challenging the adequacy of the ER/DEIS discussions of baseline aquatic data, impingement and entrainment impacts, and thermal discharges, concluding that SNC has failed to demonstrate there are no material factual disputes concerning genuine issues with regard to those portions of the contention.

B For proceedings that are being conducted pursuant to the "informal" hearing procedures of 10 C.F.R. Part 2, Subpart L, summary disposition motions are to be resolved in accord with the standards for dispositive motions for "formal" hearings, as set forth in Part 2, Subpart G. *See* 10 C.F.R. § 2.1205(c). Summary disposition may be entered with respect to any matter (or all matters) in a proceeding if the motion, along with any appropriate supporting materials (including affidavits, discovery responses, and documents), shows that there is "no genuine issue as to any material fact and that the moving party is entitled to a decision as a matter of law." *See* 10 C.F.R. §§ 2.710(d)(2), 2.1205(c).

C The party proffering the summary disposition motion bears the burden of making the requisite showing by providing "a separate, short, and concise statement of the material facts as to which the moving party contends that there is no genuine issue to be heard." 10 C.F.R. § 2.710(a). A party opposing the motion must counter any adequately supported material facts provided by the movant with its own "separate, short, and concise statement of the material facts as to which it is contended there exists a genuine issue to be heard," with the recognition that, to the degree the responsive statement fails to contravene the material facts proffered by the movant, the movant's facts "will be considered to be admitted." *Id.*

D Commission precedent recognizes that for contentions (or portions of contentions) challenging an application as having omitted a required item (or items), post-contention admission events, such as issuance of a Staff DEIS, can render the contention subject to dismissal as moot, *see Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-28, 56 NRC 373, 383 (2002).

E When filed with an intervention petition, an environmental contention and its associated bases quite properly address an applicant's ER, rather than the then still-being-developed Staff DEIS, *see* 10 C.F.R. § 2.309(f)(2) (contentions must be based on documents/information available when hearing petition to be filed).

F A Board may consider environmental contentions contesting an applicant's ER as challenges to the agency's subsequent DEIS so long as the DEIS analysis or discussion at issue is essentially *in para*

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

materia with the ER analysis or discussion that is the focus of the contention. If it is not, an intervenor attempting to litigate an issue based on expressed concerns about the DEIS may need to amend the admitted contention or, if the information in the DEIS is sufficiently different from that in the ER that supported the contention's admission, submit a new contention. *See* 10 C.F.R. § 2.309(f)(2); *see also McGuire/Catawba*, CLI-02-28, 56 NRC at 383.

G In the context of a summary disposition motion, the question about the need to amend or file a new contention becomes relevant when there is a dispute about whether an admitted issue statement (or a relevant portion of such an issue statement) is a contention of omission — i.e., a contention challenging a portion of the application, because it fails in toto to address a required subject matter — or a contention of inadequacy — i.e., one that asserts the pertinent portion of the application contains a discussion or analysis of a relevant subject that is inadequate in some material respect. *See Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-01-23, 54 NRC 163, 171-72 (2001) (dividing all contentions into “a challenge to the application’s adequacy based on the validity of the information that is in the application; a challenge to the application’s adequacy based on its alleged omission of relevant information; or some combination of these two challenges”); *see also AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), LBP-06-16, 63 NRC 737, 742 & n.7 (2006).

H If intervenors have not sought to amend an environmental contention as admitted, to the degree the contention is one of omission, it is subject to dismissal in connection with those aspects for which it is appropriately established the Staff DEIS provides any purported missing analysis or discussion.

I The argument that information provided in support of an intervenor’s response to a summary disposition motion should not be considered because the information is outside the scope of the intervenor’s admitted contention, if true, can be a meritorious assertion.

J A motion to strike is an inappropriate vehicle to address whether arguments in a summary disposition answer raise matters outside the scope of a contention, as the Board can consider and resolve the issue without such a motion and without “striking” anything. Instead, the issue should have been raised in a reply pleading, for which permission to file should have been sought from the Board before the replies were due. *See* Licensing Board Memorandum and Order (Initial Prehearing Order) (Dec. 18, 2006) at 5 (unpublished); *see also Duke Cogema Stone & Webster* (Savannah River Mixed Oxide Fuel Fabrication Facility), LBP-05-4, 61 NRC 71, 78 (2005) (request to file reply to summary disposition answer granted).

K While the current procedural rule governing summary disposition in formal agency adjudications under Part 2, Subpart G (as did its pre-2004 predecessor) clearly discourages the filing of replies to summary disposition responses, *see* 10 C.F.R. § 2.710(a) (2007) (following response by opposing party, no further supporting statements or responses will be entertained); *id.* § 2.749(a) (2003) (same); *but see id.* § 2.1205(b) (2007) (making no mention of replies relative to summary disposition in Part 2, Subpart L proceedings), given the ability of responding parties to interpose additional “factual” information by way of affidavits and other submissions, as well as the potential that exists under such a motion for a merits disposition of a contention (or portion of a contention), a properly supported request to reply to a summary disposition response would seem to be a reasonable candidate for a favorable Board discretionary decision permitting the filing. *Compare* 10 C.F.R. § 2.309(h)(2) (petitioner given opportunity to file reply to applicant/staff answers to hearing requests); *id.* § 2.323(c) (permission to file reply to response to motion may be granted in compelling circumstances, such as when moving party could not reasonably anticipate response arguments).

L While a movant’s discussion of a matter in its summary disposition motion does aid the Board in understanding whether the issue is within the scope of the contention, at least to the degree it suggests the parties had notice of the matter, such a discussion does not necessarily establish that the matter is within the scope of a contention given that the movant’s discussion may also be outside the scope of the contention. Nonetheless, if a movant discusses a matter in its statement of undisputed facts, it would not be untoward for the Board to view with skepticism any later argument by that movant that a response regarding that issue is outside the scope of the contention, particularly given the onus that is placed upon an opposing party to respond to such a statement. *See* 10 C.F.R. § 2.710(a) (“All material facts set forth in the statement required to be served by the moving party will be considered to be admitted unless controverted by the statement required to be served by the opposing party”).

M Summary disposition is not the vehicle for untangling expert disputes so long as the experts are competent and the information they provide is adequately stated and explained. *See MOX*, LBP-05-4, 61 NRC at 80-81.

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- N In the face of a Staff DEIS or final environmental impact statement that includes additional probative information the Staff believes is relevant to the subject matter of an admitted contention initially footed in an applicant's ER, an intervenor would be wise to amend its contention (or submit a new contention) to reflect any relevant changes or additions, thereby avoiding any question about whether this additional information falls outside the scope of the admitted contention so as to preclude it from consideration as support for the contention. *See* 10 C.F.R. § 2.309(f)(2).
- O In accord with 10 C.F.R. § 2.309(f)(1), the support for a contention, as reflected in its stated bases and any accompanying affidavits or documentary information, should be set forth with reasonable specificity so as "to put the other parties on notice as to what issues they will have to defend against or oppose." *Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), ALAB-899, 28 NRC 93, 97 (1988).
- LBP-08-3 SOUTHERN NUCLEAR OPERATING COMPANY (Early Site Permit for Vogtle ESP Site), Docket No. 52-011-ESP (ASLBP No. 07-850-01-ESP-BD01); EARLY SITE PERMIT; January 15, 2008; MEMORANDUM AND ORDER (Ruling on Dispositive Motion and Associated Motions To Strike and To Supplement the Record Regarding Environmental Contention 1.3)
- A In this 10 C.F.R. Part 52 proceeding regarding the application of Southern Nuclear Operating Company (SNC) for an early site permit (ESP) for an additional two reactors at the Vogtle Electric Generating Plant site, ruling on an SNC motion seeking summary disposition regarding environmental contention (EC) 1.3, Environmental Report (ER) Dry Cooling System Alternatives Discussion Fails To Address Aquatic Species Impacts, the Licensing Board denies the motion, concluding that SNC failed to demonstrate there are no material factual disputes concerning genuine issues regarding the matter of the adequacy of the analysis of the appropriateness of a dry cooling system given the presence of extremely sensitive biological resources that is the focus of the contention.
- B For proceedings that are being conducted pursuant to the "informal" hearing procedures of 10 C.F.R. Part 2, Subpart L, summary disposition motions are to be resolved in accord with the standards for dispositive motions for "formal" hearings, as set forth in Part 2, Subpart G. *See* 10 C.F.R. § 2.1205(c). Summary disposition may be entered with respect to any matter (or all matters) in a proceeding if the motion, along with any appropriate supporting materials (including affidavits, discovery responses, and documents), shows that there is "no genuine issue as to any material fact and that the moving party is entitled to a decision as a matter of law." *See* 10 C.F.R. §§ 2.710(d)(2), 2.1205(c).
- C The party proffering the summary disposition motion bears the burden of making the requisite showing by providing "a separate, short, and concise statement of the material facts as to which the moving party contends that there is no genuine issue to be heard." 10 C.F.R. § 2.710(a). A party opposing the motion must counter any adequately supported material facts provided by the movant with its own "separate, short, and concise statement of the material facts as to which it is contended there exists a genuine issue to be heard," with the recognition that, to the degree the responsive statement fails to contravene the material facts proffered by the movant, the movant's facts "will be considered to be admitted." *Id.*
- D Commission precedent recognizes that for contentions (or portions of contentions) challenging an application as having omitted a required item (or items), post-contention admission events, such as issuance of a Staff draft environmental impact statement (DEIS), can render the contention subject to dismissal as moot, *see Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-28, 56 NRC 373, 383 (2002).
- E When filed with an intervention petition, an environmental contention and its associated bases quite properly address an applicant's ER, rather than the then still-being-developed Staff DEIS, *see* 10 C.F.R. § 2.309(f)(2) (contentions must be based on documents/information available when hearing petition to be filed).
- F A Board may consider environmental contentions contesting an applicant's ER as challenges to the agency's subsequent DEIS so long as the DEIS analysis or discussion at issue is essentially *in para materia* with the ER analysis or discussion that is the focus of the contention. If it is not, an intervenor attempting to litigate an issue based on expressed concerns about the DEIS may need to amend the admitted contention or, if the information in the DEIS is sufficiently different from that in the ER that supported the contention's admission, submit a new contention. *See* 10 C.F.R. § 2.309(f)(2); *see also McGuire/Catawba*, CLI-02-28, 56 NRC at 383.
- G In the context of a summary disposition motion, the question about the need to amend or file a new contention becomes relevant when there is a dispute about whether an admitted issue statement (or a

DIGESTS

ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

relevant portion of such an issue statement) is a contention of omission — i.e., a contention challenging a portion of the application, because it fails in toto to address a required subject matter — or a contention of inadequacy — i.e., one that asserts the pertinent portion of the application contains a discussion or analysis of a relevant subject that is inadequate in some material respect. *See Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-01-23, 54 NRC 163, 171-72 (2001) (dividing all contentions into “a challenge to the application’s adequacy based on the validity of the information that is in the application; a challenge to the application’s adequacy based on its alleged omission of relevant information; or some combination of these two challenges”); *see also AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), LBP-06-16, 63 NRC 737, 742 & n.7 (2006).

H If intervenors have not sought to amend an environmental contention as admitted, to the degree the contention is one of omission, it is subject to dismissal in connection with those aspects for which it is appropriately established the Staff DEIS provides any purported missing analysis or discussion.

I The argument that information provided in support of an intervenor’s response to a summary disposition motion should not be considered because the information is outside the scope of the intervenor’s admitted contention, if true, can be a meritorious assertion.

J A motion to strike is an inappropriate vehicle to address whether arguments in a summary disposition answer raise matters outside the scope of a contention, as the Board can consider and resolve the issue without such a motion and without “striking” anything. Instead, the issue should have been raised in a reply pleading, for which permission to file should have been sought from the Board before the replies were due. *See* Licensing Board Memorandum and Order (Initial Prehearing Order) (Dec. 18, 2006) at 5 (unpublished); *see also Duke Cogema Stone & Webster* (Savannah River Mixed Oxide Fuel Fabrication Facility), LBP-05-4, 61 NRC 71, 78 (2005) (request to file reply to summary disposition answer granted).

K While the current procedural rule governing summary disposition in formal agency adjudications under Part 2, Subpart G (as did its pre-2004 predecessor) clearly discourages the filing of replies to summary disposition responses, *see* 10 C.F.R. § 2.710(a) (2007) (following response by opposing party, no further supporting statements or responses will be entertained); *id.* § 2.749(a) (2003) (same); *but see id.* § 2.1205(b) (2007) (making no mention of replies relative to summary disposition in Part 2, Subpart L proceedings), given the ability of responding parties to interpose additional “factual” information by way of affidavits and other submissions, as well as the potential that exists under such a motion for a merits disposition of a contention (or portion of a contention), a properly supported request to reply to a summary disposition response would seem to be a reasonable candidate for a favorable Board discretionary decision permitting the filing. *Compare* 10 C.F.R. § 2.309(h)(2) (petitioner given opportunity to file reply to applicant/staff answers to hearing requests); *id.* § 2.323(c) (permission to file reply to response to motion may be granted in compelling circumstances, such as when moving party could not reasonably anticipate response arguments).

L While a movant’s discussion of a matter in its summary disposition motion does aid the Board in understanding whether the issue is within the scope of the contention, at least to the degree it suggests the parties had notice of the matter, such a discussion does not necessarily establish that the matter is within the scope of a contention given that the movant’s discussion may also be outside the scope of the contention. Nonetheless, if a movant discusses a matter in its statement of undisputed facts, it would not be untoward for the Board to view with skepticism any later argument by that movant that a response regarding that issue is outside the scope of the contention, particularly given the onus that is placed upon an opposing party to respond to such a statement. *See* 10 C.F.R. § 2.710(a) (“All material facts set forth in the statement required to be served by the moving party will be considered to be admitted unless controverted by the statement required to be served by the opposing party”).

M Summary disposition is not the vehicle for untangling expert disputes so long as the experts are competent and the information they provide is adequately stated and explained. *See MOX*, LBP-05-4, 61 NRC at 80-81.

LBP-08-4 U.S. ARMY (Jefferson Proving Ground Site), Docket No. 40-8838-MLA (ASLBP No. 00-776-04-MLA); MATERIALS LICENSE AMENDMENT; February 28, 2008; INITIAL DECISION

LBP-08-5 U.S. DEPARTMENT OF ENERGY (High-Level Waste Repository), Docket No. PAPO-00 (ASLBP No. 04-829-01-PAPO); PRE-LICENSE APPLICATION MATTERS; April 23, 2008; MEMORANDUM AND ORDER (Denying the Department of Energy’s Motion To Strike)

A In the pre-license application phase of the High-Level Waste Proceeding, the Pre-License Application Presiding Officer (PAPO) Board denies the Department of Energy’s motion to strike the State of Nevada’s

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

certification that it has made all its documentary material available on the Licensing Support Network (LSN).

- B Pursuant to 10 C.F.R. § 2.325, the burden of proof rests on the movant.
- C In the case of any motion resting on assertions of fact, it is reasonable to expect that the movant will buttress it with some concrete evidence, often if not usually supplied in the form of an affidavit or declaration by a person with asserted knowledge of the fact or facts upon which the motion is based.
- LBP-08-6 CROW BUTTE RESOURCES, INC. (North Trend Expansion Project), Docket No. 40-8943 (ASLBP No. 07-859-03-MLA-BD01); MATERIALS LICENSE AMENDMENT; April 29, 2008 (Corrected May 21, 2008); MEMORANDUM AND ORDER (Ruling on Standing and Contentions of Petitioners Owe Aku, Bring Back the Way; Western Nebraska Resources Council; Slim Buttes Agricultural Development Corporation; Debra L. White Plume; and Thomas Kanatakeniate Cook)
- A In this license amendment proceeding the licensing board finds that three petitioners have standing to intervene and have submitted three admissible contentions, and set further oral argument on one additional contention and whether to grant 10 C.F.R. Part 2, Subpart G, hearing.
- B Licensing board finds it appropriate to consider the timeliness of materials proffered by petitioners in support of standing and certain contentions under 10 C.F.R. § 2.309(c) and (f)(2), and found that one document, a recent e-mail from an expert, was not timely, given that petitioners provided no indication of when they contacted the expert, and his e-mail primarily referenced articles published years earlier; nor did the e-mail constitute “legitimate amplification” of originally filed contentions, given that it was less “focused on the legal or logical arguments presented in the applicant/licensee or NRC staff answer,” than it was “new [expert] support” for contentions.
- C Licensing board finds that one document, consisting primarily of new information in the form of fairly extensive original analysis of essentially the same information contained in the application, and available in NRC ADAMS system 51 days prior to its submission but received by petitioners only 1 day before its submission, was timely under 10 C.F.R. § 2.309(c) and (f)(2).
- D Motion of Oglala Sioux Tribe To File Brief Amicus Curiae granted, because Tribe entitled to a “reasonable opportunity to participate” in this proceeding under 10 C.F.R. § 2.315(c).
- E A petitioner’s standing, or right to participate in a proceeding, concerns whether a party has “sufficient stake” in a matter, as contrasted with whether there is a real dispute.
- F A petitioner bears the burden of demonstrating standing, but in ruling on standing a licensing board is to “construe the petition in favor of the petitioner.”
- G The starting point in determining the standing of a petitioner in an NRC proceeding is section 189a of the Atomic Energy Act (AEA), which requires the NRC to provide a hearing “upon the request of any person whose interest may be affected by the proceeding,” and which has been implemented in Commission regulations in 10 C.F.R. § 2.309(d)(1).
- H Judicial concepts of standing, to which licensing boards are to look in ruling on standing, provide the following guidance in determining whether a petitioner has established the necessary “interest” under 10 C.F.R. § 2.309(d)(1): To qualify for standing a petitioner must allege (1) a concrete and particularized injury that is (2) fairly traceable to the challenged action and (3) likely to be redressed by a favorable decision. The injury may be either actual or threatened, but must lie arguably within the “zone of interests” protected by the statutes governing the proceeding — here, either the Atomic Energy Act (AEA) or the National Environmental Policy Act (NEPA).
- I An organization that wishes to establish standing to intervene may do so by demonstrating either organizational or representational standing. To establish organizational standing it must “demonstrate a palpable injury in fact to its organization interests” within the zone of interests of the AEA or NEPA; to establish representational standing, it must (1) demonstrate that the interests of at least one member who has standing to sue in his or her own right may be affected by the licensing action, (2) identify that member by name and address; and (3) show that the organization is authorized to request a hearing on behalf of that member.
- J A presumption of standing based on geographical proximity may be applied in nuclear materials licensing cases only when the activity at issue involves a “significant source of radioactivity producing an obvious potential for off-site consequences,” which is determined on a case-by-case basis, depending on how close to the source a petitioner lives or works, and “taking into account the nature of the proposed action and the significance of the radioactive source.” When there is “no obvious potential for harm,” it is the petitioner’s burden to show “specific and plausible means” by which an action may harm the petitioner.

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- K In “in situ leach,” or “ISL,” mining cases the geographical areas that may be affected by mining operations are largely dependent on the size and other characteristics of underground aquifers, including the hydrogeological conditions that determine how easily and how fast water moves within and among aquifers and interacts with surface water.
- L Although the pleading requirements of 10 C.F.R. § 2.309 are “strict by design,” a licensing board may permit potential intervenors to cure defects in petitions in order to obviate dismissal of an intervention petition because of inarticulate draftsmanship or procedural or pleading defects, and *pro se* petitioners are not held to the same standards of pleading as those represented by counsel.
- M In ruling on standing, a licensing board is not to assess the merits of a case, but rather to consider whether assertions of harm are plausible, and in this case board found it was plausible to conclude that contaminated water might mix with water ultimately used by at least some of the Petitioners, given past undisputed excursions and spills from Applicant’s mining operations, and lack of complete knowledge about the hydrogeology of the proposed new area of operation, supported by exhibit from state environmental office raising questions about Applicant’s information.
- N Organizational petitioner found to have shown representational standing based on member who had and used well drawing from same aquifer Applicant proposed to mine, 1-1/2 miles from proposed site boundary.
- O Organizational petitioner found to have shown representational standing based on member who drank from well that drew from aquifer that might mix with aquifer to be mined, in the area of the proposed site, 8 miles from its boundary, supported by exhibit from state environmental office; notwithstanding Applicant’s arguments about how fast water was said to flow in mined aquifer, there were indications that water in aquifer from which well drew flowed at a faster rate.
- P Individual petitioner who fished in river downstream from proposed mining operations, into which mining site would drain, found to have shown standing, given history of spill into river and case law supporting arguments that contamination can be carried significant distances in rivers.
- Q Organizational petitioner that alluded to a number of promising avenues for demonstrating standing, but failed to follow any to a concrete, particular, and specific conclusion that would plausibly establish its standing, denied standing to intervene.
- R Individual petitioner who alleged that his well drew from an aquifer that might mix with the mined aquifer or another nearby aquifer, and lived 20 miles from proposed mining site, found not to have plausibly shown, with sufficient specificity, concreteness, or particularity, how he might be injured as a result of proposed operation, and therefore denied standing; but ruling not meant to suggest that any particular distance would or would not confer standing in any case, as all such rulings are dependent on a variety of factors.
- S To intervene in an NRC proceeding, a petitioner must, in addition to demonstrating standing, submit at least one contention meeting the requirements of 10 C.F.R. § 2.309(f)(1). Failure of a contention to meet any of the requirements of section 2.309(f)(1) is grounds for its dismissal.
- T Although the February 2004 revision of the NRC procedural rules no longer incorporates all of the prior provisions, including some of those formerly found in 10 C.F.R. § 2.714(a)(3), (b)(1), which in the past permitted the amendment and supplementation of petitions and filing of contentions after the original filing of petitions, the new rules contain essentially the same substantive admissibility standards for contentions.
- U The “strict contention rule serves multiple interests,” including (1) focusing the hearing process on real disputes susceptible of resolution in an adjudication (for example, a petitioner may not demand an adjudicatory hearing to attack generic NRC requirements or regulations, or to express generalized grievances about NRC policies); (2) putting other parties in the proceeding on notice of the Petitioners’ specific grievances, by requiring detailed pleadings that give other parties a good idea of the claims they will be either supporting or opposing; and (3) helping to ensure that full adjudicatory hearings are triggered only by those able to proffer at least some minimal factual and legal foundation in support of their contentions.
- V It is not essential that there be “technical perfection” in contention pleading,” and contentions should be decided on their merits rather than on technicalities, but the contention admissibility rules still bar contentions based only on “generalized suspicions.”
- W A petitioner must read the application, state the position of the applicant as stated therein, and state and explain the petitioner’s opposing view. A contention must directly controvert a position taken by the

DIGESTS

ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- applicant in the application. A petitioner must explain any alleged deficiencies and support its contentions with documents, expert support, or at least a fact-based argument.
- X A petitioner is not required to prove its case at the contention admissibility stage of a proceeding, or to state factual allegations in affidavits or formal evidentiary form sufficient to withstand a summary disposition motion, but must do more than make conclusory allegations; a petitioner must show that material facts are in dispute and demonstrate that an in-depth inquiry is appropriate.
- Y A petitioner must provide a sufficient basis to support a contention, which requires not an exhaustive list of bases but enough alleged factual or legal bases to support the contention.
- Z The “brief explanation of the basis” that is required by section 2.309(f)(1)(ii) helps define the scope of a contention, but it is the contention itself, not “bases,” whose admissibility must be determined.
- AA In ruling on contentions originally filed by Petitioners acting *pro se* but who later retained counsel, it is not appropriate to hold the petition itself to the same standards of pleading as would be expected of a lawyer, particularly because under the new procedural rules in 10 C.F.R. Part 2 it is no longer permissible for counsel to file an amended petition.
- BB Expert support is not required for admission of a contention; a fact-based argument may be sufficient on its own.
- CC With regard to contentions involving alleged violations of the National Environmental Policy Act (NEPA), although the requirements of NEPA are directed to federal agencies and thus the primary duties of NEPA fall on the NRC Staff in the NRC proceedings, the initial requirement to analyze the environmental impacts of an action, including a materials licensing amendment, is directed to applicants under relevant NRC rules.
- DD The contention admissibility stage of a proceeding is not the time to go to merits determinations on matters raised in contentions.
- EE The provision in 10 C.F.R. § 2.335(a) that no NRC rule is subject to attack in any adjudicatory proceeding prohibits the admission of any contention or part thereof challenging any dose limits specified in NRC rules.
- FF The provision in 10 C.F.R. § 2.335(a) that no NRC rule is subject to attack in any adjudicatory proceeding does not prohibit the filing of a contention challenging, in a license amendment proceeding, a position of an applicant that is based on a condition in its current license, because a license condition is not the same as an NRC rule.
- GG The licensing board finds that Petitioners have demonstrated that further inquiry in depth is appropriate with regard to two contentions alleging that proposed mining operations could have negative environmental and health and safety impacts, by contaminating groundwater resources that mix with water resources used by Petitioners, and admits contentions in somewhat limited form and reframed to consolidate admissible environmental issues falling logically under NEPA into one admitted contention, and to consolidate admissible public health and safety issues falling under the Atomic Energy Act (AEA) into a second admitted contention. While this results in a somewhat artificial separation of issues, given the interrelatedness of the two sets of issues that are both centered primarily in the underground geology of the area surrounding the proposed expansion area and how groundwater may move among underground aquifers and interact with surface water and thereby potentially affect both the environment and public health and safety through the same underlying mechanisms, the NRC’s authority and responsibility to regulate the matters in dispute in this proceeding arise out of two sets of standards, found in NEPA and the AEA, and thus, for the sake of analytical clarity under these dual sets of standards — particularly given the absence of any rules specifically setting standards in ISL cases — the licensing board finds that proceeding in the manner described makes for the most effective organization of the admissible issues under the circumstances.
- HH Issues of drought and climate change are not outside the scope of the proceeding because these fall under the provisions of 10 C.F.R. § 51.45(b)(1), (b)(4), requiring that an environmental report include a description of the environment affected and discuss impacts of the proposed action on the environment, in proportion to their significance, and the relationship between local short-term uses of man’s environment and the maintenance and enhancement of long-term productivity.
- II Licensing board admits contention asserting that prehistoric Indian camp should be inspected by Tribal elders and leaders, finding that in it Petitioners demonstrated a dispute over the material factual/legal issue of whether the consultation process conducted by the Applicant, a precursor to the consultation to be conducted by the NRC as the responsible federal agency, complies with relevant requirements of

DIGESTS

ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- law; contentions are to be based on documents available at the time the petition is filed, including the environmental report, and Petitioners based their contention on this.
- JJ Licensing board denies contention concerned with terrorism, based on failure of Petitioners to distinguish situation at issue from relevant and binding Commission case law that such contentions are outside the scope of NRC adjudicatory proceedings in jurisdictions where no federal court of appeals has ruled to the contrary.
- KK Licensing board defers ruling on contention concerning alleged foreign ownership of Applicant until parties have briefed issue.
- LBP-08-7 PACIFIC GAS AND ELECTRIC COMPANY (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), Docket No. 72-26-ISFSI (ASLBP No. 08-860-01-ISFSI-BD01); INDEPENDENT SPENT FUEL STORAGE INSTALLATION; May 14, 2008; ORDER (Granting NRC Staff's Unopposed Motion for Summary Disposition of San Luis Obispo Mothers for Peace's Contention 1(b))
- A In the Diablo Canyon proceeding, the Presiding Officer grants the NRC Staff's uncontested motion for summary disposition of Contention 1(b), which alleged that the Staff failed to provide a complete list of source documents underlying its Environmental Assessment, and also failed to identify appropriate Freedom of Information Act exemptions for its withholding decisions.
- B Summary disposition motions are addressed in 10 C.F.R. § 2.710, which states that summary disposition shall be granted if the "filings in the proceeding . . . together with the statements of the parties and the affidavits . . . show that there is no genuine issue as to any material fact and that the moving party is entitled to a decision as a matter of law" (10 C.F.R. § 2.710(d)(2)).
- C The moving party bears the initial burden of informing the tribunal of the basis for its motion and identifying those portions of the record that demonstrate the absence of a genuine issue of material fact (*Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986)).
- D The nonmoving party cannot rest on the mere allegations or denials of a pleading, but must "go beyond the pleadings and by [the party's] own affidavits, or by the depositions, answers to interrogatories, and admissions on file, designate specific facts showing that there is a genuine issue for trial" (*Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986)).
- E The tribunal must examine the evidence in the light most favorable to the nonmoving party (*Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986)).
- F The moving party "has the burden to show that he is entitled to judgment under established principles; and if he does not discharge that burden then he is not entitled to judgment. No defense to an insufficient showing is required" (*Cleveland Electric Illuminating Co.* (Perry Nuclear Power Plant, Units 1 and 2), ALAB-443, 6 NRC 741, 754 (1977); *accord Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 160 (1970)).
- G Challenges in FOIA cases routinely are resolved on the basis of summary judgment pleadings. *See, e.g., Wickwire Gavin, P.C. v. U.S. Postal Service*, 356 F.3d 588 (4th Cir. 2004); *Cooper Cameron Corp. v. U.S. Department of Labor*, 280 F.3d 539 (5th Cir. 2002); *Minier v. Central Intelligence Agency*, 88 F.3d 796 (9th Cir. 1996); *Lewis v. Internal Revenue Service*, 823 F.2d 375 (9th Cir. 1987).
- H Where the agency has submitted detailed public affidavits that permit resolution of FOIA issues, *in camera* review of redacted information or sealed documents is not necessary. *See Lion Raisins Inc. v. U.S. Department of Agriculture*, 354 F.3d 1072, 1083 (9th Cir. 2004) (*in camera* review ought to occur only in the "exceptional case" after the "government has submitted as detailed public affidavits . . . as possible") (quoting *Doyle v. Federal Bureau of Investigation*, 722 F.2d 554, 556 (9th Cir. 1983)).
- I Regarding the public disclosure requirements of an agency's NEPA analysis, Congress has established that the Environmental Impact Statement "shall be made available . . . to the public as provided by [FOIA]" (42 U.S.C. § 4332(2)(C)).
- J An agency need not disclose information if it falls within one of the nine exemptions in FOIA (5 U.S.C. § 552(b)). An agency may "withhold public disclosure of any NEPA documents, in whole or in part, under the authority of an FOIA exemption" (*Weinberger v. Catholic Action of Hawaii/Peace Education Project*, 454 U.S. 139, 143 (1981)).
- K Ordinarily, when access to documents is disputed in FOIA litigation, the "government must submit detailed public affidavits identifying the documents withheld, the FOIA exemptions claimed, and a particularized explanation of why each document falls within the claimed exemption" (*Lion Raisins Inc. v. U.S. Dep't of Agric.*, 354 F.3d at 1082). This can be usually accomplished by the agency's preparation of a *Vaughn* Index and explanatory affidavits that are sufficiently detailed to support a tribunal's plenary

DIGESTS

ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- assessment of the validity of a claimed exemption. See *Lion Raisins Inc.*, 354 F.3d at 1082-83; *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 977 (1974).
- L In evaluating the validity of a claimed FOIA exemption, the experience and expertise of an affiant, coupled with a detailed and specific affidavit, lends special weight to the affiant's statements and conclusions. See *Lion Raisins Inc.*, 354 F.3d at 1080.
- M FOIA Exemption 2 authorizes an agency to withhold "matters that are . . . related solely to the internal personnel rules and practices of an agency" (5 U.S.C. § 552(b)(2)). Relevant case law supports the conclusion that NRC records are protected from disclosure under Exemption 2 to the extent they contain internal analytic guidance, operating rules, or practices, the disclosure of which would aid terrorists or saboteurs seeking to circumvent security measures designed to protect nuclear materials. *E.g.*, *Dirksen v. U.S. Department of Health and Human Services*, 803 F.2d 1456 (9th Cir. 1986); *Ginsburg, Feldman, & Bress v. Federal Energy Administration*, 591 F.2d 717 (D.C. Cir.), *aff'd en banc and per curiam*, 591 F.2d 752 (D.C. Cir. 1978), *cert. denied*, 441 U.S. 906 (1979).
- N Under NRC Regulations, an Environmental Assessment must include a Reference Document List that "(identifies the) sources used" (10 C.F.R. § 51.30(a)(2)). This List should include ("[a]ll references (i.e., sources used) used in the preparation of the EA . . . including those cited in the text of the EA and those that were not specifically cited but served as useful guidance during document development" (NUREG-1748, "Environmental Review Guidance for Licensing Actions Associated with NMSS Programs" § 3.4.12 (Aug. 2003)).
- LBP-08-8 SHIELDALLOY METALLURGICAL CORPORATION (Amendment Request for Decommissioning of the Newfield, New Jersey Facility), Docket No. 40-7102-MLA (ASLBP No. 07-852-01-MLA-BD01); MATERIALS LICENSE AMENDMENT; June 2, 2008; MEMORANDUM (Bringing Matter of Concern to Commission's Attention)
- LBP-08-9 DOMINION NUCLEAR CONNECTICUT, INC. (Millstone Nuclear Power Station, Unit 3), Docket No. 50-423-OLA (ASLBP No. 08-862-01-OLA-BD01); OPERATING LICENSE AMENDMENT; June 4, 2008; MEMORANDUM AND ORDER (Ruling on Petition To Intervene and Request for Hearing)
- A In addition to the traditional requirements for standing, the Commission has recognized that a petitioner may have standing based upon its geographical proximity to a particular facility. *Florida Power & Light Co.* (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325, 329 (1989). In appropriate circumstances, a petitioner's proximity to the facility in question provides for a so-called presumption that "a petitioner has standing to intervene without the need to specifically plead injury, causation, and redressability if the petitioner lives within, or otherwise has frequent contacts with, the zone of possible harm from the nuclear reactor or other source of radioactivity." *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-01-6, 53 NRC 138, 146 (2001), *aff'd on other grounds*, CLI-01-17, 54 NRC 3 (2001). However, in an uprate proceeding, demonstrating standing in this manner additionally requires a "determination that the proposed action involves a significant source of radioactivity producing an obvious potential for offsite consequences." *Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Georgia), CLI-95-12, 42 NRC 111, 116 (1995); see also *PPL Susquehanna LLC* (Susquehanna Steam Electric Station, Units 1 and 2), LBP-07-10, 66 NRC 1, 18 (2007); *Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), LBP-04-28, 60 NRC 548, 553-54 (2004).
- B An organization seeking to intervene in a representational capacity must demonstrate that the licensing action will affect at least one of its members, must identify that member by name and address, and must show that it is authorized by that member to request a hearing on his or her behalf. *Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), CLI-00-20, 52 NRC 151, 163 (2000).
- C An applicant for a change in the operating conditions of its nuclear power plant (in this case, a power uprate) is required to comply with all relevant NRC regulations. The standard to be met is whether the application meets the requirements for a License Amendment. The relevant NRC regulations for a power uprate, be it a SPU or an EPU, are set forth in 10 C.F.R. §§ 50.90 to 50.92. See 10 C.F.R. §§ 50.90 to 50.92.
- D The failure of an applicant to address any guidance topics or deviation from the guidance provided does not rise to the level of failure to comply with NRC regulations.
- E A contention must specifically challenge the license application to be admissible. 10 C.F.R. § 2.309(f)(1)(vi). This can either be in the form of an asserted omission from the application of required information or an asserted error in a specific analysis or other technical matter set out in the application. *Id.* The former form of challenge must be supported by specific reasons why the alleged omissions are

DIGESTS

ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

relevant and material, and the latter form of challenge must be supported by reasons why the analysis is deficient. *Id.*

F To the extent a contention calls for requirements in excess of those imposed by Commission regulations, it must be rejected as a collateral attack on the regulations. *See Northeast Nuclear Energy Co.* (Millstone Nuclear Power Station, Units 2 and 3), LBP-01-10, 53 NRC 273, 286-87 (2001); *Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), LBP-82-106, 16 NRC 1649, 1656 (1982).

G In determining whether an amendment to a license will be issued, the Commission is “guided by the considerations which govern the issuance of initial licenses.” 10 C.F.R. § 50.92(a), i.e., the same regulatory criteria that govern the initial license issuance govern each amendment. Therefore, as amendments are approved, they become part of the licensing baseline, all evaluated against the same standards. The current application for an amendment to the license to permit a power uprate must be evaluated against the current baseline (i.e., as against the status quo). Thus the structural operating margins are evaluated considering the plant’s current design limits (which are based upon the cumulative effect of the original license and all of the amendments previously approved). Challenges to the current operating license are outside the scope of matters challengeable in a power uprate application, and therefore fail to meet the requirements of 10 C.F.R. § 2.309(f)(1)(iii).

H Whether Millstone Unit 3 has a valid NPDES permit is outside the scope of this uprate proceeding. *See Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), LBP-04-15, 60 NRC 81, 92-93 (2004); *Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), CLI-07-16, 65 NRC 371, 377 (2007).

I Challenges to how the Staff performs its reviews are outside the scope of this proceeding. *See Tennessee Valley Authority* (Sequoyah Nuclear Plant, Units 1 and 2; Watts Bar Nuclear Plant, Unit 1), LBP-02-14, 56 NRC 15, 37 (2002) (“It is a well-established principle of NRC adjudication that ‘contentions must rest on the *license application*, not on NRC Staff reviews’ As the Commission stated when it amended the contentions rule, ‘a contention will not be admitted if the allegation is that the NRC Staff has not performed an adequate analysis’ because ‘the sole focus of the hearing is on whether the application satisfies NRC regulatory requirements, rather than adequacy of the NRC Staff performance’”) (internal citations omitted) (emphasis in original).

LBP-08-10 U.S. DEPARTMENT OF ENERGY (High-Level Waste Repository), Docket No. PAPO-001 (ASLBP No. 08-861-01-PAPO-BD01); PRE-LICENSE APPLICATION MATTERS; June 20, 2008; MEMORANDUM AND ORDER (Case Management Order Concerning Petitions To Intervene, Contentions, Responses and Replies, Standing Arguments, and Referencing or Attaching Supporting Materials)

A The Advisory Pre-License Application Presiding Officer Board sets forth binding case management requirements and makes certain related recommendations pertaining to petitions to intervene, contentions, responses and replies, standing arguments, and referencing or attaching supporting materials, in any adjudication regarding the Department of Energy’s application for authorization to construct a high-level waste repository at Yucca Mountain, Nevada.

LBP-08-11 SHAW AREVA MOX SERVICES (Mixed Oxide Fuel Fabrication Facility), Docket No. 70-3098-MLA (ASLBP No. 07-856-02-MLA-BD01); MATERIALS LICENSE AMENDMENT; June 27, 2008; MEMORANDUM AND ORDER (Ruling on Contentions and All Other Pending Matters)

A In this proceeding regarding the application of Shaw AREVA MOX Services (MOX Services) for a license to possess and use byproduct, source, and special nuclear material at the planned Mixed Oxide Fuel Fabrication Facility (MFFF, or the MOX facility) that it is building for the U.S. Department of Energy (DOE) on the federal government’s Savannah River Site (SRS), the Licensing Board — ruling on a hearing petition filed by Blue Ridge Environmental Defense League (BREDL), Nuclear Watch South (NWS), and the Nuclear Information and Resource Service (NIRS) (collectively “Petitioners”) seeking to intervene to contest the MOX Services Application — concludes that the Petitioners have proffered one admissible contention, that one previously admitted contention should be dismissed after reconsideration, and that a new contention should be dismissed, with its denial conditioned upon the other parties notifying the Petitioners when action on that subject is next contemplated.

B The Chairman issued a concurring opinion to point out possible ways in which the Commission might avoid disruptions or errors attributable to safety-culture or due-process shortcomings. The first is that the Commission has stressed the need for safety culture to drive the performance of the NRC Staff in its regulation and oversight of the industry. In the Chairman’s judgment, this proceeding has exposed matters that might indicate that that culture is being undermined. Secondly, the Chairman suggests that the

DIGESTS

ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- Commission needs to issue directives or policies that would enable adjudications to proceed differently when circumstances call for it, so as to assure that the agency's hearing process is "meaningful."
- C While the Licensing Board is concerned about the need to make — and the legitimacy of making — significant decisions intrinsic to the operating license proceeding when construction of the facility has scarcely begun, this concern alone is not sufficient to permit admission of an environmental contention in the face of the Commission's specific direction that environmental issues would be resolved at an earlier phase.
- D A contention based solely on information relating to possible design or capacity changes that have not yet been presented to the agency (e.g., as an amendment to the Application) must fail because "a possible future action must at least constitute a 'proposal' pending before the agency to be ripe for adjudication." *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-14, 55 NRC 278, 295 (2002).
- E Unlike contentions that deal with the capability of the facility as designed to accommodate interruptions in waste transfer that could significantly influence the facility's environmental impact and safe operation, a contention revolving around the possibility of future design changes to the facility is speculative and would for that reason be inadmissible even absent restrictions on environmental contentions in general.
- F When the Safety Evaluation Report (SER) was not explicitly mentioned in the original version of the contention, but was the subject of supporting information that the Petitioners did cite explicitly, it is appropriate to include a reference to it in a Board-revised contention. In any event, whether or not the referenced SER *citation* appears in the revised contention, the relevant SER *material* will deserve attention in any adjudication that may eventually take place on the contention.
- G What is far more consequential are the implications of the argument that an SER prepared at one stage lacks force at the next stage. If that is the position being asserted, then much of the underpinning of, and reliance placed upon, the Staff's regulatory review would be vitiated. Such a position must be rejected.
- H The admission of a "grand contention of omission" based on failure to meet the requirements of 10 C.F.R. § 70.23(a)(8) regarding facility completion could be justified in order to preserve, untrammelled, a Petitioners' litigation options where a notice of hearing on an operating license for a facility is published at the nascent stages of a 6-year construction process. Nonetheless, a better approach is to dismiss the contention on the condition that the Applicant and the NRC Staff provide specified notices of the pendency of the "completion" finding. This will provide the Petitioners with reasonable notice of an opportunity to formulate — in an effective and efficient manner — any challenges they may then have regarding the substance of that finding, and to present such a substantive contention without the need for extraordinary allotments of additional time (beyond the norm) to do so.
- I It has been customary in other proceedings for licensing boards, after intervention has been allowed, to establish a specific time period after the occurrence of a triggering event during which new contentions will, if filed within that time, be deemed to have been filed "in a timely fashion based on the availability of the subsequent information" within the meaning of 10 C.F.R. § 2.309(f)(2)(iii). Many times, boards have selected 30 days as that specific presumptive time period. The Board finds that a longer period is justified here. The task facing citizen-intervenors who are monitoring the publication of documents on the progress of facility planning and construction in an effort to file timely new contentions is enormous. Given the disparity in resources, the Applicant's choice to file well in advance of the start of construction should not be allowed to place upon the Petitioners the burden of having to face, continuously for the entirety of a 6-year construction period, a rolling 30-day deadline for monitoring, reviewing, analyzing, and critiquing documents. That period is too short in these circumstances.
- J Given the length of time that this proceeding will consume, there is no room for the Applicant to argue that its interests, or the public interest, would be harmed by extending the Petitioners' time. An extension of a rolling 30-day deadline to a rolling 60-day one confers the benefit of doubling the Petitioners' time to prepare any one contention while adding a total of only 30 days — during a 6-year construction period — to the *overall* time Petitioners will have to file contentions. This would seem a worthwhile investment in making the opportunity for a hearing a meaningful one.
- LBP-08-12 AMERGEN ENERGY COMPANY, LLC (Oyster Creek Nuclear Generating Station), Docket No. 50-0219-LR (ASLBP No. 06-844-01-LR); LICENSE RENEWAL; July 24, 2008; MEMORANDUM AND ORDER (Denying Citizens' Motion to Reopen the Record and to Add a New Contention)

DIGESTS

ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- A Reopening the record is an “‘extraordinary action’” (51 Fed. Reg. 19,535, 19,538 (May 30, 1986)). The standards for reopening are strict and demanding. Otherwise, “‘there would be little hope’ of completing administrative proceedings if each newly arising allegation required an agency to reopen its hearings” (*Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-05-12, 61 NRC 345, 350 n.18 (2005) (quoting *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 435 U.S. 519, 555 (1978))). Proponents of motions seeking to reopen the record therefore bear a “heavy burden” (*Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-756, 18 NRC 1340, 1344 (1983) (quoting *Kansas Gas & Electric Co.* (Wolf Creek Generating Station, Unit 1), ALAB-462, 7 NRC 320, 338 (1978))).
- B Movants must satisfy a multifactor test (10 C.F.R. §§ 2.326(a) and 2.326(d)) that is governed by prescribed evidentiary requirements (*id.* § 2.326(b)).
- C Additionally, where a motion to reopen the record seeks to admit a new contention that has not previously been in controversy among the parties, section 2.326(d) requires the movant to show that a balancing of the factors of 2.309(c)(1) (to the extent they are relevant to the particular filing) weighs in favor of reopening.
- D Section 2.326(b) demands particularized support for motions that seek to reopen the record. *See Private Fuel Storage, L.L.C.*, CLI-05-12, 61 NRC at 350 (“a party seeking to reopen a closed record to raise a new matter faces an elevated burden to lay a proper foundation for its claim”). Such motions must be accompanied by “affidavits that set forth the factual and/or technical bases for the movant’s claim that the criteria [in section 2.326(a)] have been satisfied” (10 C.F.R. § 2.326(b)). Moreover, section 2.326(b) requires that “[e]vidence contained in affidavits must meet the [regulatory] admissibility standards” (*ibid.*) — that is, it must be “relevant, material, and reliable” (*id.* § 2.337(a)).
- E In evaluating a motion to reopen the record, a licensing board properly evaluates the evidentiary material submitted by the parties. *See Private Fuel Storage, L.L.C.*, CLI-05-12, 61 NRC at 350 (a licensing board properly considers the movant’s “new allegations and [the nonmovant’s] contrary evidence in determining whether there was a real issue at stake warranting a reopened hearing”); *Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), CLI-90-10, 32 NRC 218, 222 (1990) (Commission weighed the competing evidence in concluding that a “motion to reopen [did] not present a question of safety significance”).
- F When considering a motion to reopen the record, a licensing board need not formally reopen the record in order to assess the relative worth of the parties’ competing evidence. *See Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Station), ALAB-138, 6 AEC 520, 523 (1973) (In denying a motion to reopen the record, the tribunal will necessarily have supplemented the record with, for example, the “affidavits, letters or other materials accompanying the motion and the responses thereto. The ‘hearing record,’ however, has not been reopened”).
- G It is well established that discovery is not permitted for the purpose of developing a motion to reopen the record or to assist a petitioner in the framing of contentions. *See Baltimore Gas & Electric Co.* (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), CLI-98-25, 48 NRC 325, 351 (1998); *Metropolitan Edison Co.* (Three Mile Island Nuclear Station, Unit 1), CLI-85-7, 21 NRC 1104, 1106 (1985); *see also Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), ALAB-915, 29 NRC 427, 432-33 (1989).
- H Neither law nor logic supports an assertion that a licensing board is foreclosed from considering docketed licensing material that has been submitted to the board and that, on its face, appears to be relevant to the disposition of a pending motion.
- I “There is a difference between contentions that, on the one hand, allege that a license application suffers from an improper omission, and contentions that, on the other hand, raise a specific substantive challenge to how particular information or issues have been discussed in a license application” (*AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), LBP-06-16, 63 NRC 737, 742 (2006)). As with all contentions of omission, if the applicant supplies the missing information — or, as relevant here, if the applicant performs the omitted analysis — the contention is moot (*Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-28, 56 NRC 373, 383 (2002)).
- J To satisfy the requirement in section 2.326(a)(2), the affidavit must provide sufficient information to support a *prima facie* showing that (1) a deficiency exists in the license renewal application, and (2) the deficiency presents a significant safety issue.

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- K When a newly proffered contention (and its underlying evidence) is unrelated to the contention adjudicated by the licensing board, rather than showing that the newly proffered evidence would likely have materially altered the board's disposition of the contention, the movant must show that the evidence supporting their contention would likely have materially affected the outcome of the license renewal proceeding. That is, they must show a likelihood that its contention would be resolved in its favor such that the license renewal application would be denied or conditioned. *See Private Fuel Storage, LLC*, CLI-05-12, 61 NRC at 350 (to reopen a closed record to introduce a new issue, the movant has the burden of "showing that the new information will 'likely' trigger a 'different result'").
- L A decision by the NRC Staff to revise the Final Safety Evaluation Report to account for an applicant's confirmatory analysis would not, standing alone, be a materially different result that justifies reopening the record, because it would neither change the outcome of the renewal proceeding nor impose a different licensing condition on an applicant.
- M Although the term "likely" in section 2.326(a)(3) is not defined, we construe it — consistent with its commonly understood meaning — to be synonymous with "probable" or "more likely than not." *See Webster's Third New International Dictionary of the English Language Unabridged* 1310 (1976); *cf.* 51 Fed. Reg. at 19,536-37 (in selecting a "likelihood" standard, the Commission indicated that a "would have been reached" standard is too strict, and a "might have been reached" standard is too lax).
- N It is not surprising that a movant who has failed to provide an adequate foundation to support the existence of a significant safety issue also is unable to "demonstrate that a materially different result . . . would have been likely had [their] newly proffered evidence been considered initially" (10 C.F.R. § 2.326(a)(3)). *See Seabrook*, CLI-90-10, 32 NRC at 223 ("Because this matter as presented is devoid of safety significance, we see no likelihood whatsoever — let alone a demonstration — that a materially different result would . . . have been likely had the newly proffered evidence been considered initially").
- O Failure by a movant to address all the reopening requirements in a motion to reopen "is reason enough to deny [the motion]." *See AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-08-13, 67 NRC 396, 399 (2008). *See also Seabrook*, ALAB-915, 29 NRC at 432 ("the Commission expects its adjudicatory boards to enforce [reopening requirements] rigorously — i.e., to reject out-of-hand reopening motions that do not meet those requirements within their four corners").
- LBP-08-13 ENTERGY NUCLEAR OPERATIONS, INC. (Indian Point, Units 2 and 3), Docket Nos. 50-247-LR, 50-286-LR (ASLBP No. 07-858-03-LR-BD01); LICENSE RENEWAL; July 31, 2008; MEMORANDUM AND ORDER (Ruling on Petitions to Intervene and Requests for Hearing)
- A In this proceeding regarding the License Renewal Application ("LRA") of Entergy Nuclear Operations, Inc. ("Entergy" or "Applicant"), to renew the operating license for the Indian Point Energy Center ("IPEC" or "Indian Point"), for 20 years beyond the current expiration date of September 9, 2013, for Unit 2 ("IP2") and December 12, 2015, for Unit 3 ("IP3"), the Licensing Board — ruling on petitions to intervene filed by seven different petitioners — concludes that three petitioners have demonstrated standing and proffered at least one admissible contention and are admitted as parties to the proceeding; that three petitioners that were not admitted as parties have the option to participate in the proceeding as interested governmental entities; and that one petitioner failed to proffer an admissible contention and has been dismissed from the proceeding.
- B A petitioner must provide basic information supporting its claim to standing in order to satisfy the requirements of 10 C.F.R. § 2.309(d)(1)(ii)-(iv). This information must include (1) the nature of the petitioner's right to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any decision or order that may be issued in the proceeding on the petitioner's interest. In addition, the NRC generally follows judicial concepts of standing, which require that a petitioner "(1) allege a concrete and particularized injury that is (2) fairly traceable to the challenged action and (3) likely to be redressed by a favorable decision," commonly referred to as "injury in fact," causality, and redressability."
- C In order for organizations to demonstrate standing to intervene, they must allege that the challenged action will cause a cognizable injury to the organization's interests or to the interests of its members.
- D When seeking to intervene as the representative for its members, an organization must identify a member by name and address, show how that member would be affected by the licensing action, and demonstrate that the member has authorized the organization to request a hearing on his or her behalf.

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- E The NRC applies a proximity presumption, whereby a petitioner is presumed to have standing to intervene without the need specifically to plead injury, causation, and redressability if the petitioner lives within 50 miles of the nuclear power reactor.
- F A State or local governmental entity that wishes to be a party in a proceeding that involves a facility located within its boundaries is automatically deemed to have standing.
- G An admissible contention must (1) provide a specific statement of the legal or factual issue sought to be raised; (2) provide a brief explanation of the basis for the contention; (3) demonstrate that the issue raised is within the scope of the proceeding; (4) demonstrate that the issue raised is material to the findings the NRC must make to support the action that is involved in the proceeding; (5) provide a concise statement of the alleged facts or expert opinions, including references to specific sources and documents, that support the petitioner's position and upon which the petitioner intends to rely at hearing; and (6) provide sufficient information to show that a genuine dispute exists with regard to a material issue of law or fact, including references to specific portions of the application that the petitioner disputes, or in the case when the application is alleged to be deficient, the identification of such deficiencies and supporting reasons for this belief.
- H With limited exceptions not applicable in this case, no rule or regulation of the Commission is subject to attack in any adjudicatory proceeding.
- I In order for a petitioner to adopt the contention of another petitioner, it must first demonstrate that it has standing and submit its own admissible contention. The Board will not allow a petitioner who has not submitted an admissible contention to adopt the contentions of other petitioners.
- J Part 51 of 10 C.F.R. divides environmental issues for license renewal into generic and site-specific components. The issues that have been dealt with generically are identified as Category 1 issues. Other issues that require site-specific analysis, are identified as Category 2 issues. Category 1 issues are not subject to challenge in a relicensing proceeding because they involve environmental effects that are essentially similar for all plants and need not be assessed repeatedly on a site-specific basis.
- K Absent a waiver pursuant to 10 C.F.R. § 2.335, Category 1 issues cannot be addressed in a license renewal proceeding.
- L Category 2 issues, on the other hand, are not "essentially similar" for all plants because they must be reviewed on a site-specific basis; accordingly, challenges relating to these issues are properly part of a license renewal proceeding.
- M Certain safety issues that were reviewed for the initial license have been closely monitored by NRC inspection during the license term and need not be reviewed again in the context of a license renewal application.
- N The Updated Final Safety Analysis Report ("UFSAR") is part of the Current Licensing Basis ("CLB") and must be updated annually. Contentions pertaining to issues dealing with the current operating license, including the UFSAR, are not within the scope of license renewal review.
- O The General Design Criteria are not applicable to nuclear power plants with construction permits issued prior to May 21, 1971.
- P Aging management programs ("AMP") for systems, structures, and components ("SSC") identified by 10 C.F.R. § 54.4 are within the scope of license renewal proceedings. For those SSCs subject to aging management review that are not CLB issues, discussion of proposed inspection and monitoring details will come before this Board only as they are needed to demonstrate that the Applicant's AMP does or does not achieve the desired goal of providing assurance that the intended function of relevant SSCs discussed herein will be maintained for the license renewal period.
- Q Pursuant to section 54.21(a)(3), each application must contain an Integrated Plant Assessment ("IPA") for which specified components will, *inter alia*, demonstrate that the effects of aging will be adequately managed so that the intended function(s) will be maintained consistent with the CLB for the period of extended operation. A commitment to develop a program does not *demonstrate* that the effects of aging will be adequately managed.
- R NEPA does not require an applicant to look at every conceivable alternative, but rather requires only consideration of feasible, nonspeculative, reasonable alternatives. The reasonable alternatives for license renewal proceedings are limited to discrete electric generation sources that are feasible technically and available commercially. Section 8.2 of the Generic Environmental Impact Statement ("GEIS") addresses the need to consider energy conservation for the "no-action" alternative.

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- S The reasonable alternatives to be considered in the Environmental Report for license renewal proceedings are limited to discrete electric generation sources that are feasible technically and available commercially. There is no requirement for an applicant to analyze in detail options that are not discrete, feasible sources of base-load energy.
- T Neither the NRC nor the applicant has the mission or authority to implement a general societal interest in energy efficiency. An applicant's decision to exclude renewable energy options from its alternatives analysis is reasonable because these sources are not always available and, with the current technology, cannot meet the goals of the LRA.
- U Whether a SAMA must be analyzed in an ER hinges on whether it could potentially be cost-beneficial. Therefore, a petitioner must, at a minimum, address the approximate relative cost and benefit of the SAMA because without any notion of cost, it is difficult to assess whether a SAMA may be cost-beneficial and thus warrant serious consideration.
- V While the seismic SAMA methodology is outlined in the ER, a petitioner may assume that, because it cannot check all analysis details, the analysis is incomplete or incorrect. This is mere speculation and such speculation is insufficient to support the admissibility of this contention.
- W A petitioner is not required to redo SAMA analyses in order to raise a material issue. Where a petitioner alleges that the SAMA was done, but that the analysis was significantly flawed due to the use of inaccurate factual assumptions, it may be used to support a contention.
- X Pursuant to 10 C.F.R. Part 51, Subpart A, Appendix B, Table B-1 ("Table B-1"), the impact on offsite land use during the license renewal term cannot be assessed generically and, accordingly, it is a Category 2 environmental issue that is within the scope of this proceeding. In conducting its analysis of the impact of the license renewal on land use, an applicant should consider the impact on real estate values that would be caused by license renewal or nonrenewal.
- Y The adequacy of the UFSAR and compliance with the CLB are outside the scope of license renewal proceedings. The proper vehicle to challenge the adequacy of the UFSAR would be a section 2.206 petition, not a challenge to the license renewal.
- Z Any challenge, explicit or implicit, to a decision by the NRC Staff to grant an exemption from a 1-hour barrier to a 24/30-minute barrier is a direct challenge to the CLB and unrelated to the effects of plant aging and the LRA. Accordingly, it is beyond the scope of a license renewal proceeding.
- AA Part 54 does not require a comprehensive preapplication baseline inspection. If a petitioner believes the current NRC regulations are inadequate, the venue for raising such a concern is a section 2.802 petition to institute a rulemaking action.
- BB It is the burden of an applicant to show that the concrete in the containment structures will maintain its integrity during the extended period of operations, and, if this cannot be done, to develop an AMP that ensures that any indication of degradation is detected and remediated.
- CC Whether an AMP is necessary to manage the cumulative effects of embrittlement of the reactor pressure vessels and associated internals is within the scope of this proceeding.
- DD In evaluating metal fatigue, a component's cumulative usage factor ("CUF") is the fundamental parameter used to determine whether it will likely develop cracks during the license renewal period and, as a result, be subject to an AMP in accordance with 10 C.F.R. § 54.21(c)(1)(iii). As the threshold parameter of the time-limited aging analysis ("TLAA") for metal fatigue, an applicant must complete the analysis of the CUFs for the license renewal period and include the results in the LRA. An applicant's commitment to repair or replace the affected locations before exceeding a CUF of 1.0 does not meet the "demonstration" requirement of the regulations. While the implementation of the AMP can anticipate future actions as implied by this statement, the actual plan must be sufficient to demonstrate the specific aging management actions that will take place in the future, and not just that the AMP will be developed in the future.
- EE The Commission ruled that NEPA imposes no legal duty on the NRC to consider intentional malevolent acts . . . on a case-by-case basis in conjunction with commercial power reactor license renewal applications.
- FF Contentions relating to the conclusions that the NRC Staff reaches in its NEPA analysis with regard to the environmental impacts from these radiological releases to groundwater must await future publication of its SEIS.
- GG There is no need for a review of emergency planning issues in the context of license renewal.
- HH Section 51.53(c)(3)(ii)(B) requires an applicant to provide in its ER a site-specific analysis of entrainment, impingement, and heat shock/thermal discharge impacts from its once-through cooling

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

systems. An applicant may meet its obligations by doing one of following: (1) provide a copy of current CWA § 316(b) determination; (2) provide a section 316(a) variance or equivalent State permit and supporting documentation; or (3) assess the impact of proposed action on fish and shellfish resources resulting from heat shock, impingement, and entrainment.

- II Spent fuel pool fires are Category 1 environmental issues and, therefore, are addressed generically in the GEIS for license renewals. A petition for rulemaking that addresses issues related to spent fuel pool fires would be a more appropriate venue to seek relief for resolving generic concerns about spent fuel fires than a site-specific contention in an adjudication.
- JJ Presentation of an alternative analysis is, without more, insufficient to support a contention alleging that the original analysis failed to meet applicable requirements.
- KK An applicant is required to address new and significant information for either Category 1 or Category 2 issues in its ER for an LRA.
- LL NEPA, which mandates a hard look at the environmental impact of proposed federal actions, is the only legal grounds for an admissible contention relating to Environmental Justice (“EJ”) matters. Under NEPA, the purpose of an EJ review is to insure that the Commission considers and publicly discloses environmental factors peculiar to minority or low-income populations that may cause them to suffer harm disproportionate to that suffered by the general population. The goals of NEPA are to inform federal agencies and the public about the environmental effects of proposed projects.
- MM An applicant in its ER need only consider the range of alternatives that are capable of achieving the goal of the proposed action. The reasonable alternatives for license renewal proceedings are limited to discrete electric generation sources that are technically feasible and commercially available. Energy conservation, including the demand-side options, are not discrete electric generation sources. NEPA’s “rule of reason” does not demand an analysis of energy efficiency, because, *inter alia*, conservation measures are beyond the ability of an applicant to implement, and are therefore outside the scope required by a NEPA review of reasonable alternatives.
- NN General allegations covering the overall adequacy of SSCs, with no mention of potential errors or deficiencies in an applicant’s LRA do not support the admissibility of a contention.
- OO An ER prepared for a license renewal pursuant to 10 C.F.R. § 51.53(c) need not discuss the economic or technical benefits and costs of the proposed action or alternatives except as they are either essential for determining whether an alternative should be included or relevant to mitigation.
- LBP-08-14 FLORIDA POWER & LIGHT COMPANY (St. Lucie Nuclear Power Plant, Units 1 and 2), Docket Nos. 50-335-CO, 50-389-CO (ASLBP No. 08-866-01-CO-BD01); ENFORCEMENT; August 15, 2008; MEMORANDUM AND ORDER (Denying Request for Hearing)
- A In this proceeding regarding a request for hearing filed by Saporito Energy Consultants, by and through its president, Thomas Saporito (Petitioner or SEC), seeking to challenge a Confirmatory Order issued by the Nuclear Regulatory Commission Staff (Staff) to Florida Power & Light Company (FPL or Licensee), the Licensing Board concludes that Petitioner has failed to demonstrate that it has standing and has failed to proffer an admissible contention. Accordingly, the Board denies the request for hearing.
- B A petitioner’s right to participate in a licensing proceeding stems from section 189a of the Atomic Energy Act. That section provides for a hearing upon the request of any person whose interest may be affected by the proceeding. The Commission’s regulations implementing that section of the Atomic Energy Act (“AEA”) require a licensing board, in ruling on a request for a hearing, to determine whether the petitioner has an interest potentially affected by the proceeding by considering (1) the nature of the petitioner’s right under the AEA to be made a party to the proceeding; (2) the nature and extent of the petitioner’s property, financial, or other interest in the proceeding; and (3) the possible effect of any decision or order that may be issued in the proceeding on the petitioner’s interest.
- C When assessing whether a petitioner has set forth a sufficient interest to intervene under 10 C.F.R. § 2.309, licensing boards apply judicial concepts of standing. Judicial concepts of standing require the petitioner to show that (1) he or she has personally suffered, or will personally suffer in the future, a distinct and palpable harm that constitutes an injury in fact; (2) the injury fairly can be traced to the challenged action; and (3) the injury is likely to be redressed by a favorable decision.
- D If the petitioner requests a remedy that is beyond the scope of the hearing, then the hearing request must be denied because redressability is an element of standing. Accordingly, it is unlikely that petitioners will often obtain hearings on confirmatory enforcement orders. In the context of an enforcement proceeding, Commission precedent teaches that the scope of the proceeding is directly related to the issue

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

of standing, in that an individual or organization requesting a hearing must show that the petitioner would be adversely affected by the enforcement order as it exists, rather than being adversely affected by the existing order as it might be compared to a hypothetical order that the petitioner asserts would be an improvement.

E The Commission's regulations, 10 C.F.R. § 2.309(f)(1), set out the requirements that must be met if a contention is to be admitted in a NRC licensing or enforcement adjudication. An admissible contention must (1) provide a specific statement of the legal or factual issue sought to be raised; (2) provide a brief explanation of the basis for the contention; (3) demonstrate that the issue raised is within the scope of the proceeding; (4) demonstrate that the issue raised is material to the findings the NRC must make to support the action involved in the proceeding; (5) provide a concise statement of the alleged facts or expert opinions, including references to specific sources and documents, that support the petitioner's position and upon which the petitioner intends to rely at the hearing; and (6) provide sufficient information to show that a genuine dispute exists with regard to a material issue of law or fact, including references to specific portions of the application that the petitioner disputes, or in the case when the application is alleged to be deficient, the identification of such deficiencies and supporting reasons for this belief.

F In addition to the contention admissibility standards in section 2.309(f), section 2.335(a) prohibits petitioners from challenging NRC regulations.

G The purpose of the contention rule is to focus litigation on concrete issues and should result in a clearer and more focused record for decision. The Commission has stated that it should not have to expend resources to support the hearing process unless there is an issue that is appropriate for, and susceptible to, resolution in an NRC hearing. The Commission has emphasized that the rules on contention admissibility are "strict by design." Failure to comply with any of these requirements is grounds for the dismissal of a contention.

H The issue of standing in an enforcement proceeding and whether a request for hearing raises allegations that are within the scope of the proceeding are closely related. A petitioner requesting a hearing must show that the request is within the scope of the proceeding by demonstrating that the petitioner will be adversely affected by the existing terms of the enforcement order. Any purported adverse effects caused by the Confirmatory Order's failure to include revised or additional provisions sought by a petitioner shall be deemed irrelevant for this purpose. If the petitioner fails to show the adverse effects of the Confirmatory Order, the hearing request will be denied.

I Although licensing boards have used a proximity presumption when resolving issues of standing for cases involving reactor licensing, in a case involving an enforcement order the standing requirement is based on the Confirmatory Order itself, and the petitioner must show that he will be adversely affected by the terms of the Confirmatory Order.

J Therefore, something more than proximity to the facility (i.e., a link between the Confirmatory Order and the alleged harm to the individual) is necessary to establish standing.

K The Commission has consistently and unequivocally ruled that petitioners may not seek to enhance the measures outlined in an enforcement order. Additionally, the Commission has held that claims by a nonlicensee to the effect that the root causes or facts underpinning a Confirmatory Order are inaccurate, are not valid claims in a proceeding concerning a Confirmatory Order.

L Challenges to the NRC's authority to engage in administrative dispute resolution (ADR) is beyond the scope of enforcement order proceedings. Supreme Court precedent establishes that agencies have wide latitude in administering their enforcement program. Indeed, the Administrative Dispute Resolution Act of 1996 requires each federal agency to promote the use of ADR.

LBP-08-15 VIRGINIA ELECTRIC AND POWER COMPANY d/b/a DOMINION VIRGINIA POWER and OLD DOMINION ELECTRIC COOPERATIVE (North Anna Power Station, Unit 3), Docket No. 52-017-COL (ASLBP No. 08-863-01-COL); COMBINED LICENSE; August 15, 2008; MEMORANDUM AND ORDER (Ruling on Petitioner's Standing and Contentions and NCUC's Request to Participate as a Nonparty Interested State)

A State agencies may participate as nonparty interested States. 10 C.F.R. § 2.315(c).

B Matters resolved in a proceeding on an ESP application are considered resolved in a subsequent COL proceeding when the COL application references the ESP, subject to certain exceptions. 10 C.F.R. § 52.39(a)(2).

C A safety contention arising from a matter resolved in an ESP proceeding is within the scope of a COL proceeding that references the ESP only if it concerns whether the site characteristics and design

DIGESTS

ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- parameters specified in the ESP have been met (10 C.F.R. § 52.39(c)(1)(i)), whether a term or condition in the ESP has been met (§ 52.39(c)(1)(ii)), whether a variance from the ESP requested by the COL applicant is unwarranted or should be modified (§ 52.39(c)(1)(iii)), or whether emergency planning matters resolved in the ESP should be revisited (§ 52.38(c)(1)(iv)).
- D The Commission's decision to use the term "resolved" in 10 C.F.R. § 52.39(a) implies that it intended to grant preclusive effect only when the appropriate agency official makes a determination concerning the issue in dispute. The fact that an issue was mentioned in agency documents is insufficient to show that it was resolved.
- E An environmental contention may be admitted during a COL proceeding if it concerns a significant environmental issue that was not resolved in the ESP proceeding, or if it involves the impacts of construction and operation of the facility and significant new information has been identified. 10 C.F.R. § 52.39(c)(1)(v).
- F A matter need not be actually litigated in order to be "resolved" in an ESP proceeding. If the matter was decided by the Staff in the ESP proceeding, concerns an issue the Staff was required to resolve at that stage, and could have been litigated in the ESP proceeding, the matter is deemed "resolved" by the ESP proceeding even if the issue was not actually litigated.
- G In general, the rule of collateral estoppel bars parties from relitigating issues actually and necessarily decided in prior litigation between the same parties. The Appeals Board decided in 1974 that the doctrine of collateral estoppel should be applied in appropriate circumstances in NRC proceedings.
- H The NRC must have provided adequate notice to potential litigants, through the *Federal Register* notice that provides the public with the opportunity for a hearing, of the issues that were within the scope of the ESP proceeding, and thus might properly be raised in a request for a hearing in that ESP proceeding. Given that the *Federal Register* notice defines the scope of the issues that may properly be raised in a request for a hearing, it also defines the scope of the issues that could reasonably be deemed resolved during an ESP proceeding.
- I Before a participant may be precluded from litigating an issue because it failed to raise the issue in an earlier proceeding, it must have had reasonable notice that such an opportunity existed.
- J A contention of omission claims, in the words of 10 C.F.R. § 2.309(f)(1)(vi), that "the application fails to contain information on a relevant matter as required by law . . . and the supporting reasons for the petitioner's belief." For such a contention, a petitioner may satisfy the requirement to provide a specific statement of the legal or factual issue sought to be raised by providing an adequate description of the information it contends should have been included in the application. 10 C.F.R. § 2.309(f)(1)(i).
- K For a contention of omission, the petitioner may satisfy the requirement of 10 C.F.R. § 2.309(f)(1)(ii) to provide a brief explanation of the basis of the contention by adequately explaining the basis of its belief that the application omits information necessary to satisfy the governing NRC regulations.
- L If a contention challenges the legal sufficiency of the application that is the subject of the Notice of Hearing and Opportunity to Petition for Leave to Intervene, the contention is within the scope of the proceeding. 10 C.F.R. § 2.309(f)(1)(iii).
- M Applicant's plan for storage of low-level radioactive waste was material to the findings the NRC must make to support the action that is involved in the proceeding, because the applicant had requested a license under 10 C.F.R. Part 30 that would authorize it to possess and store the low-level radioactive waste that is the subject of the proposed contention. 10 C.F.R. § 2.309(f)(1)(iv).
- N Applicant's plan for storage of low-level radioactive waste at its facility was material to compliance with the National Environmental Policy Act (NEPA) and the NRC's regulations implementing NEPA, because the environmental report prepared for a Combined Operating License application must address, among other things, the environmental costs of "management of low-level wastes and high-level wastes related to uranium fuel cycle activities." 10 C.F.R. § 51.51(a).
- O Petitioner failed to establish the materiality of its contention related to management of low-level radioactive waste by referring to 10 C.F.R. Part 61. The applicant was not seeking a license under Part 61, and it was speculative whether such a license would ever be necessary.
- P For a contention of omission, the petitioner's burden under 10 C.F.R. § 2.309(f)(1)(v) is to show the facts necessary to establish that the application omits information that should have been included. The facts relied on need not show that the applicant's facility cannot be safely operated, but rather that the application is incomplete under the governing regulations. If the applicant cures the omission, the

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

contention will become moot. Then, the intervenor must timely file a new or amended contention if it intends to challenge the sufficiency of the new information supplied by the applicant.

Q Under 10 C.F.R. § 2.309(f)(1)(vi), when an application is alleged to be deficient, the petitioner must identify the deficiencies and provide supporting reasons for its position that such information is required. Any contention that meets these requirements necessarily presents a genuine dispute with the applicant on a material issue, as required by section 2.309(f)(1)(vi).

R Petitioners that are not represented by counsel will be held to less rigid standards for pleading, although a totally deficient petition will not be admitted.

S Contention that asked the Licensing Board to determine whether the applicant would be able to obtain permits from and comply with regulatory requirements imposed by other agencies was in substance a request that the Board examine matters outside the NRC's jurisdiction, and therefore the contention was outside the scope of the proceeding.

T Because the NRC's regulations mandate balancing the economic and other benefits of a proposed new reactor against its environmental and other costs, a contention that worldwide uranium supplies will be inadequate to permit the anticipated power production benefits during the license term was potentially material to the licensing proceeding under 10 C.F.R. Part 52. Nevertheless, the Board declined to admit the contention because the Petitioner failed to provide expert opinion, documents, or other sources to support its allegation that worldwide uranium supplies would be inadequate.

LBP-08-16 TENNESSEE VALLEY AUTHORITY (Bellefonte Nuclear Power Plant, Units 3 and 4), Docket Nos. 52-014-COL, 52-015-COL (ASLBP No. 08-864-02-COL-BD01); COMBINED LICENSE; September 12, 2008; MEMORANDUM AND ORDER (Ruling on Standing, Hearing Petition Timeliness, and Contention Admissibility)

A In this 10 C.F.R. Part 52 proceeding regarding the application of the Tennessee Valley Authority (TVA) for a combined operating license (COL) to construct and operate two new reactors at the existing Bellefonte nuclear facility site, ruling on a petition filed jointly by three public interest organizations seeking to intervene to contest the TVA COL application, the Licensing Board concludes that, having established the requisite standing and proffering four admissible contentions, two of the petitioners, Blue Ridge Environmental Defense League (BREDL) and the Southern Alliance for Clean Energy (SACE), are admitted as parties to the proceeding. The third petitioner, the Bellefonte Efficiency and Sustainability Team (BEST), having failed to make the requisite standing showing, is not admitted as a party to the proceeding.

B In determining whether an individual or organization should be granted party status in a proceeding based on standing "as of right," the agency has applied contemporaneous judicial standing concepts that require a participant to establish (1) it has suffered or will suffer a distinct and palpable injury that constitutes injury-in-fact within the zones of interests arguably protected by the governing statutes (e.g., the Atomic Energy Act (AEA), the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. § 4321, et seq.); (2) the injury is fairly traceable to the challenged action; and (3) the injury is likely to be redressed by a favorable decision. See *Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-96-1, 43 NRC 1, 6 (1996).

C In cases involving the possible construction or operation of a nuclear power reactor, proximity to the proposed facility has been considered sufficient to establish the requisite standing elements. See *Florida Power & Light Co.* (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325, 329 (1989).

D When an entity seeks to intervene on behalf of its members, that entity must show it has an individual member who can fulfill all the necessary standing elements and who has authorized the organization to represent his or her interests. See *Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), CLI-00-20, 52 NRC 151, 163 (2000).

E In assessing a petition to determine whether these elements are met, which a presiding officer must do even though there are no objections to a petitioner's standing, the Commission has indicated that we are to "construe the petition in favor of the petitioner." *Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Georgia), CLI-95-12, 42 NRC 111, 115 (1995).

F Because none of the affidavits submitted in support of a hearing request indicate an organization seeking to intervene represents the interests of the submitter, the organization has failed to establish it has standing. See *Virginia Electric and Power Co.* (North Anna Power Station, Unit 3), LBP-08-15, 68 NRC 294, 304 (2008).

DIGESTS

ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- G Under 10 C.F.R. § 2.306(c)(2), to be considered timely, a document must be submitted to the E-Filing system for docketing and service “[b]y 11:59 p.m. Eastern Time.” The agency’s regulations further state that a filing will be considered complete “[b]y electronic transmission when the filer performs the last act that it must perform to transmit a document, in its entirety, electronically.” 10 C.F.R. § 2.302(d)(1).
- H “Hitting the button” to submit, if the last act for a particular pleading, is all the regulations require to be done by 11:59 p.m. on the due date. Thus, the time an E-Filing submission is received by the system server is not necessarily controlling relative to the timeliness of the filing.
- I Given the general rule of interpretation that the specific controls over the general, *see* 10 C.F.R. § 2.3(a) (in any conflict between a general rule in Part 2, Subpart C, and a special rule in Part 2, the special rule governs), the language of the Commission’s case-specific notice establishing “11:59 p.m. Eastern Standard Time” as the filing time for hearing petitions controls over the agency’s rule of general applicability for all cases that refers only to “11:59 p.m. Eastern Time.”
- J Considerations not unlike those associated with the concept of *contra proferentem* that applies in construing written instruments, *see* Black’s Law Dictionary 328 (7th ed. 1999) (ambiguous provision is construed most strongly against the person who selected the language), lead to the conclusion that any ambiguity relative to the filing date for hearing requests arising from the language of the agency’s hearing opportunity notice should be construed in favor of a participant (particularly a pro se participant) who was seeking to comply with the notice.
- K Those who wish to make a timely adjudicatory filing via the agency’s E-Filing system should leave themselves enough preparation time to ensure they can “hit the button” to submit their filing, in its entirety, well before the eleventh hour (and fifty-ninth minute).
- L Section 2.309(f) of the Commission’s rules of practice specifies the requirements that must be met if a contention is to be deemed admissible. Specifically, a contention must provide (1) a specific statement of the legal or factual issue sought to be raised; (2) a brief explanation of its basis; (3) a concise statement of the alleged facts or expert opinions, including references to specific sources and documents, that support the petitioner’s position and upon which the petitioner intends to rely at hearing; and (4) sufficient information demonstrating that a genuine dispute exists in regard to a material issue of law or fact, including references to specific portions of the application that the petitioner disputes, or in the case when the application is alleged to be deficient, the identification of such deficiencies and supporting reasons for this belief. *See* 10 C.F.R. § 2.309(f)(1)(i), (ii), (v), and (vi). In addition, the petitioner must demonstrate that the issue raised in the contention is both “within the scope of the proceeding” and “material to the findings the NRC must make to support the action that is involved in the proceeding.” *Id.* § 2.309(f)(1)(iii), (iv). Failure to comply with any of these requirements is grounds for dismissing a contention. *See Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 325 (1999); *see also Arizona Public Service Co.* (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), CLI-91-12, 34 NRC 149, 155-56 (1991).
- M A contention that attacks a Commission rule, or which seeks to litigate a matter that is, or clearly is about to become, the subject of a rulemaking, is inadmissible. *See* 10 C.F.R. § 2.335; *Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 345 (1999) (citing *Potomac Electric Power Co.* (Douglas Point Nuclear Generating Station, Units 1 and 2), ALAB-218, 8 AEC 79, 85, 89 (1974)). This includes contentions that advocate stricter requirements than agency rules impose or that otherwise seek to litigate a generic determination established by a Commission rulemaking. *See Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-01-6, 53 NRC 138, 159 (2001); *Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), LBP-93-1, 37 NRC 5, 29-30 (1993); *Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), LBP-82-106, 16 NRC 1649, 1656 (1982); *see also Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-96-7, 43 NRC 235, 251 (1996); *Arizona Public Service Co.* (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), LBP-91-19, 33 NRC 397, 410, *aff’d in part and rev’d in part on other grounds*, CLI-91-12, 34 NRC 149 (1991). Similarly, an adjudication is not the proper forum for challenging applicable statutory requirements or the basic structure of the agency’s regulatory process. *See Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), CLI-07-16, 65 NRC 371, 383 (2007) (citing 10 C.F.R. § 2.335(a)); *see also Philadelphia Electric Co.* (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20, *aff’d in part on other grounds*, CLI-74-32, 8 AEC 217 (1974). By the same token, a contention that simply states the petitioner’s views about what regulatory policy should be does not present a litigable issue. *See PPL Susquehanna LLC* (Susquehanna Steam

DIGESTS

ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- Electric Station, Units 1 and 2), CLI-07-25, 66 NRC 101, 106 (2007) (citing *Peach Bottom*, ALAB-216, 8 AEC at 20-21 & n.33).
- N All proffered contentions must be within the scope of the proceeding as defined by the Commission in its initial hearing notice and order referring the proceeding to the Licensing Board. See 10 C.F.R. § 2.309(f)(1)(iii); *Tennessee Valley Authority* (Watts Bar Nuclear Plant, Unit 1; Sequoyah Nuclear Plant, Units 1 and 2; Browns Ferry Nuclear Plant, Units 1, 2, and 3), CLI-04-24, 60 NRC 160, 204 (2004) (citing *General Public Utilities Nuclear Corp.* (Three Mile Island Nuclear Station, Unit 1), ALAB-881, 26 NRC 465, 476 (1987) (footnotes omitted)); see also *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-00-23, 52 NRC 327, 329 (2000); *Duke Power Co.* (Catawba Nuclear Station, Units 1 and 2), ALAB-825, 22 NRC 785, 790-91 (1985). As a consequence, any contention that falls outside the specified scope of the proceeding must be rejected. See *Portland General Electric Co.* (Trojan Nuclear Plant), ALAB-534, 9 NRC 287, 289 n.6 (1979).
- O It is the petitioner's obligation to present factual information and/or expert opinion necessary to support its contention. See 10 C.F.R. § 2.309(f)(1)(v); *Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Georgia), LBP-95-6, 41 NRC 281, 305, *vacated in part and remanded on other grounds*, CLI-95-10, 42 NRC 1, and *aff'd in part*, CLI-95-12, 42 NRC 111 (1995). While a Board may appropriately view a petitioner's supporting information in a light favorable to the petitioner, failure to provide such information regarding a proffered contention requires the contention be rejected. See *Palo Verde*, CLI-91-12, 34 NRC at 155. In this connection, neither mere speculation nor bare or conclusory assertions, even by an expert, alleging that a matter should be considered will suffice to allow the admission of a proffered contention. See *Fansteel, Inc.* (Muskogee, Oklahoma Site), CLI-03-13, 58 NRC 195, 203 (2003). If a petitioner neglects to provide the requisite support for its contentions, it is not within the Board's power to make assumptions of fact that favor the petitioner, nor may the Board supply information that is lacking. See *Palo Verde*, CLI-91-12, 34 NRC at 155; *Duke Cogema Stone & Webster* (Savannah River Mixed Oxide Fuel Fabrication Facility), LBP-01-35, 54 NRC 403, 422 (2001); *Georgia Tech Research Reactor*, LBP-95-6, 41 NRC at 305.
- P Simply attaching material or documents as a basis for a contention, without setting forth an explanation of that information's significance, is inadequate to support the admission of the contention. See *Fansteel*, CLI-03-13, 58 NRC at 204-05. Along these lines, any supporting material provided by a petitioner, including those portions of the material that are not relied upon, is subject to Board scrutiny. See *Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), LBP-96-2, 43 NRC 61, 90, *rev'd in part on other grounds*, CLI-96-7, 43 NRC 235 (1996). Thus, the material provided in support of a contention will be carefully examined by the Board to confirm that on its face it does supply an adequate basis for the contention. See *Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), ALAB-919, 30 NRC 29, 48 (1989), *vacated in part on other grounds and remanded*, CLI-90-4, 31 NRC 333 (1990).
- Q To be admissible, the regulations require that all contentions assert an issue of law or fact that is material to the outcome of a licensing proceeding, meaning that the subject matter of the contention must impact the grant or denial of a pending license application. See 10 C.F.R. § 2.309(f)(1)(iv). This requirement of materiality often dictates that any contention alleging deficiencies or errors in an application also indicate some significant link between the claimed deficiency and either the health and safety of the public or the environment. See *Yankee Nuclear*, LBP-96-2, 43 NRC at 75-76; see also *Pacific Gas and Electric Co.* (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), LBP-02-23, 56 NRC 413, 439-41 (2002), *petition for review denied*, CLI-03-12, 58 NRC 185, 191 (2003).
- R All properly formulated contentions must focus on the license application in question, challenging either specific portions of or alleged omissions from the application (including the applicant's safety analysis report and the environmental report) so as to establish that a genuine dispute exists with the applicant on a material issue of law or fact. See 10 C.F.R. § 2.309(f)(1)(vi). Any contention that fails directly to controvert the application or that mistakenly asserts the application does not address a relevant issue can be dismissed. See *Sacramento Municipal Utility District* (Rancho Seco Nuclear Generating Station), LBP-93-23, 38 NRC 200, 247-48 (1993), *review declined*, CLI-94-2, 39 NRC 91 (1994); *Texas Utilities Electric Co.* (Comanche Peak Steam Electric Station, Unit 2), LBP-92-37, 36 NRC 370, 384 (1992).
- S Although licensing boards generally are to litigate a "contention" rather than the "basis" that provides the issue statement's foundational support, it has been recognized that the reach of a contention necessarily

DIGESTS

ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- hinges upon its terms coupled with its stated basis. *See Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), ALAB-899, 28 NRC 93, 97 (1988), *aff'd sub nom. Massachusetts v. NRC*, 924 F.2d 311 (D.C. Cir.), *cert. denied*, 502 U.S. 899 (1991); *see also Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-28, 56 NRC 373, 379 (2002).
- T If there are problems with meeting a filing date, participants should seek an extension of time or, if the time for filing has passed, submit a motion for leave to file out of time.
- U The failure to specify the language of a contention and distinguish it from the discussion that might otherwise be considered the basis for the issue statement might be grounds for dismissing the contention. *See* 10 C.F.R. § 2.309(f)(1)(i), (ii) (providing for separate statement of contention and basis).
- V In the absence of a 10 C.F.R. § 2.335 waiver petition, any challenge brought to aspects of a referenced certified design is outside the scope of a combined operating license proceeding. *See* 10 C.F.R. § 52.63(a)(5).
- W Even in the face of the Commission's longstanding admonition that a presiding officer should provide latitude to a pro se participant, *see Shieldalloy Metallurgical Corp.* (Cambridge, Ohio Facility), CLI-99-12, 49 NRC 347, 354 (1999); *Public Service Electric and Gas Co.* (Salem Nuclear Generating Station, Units 1 and 2), ALAB-136, 6 AEC 487, 489 (1973), a pro se petitioner's decision to provide an expert affidavit, available when it filed its hearing petition, at the time it submitted its reply is one that runs afoul of the Commission's explicit and repeated directive that reply pleadings cannot be used to introduce additional supporting information relative to a contention (as opposed to addressing the arguments raised in response to the petition), *see Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-04-25, 60 NRC 223, 225, *reconsideration denied*, CLI-04-35, 60 NRC 619 (2004).
- X The Licensing Board in the Vogtle early site permit (ESP) proceeding recently observed: "[I]n support of their argument the ER is deficient because of its lack of site-specific studies, Joint Petitioners have not demonstrated with any references — nor are we aware of any — that suggest site-specific studies are generally required. Rather, the appropriate scope of the baseline for a project is a functional concept: an applicant must provide enough information and in sufficient detail to allow for an evaluation of important impacts." *Southern Nuclear Operating Co.* (Early Site Permit for Vogtle ESP Site), LBP-07-3, 65 NRC 237, 257 (2007) (citations omitted).
- Y That is not to say that questions about the adequacy of an applicant's ER discussion regarding the impacts associated with the construction and operation of reactor cooling system intake and discharge structures cannot be based on the adequacy of the applicant's assessment of the state of existing aquatic resources. As the Board in the *Vogtle ESP* proceeding also noted, asserted deficiencies in the ER intake/discharge impact discussion as it is associated with the baseline discussion of aquatic resources, if properly supported, can be admitted for further litigation. *See id.* at 258-59.
- Z It is the petitioner's responsibility to provide factual or expert support for its contention, which includes the specific sources or documents on which it relies to support its position. A litany of "facts" and "figures" on various items without citing any specific document, expert opinion, or other source that will support their figures or claims severely undercuts the probative value to which these "factual" assertions might otherwise be entitled, essentially reducing them to the type of "bare assertions and speculation" that the Commission indicated in *GPU Nuclear, Inc.* (Oyster Creek Nuclear Generating Station), CLI-00-6, 51 NRC 193, 208 (2000), will not support the admission of their contention. *See* 10 C.F.R. § 2.309(f)(1)(v).
- AA In the context of seeking the admission of a NEPA or environmental-based contention, the underlying purpose of NEPA as an information-gathering and disclosure mechanism does require a somewhat different view of the concept of "materiality" under section 2.309(f)(1)(iv) than might be applied, strictly speaking, to a contention seeking to establish an AEA health and safety issue. Just because a contention is NEPA-related does not, however, eliminate materiality as an admissibility factor. Thus, an assertion that some analysis, calculation, or survey must be included in an ER or environmental statement is not necessarily sufficient, in and of itself, to require consideration of whether that additional information gathering and disclosure mechanism should be included, particularly in the absence of any expert or other support suggesting that such inquiry or examination is necessary to provide a reasonably accurate perspective regarding the relevant circumstances. Even in the context of NEPA, "saying it, does not make it so" for the purpose of establishing the materiality of a perceived information or analytical omission or deficiency.
- BB While a presiding officer must take seriously the responsibility, as recognized by the Commission, to afford a reasonable measure of latitude to a pro se intervenor in terms of the mechanics of contention

DIGESTS

ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

pleading and citation, this does not equate to the principle that all pro se intervenors must be afforded the same measure of latitude without regard to their experience in dealing with the agency's adjudicatory process and procedural rules. When an organization has appeared several times previously, it is not untoward for the presiding officer to expect that there will be a heightened awareness of the agency's pleading rules.

CC The agency's longstanding approach to electric power demand forecasting has emphasized historical, conservative planning to ensure electricity generating capacity will be available to meet reasonably expected needs. *See Duke Power Co.* (Catawba Nuclear Station, Units 1 and 2), ALAB-355, 4 NRC 397, 410 (1976); *see also Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant, Units 1, 2, 3, and 4), CLI-79-5, 9 NRC 607, 609-10 (1979).

DD Notwithstanding TVA's status as a federal entity, it is within NRC's regulatory authority to review TVA's COL application, including its compliance with the agency's NEPA requirements. *See Tennessee Valley Authority* (Phipps Bend Nuclear Plant, Units 1 and 2), ALAB-506, 8 NRC 533, 545-47 (1978). Moreover, it is apparent that the issue of the need for power is a part of the agency's COL NEPA review process. *See* 10 C.F.R. § 51.45(c) (ER submitted for agency review must contain analysis of economic, technical, and other benefits), *id.* § 51.50(c) (ER for COL application must include information required by section 51.45(c)). Further, as the Staff's standard review plan for environmental matters makes clear, under the agency's NEPA process the ER is reviewed to "ensur[e] that the analysis of the need for power and alternatives is reasonable and meets high quality standards." NUREG-1555, "Standard Review Plans for Environmental Reviews for Nuclear Power Plants," at 8.4-1 (Oct. 1999).

LBP-08-17 DUKE ENERGY CAROLINAS, LLC (William States Lee III Nuclear Station, Units 1 and 2), Docket Nos. 52-018-COL, 52-019-COL (ASLBP No. 08-865-03-COL-BD01); COMBINED LICENSE; September 22, 2008; MEMORANDUM AND ORDER (Ruling on Petition for Intervention and Request for Hearing)

A The Licensing Board finds that Petitioner Blue Ridge Environmental Defense League has standing to intervene, but because it has not submitted an admissible contention, the Board denies Petitioner's hearing request. The Board, however, refers its ruling on Contention Two to the Commission, consistent with the licensing board's treatment of an identical contention in *Tennessee Valley Authority* (Bellefonte Nuclear Power Plant, Units 3 and 4), LBP-08-16, 68 NRC 361 (2008).

B In addition to the traditional requirements for standing, the Commission recognizes that a petitioner may have standing based upon its geographic proximity to a particular facility. *Florida Power & Light Co.* (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325, 329 (1989). In appropriate circumstances, a petitioner's proximity to the pertinent facility triggers a presumption that it "has standing to intervene without the need to specifically plead injury, causation, and redressability if the petitioner lives within, or otherwise has frequent contacts with, the zone of possible harm." *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-01-6, 53 NRC 138, 146, *aff'd on other grounds*, CLI-01-17, 54 NRC 3 (2001). In reactor license proceedings, that zone is generally deemed to constitute the areas within a 50-mile radius of the site. *Id.* at 149.

C An organization that wants to intervene in a representational capacity must (1) demonstrate that the licensing action will affect at least one of its members; (2) identify that member by name and address; and (3) show that it is authorized by that member to request a hearing on his or her behalf. *Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), CLI-00-20, 52 NRC 151, 163 (2000). Additionally, the member must qualify for standing in his or her own right, the interests that the organization seeks to protect must be germane to its own purpose, and neither petitioner's contentions nor the requested relief must require an individual member to participate in the proceeding. *Consumers Energy Co.* (Palisades Nuclear Plant), CLI-07-18, 65 NRC 399, 409 (2007).

D In determining whether a petitioner has established standing, the Commission has directed us to "construe the petition in favor of the petitioner." *Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Georgia), CLI-95-12, 42 NRC 111, 115 (1995).

E Absent a waiver, "no rule or regulation of the Commission . . . is subject to attack . . . in any adjudicatory proceeding." 10 C.F.R. § 2.335(a).

F A waiver of a Commission regulation "can be granted only in unusual and compelling circumstances." *Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), ALAB-895, 28 NRC 7, 16, *aff'd*, CLI-88-10, 28 NRC 573, 597 (1988), *reconsideration denied*, CLI-89-3, 29 NRC 234 (1989) (internal

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

quotation marks omitted). “The sole ground for petition of waiver or exception is that special circumstances with respect to the subject matter of the particular proceeding are such that the application of the rule or regulation . . . would not serve the purposes for which the rule or regulation was adopted.” 10 C.F.R. § 2.335(b). The Commission requires that any request for such waiver or exception be accompanied by an affidavit that identifies “with particularity the special circumstances alleged to justify the waiver or exception requested.” *Id.*

G The NRC has made a generic determination that regulated electric utilities are financially qualified to operate nuclear power plants. By regulation, the Commission has exempted such utilities from NRC review of their financial qualifications to cover operational costs. *See* 10 C.F.R. § 50.33(f); Final Rule: “Elimination of Review of Financial Qualifications of Electric Utilities in Operating License Review and Hearings for Nuclear Power Plants,” 49 Fed. Reg. 35,747, 35,747-49 (Sept. 12, 1984). Therefore, a contention that suggests this information should be provided in the application submitted by a regulated electric utility represents an impermissible challenge to Commission regulations.

H The NRC regulations implementing the AEA do not require an applicant to address or demonstrate whether the issuance of a COL will improve the general welfare, increase the standard of living, or strengthen free competition in private enterprise. Nor is the NRC required to make such a finding prior to granting a COL. Therefore, contrary to 10 C.F.R. § 2.309(f)(1)(iii) and (iv), these matters are outside the scope of this proceeding and are not material to the findings that the NRC must make to support issuance of a license.

I By complying with the six contention requirements in 10 C.F.R. § 2.309(f)(1)(i)-(vi), a petitioner must demonstrate: (1) that a contention raises an issue that is appropriate for a licensing board hearing; and (2) that such a hearing would not likely be a waste of time and resources.

J Licensing boards admit contentions, not bases: “[I]t is the admissibility of the contention, not the basis, that must be determined.” *Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), LBP-04-28, 60 NRC 548, 557 (2004). Nor should boards try to rewrite a petitioner’s contention, transforming it into numerous additional contentions that the petitioner has not clearly set forth. “A contention’s proponent, not the licensing board, is responsible for formulating the contention.” *Statement of Policy on Conduct of Adjudicatory Proceedings*, CLI-98-12, 48 NRC 18, 22 (1998).

K Licensing boards can and should review materials that purportedly support a petition to intervene or request for hearing to determine whether, at least on their face, they actually support the facts alleged. *See Dominion Nuclear North Anna, LLC* (Early Site Permit for North Anna ESP Site), LBP-04-18, 60 NRC 253, 265 (2004).

L The Commission has instructed licensing boards not to initiate evidentiary hearings unless the petitioner has specified how an application is deficient. A contention is not admissible where “the Petitioner’s assertion that the application[] [is] deficient is simply based upon a failure to read or perform any meaningful analysis of the application[.]” *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), LBP-04-15, 60 NRC 81, 95 (2004).

M An NRC licensing proceeding is not “an occasion for far-reaching speculation about unimplemented and uncertain plans” of applicants or licensees. *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-14, 55 NRC 278, 293 (2002).

N The proper purpose of a reply is to discuss alleged deficiencies in a petition, not to try to fix them. *See Nuclear Management Co., LLC* (Palisades Nuclear Plant), CLI-06-17, 63 NRC 727, 732 (2006).

O Referencing a reactor design for which a design certification application has been docketed but not yet granted is expressly authorized by the Commission’s regulations. *See* 10 C.F.R. § 52.55(c). An applicant that avails itself of this procedure does so “at its own risk.” *Id.* Should an applicant revise its application as a result of the NRC’s review process, a petitioner may submit contentions at that time. Moreover, a petitioner may raise concerns by filing comments on the proposed rule when it is issued. Similarly, if a petitioner had submitted an otherwise admissible contention challenging specific aspects of a design, the licensing board would refer that contention to the NRC Staff for consideration in the design certification rulemaking, and hold the contention in abeyance. *See* Conduct of New Reactor Licensing Proceedings; Final Policy Statement, 73 Fed. Reg. 20,963, 20,972 (Apr. 17, 2008).

P In its Waste Confidence Rule, the Commission has made a determination, on a generic basis, that spent fuel generated by “any reactor” can be safely managed and that sufficient repository capacity will be available. 10 C.F.R. § 51.23(a). When the Commission promulgated a revised Waste Confidence Rule in 1990, it expressly stated that its conclusions should apply to “the spent fuel discharged from any new

DIGESTS

ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- generation of reactor designs.” Review and Final Revision of Waste Confidence Decision, 55 Fed. Reg. 38,474, 38,504 (Sept. 18, 1990). The Commission reaffirmed its 1990 findings in a 1999 status report, in which it concluded that “no significant and unexpected events have occurred . . . that would cast doubt on the Commission’s Waste Confidence findings or warrant a detailed reevaluation at this time.” Status Report on the Review of the Waste Confidence Decision, 64 Fed. Reg. 68,005, 68,007 (Dec. 6, 1999). More recently, in 2007, the Commission amended the Waste Confidence Rule to clarify that the rule encompasses COL applications. See Final Rule: “Licenses, Certifications, and Approvals for Nuclear Power Plants,” 72 Fed. Reg. 49,352, 49,429 (Aug. 28, 2007) (“The NRC is revising §§ 51.23(b) and (c) to indicate that the provisions of these paragraphs also apply to combined licenses”).
- LBP-08-18 FLORIDA POWER & LIGHT COMPANY (Turkey Point Nuclear Generating Plant, Units 3 and 4), Docket Nos. 50-250, 50-251 (ASLBP No. 08-869-03-OLA-BD01); OPERATING LICENSE AMENDMENT; October 14, 2008; MEMORANDUM AND ORDER (Denying Request for Hearing)
- A In license amendment cases such as that in this proceeding, “a petitioner cannot base his or her standing simply upon a residence or visits near the plant, unless the proposed action quite ‘obvious[ly]’ entails an increased potential for offsite consequences.” *Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 and 2), CLI-99-4, 49 NRC 185, 191 (1999).
- B Pursuant to 10 C.F.R. § 50.58(b)(6), a “petition or other request for review of or hearing on the staff’s significant hazards consideration determination” will not be entertained by the Commission. 10 C.F.R. § 50.58(b)(6). For significant hazards consideration determinations, “[t]he staff’s determination is final, subject only to the Commission’s discretion, on its own initiative, to review the determination.” *Id.* See also *Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), LBP-91-7, 33 NRC 179, 183 (1991).
- C A reply cannot be used to substantively supplement or amend a contention. *Nuclear Management Co., LLC* (Palisades Nuclear Plant), CLI-06-17, 63 NRC 727, 732 (2006).
- D The Commission and licensing boards have imposed sanctions against a party seeking to file a written request for hearing only when that party “has not followed established Commission procedures” despite prior agency warnings. *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-06-4, 63 NRC 32, 38 (2006). See also *Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), CLI-07-28, 66 NRC 275, 275 (2007). A meritless petition warrants denial, not sanctions.
- LBP-08-19 FPL ENERGY POINT BEACH, LLC (Point Beach Nuclear Plant, Unit 1), Docket No. 50-266-LA (ASLBP No. 08-870-01-LA-BD01); LICENSE AMENDMENT; October 14, 2008; MEMORANDUM AND ORDER (Denying Request for Hearing)
- A SEC’s proffered contentions challenge the proposed license amendments as failing to meet the various parts of the 10 C.F.R. § 50.92(c) standard for significant hazards consideration determinations. Because 10 C.F.R. § 50.58(b)(6) provides that “[n]o petition or other request for review of or hearing on the staff’s significant hazards consideration determination will be entertained by the Commission,” the Petitioner’s contentions are not appropriate for review by the Licensing Board.
- B The Commission and the licensing board have imposed sanctions against a party seeking to file a written request for hearing only when that party “has not followed established Commission procedures.” A meritless petition warrants denial, not sanctions.
- LBP-08-20 FPL ENERGY SEABROOK, LLC (Seabrook Station, Unit 1), Docket No. 50-443-LA (ASLBP No. 08-872-02-LA-BD01); LICENSE AMENDMENT; October 14, 2008; MEMORANDUM AND ORDER (Denying Request for Hearing)
- A [T]he contentions are not appropriate for review by this Licensing Board under 10 C.F.R. § 50.58(b)(6), which provides that “[n]o petition or other request for review of or hearing on the staff’s significant hazards consideration determination will be entertained by the Commission. The staff’s determination is final, subject only to the Commission’s discretion, on its own initiative, to review the determination.” SEC’s impermissible attempt to challenge the Staff’s significant hazards consideration determination in derogation of section 50.58(b)(6) provides an independent basis for rejecting the hearing request.
- B The Commission and the licensing board have imposed sanctions against a party seeking to file a written request for hearing only when that party “has not followed established Commission procedures.” A meritless petition warrants denial, not sanctions.

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- LBP-08-21 PROGRESS ENERGY CAROLINAS, INC. (Shearon Harris Nuclear Power Plant, Units 2 and 3), Docket Nos. 52-022-COL, 52-023-COL (ASLBP No. 08-868-04-COL-BD01); COMBINED LICENSE; October 30, 2008; MEMORANDUM AND ORDER (Ruling on Standing and Contention Admissibility)
- A This 10 C.F.R. Part 52 proceeding concerns the application of Progress Energy Carolinas, Inc. (Progress Energy) for a combined operating license (COL) to construct and operate two new units employing the Westinghouse Electric Corporation AP1000 advanced pressurized water power reactor certified design on its existing Shearon Harris site, located in Wake County, North Carolina. Ruling on a petition filed by the North Carolina Waste Awareness and Reduction Network (NC WARN) seeking to intervene to contest the Progress COL application, the Licensing Board concludes that, having established the requisite standing and proffering one admissible contention, the Petitioner NC WARN is admitted as a party to the proceeding. Additionally, the South Carolina Office of Regulatory Staff (SC ORS) and the North Carolina Utilities Commission (NCUC) requests to participate in the proceeding as interested governmental entities pursuant to 10 C.F.R. § 2.315 are granted.
- B In assessing a petition to determine whether the requirements for standing are met, which we must do even though there are no objections to Petitioner's standing in this case, the Commission has indicated that we are to "construe the petition in favor of the petitioner." *Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Georgia), CLI-95-12, 42 NRC 111, 115 (1995).
- C Section 2.315(c) of 10 C.F.R. directs that an interested governmental entity that has not been admitted as a party under section 2.309 be provided "a reasonable opportunity to participate in a hearing."
- D Contention admissibility is governed by 10 C.F.R. § 2.309(f)(1), which specifies a set of strict requirements which must be satisfied for a contention to be admissible. *See* 10 C.F.R. § 2.309(f)(1)(i), (ii), (v), and (vi). The petitioner must also demonstrate that the issue raised in the contention is both "within the scope of the proceeding" and "material to the findings the NRC must make to support the action that is involved in the proceeding." *Id.* § 2.309(f)(1)(iii), (iv).
- E In CLI-08-15, the Commission directed Petitioner and, indirectly, this Board that if Petitioner identified specific omissions in the COLA, those omissions should be addressed in a contention to this Board which, in turn, "should refer such a contention to the Staff for consideration in the design certification rulemaking, and hold that contention in abeyance, if it is otherwise admissible." Memorandum and Order, CLI-08-15, 68 NRC 1, 4 (citing to the Final Policy Statement on the Conduct of New Reactor Licensing Proceedings, 73 Fed. Reg. 20,972 (Apr. 17, 2008)).
- F The mere reference to general materials on a website is insufficient to provide support for a contention. "Petitioners are expected 'to clearly identify the matters on which they intend to rely with reference to a specific point.'" *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), LBP-04-15, 60 NRC 81, 89 & n.26 (2004). "[A] petitioner may not simply incorporate massive documents by reference as the basis for a statement of his contentions." *Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), CLI-89-3, 29 NRC 234, 240-41 (1989).
- G The Commission has made clear its view that NEPA does not require the analysis of potential terrorist attacks on a proposed nuclear facility. In this case, which concerns a facility outside the jurisdiction of the Ninth Circuit, that view is binding upon this Board.
- H NEPA does not require revisitation by the NRC of matters related to high-density spent fuel pool (SFP) coolant loss (or other SFP events). The NRC has determined that the "security and mitigation measures the NRC has imposed upon its licensees since September 11, 2001, and national anti-terrorist measures to prevent, for example, aircraft hijackings, coupled with the robust nature of SFP's, make the probability of a successful terrorist attack, though numerically indeterminable, very low," i.e., it is precisely the type of remote and speculative event that an agency need not address. *See* Denial of Petitions for Rulemaking, 73 Fed. Reg. 46,204, 46,207 (Aug. 8, 2008).
- I Commission precedent establishes that NEPA requires an applicant to present a cost-benefit analysis (and therefore provide cost estimates) for nuclear power plants and facilities only where the applicant's alternatives analysis indicates that there is an environmentally preferable alternative. *See Consumers Power Co.* (Midland Plant, Units 1 and 2), ALAB-458, 7 NRC 155 (1978).
- J NRC regulations do not require the Applicant to include cost data in the ER. *See* 10 C.F.R. § 51.45. Although the regulations encourage the Applicant to provide cost information in the ER, we find that this is not mandatory. The Commission did not intend, and our regulations do not require, that costs be considered in the ER. Therefore, the question of whether or not the cost estimates used in the ER are inaccurate does not rise to the level of a failure to comply with NRC regulations. Where Applicant did not

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

find any environmentally preferable alternative in its ER analysis, it was under no obligation to provide cost estimates or a comparison of costs, as NEPA only requires a cost-benefit analysis where there exists an environmentally preferable alternative.

K The Commission contemplates that its Waste Confidence Decision covers new reactors; for example, in the revised Waste Confidence Rule of 1990, the Commission stated that the rule should apply to “the spent fuel discharged from any new generation of reactor designs.” See Review and Final Revision of Waste Confidence Decision, 55 Fed. Reg. 38,474, 38,504 (Sept. 18, 1990).

L A contention that seeks to litigate a matter that is, or clearly is about to become, the subject of a rulemaking, is inadmissible. See 10 C.F.R. § 2.335.

LBP-08-22 ENTERGY NUCLEAR GENERATION COMPANY and ENTERGY NUCLEAR OPERATIONS, INC. (Pilgrim Nuclear Power Station), Docket No. 50-293-LR (ASLBP No. 06-848-02-LR); LICENSE RENEWAL; October 30, 2008; INITIAL DECISION

A This 10 C.F.R. Part 54 proceeding concerns the application of Entergy Nuclear Generation Company and Entergy Nuclear Operations, Inc. (Entergy) for renewal of the operating license for its Pilgrim Nuclear Power Station (the “Pilgrim plant”), located in Plymouth, Massachusetts. Ruling on the merits of Contention 1 as filed by Intervenor Pilgrim Watch concerning Entergy’s aging management program, or “AMP,” for certain underground pipes, the Licensing Board concludes that, based on the entire evidentiary record and the parties’ arguments in this proceeding, Pilgrim Watch’s Contention 1 is resolved in favor of Entergy, and that this proceeding is terminated.

B In conducting Subpart L hearings under 10 C.F.R. Part 2, Board members pose a question to the parties’ witnesses in those areas that, in the Board’s judgment, require additional clarification and development. 10 C.F.R. § 2.1207(b)(6). Boards in part accomplish this through proposed written questions that the parties provide prior to, and during the course of, the hearing. 10 C.F.R. § 2.1207(a)(3); 10 C.F.R. § 2.1207(b)(6).

C In developing 10 C.F.R. Part 54, the Commission focused the NRC license renewal safety review “upon those potential detrimental effects of aging that are not routinely addressed by ongoing regulatory oversight programs.” In so doing, the Commission expressed the view that these are the matters it considered “the most significant overall safety concern posed by extended reactor operation.” *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 7 (2001).

D The regulatory authority relating to the renewal of nuclear power plant operating licenses is found in 10 C.F.R. Parts 51 and 54, the latter of which concerns the “Requirements for Renewal of Operating Licenses for Nuclear Power Plants,” and enumerates issues to be addressed in license renewal proceedings. Accordingly, the scope of license renewal proceedings is quite limited under Commission rules and case law.

E Applicants must “demonstrate that all ‘important systems, structures, and components’ will continue to perform their intended function in the period of extended operation”; and “identify any additional actions, i.e., maintenance, replacement of parts, etc., that will need to be taken to manage adequately the detrimental effects of aging.” *Turkey Point*, CLI-01-17, 54 NRC at 8 (quoting 60 Fed. Reg. at 22,462). The Commission has recognized that these “[a]dverse aging effects generally are gradual and thus can be detected by programs that ensure sufficient inspections and testing.” *Id.* (citing 60 Fed. Reg. at 22,475). Accordingly, license renewal proceedings are limited to a “review of the plant structures and components that will require an aging management review for the period of extended operation and the plant’s systems, structures, and components that are subject to an evaluation of time-limited aging analyses.” *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-01-20, 54 NRC 211, 212 (2001) (citing 10 C.F.R. §§ 54.21(a) & (c), 54.4; 60 Fed. Reg. 22,461).

F The Commission may issue the renewed license, under the provisions of 10 C.F.R. § 54.29 if it finds that, with respect to the structures and components identified under section 54.21(a)(1), there is reasonable assurance of ongoing conformity to the current licensing basis or “CLB.” Those systems, structures, and components (SSCs) are delineated in 10 C.F.R. § 54.4 and include not only those SSCs that perform safety-related functions as defined in section 54.4(a)(1), but also those non-safety-related SSCs (defined in section 54.4(a)(2)) whose failure could prevent accomplishment of the section 54.4(a)(1) tasks and those SSCs relied on in safety analyses or plant evaluations to perform a function that demonstrates compliance with the Commission’s regulations for fire protection, environmental qualification, pressurized thermal shock, anticipated transients without scram, and station blackout, as defined in section 54.4(a)(3).

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- G Section 54.4(b) of 10 C.F.R. advises that even if a particular “system” falls within the scope of Part 54, not all structures and components comprising that system will necessarily be subject to Part 54 aging management requirements — only those that perform section 54.4(a) functions will be subject to the requirements in question. Therefore, the issue before the Board was whether the existing aging management plans, or “AMPs,” for the nuclear power plant provide appropriate assurance that the buried pipes and tanks will not develop leaks so great as to cause those pipes and tanks to be unable to perform their intended safety functions.
- H NRC regulations require that a license renewal application “[f]or those [systems, structures, and components (SSCs) within the scope], demonstrate that the effects of aging will be adequately managed so that the intended function(s) [i.e., the direct and indirect safety-related functions enumerated in 10 C.F.R. § 54.4] will be managed consistent with the current licensing basis for the period of extended operation.” 10 C.F.R. § 54.21(a)(3). Challenges to the current licensing basis itself are, however, not within the scope of a license renewal proceeding. *See, e.g.*, 10 C.F.R. § 54.30(b). Thus, the subject matter of a license renewal proceeding is of very narrow scope.
- I Matters relating to an applicant’s ongoing operational and maintenance programs are not within the scope of a license renewal proceeding. Accordingly, monitoring, and the installation of monitoring wells, is a matter for ongoing operation and maintenance, and not within the scope of matters properly considered in a license renewal.
- LBP-08-23 VIRGINIA ELECTRIC AND POWER COMPANY d/b/a DOMINION VIRGINIA POWER and OLD DOMINION ELECTRIC COOPERATIVE (North Anna Power Station, Unit 3), Docket No. 52-017-COL (ASLBP No. 08-863-01-COL); COMBINED LICENSE; November 7, 2008; ORDER (Denying the Motion of the Blue Ridge Environmental Defense League to Reconsider the Board’s Order of August 15, 2008)
- A Although licensing boards frequently hold oral arguments on contention admissibility, a board may instead elect to dispense with oral argument. *See* 10 C.F.R. § 2.331.
- B When a board decides to allow oral argument on contention admissibility, neither NRC regulations nor agency policy mandates that the arguments be conducted in person near the site. The argument may be held in a public place in the vicinity of the facility in question or in the ASLBP Hearing Room at NRC Headquarters in Rockville, Maryland. Another option is to hold a prehearing teleconference.
- C In ASLBP proceedings, collateral estoppel may bar a party from relitigating the admissibility of a contention when an earlier board refused to admit the same contention in an earlier proceeding involving the same facility. The party against which collateral estoppel is applied must have had a full and fair opportunity to litigate its position, but it need not necessarily have had discovery or an evidentiary hearing.
- LBP-08-24 CROW BUTTE RESOURCES, INC. (In Situ Leach Facility, Crawford, Nebraska), Docket No. 40-8943 (ASLBP No. 08-867-02-MLA-BD01); LICENSE RENEWAL; November 21, 2008; MEMORANDUM AND ORDER (Ruling on Hearing Requests)
- A A Board in one proceeding is not constrained to follow the rulings of another Board absent explicit affirmation by the Commission.
- B The Commission has held that proximity alone is not sufficient to establish standing for a petitioner’s proximity to a source materials activity. In cases involving ISL uranium mining and other source materials licensing, a petitioner must independently establish the requisite elements of standing, i.e., injury in fact, causation, and redressibility.
- C Standing can be accorded where a petitioner uses a substantial quantity of water personally or for livestock from a source that is reasonably contiguous to either the injection or processing sites, because such a showing demonstrates an “injury in fact.” Stated otherwise, to the extent contaminants can plausibly migrate to the aquifer from which a petitioner obtains his or her water, a petitioner would have a claim of a cognizable injury and could be accorded standing.
- D Petitioners are not required to demonstrate their asserted injury with “certainty,” nor to “provide extensive technical studies” in support of their standing argument. These determinations are reserved for adjudicating the ultimate merits of a contention.
- E The Board is bound by the holding in *United States v. Sioux Nation of Indians*, 448 U.S. 371 (1980) and is required to reject treaty-based claims of ownership. As a consequence, any claims to ownership of the land upon which a mining site sits cannot support standing.
- F The preservation of cultural traditions is a protected interest under federal law. If this interest is endangered or harmed, it qualifies as an injury for the purposes of establishing standing.

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- G To establish an injury in fact, a party merely has to show some threatened concrete interest personal to the party that the National Historic Preservation Act was designed to protect. Without consultation with a Tribe, culturally significant resources will go unidentified and unprotected. As a result, development or use of the land might cause damage to these cultural resources, thereby injuring the protected interests of the Tribe.
- H Federal law not only recognizes that Native American tribes have a protected interest in cultural resources found on their aboriginal land, but as well has imposed on federal agencies a consultation requirement under the National Historic Preservation Act to ensure the protection of tribal interests in cultural resources. A Tribe's threatened injury is therefore within the zone of interests protected by the National Historic Preservation Act, and is beyond cavil that the failure of consultation provides a definite and concrete threat of injury to the interests of a Tribe.
- I The NRC has the authority to regulate the release of nonradiological contaminants, and therefore, a challenge to the analysis (or lack thereof) of nonradiological contaminants in the License Renewal Application is within the scope of the proceeding, 42 U.S.C. § 2114(a)(1) (2008).
- J The commitment of one party to fulfill its statutory duties in the application process is not enough to demonstrate that the issue would be properly addressed. Such assurances are no substitute for enabling a Tribe to prosecute its contention. The Board must afford a Tribe a way to ensure its interests are protected; if all claims were denied because an adverse party promises to fulfill its duties, the hearing process would be subverted.
- K In determining ripeness, the Board assesses both the fitness of the issue for judicial decision and the hardship to the parties of withholding court consideration.
- L The regulations that implement the National Historic Preservation Act require federal agencies themselves to consult with a tribe if that tribe ascribes cultural or religious significance to properties not on tribal lands. The regulations clearly require that each federal agency consult with the Indian tribe(s) whose interests are at stake as a result of agency action — such as the issuance, renewal, or amendment of a license — that may affect a tribe's cultural resources. 36 C.F.R. § 800 *et seq.*; 16 U.S.C. § 470(f).
- M The Applicant is not qualified to make representations regarding cultural resources found on the mining site. Because Tribal Historical Preservation Officers were not consulted by the NRC, the Petitioner raised a legitimate challenge to the Applicant's finding in the License Renewal Application that no significant impact to cultural resources will occur as a result of mining activities.
- N A license renewal proceeding is an appropriate occasion for appraising the entire past performance of the licensee. Such appraisals are relevant in a license renewal proceeding because NRC must assure the public that the facility's current management encourages a safety-conscious attitude and must provide reasonable assurance that the facility can be safely operated.
- O Unlike federal court practice, the Commission does not accept mere notice pleading in support of an admissible contention.
- P The Commission has made clear that a Board is not to permit incorporation by reference where the effect would be to circumvent NRC-prescribed specificity requirements.
- Q Part 40 of 10 C.F.R. does not require ISL uranium mining facilities to maintain backup power. If such a facility were to experience a power failure, uranium recovery operations would simply cease.
- R The contention admissibility requirements are strict by design to ensure that hearings cover only genuine and pertinent issues of concern and that the issues are framed and supported concisely enough at the outset to ensure that the proceedings are effective and focused on real, concrete issues.
- S The trust responsibility imposes a fiduciary duty on NRC, as a federal agency, to the Tribe and its members.
- T An individual member of a Native American tribe may assert his or her rights on behalf of the tribe.
- U Applicant's failure to disclose ownership by a foreign corporation in its License Renewal Application constitutes a contention of omission. 10 C.F.R. § 40.9.
- V Concerns related to an Applicant's foreign ownership are potentially material to the safety and environmental requirements of 10 C.F.R. Part 40. Moreover, a license renewal proceeding is an appropriate time to review the adequacy of a licensee's corporate organization and the integrity of its management.
- W Because the regulations clearly require the NRC Staff to take into consideration whether or not renewing an Applicant's license would be inimical to the common defense and security or the public health and safety, this issue is material. In fact, the Commission has held that the phrase "inimical to the common

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

defense and security” refers to, among other things, the absence of foreign control over the applicant. 10 C.F.R. § 40.32(d).

X The lease and proposed issues related to Nebraska laws on alien ownership of property are outside the scope of these proceedings and outside the jurisdiction of the NRC.

Y Absent explicit Commission authority, there appears to be no provision in 10 C.F.R. § 2.700 for source materials licensing cases to be contested under Subpart G. If section 2.310(d) allows the Board to choose a Subpart G hearing process, the Board would only be permitted to do so if issues of motive or intent of the party or eyewitness material to the resolution of the contested matter are in dispute.

LBP-08-25 ENTERGY NUCLEAR VERMONT YANKEE, LLC, and ENTERGY NUCLEAR OPERATIONS, INC. (Vermont Yankee Nuclear Power Station), Docket No. 50-271-LR (ASLBP No. 06-849-03-LR); LICENSE RENEWAL; November 24, 2008; PARTIAL INITIAL DECISION (Ruling on Contentions 2A, 2B, 3, and 4)

A In this Partial Initial Decision concerning an application submitted by Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc. (collectively, Entergy) to renew the operating license for the Vermont Yankee Nuclear Power Station (VYNPS) in Windham County, Vermont, the Board concluded that Entergy’s metal fatigue analyses of the core spray and reactor recirculation outlet nozzles did not comply with the time-limited aging analysis (TLAA) requirements of 10 C.F.R. § 54.21(c)(1) and did not provide the reasonable assurance of safety required by 10 C.F.R. § 54.29. Accordingly, the Board ruled that the license renewal is not authorized and cannot be granted unless and until 45 days after Entergy satisfactorily completes these TLAA metal fatigue calculations *and* serves them on the NRC Staff and the other parties herein. Until that time, the proceeding on Contentions 2A and 2B will remain open and Contention 2 will be held in abeyance. In addition, the Board concluded that the subjects of the other two remaining contentions, the aging management programs (AMPs) for the VYNPS steam dryer and for flow accelerated corrosion (FAC), comply with the relevant requirements and provide the reasonable assurance of safety required by the regulations. However, to clarify ambiguity in the License Renewal Application (LRA), the Board’s decision with respect to Contention 3 is that the license should include a condition requiring Entergy to continue to monitor and inspect the steam dryer during the period of extended operation (PEO) at the intervals specified in GE-SIL-644 Revision 2.

B An application to renew the operating license of a commercial nuclear power plant may be granted only if the Commission finds that the continued operation of the facility “will be in accord with the common defense and security and will provide adequate protection to the health and safety of the public” as specified in 42 U.S.C. § 2232(a).

C When the license renewal regulations were issued, the Commission acknowledged, at 56 Fed. Reg. 64,943, 64,946 (Dec. 13, 1991), that the NRC’s “ongoing processes” for regulating a nuclear power plant during its initial 40-year operating life “have not . . . addressed safety questions which, by their nature, become important principally during the period of extended operation beyond the initial 40-year license term.” Thus, the Commission concluded that analysis and management of “age-related degradation . . . must be elevated [*sic*] before a renewed license is issued. . . [and] will be critical to safety during the term of the renewed license.”

D License renewal is not limited to age-related degradation, however, because “there may be other safety issues that may arise in connection with renewal that . . . are not relevant to safety during the initial operating license term . . . but, because of their plant-specific nature, must be addressed in renewals case by case.” 56 Fed. Reg. at 64,946.

E The licensing basis for a nuclear power plant during the renewal term consists of the current licensing basis (CLB) together with new commitments to monitor, manage, and correct age-related degradation unique to license renewal. 56 Fed. Reg. at 64,946.

F The term “current licensing basis” or CLB, as defined in 10 C.F.R. § 54.3, is a “term of art comprehending the various Commission requirements applicable to a specific plant that are in effect at the time of the license renewal application.” *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plants, Units 3 and 4), CLI-01-17, 54 NRC 3, 9 (2001). The CLB “represents an ‘evolving set of requirements and commitments for a specific plant that are modified as necessary over the life of a plant to ensure continuation of an adequate level of safety.’” 60 Fed. Reg. 22,461, 22473 (May 8, 1995).

G The NRC Staff’s review of the “safety” related aspects of each license renewal application focuses on two main issues — the adequacy of the applicant’s aging management programs (AMPs) and an evaluation of the applicant’s time-limited aging analyses (TLAAs). The scope of each license renewal proceeding

DIGESTS

ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- “encompasses a review of the plant structures and components that will require an aging management review for the period of extended operation and the plant’s systems, structures, and components that are subject to an evaluation of time-limited aging analyses.” See *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-01-20, 54 NRC 211, 212 (2001).
- H Adequate aging management programs (AMPs) are both a required element of the license renewal application (LRA) and a central finding that NRC must make before it can issue a license renewal. Under 10 C.F.R. § 54.21(a)(3), “[e]ach application must . . . demonstrate that the effects of aging will be adequately managed so that the intended function(s) will be maintained consistent with the CLB for the period of extended operation.”
- I Adequate time-limited aging analyses are a required component of the license renewal application and a necessary prerequisite to license renewal. Under 10 C.F.R. § 54.21(c)(1), each application must “demonstrate” that: the time-limited aging analyses (TLAAs) (i) “remain valid for the period of extended operation”; (ii) have been projected to the end of the period of extended operation”; or that (iii) the “effects of aging on the intended function(s) will be adequately managed for the period of extended operation.”
- J Both aging management programs (AMPs) and time-limited aging analyses (TLAAs) are subject to the requirement of 10 C.F.R. § 54.29 that the Commission may not grant a license renewal unless it finds that “[a]ctions . . . have been or will be taken with respect to [the AMP or TLAA] such that there is reasonable assurance that the activities authorized by the renewed license will continue to be conducted in accordance with the [current licensing basis (CLB)] and that any changes made to the plant’s CLB in order to comply with this paragraph are in accord with the Act and the Commission’s regulations.”
- K The phrase “reasonable assurance” specified in 10 C.F.R. § 54.29 is not defined, but requires, at a minimum, that an applicant demonstrate compliance with all of NRC’s safety regulations. “[T]he *sine qua non* of adequate protection to public health and safety is compliance with all applicable safety rules and regulations.” *Maine Yankee Atomic Power Co.* (Maine Yankee Atomic Power Station), ALAB-161, 6 AEC 1003, 1009 (1973).
- L Under 10 C.F.R. § 2.325, the applicant has the burden of proving that it has met the reasonable assurance standard of 10 C.F.R. § 54.29.
- M A finding of “reasonable assurance that there will be adequate protection to the health and safety of the public” is based on judgment, not on the application of a mechanical verbal formula, a set of objective standards, or specific confidence interval.
- N While compliance with NRC regulations is legally mandatory, compliance with NRC guidance documents is neither necessary nor necessarily sufficient to satisfy the legal requirements that each application must meet under the Atomic Energy Act (AEA) and Part 54. Compliance or noncompliance with such guidance, even if proven, is simply evidence and does not relieve the Board of the duty to determine whether an applicant has satisfied the relevant legal and regulatory requirements.
- O The current licensing basis (CLB) for the plant during the license renewal term incorporates the CLB for the current license, including all licensee commitments, plus any “new commitments to monitor, manage, and correct age-related degradation unique to license renewal.” 56 Fed. Reg. at 64,946.
- P Under 10 C.F.R. § 54.21(c), each license renewal application must contain three things: (1) an evaluation of time-limited aging analyses (TLAAs), (2) a list of TLAAs, and (3) a demonstration relating to TLAAs. But, since one cannot evaluate a TLAA unless it exists, the regulation seems to imply a fourth requirement, i.e., that the application include the TLAA.
- Q Section 54.21(c)(1)(i) requires that the application demonstrate that the time-limited aging analyses (TLAAs) “remain valid” for the period of extended operation (PEO). There is no definition of what this means. Technical accuracy of the TLAA is necessary, but not sufficient, because it is clear that a technically accurate TLAA that shows that the component *will fail* during the period of extended operation does not satisfy 10 C.F.R. § 54.21(c)(1)(i).
- R Section 54.21(c)(1)(ii) requires that the application demonstrate that the time-limited aging analysis (TLAA) has “been projected to the end of the period of extended operation,” but a technically accurate projection of the TLAA that predicts that the component *will fail* due to aging during the 20-year PEO will not suffice.
- S The “demonstrations” mandated by 10 C.F.R. § 54.21(c)(1)(i) and (ii) require that the time-limited aging analyses both (1) be performed in a technically accurate manner, and (2) produce a prediction that the component will *not fail* due to aging during the period of extended operation.

DIGESTS

ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- T Section 54.21(c)(1)(iii) allows the applicant to pursue a license renewal even if the time-limited aging analyses (TLAAs) predict that the component will fail during the period of extended operation (PEO). In such a situation, a license renewal can still be granted if the applicant demonstrates that the effects of aging will be adequately managed during the PEO, i.e., the applicant demonstrates that it has an AMP and that it is adequate. Under this regulation, the applicant can use an AMP either when (1) the TLAAs predict that the component in question will fail due to aging during the PEO or (2) the applicant foregoes the TLAAs and assumes that aging is a problem.
- U Section 54.21(c)(1)(i)-(iii) requires that the applicant make its demonstration in the application, which is necessarily *before* the license may be granted. The applicant has a choice: either perform an analysis-of-record that demonstrates that aging is not a problem, or accept that aging is a problem and demonstrate that it will be adequately managed, i.e., time-limited aging analysis (TLAA) or aging management program (AMP). The demonstration is a *condition precedent* to issuance of a license renewal. Section 54.21(c)(1) does not allow the applicant to postpone the demonstration and say: renew our license now, and we will do our predictive TLAA (analysis-of-record) later to determine whether an AMP is needed.
- V The feedwater, reactor recirculation, and core spray outlet nozzles on a boiling water reactor such as VYNPS are “components which are part of the reactor coolant pressure boundary that must meet the requirements of Class I components in Section III of the ASME Boiler and Pressure Vessel Code” under 10 C.F.R. § 50.55a.
- W As Class I components, the feedwater, reactor recirculation, and core spray outlet nozzles on a boiling water reactor such as VYNPS must be designed, fabricated, erected, and tested to the “highest quality standards practical” as specified in Part 50, Appendix A, General Design Criterion 30.
- X Even if we assume that the applicant’s metal fatigue analysis complies with NUREG/CR-5704 and NUREG/CR-6583, it is not dispositive of the Board’s determination as to whether the application complies with the regulations. If the Board found that the use of a more accurate approach was needed in order to provide reasonable assurance that metal fatigue will be adequately managed during the PEO, then the Board would be authorized, and duty bound, to impose such a requirement.
- Y The Board finds that the NRC Staff’s guidance document NUREG/CR-6909, which prescribes guidance on the calculation of metal fatigue on reactor components in a light water reactor environment, is built upon a larger and more recent database than NUREG/CR-5704 and -6583.
- Z Although NUREG/CR-6909, which prescribes guidance on the calculation of metal fatigue on reactor components in a light water reactor environment, is built upon a larger and more recent database than NUREG/CR-5704 and -6583, the Board finds that Entergy’s use of the latter NUREGs was sufficient to provide the reasonable assurance required by 10 C.F.R. § 54.29. In this instance, although NUREG/CR-6909 is more accurate in certain respects, the use of NUREG/CR-5704 and -6583 produced more conservative results.
- AA Entergy’s environmentally adjusted cumulative usage factor (CUFen) analyses for metal fatigue used a conservative number of transients in the calculations. Rather than using a simple linear projection as to the number of transients expected during the period of extended operation, Entergy’s projections are based on design basis events, actual experience at the VYNPS, industry experience, and increased severity levels that might be associated with the recent extended power uprate. Thus, with regard to the number of transients, Entergy’s time-limited aging analysis calculations are adequate to provide the degree of assurance required by 10 C.F.R. § 54.29(a).
- BB Entergy’s environmentally adjusted cumulative usage factor metal fatigue analyses for the core spray and reactor recirculation outlet nozzles used a simplified Green’s function methodology, and are thus inconsistent with the ASME Code, could underestimate the nature and extent of metal fatigue, cannot serve as the analysis-of-record, and do not satisfy the requirements of 10 C.F.R. §§ 54.21(c)(1) or 54.29(a).
- CC The performance of corrected environmentally adjusted cumulative usage factor metal fatigue analyses for the core spray and reactor recirculation outlet nozzles without use of a simplified Green’s function methodology, involves a considerable amount of technical and scientific judgment and is not a minor or ministerial task.
- DD If an applicant’s metal fatigue analyses on Class I components do not comply with the ASME Code and do not provide reasonable assurance as required by 10 C.F.R. §§ 54.21(c)(1) and 54.29(a), then a license renewal cannot be issued before the necessary “analysis-of-record” TLAA is performed and these

DIGESTS

ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- analyses cannot be postponed until after the license is issued. They are a condition precedent, not a condition subsequent, to license issuance.
- EE Allowing an applicant to postpone the performance of an “analysis-of-record” time-limited aging analysis (TLAA) until after the license renewal is issued, is inconsistent with the language, structure, and intent of the Part 54 regulations and inconsistent with NRC precedent.
- FF Allowing an applicant to postpone the performance of an “analysis-of-record” time-limited aging analysis (TLAA) until after the license renewal is issued would violate the intervenor’s right under section 189(a) of the Atomic Energy Act to have a hearing on an issue material to the licensing decision and would impermissibly remove a significant safety issue from the opportunity to be reviewed in the adjudicatory hearing process.
- GG An accurate calculation as to whether components such as the core spray and reactor recirculation outlet nozzles are likely to fail due to metal fatigue during the period of extended operation is a critical part of the license renewal proceeding. Given the fact that the cumulative usage factor (CUF) used in the ASME Code fails to account for the substantial effects of the actual environment in a light water reactor (e.g., water, high temperature, high pressure, transients, nonsmooth metal surfaces) and the fact that these effects can cause a substantial acceleration of metal fatigue, the Board concludes that CUF *must* be adjusted to account for such environmental factors (e.g., “Fen” factors). An LRA analysis of metal fatigue that ignored the known and substantial effects of the LWR environment (the Fen) would be insufficient, both as a technical matter and as a legal matter under 10 C.F.R. § 54.21(c)(1)(i), (ii) or § 54.29(a).
- HH Compliance cannot be achieved by repackaging and postponing a time-limited aging analysis (TLAA) analysis-of-record and calling it an aging management program (AMP). First, such an interpretation would collapse 10 C.F.R. § 54.21(c)(1)(ii) into subsection (iii), subsuming the former into the latter. An applicant cannot demonstrate compliance *now* by *promising* to demonstrate compliance *later*. Any other interpretation would render 10 C.F.R. § 54.21(c)(1)(ii) superfluous, thus violating a cardinal rule of statutory and regulatory interpretation.
- II The structure and intent of 10 C.F.R. § 54.21(c)(1) require that the demonstration be in the application, i.e., *prior* to the issuance of the license renewal. An applicant must *either* demonstrate that aging will not be a problem (by submitting a TLAA) *or* demonstrate that aging will be properly managed (by submitting an AMP). One or the other must be *demonstrated* before the license can be granted. Promising to demonstrate, after the application is issued, that aging will not be a problem, does not suffice.
- JJ There is a distinction between *predictive* time-limited aging analyses (TLAAs) that are performed as the “analysis-of-record,” and TLAAs that may be done after the license is issued in order to monitor or track compliance and safety (*tracking* TLAAs). Nothing prevents a licensee from doing tracking TLAAs after the license renewal is granted. If, however, a TLAA is to serve as the “analysis-of-record” that (1) predicts that aging will NOT be a problem during the period of extended operation (PEO) and (2) establishes that an aging management program (AMP) is not required, *then* it is a condition precedent to the grant of the license. The predictive analysis-of-record that serves to excuse the licensee from the need to have any further AMP cannot be postponed until after the license is issued.
- KK The demonstration required by 10 C.F.R. § 54.21(c)(1)(i)-(iii) and the reasonable assurance criterion of 10 C.F.R. § 54.29(a), are conditions precedent to the issuance of a license renewal. The performance of satisfactory confirmatory CUFens on the core spray and reactor recirculation outlet nozzles are not merely ministerial and cannot be consigned to some post-hearing interaction between the NRC Staff and an applicant where there is no opportunity for the public to challenge the sufficiency of the methods and judgments that went into the calculation and/or to request a hearing.
- LL Although the steam dryer is not a safety-related system, the cracking of a dryer could cause a release of loose parts that could have an adverse impact on safety-related equipment by becoming lodged in places that might impede the function of other reactor components that do perform safety-related functions. Thus, the steam dryer is a “nonsafety-related system[], structure[], and component[] whose failure could prevent” safety-related systems, structures, and components from performing their safety-related functions, as specified in 10 C.F.R. § 54.4(a)(2) and it is within the scope of aging management review in a license renewal proceeding.
- MM Pursuant to 10 C.F.R. § 54.21(a)(3), (c)(1)(iii), an applicant must demonstrate that its AMP for the steam dryer is adequate to manage the effects of aging so that the functionality of the safety-related systems, structures, and components will be maintained during the period of extended operation (PEO). In addition, pursuant to 10 C.F.R. § 54.29(a), a Licensing Board must find there is “reasonable assurance

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- that the activities authorized by the renewed license will continue to be conducted in accordance with the [current licensing basis (CLB)].” Accordingly, an applicant is required to establish that it has an aging management program (AMP) for the steam dryer that provides “reasonable assurance” that it will not fail in such a way as to prevent the functioning of the safety-related systems, structures, and components during the PEO.
- NN Sections 54.21(a)(3) and 54.21(c)(1)(iii) require an AMP for the steam dryer to “demonstrate that the effects of aging will be adequately managed so that the intended function(s) will be maintained consistent with the [current licensing basis (CLB)] during the period of extended operation.” Meanwhile, section 54.29(a) does not permit the NRC to issue a renewed license until the applicant provides reasonable assurance that failure of the steam dryer will not interfere with the continued operation of safety-related components and that the activities that the renewed license authorizes will continue to be conducted in accordance with the CLB. It is the burden of the applicant to show that the aging management program for the steam dryer meets these criteria, and it must do so by a preponderance of the evidence.
- OO Entergy’s steam dryer aging management program (AMP) has two branches, the first calling for the continuation of Entergy’s existing program, and the second specifying that a new AMP, the “BWRVIP-139,” will apply if and when various contingencies occur, including (a) [Electric Power Research Institute (EPRI)] is finished revising it, (b) the NRC Staff approves it, and (c) Entergy decides to accept it or to take “exceptions” to it. BWRVIP-139 is an EPRI proprietary document that is not available to the public, has not been provided to the intervenors, and is not in evidence. Based solely on the first branch of Entergy’s steam dryer AMP, the Board concludes that it is adequate. Our decision is not based on this second branch, the content of which is unknown. In the event that, in the future, Entergy attempts to switch its steam dryer AMP to the BWRVIP-139 option, nothing precludes a challenge to the second branch at that time.
- PP Our conclusion that Entergy’s steam dryer aging management program satisfies the regulatory requirements is subject to the requirement that the license include a condition requiring Entergy to continue to perform and implement continuous parameter monitoring, moisture content monitoring, and visual inspections at the intervals specified in GE-SIL-644 Revision 2 for the full term of the period of extended operations, unless the license is duly amended.
- QQ Sections 54.21(a)(3), 54.21(c)(1)(iii), and 54.29(a) provide the applicable legal standards for the approval of an aging management program (AMP) for plant piping due to flow accelerated corrosion (FAC). Pursuant to 10 C.F.R. § 54.21(a)(3), (c)(1)(iii), the applicant must establish an AMP that is adequate to provide reasonable assurance that the intended function of the piping subject to FAC will be maintained in accordance with the current licensing basis for the period of extended operation.
- RR An aging management program which consists solely of the bald statements that it is (1) “comparable to the program described in NUREG-1801,” (2) “consistent with the program described in NUREG-1801,” and (3) “based on [Electric Power Research Institute (EPRI)] Report NSAC-202L-R2 recommendations,” does not satisfy the requirement that an applicant “demonstrate” that it will adequately manage aging, as required by 10 C.F.R. § 54.21(a)(3) and (c)(1)(iii). NUREG-1801 and the EPRI Report are not themselves aging management programs, and the terms “comparable,” “consistent,” and “based on” leave huge ambiguity and discretion to the applicant. A declaration of compliance is not a demonstration of compliance.
- SS As required by 10 C.F.R. § 2.337(f), and in accordance with Rule 201(e) of the Federal Rules of Evidence, where a Board’s decision rests in part on facts officially noticed, any party wishing to controvert the facts officially noticed may do so by filing a motion for reconsideration or an appeal from this Partial Initial Decision.
- TT While some special weight should be given to some NRC guidance documents, the same does not apply to industry guidance documents. Further, any suggestion that NRC guidance is on par with NRC regulations (which are legally binding) is incorrect.
- UU The term “demonstrate” as used in 10 C.F.R. § 54.21 is a strong, definitive verb that logically requires an applicant to provide a reasonably thorough description of its aging management program and to show conclusively how this program will ensure that the effects of aging will be managed for its specific plant. For an applicant to just illustrate how its proposed program will, or promises to, follow the same generic recommendations provided to all plants does not clear the bar required by the regulations. To claim otherwise would imply that the AMP has already been generically developed for all plants and would render 10 C.F.R. § 54.21 unnecessary.

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- LBP-08-26 NORTHERN STATES POWER COMPANY (formerly NUCLEAR MANAGEMENT COMPANY, LLC) (Prairie Island Nuclear Generating Plant, Units 1 and 2), Docket Nos. 50-282-LR, 50-306-LR (ASLBP No. 08-871-01-LR); LICENSE RENEWAL; December 5, 2008; MEMORANDUM AND ORDER (Ruling on Petition to Intervene, Request for Hearing, and Motion to Strike)
- A General Counsel for an Indian Tribe is not required to submit a declaration stating the basis of his or her authority to represent the Tribe. As long as Counsel is an attorney in good standing and a member of the bar, a Notice of Appearance is sufficient in itself for him or her to represent the Tribe in a proceeding. *See* 10 C.F.R. § 2.314(b).
- B A reply is not an opportunity for a petitioner to bolster its original contentions with new supporting facts and arguments. Rather, it is a chance to amplify issues presented in the initial petition as well as the applicant's and NRC Staff's answers. *See Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-04-25, 60 NRC 223, 224-25, *reconsideration denied*, CLI-04-35, 60 NRC 619 (2004).
- C Under Commission regulations, a license renewal applicant must "assess whether any historic or archaeological properties will be affected by the proposed project." 10 C.F.R. § 51.53(c)(3)(ii)(K). The regulations also shed light on the required extent of this assessment: "The environmental report should contain sufficient data to aid the Commission in its development of an independent analysis." 10 C.F.R. § 51.45(c).
- D A license renewal applicant has no obligation to discuss in its ER the impacts of a potential expansion of the Independent Spent Fuel Storage Installation (ISFSI). Expansion of the ISFSI is a separate project, subject to a separate proceeding governed by the regulations in 10 C.F.R. Part 72.
- E Offsite radiological impacts are a Category 1 issue, and the Commission has determined such impacts to be "small" for all nuclear power plants seeking a renewed license. *See* 10 C.F.R. Part 51, App. B, Table B-1. If a petitioner wishes to challenge this generic determination in a license renewal proceeding, it must seek and receive a waiver under 10 C.F.R. § 2.335(b).
- F While true that, under NEPA, the Commission is ultimately responsible for analyzing environmental justice issues, nonetheless, 10 C.F.R. § 51.45(c) requires license renewal applicants to assist the Commission with that evaluation.
- G NRC regulations require a petitioner to raise contentions related to NEPA as challenges to the applicant's environmental report, which acts as a surrogate for the EIS during the early stages of a relicensing proceeding.
- H If a component falls within the scope of 10 C.F.R. § 54.4 and meets the requirements of 10 C.F.R. § 54.21 such that aging of the component is a relicensing issue, an applicant may address this issue in one of two ways. An analysis may be performed showing that the aging mechanism will not cause failure of the component. If the analysis fails, then the application must include a specific aging program to manage the effects of aging on that component. If, however, the analysis succeeds, then no aging management program is required.
- I The ten elements of an effective aging management program (AMP) must be addressed only when an applicant's AMP differs from the relevant AMP identified in the GALL Report. *See AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-08-23, 68 NRC 461, 468 (2008).
- J Where the application provides a commitment that, should inspection requirements be changed, the applicant will implement those new inspection requirements, it is the responsibility of NRC Staff and the applicant to ensure that this commitment is fulfilled. The Board lacks the authority — much less the ability — to require an applicant clairvoyantly to predict the future inspection requirements and to describe their future implementation in the application.
- K Although an applicant's use of an AMP identified in the GALL Report constitutes reasonable assurance that it will manage the targeted aging effect during the renewal period, the application still must contain sufficient information to independently confirm consistency with the GALL Report.
- LBP-08-27 CROW BUTTE RESOURCES, INC. (In Situ Leach Facility, Crawford, Nebraska), Docket No. 40-8943 (ASLBP No. 08-867-02-MLA-BD01); LICENSE RENEWAL; December 10, 2008; ORDER (Ruling on Motion to Admit New Contention)
- A This 10 C.F.R. Part 40 proceeding concerns the application of Crow Butte Resources, Inc. (Crow Butte), for renewal of its Source Materials License No. SUA-1534 to allow continued operation of its in-situ leach (ISL) uranium mine in Crawford, Nebraska. The Licensing Board ruled that a newly filed contention regarding public health and safety concerns related to arsenic in Consolidated Petitioners' drinking water was both timely and admissible.

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- B The basic rule governing contentions (10 C.F.R. § 2.309(f)) indicates that contentions “must be based on documents or other information available at the time the petition is to be filed . . .” 10 C.F.R. § 2.309(f)(2). To that end, new or amended contentions can be filed with leave of the Board if (i) the information upon which the amended or new contention is based was not previously available; (ii) the information upon which the amended or new contention is based is materially different from information previously available; and (iii) the amended or new contention has been submitted in a timely fashion based on the availability of the subsequent information. *See id.* § 2.309(f)(2)(i)-(iii).
- C Nontimely contentions may be accepted under section 2.309(c)(1) only upon a showing of “good cause” for failure to file in a timely manner and a weighing of a number of factors. 10 C.F.R. § 2.309(c)(1)(ii)-(viii). Previous boards have concluded that, when new contentions are based on “breaking developments of information, they are to be treated as ‘new or amended,’ not as ‘nontimely.’” *Shaw AREVA MOX Services (Mixed Oxide Fuel Fabrication Facility)*, LBP-07-14, 66 NRC 169, 210 n.95 (2007).
- D The contention need not meet the stricter requirements required of untimely contentions under section 2.309(c)(i)-(viii) because it is based on information heretofore unknown to Petitioners. Though the concern was referenced in Petitioners’ initial pleading, they filed their initial pleading 1 month before the scientific study in issue was available to the public. The information in the scientific study is therefore both new to Petitioners and is materially different from information previously available to them. Therefore, “[t]he amended or new contention has been submitted in a timely fashion based on the availability of the subsequent information.” 10 C.F.R. § 2.309(f)(2)(iii).
- LBP-09-1 CROW BUTTE RESOURCES, INC. (North Trend Expansion Project), Docket No. 40-8943 (ASLBP No. 07-859-03-MLA-BD01); MATERIALS LICENSE AMENDMENT; January 27, 2009; MEMORANDUM AND ORDER (Ruling on Foreign Ownership and Arsenic Contentions and Other Pending Matters)
- A In this materials license amendment proceeding the licensing board admits a contention relating to foreign ownership, finds that a separate showing of standing for each contention is not required, denies a motion for sanctions, allows litigation of newly submitted allegations regarding arsenic contamination and health effects under an already-admitted contention, permits participation of tribal treaty council, and recommends that the Commission order that the hearing be conducted under the provisions of 10 C.F.R. Part 2, Subpart G.
- B Petitioners are not required to show standing for each contention separately; once a party demonstrates that it has standing to intervene on its own accord, that party may then raise any contention that, if proved, will afford the party relief from the injury it relies upon for standing, and there is no requirement for any “nexus” between the injury and the contention. Case law to the effect that a plaintiff in federal court must demonstrate standing separately for each “form of relief sought” and for each separate “claim” does not translate into a requirement that a petitioner must show standing for each contention submitted in an NRC proceeding; contentions are comparable to neither “forms of relief” nor Article III “claims,” but are instead comparable to various “grounds” that may be asserted in opposition to a proposed agency action at issue, approving an application for a license, license amendment, or other authorization. In sum, a showing of standing need be made only once with regard to any one proposed agency action.
- C Contention alleging foreign ownership of applicant, failure to disclose, and various ramifications of such ownership, is found to be admissible. In addition to meeting the requirements of 10 C.F.R. § 2.309(f)(1)(i), (ii), and (v), the contention is “within the scope of the proceeding” and “material to the findings the NRC must make to support the action” at issue, and supported by “sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact,” as required by 10 C.F.R. § 2.309(f)(1)(iii), (iv), and (vi). Section 40.32, which concerns the requirements for issuance of a materials license, includes as a requirement that “issuance of the license will not be inimical to the common defense and security or to the health and safety of the public”; the phrase “common defense and security” has been interpreted in NRC case law as referring to “the absence of foreign control over the applicant”; and Intervenor urge that Applicant’s foreign ownership is “key” to the determination whether the Applicant’s current and proposed operations are within “the best interests of the US general public.” Applicant acknowledges that its ultimate owner is a Canadian company, on the significance and consequences of which the parties are in dispute; under 10 C.F.R. § 40.2, relevant provisions of Part 40 “apply to all persons in the United States” and not to those outside the United States, even those in Canada, which brings into question whether the “applicant’s proposed . . . procedures are adequate to protect health

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

and minimize danger to life or property” under 10 C.F.R. § 40.32(c); and it would be inappropriate to deny the admission of Contention E based on arguments that issues raised are appropriate for consideration only later, in any export license proceedings.

D Given the Commission’s calls for licensing boards to sanction parties that violate NRC rules, which do not have the purpose of relieving intervenors of their adjudicatory expenses but would merely have an incidental effect as part of an overall effort to ensure the expeditious management of the licensing process, in appropriate situations licensing boards might be said to have the authority to impose monetary sanctions on any party to any other party without violating the prohibition of section 502 of the Energy and Water Development Appropriations Act of 1993, which provides that NRC appropriations shall not “be used to pay the expenses of, or otherwise compensate, parties intervening in regulatory or adjudicatory proceedings.” In this instance, however, the motion for monetary sanctions is denied, because the requisite showing of “willful, prejudicial, and bad-faith behavior” is not shown.

E A new contention based on a new study that supports the hypothesis that low levels of exposure to inorganic arsenic in drinking water may play a role in diabetes prevalence, connected with additional newly discovered information about a high incidence of pancreatic cancer in areas near the proposed new site, and already existing information about a link between diabetes and pancreatic cancer, and about allegations concerning arsenic in water returned to relevant aquifers during the course of the mining process, is subsumed within a previously admitted contention regarding alleged contamination of water and resulting harm to public health and safety, and may thus be litigated as part of that contention, and not as a new contention.

F The Black Hills/Oglala Delegation of the Sioux Nation Treaty Council is permitted to participate in this proceeding, subject to appropriate coordination and consolidation of the presentations of the council with those of the Oglala Sioux Tribe and the intervenors.

G Section 2.700 of 10 C.F.R. provides that Subpart G hearing procedures apply only to certain enumerated types of proceedings, not including proceedings such as this materials license case but including “any other proceeding as ordered by the Commission.” The licensing board therefore does not grant Intervenor’s request to conduct this proceeding under the provisions of Subpart G, but does recommend to the Commission that it order that the proceeding be conducted as a Subpart G proceeding, based on considerations including alleged failures to disclose certain information; the nature of the issues in this case, which are of a sort that would benefit from having live witnesses subject to cross-examination and available to question for clarification during oral testimony; ongoing disputes between the parties and allegations relating to motive, analogous to that at issue under 10 C.F.R. §§ 2.310(d) and 2.700; more effective sharing of information and management by the board under the discovery provisions of Subpart G; and the greater transparency associated with a Subpart G hearing, which is particularly appropriate given community and tribal interest in the proceeding.

LBP-09-2 SOUTH CAROLINA ELECTRIC & GAS COMPANY and SOUTH CAROLINA PUBLIC SERVICE AUTHORITY (also referred to as SANTEE COOPER) (Virgil C. Summer Nuclear Station, Units 2 and 3), Docket Nos. 52-027-COL, 52-028-COL (ASLBP No. 09-875-03-COL-BD01); COMBINED LICENSE; February 18, 2009; ORDER (Ruling on Standing and Contention Admissibility)

A Petitioner here impermissibly challenges NRC’s regulations, which explicitly provide that “[a]ll nuclear safety issues,” 10 C.F.R. Part 52, App. D, § VI.B.1, and “[a]ll environmental issues concerning severe accident mitigation design alternatives associated with . . . the NRC’s EA [(environmental assessment)] for the AP1000 design and Appendix 1B of the generic [Design Control Document (DCD)]” are considered resolved by the Commission. 10 C.F.R. Part 52, App. D, § VI.B.7.

B The revision process is contemplated by NRC regulations, *see, e.g.*, 10 C.F.R. § 52.55(c); *Progress Energy Carolinas, Inc.* (Shearon Harris Nuclear Power Plant, Units 2 and 3), CLI-08-15, 68 NRC 1, 3-4 (2008), and is currently being carried out through the design certification rulemaking. The appropriate path for any petitioner’s challenges to proposed design revisions is through participation in those rulemaking proceedings, not through a combined license (COL) proceeding. *See* Conduct of New Reactor Licensing Proceedings; Final Policy Statement, 73 Fed. Reg. 20,963 (Apr. 17, 2008); *Shearon Harris*, CLI-08-15, 68 NRC at 4.

C Along the way, and certainly once a final design is certified, each Combined License Application (COLA) applicant will have to determine whether it will adopt *in toto* the certified design, or whether it will take exemptions thereto and/or departures therefrom. *See, e.g.*, 10 C.F.R. § 52.63(b)(1), (2); 10 C.F.R. Part 52, App. D, §§ IV, VIII. An applicant will also have to demonstrate that the site-specific parameters

DIGESTS

ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- are bounded by the parameters developed for the certified design. *See, e.g.*, 10 C.F.R. Part 52, App. D, §§ I.I.C, V.I.B.7.
- D The process for taking exemptions and departures from the certified design is set forth in 10 C.F.R. Part 52, App. D, § VIII, and we note that there are provisions in both subsections A.4 and B.4 thereof that describe the process for hearings and litigation on any such departures and exemptions. *See* 10 C.F.R. §§ 52.63(b)(1), 52.98(f), 50.12(a). *See also* 73 Fed. Reg. 20,963; *Shearon Harris*, CLI-08-15, 68 NRC at 4.
- E At the appropriate point in the overall COLA/DCD process, an interested party will have the opportunity to petition for intervention to raise matters that are material to the decision the NRC must make regarding the licenseability of the proposed nuclear units.
- F A contention that attacks a Commission rule, or which seeks to litigate a matter that is, or clearly is about to become, the subject of a rulemaking, is inadmissible. *See Potomac Electric Power Co.* (Douglas Point Nuclear Generating Station, Units 1 and 2), ALAB-218, 8 AEC 79, 85, 89 (1974); *see also Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Unit 2), CLI-03-14, 58 NRC 207, 218 (2003).
- G An applicant for a COL is expressly authorized by NRC's regulations to incorporate by reference a certified design. *See, e.g.*, 10 C.F.R. §§ 52.55(c), 52.73(a), 52.79(d)(1).
- H Challenges to the certified design (or the certification thereof) are outside the scope of this adjudicatory proceeding and should be resolved in the design certification rulemaking. *Shearon Harris*, CLI-08-15, 68 NRC at 4.
- I The National Environmental Policy Act (NEPA) is not an appropriate vehicle for exploring questions about the potential for a terrorist attack upon a proposed nuclear facility. *See, e.g., System Energy Resources, Inc.* (Early Site Permit for Grand Gulf ESP Site), CLI-07-10, 65 NRC 144 (2007); *Nuclear Management Co., LLC* (Palisades Nuclear Plant), CLI-07-9, 65 NRC 139, 141-42 (2007); *AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-07-8, 65 NRC 124, 128-34 (2007).
- J Although the United States Court of Appeals for the Ninth Circuit has held that the NRC must address certain matters to satisfy its NEPA obligations, *see San Luis Obispo Mothers for Peace v. NRC*, 449 F.3d 1016 (9th Cir. 2006), *cert. denied*, 549 U.S. 1166 (2007), the Commission has stated that it does not consider itself bound by that holding outside the Ninth Circuit, *see Oyster Creek*, CLI-07-8, 65 NRC at 128-29, and this Board is bound by that position.
- K The need for design features to guard against Design Basis Threats is outside the scope of this proceeding because it is the subject of an ongoing rulemaking. *See Consideration of Aircraft Impacts for New Nuclear Power Reactor Designs*, 72 Fed. Reg. 56,287 (Oct. 3, 2007).
- L Events that could cause radioactive releases (including aircraft impact events) are included within the set of Design Basis Events required to be analyzed and designed against only if the probability of such events is above 10^{-6} per year. *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-01-22, 54 NRC 255, 260 (2001).
- M The Commission stated that "[q]uibbling over the details of an economic analysis . . . [amounts to] . . . standing NEPA on its head by asking that the license be rejected not due to environmental costs, but because the economic benefits are not as great as estimated." *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-04-22, 60 NRC 125, 145 (2004) (internal quotation marks omitted).
- N In 10 C.F.R. § 51.45(b)(3), the NRC's regulations adopt NEPA's requirement that an agency consider alternatives that are "appropriate alternatives to recommended courses of action." 42 U.S.C. § 4332(2)(E). A reviewing agency determines whether an alternative is "appropriate" by looking at the objectives (i.e., purpose and need) of a project sponsor. *See Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 195 (D.C. Cir. 1991). So long as the applicant has "not set forth an unreasonably narrow objective of its project," *see Nuclear Energy Institute; Denial of Petition for Rulemaking*, 68 Fed. Reg. 55,905, 55,910 (Sept. 29, 2003), the NRC adheres to the principle that "when the purpose is to accomplish one thing, it makes no sense to consider alternative ways by which another thing might be accomplished." *Citizens Against Burlington*, 938 F.2d at 195 (citing *City of Angoon*, 803 F.2d 1016, 1021 (9th Cir. 1986)).
- O Costs for a project are relevant for the determination only if an environmentally preferable option is identified. *Consumers Power Co.* (Midland Plant, Units 1 and 2), ALAB-458, 7 NRC 155, 163 (1978).
- P The accuracy of project cost estimates only becomes relevant if an environmentally preferable alternative has been identified. *Progress Energy Carolinas, Inc.* (Shearon Harris Nuclear Power Plant, Units 2 and 3), LBP-08-21, 68 NRC 554, 576 (2008).

DIGESTS

ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- Q “[T]he NRC is not in the business of regulating the market strategies of licensees . . . and leave[s] to licensees the ongoing business decisions that relate to costs and profit.” *Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-05-28, 62 NRC 721, 726 (2005) (internal citation omitted).
- R NEPA charges a federal agency with weighing the environmental effects and impacts of the proposed project and its alternatives against each other and balancing those effects against the benefits of each such project. The Commission is consummately clear that its obligations under NEPA focus on “the adjective ‘environmental,’” and “NEPA does not require the agency to assess every impact or effect . . . , but only the impact or effect on the environment.” *Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), CLI-98-3, 47 NRC 77, 88 (1998) (citing *Metropolitan Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766, 772 (1983)).
- LBP-09-3 SOUTHERN NUCLEAR OPERATING COMPANY (Vogtle Electric Generating Plant, Units 3 and 4), Docket Nos. 52-025-COL, 52-026-COL (ASLBP No. 09-873-01-COL-BD01); COMBINED LICENSE; March 5, 2009; MEMORANDUM AND ORDER (Ruling on Standing and Contention Admissibility)
- A In this 10 C.F.R. Part 52 proceeding regarding the application of Southern Nuclear Operating Company (SNC) for a combined license (COL) to construct and operate two new nuclear reactors at its existing Vogtle Electric Generating Plant (VEGP) site, ruling on a petition filed jointly by five public interest organizations seeking to intervene to contest the SNC COL application, the Licensing Board concludes that, having established the requisite standing and proffered one admissible contention, the Joint Petitioners are admitted as parties to the proceeding.
- B In determining whether an individual or organization should be granted party status in a proceeding based on standing “as of right,” the agency has applied contemporaneous judicial standing concepts that require a participant to establish (1) it has suffered or will suffer a distinct and palpable injury that constitutes injury-in-fact within the zones of interests arguably protected by the governing statutes (e.g., the AEA, the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. § 4321, *et seq.*); (2) the injury is fairly traceable to the challenged action; and (3) the injury is likely to be redressed by a favorable decision. *See Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-96-1, 43 NRC 1, 6 (1996).
- C In cases involving the possible construction or operation of a nuclear power reactor, proximity to the proposed facility has been considered sufficient to establish the requisite standing elements. *See Florida Power & Light Co.* (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325, 329 (1989).
- D When an entity seeks to intervene on behalf of its members, that entity must show it has an individual member who can fulfill all the necessary standing elements and who has authorized the organization to represent his or her interests. *See Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), CLI-00-20, 52 NRC 151, 163 (2000).
- E In assessing a petition to determine whether these elements are met, which a licensing board must do even though there are no objections to a petitioner’s standing, the Commission has indicated that we are to “construe the petition in favor of the petitioner.” *Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Georgia), CLI-95-12, 42 NRC 111, 115 (1995).
- F Section 2.309(f) of the Commission’s rules of practice specifies the requirements that must be met if a contention is to be deemed admissible. Specifically, a contention must provide (1) a specific statement of the legal or factual issue sought to be raised; (2) a brief explanation of the basis of the contention; (3) a concise statement of the alleged facts or expert opinions, including references to specific sources and documents, that support the petitioner’s position and upon which the petitioner intends to rely at hearing; and (4) sufficient information demonstrating that a genuine dispute exists in regard to a material issue of law or fact, including references to specific portions of the application that the petitioner disputes, or in the case when the application is alleged to be deficient, the identification of such deficiencies and supporting reasons for this belief. *See* 10 C.F.R. § 2.309(f)(1)(i), (ii), (v), and (vi). In addition, the petitioner must demonstrate that the issue raised in the contention is both “within the scope of the proceeding” and “material to the findings the NRC must make to support the action that is involved in the proceeding.” *Id.* § 2.309(f)(1)(iii)-(iv). Failure to comply with any of these requirements is grounds for dismissing a contention. *See Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 325 (1999); *see also Arizona Public Service Co.* (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), CLI-91-12, 34 NRC 149, 155-56 (1991).
- G An adjudication is not the proper forum for challenging applicable statutory requirements or the basic structure of the agency’s regulatory process. *See Philadelphia Electric Co.* (Peach Bottom Atomic Power

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20, *aff'd in part on other grounds*, CLI-74-32, 8 AEC 217 (1974). Similarly, a contention that attacks a Commission rule, or which seeks to litigate a matter that is, or clearly is about to become, the subject of a rulemaking, is inadmissible. *See* 10 C.F.R. § 2.335; *Potomac Electric Power Co.* (Douglas Point Nuclear Generating Station, Units 1 and 2), ALAB-218, 8 AEC 79, 85, 89 (1974). This includes contentions that advocate stricter requirements than agency rules impose or that otherwise seek to litigate a generic determination established by a Commission rulemaking. *See Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-01-6, 53 NRC 138, 159 (2001); *Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), LBP-93-1, 37 NRC 5, 29-30 (1993); *Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), LBP-82-106, 16 NRC 1649, 1656 (1982); *see also Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-96-7, 43 NRC 235, 251 (1996); *Arizona Public Service Co.* (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), LBP-91-19, 33 NRC 397, 410, *aff'd in part and rev'd in part on other grounds*, CLI-91-12, 34 NRC 149 (1991). By the same token, a contention that simply states the petitioner's views about what regulatory policy should be does not present a litigable issue. *See Peach Bottom*, ALAB-216, 8 AEC at 20-21 & n.33.

H All proffered contentions must be within the scope of the proceeding as defined by the Commission in its initial hearing notice and order referring the proceeding to the Licensing Board. *See* 10 C.F.R. § 2.309(f)(1)(iii); *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-00-23, 52 NRC 327, 329 (2000); *Duke Power Co.* (Catawba Nuclear Station, Units 1 and 2), ALAB-825, 22 NRC 785, 790-91 (1985). As a consequence, any contention that falls outside the specified scope of the proceeding must be rejected. *See Portland General Electric Co.* (Trojan Nuclear Plant), ALAB-534, 9 NRC 287, 289 n.6 (1979).

I It is the petitioner's obligation to present factual information and/or expert opinion necessary to support its contention. *See* 10 C.F.R. § 2.309(f)(1)(v); *Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Georgia), LBP-95-6, 41 NRC 281, 305, *vacated in part and remanded on other grounds*, CLI-95-10, 42 NRC 1, and *aff'd in part*, CLI-95-12, 42 NRC 111 (1995). While a Board may appropriately view a petitioner's supporting information in a light favorable to the petitioner, failure to provide such information regarding a proffered contention requires that the contention be rejected. *See Palo Verde*, CLI-91-12, 34 NRC at 155. In this connection, neither mere speculation nor bare or conclusory assertions, even by an expert, alleging that a matter should be considered will suffice to allow the admission of a proffered contention. *See Fansteel, Inc.* (Muskogee, Oklahoma Site), CLI-03-13, 58 NRC 195, 203 (2003). If a petitioner neglects to provide the requisite support for its contentions, it is not within the Board's power to make assumptions of fact that favor the petitioner, nor may the Board supply information that is lacking. *See Palo Verde*, CLI-91-12, 34 NRC at 155; *Duke Cogema Stone & Webster* (Savannah River Mixed Oxide Fuel Fabrication Facility), LBP-01-35, 54 NRC 403, 422 (2001); *Georgia Tech Research Reactor*, LBP-95-6, 41 NRC at 305.

J Simply attaching material or documents as a basis for a contention, without setting forth an explanation of that information's significance, is inadequate to support the admission of the contention. *See Fansteel*, CLI-03-13, 58 NRC at 204-05. Along these lines, any supporting material provided by a petitioner, including those portions of the material that are not relied upon, is subject to Board scrutiny. *See Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), LBP-96-2, 43 NRC 61, 90 (1996), *rev'd in part on other grounds*, CLI-96-7, 43 NRC 235 (1996). Thus, the material provided in support of a contention will be carefully examined by the Board to confirm that on its face it does supply adequate support for the contention. *See Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), ALAB-919, 30 NRC 29, 48 (1989), *vacated in part on other grounds and remanded*, CLI-90-4, 31 NRC 333 (1990).

K To be admissible, the regulations require that all contentions assert an issue of law or fact that is material to the outcome of a licensing proceeding, meaning that the subject matter of the contention must impact the grant or denial of a pending license application. *See* 10 C.F.R. § 2.309(f)(1)(iv). This requirement of materiality often dictates that any contention alleging deficiencies or errors in an application also indicate some significant link between the claimed deficiency and either the health and safety of the public or the environment. *See Yankee Nuclear*, LBP-96-2, 43 NRC at 75-76; *see also Pacific Gas and Electric Co.* (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), LBP-02-23, 56 NRC 413, 439-41 (2002), *petition for review denied*, CLI-03-12, 58 NRC 185, 191 (2003).

L All properly formulated contentions must focus on the license application in question, challenging

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

either specific portions of or alleged omissions from the application (including the Safety Analysis Report and the Environmental Report) so as to establish that a genuine dispute exists with the applicant on a material issue of law or fact. *See* 10 C.F.R. § 2.309(f)(1)(vi). Any contention that fails directly to controvert the application or that mistakenly asserts the application does not address a relevant issue can be dismissed. *See Sacramento Municipal Utility District* (Rancho Seco Nuclear Generating Station), LBP-93-23, 38 NRC 200, 247-48 (1993), *review declined*, CLI-94-2, 39 NRC 91 (1994); *Texas Utilities Electric Co.* (Comanche Peak Steam Electric Station, Unit 2), LBP-92-37, 36 NRC 370, 384 (1992).

M The current situation in which a Part 52 COLA referencing a certified standard design (CSD) that, while previously approved, faces potential modification in the form of pending design certification document (DCD) revisions that both have and have not been incorporated into the COLA is no doubt one the Commission hoped reactor designers and COL applicants would avoid so as to maximize the longstanding “reliability” and “finality” hallmarks of the Part 52 CSD, early site permit (ESP), and COL processes. At the same time, this is a happenstance the Commission has recognized may occur, and could result in a properly framed contention being admitted and held in abeyance pending resolution of the design certification rulemaking (DCR). *See Progress Energy Carolinas, Inc.* (Shearon Harris Nuclear Power Plant, Units 2 and 3), CLI-08-15, 68 NRC 1, 3-4 & nn.5, 8 (2008); *see also Detroit Edison Co.* (Enrico Fermi Atomic Power Plant, Unit 3), CLI-09-4, 69 NRC 80, 84-85 (2009).

N Absent a future exemption request, an applicant cannot obtain a COL for its proposed facility until the DCR process for a COLA-referenced revision to the COLA-referenced DCD is completed by incorporating the revision into the CSD.

O A concern about the travails of the post-initial intervention contention admission process does not provide the basis for an open-ended, placeholder contention. Rather than asserting, based on documentary material or expert analysis, that some particular facet of a proposed DCD change has a safety impact relative to some specific aspect of either the existing CSD or the proposed unit, the focus of a submitted contention was a generalized concern that because the design issues reflected in the proposed DCD revision will remain unresolved pending the completion of the DCR to incorporate the change, the COLA is somehow fatally incomplete. But given that a pending DCD revision clearly can be referenced in a COLA, *see* 10 C.F.R. § 52.55(c), the failure to frame a specific, sufficiently supported, material issue regarding a safety concern arising from the interaction of the proposed DCD amendment with the existing CSD and/or a facility-specific provision of the COLA leaves the contention as no more than an inadmissible challenge to the Part 52 regulatory framework.

P If a contention is a contention of omission, a petitioner need only “identify[] the regulatively required missing information” and provide enough facts to show that the application is incomplete. *Virginia Electric and Power Co.* (North Anna Power Station, Unit 3), LBP-08-15, 68 NRC 294, 317 (2008) (quoting *Pa’ina Hawaii, LLC*, LBP-06-12, 63 NRC 403, 414 (2006)).

Q While section 52.79(a)(3) does not explicitly speak to long-term storage of low-level radioactive waste (LLRW) or any specific amount of waste storage, if offsite disposal for LLRW remains unavailable, it is not apparent how a COL applicant could address compliance with 10 C.F.R. Part 20 limits in accordance with section 52.79(a)(3) without addressing what it intends to do with the LLRW (which certainly qualifies as radioactive material) expected to be produced in the operation of a proposed reactor unit. Thus, because an applicant’s compliance with 10 C.F.R. § 52.79 is a material part of what the agency must assess in a COL proceeding, the question of how the applicant intends to handle LLRW in the absence of an offsite disposal facility is material to the findings the agency must make.

LBP-09-4 CALVERT CLIFFS 3 NUCLEAR PROJECT, LLC, and UNISTAR NUCLEAR OPERATING SERVICES, LLC (Calvert Cliffs Nuclear Power Plant, Unit 3), Docket No. 52-016-COL (ASLBP No. 09-874-02-COL-BD01); COMBINED LICENSE; March 24, 2009; MEMORANDUM AND ORDER (Ruling on Joint Petitioners’ Standing and Contentions)

A There is no conflict between judicial concepts of standing and the NRC’s 50-mile presumption of standing. The presumption does not permit persons with no actual or imminent claim of injury to obtain a hearing. On the contrary, the “common thread” in the decisions applying the 50-mile presumption is a recognition of the potential effects at significant distances from the facility of the accidental release of fissionable materials. The increased risk of living within 50 miles of the plant constitutes injury-in-fact, is traceable to the challenged action (the NRC’s licensing of a new nuclear reactor), and is likely to be redressed by a favorable decision that either denies a license or mandates compliance with legal requirements that protect the interests of the petitioners.

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- B Licensing boards are bound by Commission and appeal board precedent and therefore are not at liberty to reject the 50-mile presumption.
- C The rationale for the 50-mile presumption does not depend upon the probability that a proposed reactor is likely to generate an accidental release of radioactive materials, but rather the fact that, if such an accident were to occur, it could realistically impact the geographic area within which the petitioners reside.
- D Although the Commission has encouraged licensing boards to apply contemporaneous concepts of standing, the ultimate test is not whether the NRC's test for standing conforms to that applied by federal courts, but whether the NRC's test represents a reasonable construction of section 189a of the Atomic Energy Act. As long as the petitioners reside within an area that could realistically be impacted if an accidental release occurs, it is reasonable and consistent with section 189a to find that they have standing to challenge Applicant's safety claims and its environmental analysis under NEPA.
- E The Petition was submitted through the EIE system and the failure of all the representatives to sign the Petition was evidently due to a misunderstanding of the EIE system and the requirements of 10 C.F.R. § 2.304(d). Given the complexities of the EIE system, the fact that it is new, and that it was not intended to frustrate the ability of the public to participate in NRC proceedings, Petitioners will not be denied the opportunity to participate in this proceeding due to an error that can easily be corrected and that has caused no prejudice to any other participant.
- F The NRC has not established an ownership interest threshold or plateau above which a foreign entity is presumed to have control or domination over the applicant. Instead, the decision of whether or not to grant a license to a corporation hinges on whether the applicant is being *controlled or dominated* by the foreign entity.
- G The AEA restriction on foreign ownership focuses on safeguarding access to nuclear materials, a security issue, and not on other licensing matters.
- H A domestic corporation in which a foreign entity has an ownership interest is considered "controlled or dominated" if their will is subjugated to the will of the foreign entity on primary safety matters or access policies that may be inimical to the national defense and security of the United States. However, a license will not be prohibited if the foreign entity's influence is on other licensing activities not of primary concern to the NRC, or if the corporation follows NRC-implemented conditions to isolate safety matters from foreign control.
- I NRC case law and precedent do not prohibit considering the percentage of foreign ownership as one element in NRC's overall analysis and finding of whether or not the foreign entity is a threat to the national defense and security of the United States.
- J It is beyond the authority of a licensing board to require applicant to choose a certain method of decommissioning funding. Moreover, there is no provision that requires an applicant or licensee to choose one form of decommissioning assurance over another. Licensees and applicants can demonstrate financial assurance by "one or more" of the funding mechanisms. An applicant is permitted to choose a single method or a combination of methods to demonstrate financial assurance.
- K The contention states that Applicant cannot demonstrate that the decommissioning funding strategy is financially possible. Such demonstration is required at some point in the licensing process. However, both regulations and guidance documents fail to state when such proof is required.
- L It would be inconsistent with NEPA's rule of reason to require that the cumulative impacts analysis individually analyze the effects of remote facilities absent a demonstration that such additional effort would lead to a different conclusion.
- M NEPA analyses are subject to a "rule of reason," but to apply a rule of reason it is necessary to have a criterion upon which reasonableness may be determined. If the accident sought to be considered is sufficiently unlikely, such that it can be characterized fairly as remote and speculative, then consideration under NEPA is not required as a matter of law. The Commission has found that events having a less than a one in one million probability of occurring are not "credible events." Taken together, these individual statements lead to the conclusion that 10^{-6} is a reasonable threshold for considering events under NEPA.
- N The Commission has announced proposals to revise its Waste Confidence Rule and its Waste Confidence Decision, and that it is accepting public comment on both proposals. Petitioners and others who believe the Waste Confidence Rule needs revision must use those proceedings to express their concerns.

DIGESTS

ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- O Contentions concerning an Applicant's plan for disposal of Greater-Than-C radioactive waste cannot be admitted because the disposal of that type of waste is the responsibility of the federal government.
- P A licensing board may not admit a contention that directly or indirectly challenges Table S-3 of 10 C.F.R. § 51.51.
- Q The Board may admit an application-specific contention concerning the environmental consequences of the need for extended onsite storage of Low Level Radioactive Waste, assuming that contention satisfies the requirements of 10 C.F.R. § 2.309(f)(1).
- R The Application assumes that offsite disposal facilities will be available to receive the full range of radioactive waste generated at the nuclear power plant. The Application does not explain how Applicant intends to manage Low Level Radioactive Waste in the absence of an offsite disposal facility. The omitted information is material to the ER's compliance with 10 C.F.R. § 51.45(b) and (e), and to the agency's compliance with NEPA.
- S NEPA requires that an EIS disclose measures that will mitigate potential adverse environmental impacts.
- T The Commission has made clear that petitioners must raise NEPA contentions in response to the ER, rather than await the agency's draft environmental impact statement.
- LBP-09-5 SOUTH TEXAS PROJECT NUCLEAR OPERATING COMPANY, NRG SOUTH TEXAS 3, LLC, NRG SOUTH TEXAS 4, LLC, and the CITY PUBLIC SERVICE BOARD acting for the CITY OF SAN ANTONIO, TEXAS (South Texas Project, Units 3 and 4), Docket Nos. 52-012-COL, 52-013-COL (ASLBP No. 09-883-06-COL-BD01); COMBINED LICENSE; April 20, 2009; MEMORANDUM AND ORDER (Affirming Denial of Access to SUNSI)
- A In adjudicating Petitioners' appeal from the NRC Staff's denial of Petitioners' request for access to SUNSI, we consider whether the NRC Staff correctly applied the criteria established by the Commission and prescribed by order of the Secretary of the Commission — namely, (1) whether the SUNSI request demonstrates a reasonable basis to believe that a potential party is likely to establish standing to intervene; and (2) whether the SUNSI request demonstrates the proposed recipient has a "need" for the SUNSI.
- B If a SUNSI request is denied, the NRC Staff shall briefly state the reasons for the denial. The requester then may challenge the NRC Staff's adverse determination with respect to access to SUNSI by filing a challenge with the presiding officer, and the NRC Staff may file a reply to the requester's challenge. Thus, when the appeal appears before us, we are asked to adjudicate a dispute arising from the NRC Staff's adverse determinations regarding likelihood of standing and need.
- C Our standard of review in an appeal from an NRC Staff denial of a SUNSI request is *de novo*.
- D To satisfy the likelihood of establishing standing criterion, Petitioner organizations were required to provide sufficient information to allow the NRC Staff to conclude that the requirements for "representational standing" or "organizational standing" could likely be satisfied.
- E SUNSI requests need not be accompanied by affidavits or include lengthy, detailed justifications addressing the likelihood of standing criterion. Rather, such requests need simply include the name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the proposed licensing action sufficient to demonstrate a reasonable basis to conclude he or she could likely establish standing.
- F Although the SUNSI-access procedures do not impose a high threshold for demonstrating need, they must be applied consistent with the principle that it is important to prevent unnecessary disclosure of sensitive information.
- G Had Petitioners offered a reason for needing such information material to the findings a Licensing Board must make and otherwise explained why publicly available versions of the application would not be sufficient to provide the basis and specificity for a proffered contention, they would have satisfied the need criterion.
- H We stress that the requirement to discuss the basis for a proffered contention is not to be equated with the discussion that would be necessary to support an admissible contention. Rather, the discussion need only show why the publicly available information in the application is not sufficient to support the basis and specificity of a proffered contention.
- I We recognize that a petitioner's lack of access to SUNSI may, on occasion, hinder it to some degree in its ability to demonstrate why publicly available versions of the application would not be sufficient to provide the basis and specificity for a proffered contention. Any such hindrance, however, does not absolve a petitioner from at least endeavoring to address this criterion. A contrary conclusion would

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

improperly convert the current SUNSI disclosure process from one that is based on a petitioner's ability to show "legitimate need" into one where a petitioner's broad, nonspecific, and speculative assertion of "need" would mandate the wholesale release of SUNSI.

- J The procedure for seeking access to SUNSI does not provide a method for general access to SUNSI or topical access to SUNSI. It provides access to only the information necessary to meaningfully participate in an adjudicatory proceeding, and, further, only grants access to the information that is necessary to provide the basis and specificity of a proffered contention.
- LBP-09-6 U.S. DEPARTMENT OF ENERGY (High-Level Waste Repository), Docket No. 63-001-HLW; CONSTRUCTION AUTHORIZATION; May 11, 2009; MEMORANDUM AND ORDER (Identifying Participants and Admitted Contentions)
- A In this proceeding on the Application by the Department of Energy seeking authorization to construct a geologic repository for high-level nuclear waste (HLW) at Yucca Mountain, in Nye County, Nevada, the Construction Authorization Boards conclude that, having established the requisite standing and proffering admissible contentions, eight petitioners, State of Nevada, Nuclear Energy Institute, Nye County, Churchill, Esmeralda, Lander, and Mineral Counties, State of California, Clark County, Inyo County, and White Pine County, are admitted as parties to the proceeding. Two of the petitioners, the Joint Timbisha Shoshone Tribal Group and the Native Community Action Council, are denied party status until they can demonstrate compliance with the Licensing Support Network (LSN) requirements. The petition of Caliente Hot Springs Resort is denied, having failed to make the requisite standing showing.
- B To intervene as a party in the HLW proceeding, a petitioner must: (1) establish that it has standing; (2) be able to demonstrate substantial and timely LSN compliance; and (3) proffer at least one admissible contention.
- C In the HLW proceeding, the Commission conferred standing as of right on certain parties. Pursuant to 10 C.F.R. § 2.309(d)(2)(iii), intervention is permitted by the state and local governmental body (county, municipality, or other subdivision) in which the geologic repository operations area (GROA) is located, and by any affected federally recognized Indian Tribe (AIT), as defined in 10 C.F.R. Part 63, if the contention admission requirements in 10 C.F.R. § 2.309(f) are satisfied with respect to at least one contention. Additionally, in the Notice of Hearing, the Commission clarified that any "affected unit of local government" (AULG), as defined in section 2 of the Nuclear Waste Policy Act of 1982, as amended (NWPA), need not address standing, but rather shall be considered a party provided that it files at least one admissible contention in accordance with 10 C.F.R. § 2.309(f).
- D Where a petitioner is not conferred automatic standing, the petition to intervene must provide information supporting the petitioner's claim to standing, including: (1) the nature of the petitioner's right under the governing statutes to be made a party; (2) the nature of the petitioner's interest in the proceeding; and (3) the possible effect of any decision or order on the petitioner's interest. In determining whether an individual or organization should be granted party status "as of right," the Nuclear Regulatory Commission (NRC) applies judicial standing concepts that require a participant to establish: (1) it has suffered or will suffer a distinct and palpable harm that constitutes injury-in-fact within the zone of interests arguably protected by the governing statutes (e.g., the Atomic Energy Act of 1954 (AEA), the National Environmental Policy Act of 1969 (NEPA)); (2) the injury is fairly traceable to the challenged action; and (3) the injury is likely to be redressed by a favorable decision.
- E An organization seeking to intervene in a representational capacity must: (1) demonstrate that the licensing action will affect at least one of its members; (2) identify that member by name and address; and (3) show that it is authorized by that member to request a hearing on his or her behalf. Additionally, the member must qualify for standing in his or her own right, and the interests that the organization seeks to protect must be germane to its own purpose. Neither the petitioner's contentions nor the requested relief, however, must require the participation of an individual member in the proceeding.
- F In the HLW proceeding, a state can meet the requirements for standing as a matter of right, based on the threat posed by transportation of radioactive waste through that state.
- G When an organization takes formal corporate action to initiate litigation not only germane but integral to its purpose, that action can constitute the requisite, if implicit, proof of authorization.
- H Section 2.1009(b) requires a certification to the Pre-License Application Presiding Officer (PAPO) Board that the party or potential party has complied with the implementation procedures of section 2.1009(a)(2) and that "to the best of his or her knowledge, the documentary material specified in § 2.1003 has been identified and made electronically available."

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- I In the event a petitioner is found not to be in substantial and timely compliance with the LSN requirements, section 2.1012(b)(2) allows that petitioner to request party status upon a subsequent showing of compliance, although any grant of a request is “conditioned on accepting the status of the proceeding at the time of admission.”
- J An admissible contention must: (1) provide a specific statement of the legal or factual issue sought to be raised; (2) provide a brief explanation of the basis for the contention; (3) demonstrate that the issue raised is within the scope of the proceeding; (4) demonstrate that the issue raised is material to the findings the NRC must make to support the action that is involved in the proceeding; (5) provide a concise statement of the alleged facts or expert opinions that support the petitioner’s position and on which the petitioner intends to rely at the hearing, including references to the specific sources and documents on which the petitioner intends to rely; and (6) provide sufficient information to show that a genuine dispute exists on a material issue of law or fact, including references to specific portions of the application that the petitioner disputes or, if the application is alleged to be deficient, the identification of such deficiencies and the supporting reasons for this allegation.
- K An admissible contention cannot challenge an existing Commission regulation. Absent a waiver, no rule or regulation of the Commission is subject to attack in any adjudicatory proceeding. This rule bars contentions that: (1) advocate more or less stringent requirements than the NRC rules impose; (2) otherwise seek to litigate a generic determination that the Commission has established by rulemaking; or (3) raise a matter that is or is about to become the subject of rulemaking.
- L In substantially revising its contention admissibility requirements in 1989, the Commission sought to preclude a contention from being admitted where an intervenor has no facts to support its positions, but rather hopes to use discovery or cross-examination as a “fishing expedition.” The Commission therefore amended its rules to require that contentions have at least some minimal factual and legal foundation in support. As the Commission has emphasized, the contention requirements were never intended to be turned into a fortress to deny intervention.
- M In addition to the usual contention admissibility requirements set forth in section 2.309(f)(1), factual NEPA contentions in the HLW proceeding must be supported by one or more competent affidavits and such affidavits must present significant and substantial information that, if true, would render the DOE environmental statements inadequate.
- N The NWPA has limited, but not eliminated, the scope of the NRC’s NEPA responsibilities. The Commission has addressed those limitations by imposing special pleading requirements for all NEPA contentions. If those requirements are satisfied, Boards cannot dismiss otherwise admissible contentions at this stage of the proceeding.
- O The NRC is obligated under NEPA to analyze and to disclose all environmental effects of the proposed repository, not just the effects of those portions of the repository over which the NRC has direct regulatory control. Contentions that address such environmental effects, including transportation-related effects, may not be dismissed at the contention admissibility stage if they satisfy the Commission’s special pleading requirements for HLW NEPA contentions.
- P A petitioner does not fail to satisfy 10 C.F.R. § 2.309(f)(1)(v) and (vi) by providing expert affidavits that adopt assertions made in the body of the contention.
- Q An expert’s opinion need not always be accompanied by a specific reference to supporting sources and documents. Section 2.309(f)(1)(v) requires “references to the specific sources and documents on which the requestor/petitioner intends to rely to support its position.” It says nothing about references upon which an expert might rely in offering expert opinion. Nor can it reasonably be interpreted to require a petitioner to produce, at the contention admissibility stage, its exhibit list for a hearing.
- R The standards embodied in section 2.309(f)(1) have been in existence, for the most part, since 1989. If, in subsequently promulgating Subpart J containing the LSN provisions, the Commission had wanted to raise the standard for the admissibility of contentions because of the LSN, it could have done so explicitly, as it did in 10 C.F.R. § 51.109(a)(2) with respect to the admissibility of contentions raising NEPA issues. On the contrary, when promulgating Subpart J, the Commission expressly provided that section 2.309 was to remain unchanged.
- S The suggestion that “reasonable expectation,” 10 C.F.R. § 63.31(a)(2), connotes less exacting obligations than does “reasonable assurance,” 10 C.F.R. § 63.31(a)(1), invokes a distinction without a difference. The NRC has repeatedly indicated that “reasonable expectation” and “reasonable assurance” mean virtually the same thing.

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- T Under 10 C.F.R. § 2.309(f)(1)(i), a contention may raise an issue of law or fact. A purely legal issue contention need not allege “facts” under section 2.309(f)(1)(v).
- U The requirement that a NEPA contention be accompanied by one or more affidavits, pursuant to 10 C.F.R. § 51.109(a)(2), ought not apply to a legal issue contention under NEPA, as that section requires only affidavits “which set forth factual and/or technical bases for the claim.” There is no requirement that legal arguments be presented by affidavit.
- V The term “person” is defined under section 11(s) of the AEA to include not only private entities, but also “any . . . Government agency other than the Commission,” and a “person,” as the term is used throughout the AEA, is required to be licensed in order to conduct nuclear activities. Thus, in terms of the Commission’s treatment of private entities and government actors under the AEA, there is no difference.
- W The NWPA explicitly provides that it does not diminish any part of the Commission’s authority to review license applications and issue licenses under the AEA.
- X Although the Commission has not promulgated a rule or regulation requiring an applicant to include information in its application regarding its character pursuant to AEA § 182(a), NRC case law makes clear that an applicant’s character is appropriate for consideration in a licensing proceeding.
- LBP-09-7 SOUTHERN NUCLEAR OPERATING COMPANY (Early Site Permit for Vogtle ESP Site), Docket No. 52-011-ESP (ASLBP No. 07-850-01-ESP-BD01); EARLY SITE PERMIT; June 22, 2009; FIRST PARTIAL INITIAL DECISION (Contested Proceeding)
- A In this 10 C.F.R. Part 52 proceeding regarding the application of Southern Nuclear Operating Company (SNC) for an early site permit (ESP) for an additional two reactors at the existing Vogtle Electric Generating Plant (VEGP) site, in a Partial Initial Decision ruling on the merits of three admitted environmental contentions (ECs) regarding cooling system impacts on aquatic resources, use of a dry cooling system as an alternative to wet cooling, and impacts associated with dredging the Savannah River federal navigation channel to bring reactor components to the VEGP site, the Licensing Board concludes that, having carried their respective burdens of proof, a ruling on the merits of each contention should be entered in favor of the NRC Staff and SNC, thereby terminating the contested portion of this ESP proceeding before the Board.
- B The Council on Environmental Quality (CEQ) has implemented regulations that provide guidance on agency compliance with the National Environmental Policy Act (NEPA), *see* 40 C.F.R. Part 1500, that, while not binding on the NRC when the agency has not expressly adopted them, are entitled to considerable deference. *See Limerick Ecology Action, Inc. v. NRC*, 869 F.2d 719, 725, 743 (3d Cir. 1989).
- C NEPA requires federal agencies to take a “hard look” at the environmental impacts of a proposed action, as well as reasonable alternatives to that action. *See Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), CLI-98-3, 47 NRC 77, 87-88 (1998). This “hard look” is, however, subject to a “rule of reason” in that consideration of environmental impacts need not address every impact that could possibly result, but rather only those that are reasonably foreseeable or have some likelihood of occurring. *See, e.g., Long Island Lighting Co.* (Shoreham Nuclear Power Station), ALAB-156, 6 AEC 831, 836 (1973).
- D Agencies are given broad discretion in determining how thoroughly to analyze a particular subject, *see Claiborne*, CLI-98-3, 47 NRC at 103, and may decline to examine issues the agency in good faith considers “remote and speculative” or “inconsequentially small,” *Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), ALAB-919, 30 NRC 29, 44 (1989) (citing *Limerick Ecology Action, Inc.*, 869 F.2d at 739). To that end, when reviewing a license application filed by a private applicant, as opposed to a federally sponsored project, an agency may give substantial weight to the stated preferences of the applicant with regard to issues such as site selection and facility design. *See Claiborne*, CLI-98-3, 47 NRC at 104; *Hydro Resources, Inc.* (P.O. Box 15910, Rio Rancho, NM 87174), CLI-01-4, 53 NRC 31, 55 (2001).
- E CEQ regulations state that an environmental impact statement (EIS) must address both direct and indirect effects of an action. *See* 40 C.F.R. §§ 1502.16, 1508.8. Direct effects are those caused by the federal action, and occurring at the same time and place as that action, while indirect effects are those caused by the action at a later time or more distant place, yet are still reasonably foreseeable. *See id.* § 1508.8. But if effects are remote or speculative, the EIS need not discuss them. *See Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.* 435 U.S. 519, 551 (1978).
- F In the context of an NRC adjudicatory proceeding, even if an EIS prepared by the Staff is found to be inadequate in certain respects, the Board’s findings, as well as the adjudicatory record, “become, in

DIGESTS

ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- effect, part of the [final environmental impact statement (FEIS)].” *Hydro Resources*, CLI-01-4, 53 NRC at 53. Thus, the Board’s ultimate NEPA judgments can be made on the basis of the entire adjudicatory record in addition to the Staff’s FEIS. See *Louisiana Energy Services, L.P.* (National Enrichment Facility), LBP-05-13, 61 NRC 385, 404 (2005), *aff’d*, CLI-06-22, 64 NRC 37 (2006), *petition for review denied sub nom.*, *Nuclear Information and Resources Service v. NRC*, 509 F.3d 562 (D.C. Cir. 2007).
- G Under the NRC’s Part 51 regulations, an applicant for an ESP must submit with its application an ER. See 10 C.F.R. § 51.50(b). The ER must “contain a description of the proposed action, a statement of its purposes, [and] a description of the environment affected,” *id.* § 51.45(b), and it must discuss: “(1) The impact[s] of the proposed action on the environment . . . in proportion to their significance; (2) Any adverse environmental effects which cannot be avoided should the proposal be implemented; (3) Alternatives to the proposed action . . . ; (4) The relationship between local short-term uses of man’s environment and the maintenance and enhancement of long-term productivity; and (5) Any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.” *Id.* § 51.45(b)(1)-(5).
- H NEPA requires an agency to provide a detailed statement of reasonable alternatives to a proposed action. 42 U.S.C. § 4332(2)(C)(iii); see also *Claiborne*, CLI-98-3, 47 NRC at 104. The alternatives discussion, however, need not include “every possible alternative, but every reasonable alternative.” *Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), CLI-91-2, 33 NRC 61, 71 (1999) (second emphasis in original). Reasonable alternatives do not include alternatives that are “impractical[.] . . . that present unique problems; or that cause extraordinary costs.” *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-03-30, 58 NRC 454, 479 (2003) (citing *Airport Neighbors Alliance v. United States*, 90 F.3d 426, 432 (10th Cir. 1996); *Communities, Inc. v. Busey*, 956 F.2d 619, 627 (6th Cir. 1992)). Alternatives that need not be considered include those that are technologically unproven. See *Kelley v. Selin*, 42 F.3d 1501, 1521 (6th Cir. 1995); *Natural Resources Defense Council, Inc. v. Morton*, 458 F.2d 827, 837 (D.C. Cir. 1972) (approving exclusion from alternatives discussion of alternative energy sources that “will be dependent on [future] environmental safeguards and [technological] developments”); *Busey*, 956 F.2d at 627 (upholding rejection of alternatives that “presented severe engineering requirements” or were “imprudent for reasons including their high cost, safety hazards, [and] operational difficulties”).
- I The agency’s NEPA regulations require that the NRC Staff prepare an environmental impact statement in connection with the issuance of an ESP. See 10 C.F.R. § 51.20(b)(1).
- J The Staff must first prepare a draft environmental impact statement (DEIS), see *id.* § 51.70, which addresses, among other topics, “the matters specified in [section] 51.45.” *Id.* § 51.71(a).
- K Though the DEIS may rely in part on the ER, agency regulations require the Staff to “independently evaluate and be responsible for the reliability of all information used in the [DEIS].” *Id.* § 51.70(b).
- L The Staff’s DEIS is distributed for public comment and, based on the comments received, a review of information provided by the applicant, and supplemental independent information and analysis, the Staff prepares and issues an FEIS. See *id.* §§ 51.73, 51.91.
- M When the Staff makes its conclusions in the DEIS and FEIS regarding the environmental impacts of a proposed action or alternative actions, the Staff uses as guidance a standard scheme to categorize or quantify the impacts. See, e.g., 10 C.F.R. Part 51, App. B, Table B-1 n.3. This standard was created using the approach outlined in section 1508.27 of the CEQ regulations, which requires agencies to consider both the context and intensity of impacts. See 40 C.F.R. § 1508.27. The NRC has established three levels of impacts — SMALL, MODERATE, and LARGE — that are defined as follows:
- SMALL — Environmental effects are not detectable or are so minor that they will neither destabilize nor noticeably alter any important attribute of the resource.
- MODERATE — Environmental effects are sufficient to alter noticeably, but not to destabilize, important attributes of the resource.
- LARGE — Environmental effects are clearly noticeable and are sufficient to destabilize important attributes of the resource.
- N An agency may rely on an EIS prepared by another federal agency if such reliance will aid in the presentation of issues, eliminate repetition, or reduce the length of an EIS. See 10 C.F.R. Part 51, Appendix A, § 1(b). This principle may extend to conclusions by other agencies set forth in other contexts in which

DIGESTS

ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

they have analyzed an issue extensively. *See New England Coalition on Nuclear Pollution v. NRC*, 582 F.2d 87, 98 (1st Cir. 1978) (NRC can accept as conclusive Environmental Protection Agency adjudicatory findings concerning thermal discharge aquatic impacts). Thus, the Staff is able to adopt the underlying scientific data and inferences from the other agency's analysis without independent review, so long as it exercises independent judgment with respect to conclusions about the environmental impacts of the current proposed agency action. *See id.*; *Philadelphia Electric Co.* (Limerick Generating Station, Units 1 and 2), LBP-82-43A, 15 NRC 1423, 1467-68 (1982).

O In the context of licensing board adjudication of NEPA-related contentions, intervenors are required to file contentions in the first instance based on the applicant's ER. *See* 10 C.F.R. § 2.309(f)(2). Where, however, the Staff has prepared a DEIS or FEIS by the time the contentions come before a licensing board on the merits, such contentions are appropriately treated as challenges to the EIS. *See Claiborne*, CLI-98-3, 47 NRC at 84.

P Although, as the proponent of the agency action at issue, an applicant generally has the burden of proof in a licensing proceeding, *see* 10 C.F.R. § 2.325, when NEPA contentions are involved, the burden shifts to the Staff, because the NRC, not an applicant, has the burden of complying with NEPA. *See, e.g., Duke Power Co.* (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 NRC 1041, 1049 (1983). Nonetheless, because "the Staff, as a practical matter, relies heavily upon the Applicant's ER in preparing the EIS, should the Applicant become a proponent of a particular challenged position set forth in the EIS, the Applicant, as such a proponent, also has the burden on that matter." *Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), LBP-96-25, 44 NRC 331, 339 (1996) (citing *Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), ALAB-471, 7 NRC 477, 489 n.8 (1978)), *rev'd on other grounds*, CLI-97-15, 46 NRC 294 (1997).

Q Given the direction in 10 C.F.R. Part 2, Subpart L, to file proposed findings, *see* 10 C.F.R. § 2.1209 (each party "shall" file written post-hearing proposed findings of fact and conclusions of law on the contentions addressed in an oral hearing), a party's failure to raise a matter in its findings submissions (notwithstanding any discussion in its section 2.1207 initial or responsive written statements of position) seemingly waives these items as grounds for its challenge to the FEIS, *see Statement of Policy on Conduct of Licensing Proceedings*, CLI-81-8, 13 NRC 452, 457 (1981).

R Section 51.45(b)(3) of Title 10 of the *Code of Federal Regulations* remains the applicable standard for alternatives analyses in the FEIS in that section 51.90 instructs the Staff to prepare the FEIS "in accordance with the [DEIS-related] requirements in §§ 51.70(b) and 51.71," and section 51.71, in turn, instructs the Staff to address in the DEIS matters an applicant is instructed to address in the ER under section 51.45. *See* 10 C.F.R. §§ 51.90, 51.71(a). Thus, the Board must decide whether the FEIS alternatives discussion is "sufficiently complete to aid the Commission in developing and exploring, pursuant to section 102(2)(E) of NEPA, 'appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources.'" *Id.* § 51.45(b)(3).

S Under NEPA, once "the adverse environmental effects of the proposed action are adequately identified and evaluated, the agency is not constrained by NEPA from deciding that other values outweigh the environmental costs." *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 351 (1989).

T In implementing NEPA, the NRC uses the definitions provided in CEQ regulations. 10 C.F.R. § 51.14(b).

U The CEQ regulations state that an agency EIS must consider direct, indirect, and cumulative impacts of an action. *See* 40 C.F.R. § 1508.25. Direct impacts are those caused by the federal action, and occurring at the same time and place as that action, while indirect impacts are caused by the action at a later time or more distant place, yet are still reasonably foreseeable. *See id.* § 1508.8. Cumulative impacts are defined as: "the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time." *Id.* § 1508.7.

V For impacts that are reasonably foreseeable, but for which the agency lacks complete information in its analysis, the agency must indicate that such information is lacking. *See* 40 C.F.R. § 1502.22. Significantly, the unavailability of information does not "halt all government action." *Sierra Club v. Sigler*, 695 F.2d 957, 970 (5th Cir. 1983). "This is particularly true when information may become available at a later time and can still be used to influence the agency's decision." *Id.*

DIGESTS

ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- W Under section 1508.25 of the CEQ regulations, which defines the term “connected action,” the types of impacts that are to be considered are outlined separately from the types of actions that are to be considered. *See* 40 C.F.R. § 1508.25. This indicates that each type of action and each type of impact has its own independent significance in the sense that a conclusion that something is a “connected action” does not necessarily inform the type of impacts analysis that is performed, whether direct, indirect, or cumulative. *See id.* § 1508.25 (“To determine the scope of environmental impact statements, agencies shall consider 3 types of actions, 3 types of alternatives, and 3 types of impacts”).
- X Under NEPA, the Staff is required to include an analysis of only those impacts that are reasonably foreseeable or have some likelihood of occurring. *See, e.g., Shoreham*, ALAB-156, 6 AEC at 836.
- Y NEPA’s hard look requirement is subject to a rule of reason, and extensive studies of every conceivable impact need not be addressed. *See Shoreham*, ALAB-156, 6 AEC at 836.
- Z The following technical issues are discussed: Cooling Water Intake System; Impingement; Entrainment; Hydraulic Zone of Influence; Cooling Water Discharge; Thermal Plume Analysis; Effects of Thermal Discharge; Cooling Systems (Wet vs. Dry); Dredging of River Channel.
- LBP-09-8 PROGRESS ENERGY CAROLINAS, INC. (Shearon Harris Nuclear Power Plant, Units 2 and 3), Docket Nos. 52-022-COL, 52-023-COL (ASLBP No. 08-868-04-COL-BD01); COMBINED LICENSE; June 30, 2009; MEMORANDUM AND ORDER (Ruling on Admissibility of Contention TC-1 in Response to the Commission’s Remand in CLI-09-8)
- LBP-09-9 ENTERGY NUCLEAR VERMONT YANKEE, LLC, and ENTERGY NUCLEAR OPERATIONS, INC. (Vermont Yankee Nuclear Power Station), Docket No. 50-271-LR (ASLBP No. 06-849-03-LR); LICENSE RENEWAL; July 8, 2009; FULL INITIAL DECISION (Denying NEC’s Motion to File a New Contention)
- A In this Full Initial Decision concerning an application submitted by Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc. (collectively, Entergy) to renew the operating license for the Vermont Yankee Nuclear Power Station (VYNPS) in Windham County, Vermont, the Board denied New England Coalition Inc.’s (NEC) motion to file a new contention concerning Entergy’s recent metal fatigue time-limited aging analyses, pursuant to 10 C.F.R. § 54.21(c)(1)(ii), for the core spray (CS) and reactor recirculation outlet (RO) nozzles. The Board found that NEC’s motion satisfied neither the requirements specified in the Board’s partial initial decision (LBP-08-25, 68 NRC 763, 831-32 (2008)) nor the new contention pleading requirements of 10 C.F.R. § 2.309(f)(2)(i)-(iii).
- B The Board’s partial initial decision, LBP-08-25, stated that Entergy’s new metal fatigue cumulative usage factor environmentally adjusted (CUFen) analyses (1) must be done in accordance with the approach previously used in CUFen analyses for the feedwater nozzle, (2) must not use scientific or technical judgments significantly different from the prior CUFen analyses, and (3) must demonstrate values of less than unity. The Board ruled that new contentions could only be filed if the new CUFen analyses failed to conform to these requirements and ruled that any new contention could not rehash or renew technical challenges that had already been raised and resolved in this proceeding. The proposed new contention raises old arguments, such as the adequacy of consideration of the dissolved oxygen factor in the CUFen analysis and the use of inappropriate heat transfer equations, which were previously litigated and resolved, and thus is not admissible.
- C NEC’s proposed new contention also fails to meet the new contention requirements of 10 C.F.R. § 2.309(f)(2)(i)-(iii). NEC’s new contention focuses on technical assumptions made in the recent CUFen analyses. However, these same technical assumptions were made in the 2007 and 2008 CUFen analyses for the same nozzles. Thus, the new contention is based on information that cannot be considered “not previously available” or “materially different than information previously available,” and therefore the proposed new contention does not meet the requirements of 10 C.F.R. § 2.309(f)(2)(i) or (ii).
- LBP-09-10 PROGRESS ENERGY FLORIDA, INC. (Levy County Nuclear Power Plant, Units 1 and 2), Docket Nos. 52-029-COL, 52-030-COL (ASLBP No. 09-879-04-COL-BD01); COMBINED LICENSE; July 8, 2009; MEMORANDUM AND ORDER (Rulings on Standing, Contention Admissibility, Motion to File New Contention, and Selection of Hearing Procedure)
- A In this combined license application proceeding under 10 C.F.R. Part 52, Subpart C, the Petitioners have shown standing and have proffered twelve contentions. Nine of the contentions do not satisfy the admissibility criteria of 10 C.F.R. § 2.309(f)(1). Portions of three of the contentions satisfy these criteria. Therefore the Board grants the Petition to Intervene and admits portions of these three contentions.

DIGESTS

ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- B Contention 1, which asserts that the Part 52 combined license application is incomplete because it incorporates by reference a standard design certification and a pending application for a revision to that certified design, failed to identify any specific omissions in these components of the application and thus is inadmissible for failure to comply with 10 C.F.R. § 2.309(f)(1)(vi).
- C An applicant is legally entitled to reference a pending application for a design certification, but it does so “at its own risk,” i.e., subject to otherwise admissible contentions. 10 C.F.R. § 52.55(c).
- D The fact that the combined license application is subject to, or even expected to, change does not make it legally deficient. The NRC follows a “dynamic licensing process.” *Curators of the University of Missouri* (TRUMP-S Project), CLI-95-8, 41 NRC 386, 395 (1995).
- E A contention must focus on the combined license application as it exists when the contention is filed and must point out an omission or deficiency with regard to the application as of that moment in time. 10 C.F.R. §§ 2.309(f)(1)(vi), 2.309(f)(2).
- F The necessary corollary to NRC’s dynamic licensing process is that, if the combined license application is amended or material new information subsequently becomes available, petitioners must be given a fair opportunity to file new or amended contentions challenging these changes. 10 C.F.R. § 2.309(f)(2).
- G The fact that the NRC Staff issues a request for additional information (RAI) does not, per se, demonstrate that the combined license application is incomplete or ensure the admission of a new contention. The contention must still meet the criteria of 10 C.F.R. §§ 2.309(f)(1)(i)-(vi) and 2.309(f)(2) or (c).
- H The fact that the NRC Staff issues a request for additional information (RAI) does not immunize the COLA from challenge or bar the admission of a new contention on the same subject, provided the contention satisfies the criteria of 10 C.F.R. §§ 2.309(f)(1)(i)-(vi) and 2.309(f)(2) or (c).
- I To demonstrate financial qualification, an applicant for a combined license must show that it possesses funds or has “reasonable assurance of obtaining funds necessary to cover estimated” construction and fuel cycle costs. 10 C.F.R. § 50.33(f)(1).
- J A combined license is, in part, an operating license. Thus, 10 C.F.R. § 50.33(f), which states that an electric utility need not include operating and maintenance costs in its demonstration of financial qualification in an application for an operating license, also applies to an application for a combined license.
- K The purpose of the financial qualification requirements of 10 C.F.R. § 50.33(f) is to ensure the protection of public health and safety and the common defense and security, not to evaluate the financial wisdom of the proposed project. *Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), CLI-97-15, 46 NRC 294, 303 (1997) (citing Financial Qualifications, 33 Fed. Reg. 9704 (July 4, 1968)).
- L The National Environmental Policy Act (NEPA) requires the consideration of all significant environmental impacts and all reasonable alternatives and is governed by the rule of reason. Thus, the decision as to whether an alleged environmental impact or alternative is significant or reasonable is the *merits* of a NEPA contention and should not be adjudicated at the contention admissibility stage under the guise of “materiality” or “scope.”
- M Avoidance of the NEPA merits does not require the admission of every allegation that an environmental impact must be considered or an alternative analyzed. If a NEPA contention alleges that impacts or alternatives that are patently outside the realm of reason must be considered, then the contention should be denied for failure to demonstrate that the issue raised is within the legitimate scope of NEPA as required by 10 C.F.R. § 2.309(f)(1)(iii).
- N NEPA applies only to NRC and not to the applicant. Thus, the primary criterion of the adequacy of the applicant’s Environmental Report is found in 10 C.F.R. Part 51, not NEPA.
- O While our construction of the provisions of 10 C.F.R. Part 51 mandating the contents of the applicant’s Environmental Report may be informed by consideration of general NEPA principles, we must look to the wording of the Part 51 regulations to determine if an ER is satisfactory or deficient.
- P The applicant’s Environmental Report is not the same as the NRC’s Environmental Impact Statement. While 10 C.F.R. § 51.45(b)(3) specifies that the ER impact analysis must include “sufficient data to aid” the Commission, and 10 C.F.R. § 51.45(c) specifies that the alternatives analysis must be “sufficiently complete to aid the Commission” in preparing the EIS, the regulations do not repeat the NEPA mandate that the ER be a “detailed statement” and do not mandate that the ER must be equivalent to the EIS.

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- Q Section 2.309(f)(2) of 10 C.F.R. specifically recognizes that a challenge to the applicant's Environmental Report is different from a challenge to the NRC's Environmental Impact Statement or Environmental Assessment. Because the ER is the only environmental document available when NRC issues its notice of opportunity to request a hearing, all initial contentions necessarily focus on the adequacy of the applicant's ER under Part 51. But 10 C.F.R. § 2.309(f)(2) specifies that the public will have a new opportunity to file environmental contentions when the NRC Staff issues the EIS or EA. Such new contentions focus on the adequacy of the NRC Staff's EIS or EA under NEPA.
- R Although Contention 4 has multiple subparts, it presents a single major theme and was intended to be viewed as a whole. The criteria of 10 C.F.R. § 2.309(f)(1)(i)-(vi) apply to Contention 4 as a whole, with each subpart providing specific illustrations, examples or bases supporting the alleged omissions or deficiencies in the Environmental Report. While the Board will deny certain portions of Contention 4 as outside of the scope or too attenuated, applying all six criteria of 10 C.F.R. § 2.309(f)(1) to each subpart of the contention would inappropriately atomize it.
- S The requirement of Part 51 that the Environmental Report cover all significant environmental impacts associated with a project includes *offsite* impacts and is not limited to onsite environmental impacts. For example, Table S-3 to 10 C.F.R. § 51.51 covers numerous offsite environmental impacts associated with the licensing of nuclear power plants.
- T The fact that the Environmental Report is silent about the location of the offsite mining activities necessitated by the proposed project does not render a contention concerning such offsite environmental impacts inadmissible. If the environmental impact of such mining activities is potentially significant, then the failure of the ER to disclose the location of the offsite mine does not immunize it from being the subject of a legitimate contention.
- U Nothing in the NRC case law or regulations requires, at the contention admissibility stage, that a contention be supported by an expert opinion, substantive affidavits, or evidence. The regulations require that a petitioner provide a concise statement of the "alleged facts or expert opinion" that support the petitioner's position. 10 C.F.R. § 2.309(f)(1)(v). This disjunctive statement — alleged facts *or* expert opinion — makes clear that there is no requirement to have an expert or to provide an expert opinion. And it simply requires *alleged* facts, not proven facts or evidence.
- V The second half of 10 C.F.R. § 2.309(f)(1)(v) does not require that, to be admissible, a contention must be accompanied by facts, experts, affidavits, or evidence. It merely specifies that the contention include "references" to specific sources and documents, if any, that the petitioner "intends to rely on" to support its position.
- W The provision of 10 C.F.R. § 2.309(f)(vi) that requires the petition to include "sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of fact" does not require the submission of expert affidavits or evidence in order for a contention to be admissible.
- X The requirement of 10 C.F.R. § 2.309(f)(1)(ii) that the petition include a "brief explanation of the basis" for the contention requires an explanation of the rationale or theory of the contention. It does not require the submission of evidence, expert opinions, or substantive affidavits. To the extent there are any requirements to provide "alleged facts or expert opinion," or "sufficient information," they are found in 10 C.F.R. § 2.309(f)(1)(v) and (vi).
- Y Environmental Reports and Environmental Impact Statements must include an assessment of all environmental impacts, even though they are regulated by another federal or state agency. This is supported by NRC regulations (10 C.F.R. § 51.71(d) n.3 and Part 51, Appendix A, § 5), the CEQ regulations (10 C.F.R. § 1502.14(c)), and the case law (*Natural Resources Defense Council, Inc. v. Morton*, 458 F.2d 827, 834-36 (D.C. Cir. 1972)).
- Z Environmental Reports and Environmental Impact Statements must include an assessment of all environmental impacts and alternatives, even though NRC has no jurisdiction to regulate such impacts or jurisdiction to impose such alternatives. This is supported by NRC regulations (10 C.F.R. § 51.71(d) n.3 and Part 51, Appendix A, § 5), the CEQ regulations (10 C.F.R. § 1502.14(c)), and the case law (*NRDC v. Morton*, 458 F.2d at 834-36).
- AA While Petitioners need to explain how or why they disagree with statements in the application or Environmental Report, there is no presumption, at the contention admissibility stage or otherwise, that statements and assessments in the application or ER are correct or accurate. To the contrary, the applicant, as the proponent of the license, bears the burden of proof. 10 C.F.R. § 2.325.

DIGESTS

ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- BB NRC guidelines and regulatory guides are not legally binding on the Staff, the Board, or the Commission.
- CC While Part 51 requires that the Environmental Report consider all significant environmental impacts, it does not authorize NRC to regulate or enforce compliance with all other environmental laws and regulations. Part 51 and NEPA focus on assessment, not regulation.
- DD The fact that Contention 4 alleges that the Environmental Report “failed to address” a certain topic does not mean that it can only be a “contention of omission” and thus that any mention of the topic in the ER mandates the denial of the contention. Here, the contention acknowledges that the ER covered certain aspects of the topic, but goes on to allege that the ER failed to cover certain other aspects of the topic or covered them inadequately. In context, it is clear that Contention 4 is not just a “contention of omission” but is also a “contention of inadequacy” because it alleges that the ER is insufficient because it fails to discuss all aspects of the topic adequately.
- EE The portions of Contention 4 that concern the environmental impacts of offsite mining are rejected, not because the impacts occur offsite, but because the petitioner has failed to support these allegations with information indicating that such impacts (including indirect or cumulative) are even plausibly significant.
- FF The portions of Contention 4 that concern onsite and offsite impacts of active and passive dewatering associated with the proposed project satisfy the admissibility criteria of 10 C.F.R. § 2.309(f)(1)(i)-(vi).
- GG The portion of Contention 4 that alleges that the Environmental Report failed to address the alleged greenhouse gas and global climate disruption impacts resulting from “prematurely killing trees” is not admissible because the Petitioners have failed to support the proposition that the number of trees involved could, even arguably, be potentially significant or reasonably affect global warming. This is too remote and attenuated.
- HH The portions of Contention 4 that allege that, as a consequence of the failure to adequately address the environmental impacts described earlier in the contention, the Environmental Report also failed to adequately address the zone of environmental impact, impact on listed species, and appropriate mitigation are a fair and logical corollary and, to the extent the earlier portions of Contention 4 were admitted, these consequential portions of the contention are also admitted.
- II The applicant’s Environmental Report and the NRC’s Environmental Impact Statement are required to cover all significant environmental impacts of the proposed project, even if the regulation of such impacts falls outside of the NRC’s jurisdiction and lies with another agency. Thus, the fact the disposal of dredged or fill material in wetlands is regulated by USEPA and the U.S. Army Corps of Engineers does not render this portion of Contention 4 inadmissible.
- JJ The portions of Contention 4 that allege that the Environmental Report fails to address the “Guidelines for Specification of Disposal Sites for Dredged or Fill Material” stated in 40 C.F.R. Part 230 are not admissible because Petitioners fail to allege or explain how these guidelines relate to any alleged deficiency in the ER.
- KK NRC regulations require that nuclear reactors be designed to withstand certain postulated events or accidents, called “design basis accidents” or “DBAs.” By definition, a DBA results in negligible offsite consequences because the reactor is designed to handle such an event.
- LL NRC defines the term “severe accident” as a reactor accident more severe than a design basis accident where substantial damage is done to the reactor core, whether or not there are serious offsite consequences. Policy Statement on Severe Reactor Accidents Regarding Future Designs and Existing Plants, 50 Fed. Reg. 32,138 (Aug. 8, 1985).
- MM NRC safety regulations require that the combined license application address the mitigation and potential consequences of a “severe accident,” i.e., an accident that is beyond a “design basis accident.” 10 C.F.R. §§ 50.33(g), 50.34, 52.79(a)(1)(a)(vi).
- NN NEPA § 102(2)(C) requires that the NRC consider measures to mitigate the environmental impacts of the project and 10 C.F.R. § 51.45(c) requires that the Environmental Report analyze the “alternatives available for reducing or avoiding adverse environmental effects.”
- OO NRC requires that applicants examine and evaluate the consequences of severe accidents in both the AEA (safety) and NEPA (environmental) context. SAMA analyses must be site specific and given careful consideration in order to comply with NEPA and the AEA. *See Limerick Ecology Action, Inc. v. NRC*, 869 F.2d 719, 741 (3d Cir. 1989).
- PP A severe accident mitigation design analysis (SAMDA) is a subpart or element of a severe accident mitigation analysis (SAMA) that focuses on severe accident mitigation dealing with reactor design and

DIGESTS

ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- hardware issues. Licenses, Certifications and Approvals for Nuclear Power Plants, 72 Fed. Reg. 49,352, 49,426 (Aug. 28, 2007).
- QQ The existence of another independent nuclear power plant within the 10-mile-radius emergency planning zone (EPZ) (*see* 10 C.F.R. § 50.33(g)) of a proposed new nuclear power plant is a significant factor for purposes of emergency planning for the new reactor.
- RR The Board rejects the argument that the Waste Confidence Rule only applies to existing reactors and does not cover new or proposed reactors. The regulation specifically refers to “any reactor.” 10 C.F.R. § 51.23(a). When it was originally promulgated, the Commission explained that 10 C.F.R. § 51.23 was intended to cover “the storage of spent fuel in *new or existing* facilities.” Requirements for Licensee Actions Regarding the Disposition of Spent Nuclear Fuel upon Expiration of Reactor Operating Licenses, 49 Fed. Reg. 34,688, 34,689 (1984) (emphasis added). And, the regulation specifically refers to reactors to be covered by “combined licenses,” 10 C.F.R. § 51.23(b), none of which exist yet.
- SS Despite the Ninth Circuit’s holding in *San Luis Obispo Mothers for Peace v. NRC*, 449 F.3d 1016 (9th Cir. 2005), the Commission declined to require the agency (outside of the Ninth Circuit) to consider terrorist threats as part of the NEPA review process. *AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-07-8, 65 NRC 124, 126 (2007). The Third Circuit recently affirmed the Commission’s *Oyster Creek* decision in *New Jersey Department of Environmental Protection v. NRC*, 561 F.3d 132 (3d Cir. 2009).
- TT Part 61 of 10 C.F.R. only applies to the “land disposal of radioactive waste . . . *received from other persons*,” 10 C.F.R. § 61.1(a) (emphasis added), and is therefore inapplicable to the issue of Applicant’s management of low-level waste (LLW) generated and managed at the same site, i.e., Levy Units 1 and 2.
- UU In *Bellefonte*, the Commission stated, “we do not rule out that, in a future COL proceeding, a petitioner could proffer an application-specific contention suitable for litigation on the subject of onsite storage of low-level radioactive waste.” *Tennessee Valley Authority* (Bellefonte Nuclear Power Plant, Units 3 and 4), CLI-09-3, 69 NRC 68, 77 n.42 (2009). The Commission further concluded that “[t]he questions of the safety and environmental impacts of onsite low-level waste *storage* are, in our view, largely site- and design-specific, and appropriately decided in an individual licensing proceeding, provided that litigants proffer properly framed and supported contentions.” *Id.* at 76-77. Thus, based on *Bellefonte*, it is clear that there are elements of C7 and C8 that are specific to the PEF COLA, dealing with the environmental and safety consequences of the potential need for extended storage of LLW on the Levy site, and that satisfy the requirements of 10 C.F.R. § 2.309(f)(1).
- VV The duty to consider alternatives originates with two provisions of NEPA: (1) 42 U.S.C. § 4322(2)(C)(iii), which requires that an agency’s environmental impact statement (EIS) include “a detailed statement [of the] alternatives to the proposed action,” and (2) 42 U.S.C. § 4322(2)(E), which requires that an agency “study, develop and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources.”
- WW The goals of the project sponsor are given substantial weight in determining whether an alternative is reasonable. *City of New York v. U.S. Department of Transportation*, 715 F.2d 732, 742 (2d Cir. 1983). In this regard, “[a]n agency cannot redefine the [applicant’s] goals,” *Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 199 (D.C. Cir.), *cert. denied*, 501 U.S. 994 (1991), and the EIS alternatives analysis should be based around the applicant’s goals, including its economic goals. *Hydro Resources, Inc.* (P.O. Box 15910, Rio Rancho, NM 87174), CLI-01-4, 53 NRC 31, 55 (2001) (internal citations omitted).
- XX The NRC regulations state that “[a]n otherwise reasonable alternative will not be excluded from discussion solely on the ground that it is not within the jurisdiction of the NRC.” 10 C.F.R. Part 51, Subpart A, App. A, § 5.
- YY NEPA does not allow the applicant to define its goals so narrowly as to unreasonably circumscribe the range of alternatives that must be considered under 42 U.S.C. § 4322(2)(C)(iii) and (E).
- ZZ Furthermore, “NEPA requires an agency to ‘exercise a degree of skepticism in dealing with the self-serving statements from the prime beneficiary of the project’ and to look at the general goal of the project, rather than only those alternatives by which a particular applicant can reach its own specific goals.” *Environmental Law and Policy Center v. NRC*, 470 F.3d 676, 683 (7th Cir. 2006). An applicant “may not define the objectives of its action in terms so unreasonably narrow that only one alternative . . . would accomplish the [applicant’s] goals” because this would make the agency’s EIS alternatives analysis a “foreordained formality.” *Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 199 (D.C. Cir. 1991).

DIGESTS

ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- AAA While NRC does not consider CEQ pronouncements to be binding, they are entitled to substantial deference. *See Limerick*, 869 F.2d at 741.
- BBB The first step in assessing the admissibility of a new contention is to determine if it is timely under 10 C.F.R. § 2.309(f)(2)(iii) or nontimely under 10 C.F.R. § 2.309(c). If timely, then its admissibility is evaluated under the three-factor test of 10 C.F.R. § 2.309(f)(2)(i)-(iii). If nontimely, then its admissibility is evaluated under the eight-factor balancing test of 10 C.F.R. § 2.309(c)(i)-(viii).
- CCC By definition, contentions admitted under 10 C.F.R. § 2.309(f)(2)(i)-(iii) are timely because they are founded on material new information that was not available at the time when the petition was initially due. Contentions that meet the three criteria of this regulation are in no sense late, dilatory, or untimely.
- DDD The fact that a party integrates, consolidates, restates, or collects previously available information into a new document does not convert it into information that “was not previously available” within the meaning of 10 C.F.R. § 2.309(f)(2)(i).
- EEE A party cannot satisfy the “not previously available” standard of 10 C.F.R. § 2.309(f)(2)(i) by showing that, as a subjective matter, he or she only recently became aware of, or realized the significance of, public information that was previously available to all. The “not previously available” standard is an objective standard, not a subjective one.
- FFF In cases where information becomes available piecemeal over time, and the foundation for a new contention does not become reasonably apparent until the last piece of information becomes available and falls into place, the test of 10 C.F.R. § 2.309(f)(2)(i) may be met. In such “mosaic” cases, the admissibility decision turns on a determination about when, as a cumulative matter, the separate pieces of the information puzzle were sufficiently in place to make the particular concerns reasonably apparent. *Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), LBP-96-15, 44 NRC 8, 26 (1996). This is an objective standard.
- GGG The fact that NRC issues a proposed rulemaking and requests comments does not, in itself, constitute information “not previously available” that entitles a party to file a new contention under 10 C.F.R. § 2.309(f)(i).
- HHH The substantive standard for allowing parties to conduct cross-examination is the same under 10 C.F.R. Part 2, Subparts G and L. It is the standard set by 5 U.S.C. § 556(d) of the Administrative Procedure Act, whereby a party is “entitled to conduct such cross-examination as may be required for a full and true disclosure of the facts.” *See Citizens Awareness Network, Inc. v. NRC*, 391 F.3d 338, 351 (1st Cir. 2004).
- III The procedure for allowing parties to conduct cross-examination differs under 10 C.F.R. Part 2, Subparts G and L. Cross-examination occurs virtually automatically in Subpart G hearings, subject to normal judicial management and the requirement to file a cross-examination plan. *See* 10 C.F.R. §§ 2.319 and 2.711(c). In contrast, under Subpart L, a party seeking to conduct cross-examination must file a written motion and obtain leave from the Board. 10 C.F.R. § 2.1204(b).
- JJJ Under 10 C.F.R. §§ 2.309(g) and 2.310, the Board determines which hearing procedure will be used (Subpart G or L) on a contention-by-contention basis.
- KKK Section 2.310(b)-(k) of 10 C.F.R. specifies circumstances where a particular hearing procedure is required. If no particular procedure is required, then, under 10 C.F.R. § 2.310(a) the Board *may* conduct the proceeding for that contention under Subpart L. But, even then, the Board must exercise its discretion and select the hearing procedure most appropriate for the newly admitted contentions.
- LLL The selection of hearing procedures for contentions at the outset of a proceeding is not immutable, because, *inter alia*, the availability of Subpart G procedures under 10 C.F.R. § 2.310(d) depends critically on the credibility of eyewitnesses, and the identity of such witnesses may not be known until after the contentions are admitted.
- LBP-09-11 ANDREW J. SIEMASZKO, Docket No. IA-05-021-EA (ASLBP No. 05-839-02-EA); ENFORCEMENT; July 16, 2009; ORDER (Approving Proposed Settlement Agreement and Dismissing Proceeding)
- A The Licensing Board approved a settlement agreement between Andrew Siemaszko and the Nuclear Regulatory Commission. Under the Settlement Agreement, Mr. Siemaszko’s 5-year debarment would be effective from the date of the April 21, 2005 Order, which prohibited his involvement in NRC-licensed activities for a period of 5 years, and would terminate on April 21, 2010. All other terms of the Order would remain in effect.
- B A licensing board must be satisfied that the terms of a proposed Settlement Agreement reflect a fair and reasonable resolution of the matter at hand and is in keeping with the objectives of the NRC’s Enforcement Policy and satisfies the requirements of 10 C.F.R. § 2.338(g) and (h).

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- LBP-09-12 HIMAT SONI, DHIRAJ SONI, and EASTERN TESTING AND INSPECTION, INC., Docket Nos. IA-08-023, IA-08-022 (EA-08-174) (ASLBP Nos. 09-882-02-EA-BD01, 09-881-01-EA-BD01); ENFORCEMENT; July 16, 2009; ORDER (Accepting Proposed Settlement and Dismissing Proceeding)
- A In this enforcement proceeding the licensing board approves the parties' settlement agreement pursuant to 10 C.F.R. § 2.338(i), finding that its terms reflect a fair and reasonable settlement of the matters at issue, that it satisfies the requirements of 10 C.F.R. § 2.338(g) and (h), and that the public interest requires no further adjudication.
- LBP-09-13 COGEMA MINING, INC. (Irigaray and Christensen Ranch Facilities), Docket No. 40-08502-MLR (ASLBP No. 09-887-01-MLR-BD01); MATERIALS LICENSE RENEWAL; July 23, 2009; MEMORANDUM AND ORDER (Ruling on Petition for Review and Request for Hearing)
- A A petitioner's participation in an NRC licensing proceeding requires that it demonstrate that it has standing as specified in 10 C.F.R. § 2.309(a) and (d).
- B The Commission states that it customarily follows judicial concepts of standing. These require that the party show three elements: injury-in-fact, causation, and redressability.
- C The Supreme Court has defined "injury-in-fact" as an invasion of a legally protected interest which is concrete and particularized and actual or imminent rather than conjectural or hypothetical. An injury-in-fact must go beyond generalized grievances to affect a petitioner "in a personal and individual way." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 n.1 (1992).
- D To establish causation, a petitioner must show that there is a causal connection between the injury-in-fact and the conduct complained of. The injury has to be fairly traceable to the challenged action of the defendant. In NRC source materials licensing cases, the petitioner has the burden to show a plausible chain of causation between the challenged licensing activities and the alleged injury. See *USEC Inc.* (American Centrifuge Plant), CLI-05-11, 61 NRC 309, 311-12 (2005). This does not require that the injury flow directly from the challenged action, but only that the chain of causation is plausible. *Sequoyah Fuels Corp. and General Atomics* (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 75 (1994).
- E Redressability requires a petitioner to show that its alleged injury-in-fact could be cured or alleviated by some action of the tribunal.
- F An organization must satisfy one of two additional criteria in order to establish standing. It must demonstrate either organizational standing or representational standing.
- G To establish organizational standing under 10 C.F.R. § 2.309(d)(1), an organization must demonstrate that the action at issue will cause an injury-in-fact to the organization's interest. The Supreme Court has stated that an injury-in-fact necessary to establish organizational standing must be more than a "mere interest in a problem," and must go beyond asserting an injury to a generalized interest — i.e., an interest in protecting the environment, an interest in preserving national parks — and instead establish that the organization itself is suffering, or will suffer, from a specific, concrete harm caused by the challenged action. In addition, an organization, like an individual, must satisfy the causation and redressability requirements.
- H Alternatively, an organization can demonstrate representational standing by (1) showing that the interests of at least one of its members will be harmed, (2) showing that the member would have standing in his or her own right, (3) identifying that member by name and address, and (4) demonstrating that the organization is authorized to request a hearing on behalf of that member.
- I The Oglala Delegation of the Great Sioux Nation Treaty Council has failed to establish that it is a "Federally-recognized Indian Tribe" within the meaning of 10 C.F.R. §§ 2.309(d)(2)(i) or 2.315(c). These regulations were promulgated to comply with Executive Order 13,084 which defines a "Federally-recognized Indian Tribe" as one that is included on the Bureau of Indian Affairs' list of federally recognized Indian Tribes published in the *Federal Register*.
- J Under 10 C.F.R. §§ 2.309(d)(2)(i) or 2.315(c), a group whose name is included on the Bureau of Indian Affairs list is a "Federally-recognized Indian Tribe," and any organization, tribe, or otherwise, whose name does not appear on the list, is not a "Federally-recognized Indian Tribe."
- K The Bureau of Indian Affairs' list of federally recognized Indian Tribes does not include the names of the "Oglala Lakota" or the "Oglala Delegation of the Great Sioux Nation Treaty Council." Therefore, these groups do not constitute federally recognized Indian Tribes within the meaning of 10 C.F.R. §§ 2.309(d)(2)(i) or 2.315(c).
- L The Oglala Delegation of the Great Sioux Nation Treaty Council has failed to establish that it is a "local governmental body" within the meaning of 10 C.F.R. §§ 2.309(d)(2)(i). Even assuming that

DIGESTS

ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

the Delegation has some governmental functions, not all entities with governmental ties are entitled to participate in licensing proceedings as local governmental bodies. *Consumers Energy Co.* (Palisades Nuclear Plant), CLI-07-18, 65 NRC 399, 412 n.37 (2007). An entity wishing to participate as a local governmental body must demonstrate that it goes beyond an advisory role and exercises “executive or legislative responsibilities.” *Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-98-21, 48 NRC 185, 203 (1998).

M The fact that the great-grandfather of one of the members of the Oglala Delegation of the Great Sioux Nation Treaty Council signed several treaties with the United States more than 100 years ago does not establish that the Delegation is a current and official successor to the delegation that signed such treaties, or that the Delegation is a local governmental entity that currently exercises executive or legislative authority over the Oglala Lakota.

N The Oglala Delegation of the Great Sioux Nation Treaty Council has failed to establish that the proposed in-situ leach mining activities on the Irigaray and Christensen ranches are “within [the Delegation’s] boundaries” within the meaning of 10 C.F.R. § 2.309(d)(2)(i). Although the Irigaray and Christensen mines are located on lands that were once reserved to the Oglala Lakota under the Fort Laramie Treaty of 1868, the Supreme Court has ruled that the 1868 treaty was abrogated by the Fort Laramie Treaty of 1877, and that these lands no longer belong to the Oglala Lakota. *United States v. Sioux Nation of Indians*, 448 U.S. 371 (1980).

O The Oglala Delegation of the Great Sioux Nation Treaty Council has failed to establish that it has organizational standing pursuant to 10 C.F.R. § 2.309(d)(1) because it has failed to establish that it has a legal right, under the National Historic Preservation Act, to be consulted with regard to cultural artifacts found on the Cogema sites. Under 36 C.F.R. § 800.16(m), only Indian Tribes that appear on the Department of the Interior’s list of federally recognized Indian Tribes have consultation rights under the NHPA. The Delegation is not on this list. As such, any claims of injury as a result of Cogema’s or NRC Staff’s failure to consult with the Delegation are not cognizable in this proceeding.

P The Delegation has failed to establish that it has organizational standing pursuant to 10 C.F.R. § 2.309(d)(1) because even assuming, *arguendo*, that (a) the Cogema mines release contaminants, and (b) there are health problems on the Pine Ridge Indian Reservation, the Delegation provides no plausible chain of causation or connection between the two. The Delegation fails to address how the contamination might migrate 150 miles from the Cogema mines to the Pine Ridge Reservation.

Q The Trust Responsibility requires federal agencies to take actions or refrain from taking actions “in fulfillment of [Congress’s] duty to protect the Indians.” *United States v. Navajo Nation*, 537 U.S. 488 (2003). In the case before us, however, the Board has been presented with no plausible chain of causation whereby the Delegation or its members might be adversely affected by the Cogema mining operation. Without some plausible connection between the Indian people and the mine, we fail to see how the Trust Responsibility is triggered.

R The Oglala Delegation of the Great Sioux Nation Treaty Council has failed to establish that it has representational standing pursuant to 10 C.F.R. § 2.309(d)(1) because it has not shown a concrete and particularized injury-in-fact to Chief Oliver Red Cloud (the only individual named in the Delegation’s petition) that is plausibly connected to the Cogema mining operations. Absent a showing of standing for Chief Red Cloud in his own right, the Board cannot grant the Delegation representational standing on his behalf.

S The Powder River Basin Resource Council has failed to establish organizational standing under 10 C.F.R. § 2.309(d)(1). In order to establish organizational standing, a petitioner must allege “more than an injury to a cognizable interest.” *Sierra Club v. Morton*, 405 U.S. 727, 734-35 (1972). The Council listed its interests — clean air, clean water, etc. — but did not demonstrate how these interests would be adversely affected by mining operations. The Council merely lists interests that we find are too generalized to qualify as injuries-in-fact under *Sierra Club v. Morton*.

T The Powder River Basin Resource Council has failed to establish representational standing under 10 C.F.R. § 2.309(d)(1) because it failed to identify a member who has standing in his or her own right and who authorizes the Council to represent him or her in this proceeding.

LBP-09-14 DAVID B. KUHLE, II (Denial of Senior Reactor Operator License), Docket No. 55-62335-SP (ASLBP No. 09-891-01-SP-BD01); REACTOR OPERATOR LICENSE; July 28, 2009; MEMORANDUM AND ORDER (Regarding Request for Hearing)

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- A The Licensing Board concludes that because Mr. Kuhl no longer works for the facility for which he seeks a senior reactor operator license, there is no possible remedy for his claim. Therefore the Board dismisses Mr. Kuhl's claim as moot.
- B Any senior reactor operator (SRO) license is "limited to the facility for which it is issued." 10 C.F.R. § 55.53(b).
- C Any SRO license automatically expires "upon termination of employment with the facility licensee." 10 C.F.R. § 55.55(a).
- D The Commission has recognized that, despite not being constitutionally limited by the case or controversy requirement of Article III, common sense counsels against proceeding with an adjudication where no effective relief can be granted. *See, e.g., Texas Utilities Electric Co.* (Comanche Peak Steam Electric Station, Unit 2), CLI-93-10, 37 NRC 192, 204 (1993) (dismissing appeal as moot where "[n]o effective relief can be granted the Petitioners even if they were to prevail on their claim"). In similar circumstances, where an applicant had proposed that an SRO license be both issued and cancelled retroactively, the Commission declined to engage in such "an empty exercise." *Alfred J. Morabito* (Senior Operator License for Beaver Valley Power Station, Unit 1), CLI-88-4, 28 NRC 5, 6 (1988).
- LBP-09-15 CALVERT CLIFFS 3 NUCLEAR PROJECT, LLC, and UNISTAR NUCLEAR OPERATING SERVICES, LLC (Calvert Cliffs Nuclear Power Plant, Unit 3), Docket No. 52-016-COL (ASLBP No. 09-874-02-COL-BD01); COMBINED LICENSE; July 30, 2009; MEMORANDUM AND ORDER (Granting Motion for Summary Disposition of Contention 2)
- A We conclude that the financial test for a parent company guarantee is a material issue because the Staff must decide whether the test is satisfied in order to grant the COL.
- B The mootness doctrine derives from the Constitution's limitation of federal courts' jurisdiction to "cases" or "controversies." The Commission has explained that, although it "is not strictly bound by the doctrine, the agency's adjudicatory tribunals have generally adhered to the principle." *Advanced Medical Systems, Inc.* (One Factory Row, Geneva, Ohio 44041), CLI-93-8, 37 NRC 181, 185 (1993) (citing *Northern States Power Co.* (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-455, 7 NRC 41, 54 (1978)).
- C The Commission has further stated that a contention alleging that a license application omits material information becomes moot when the applicant cures the omission. *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-28, 56 NRC 373, 383 (2002).
- D In general, when a claim becomes moot in federal court, the court loses jurisdiction to decide the merits of that claim. But, as noted in a leading treatise on federal court practice and procedure, a decision on the merits "may be appropriate if the same basic dispute is likely to recur in the future, unless it seems sufficient to await the event or better to defer to another court." 13A Charles Alan Wright et al., *Federal Practice and Procedure* § 3533.2 (2nd ed. 1984) (footnote omitted); *see also In re Campbell*, 628 F.2d 1260, 1262 (9th Cir. 1980); *Kodiak Oil Field Haulers, Inc. v. Teamsters Union Local No. 959*, 611 F.2d 1286, 1290 (9th Cir. 1980).
- E We are not invariably required to avoid consideration of a legal issue in circumstances where a federal court would do so. When a federal court dismisses a claim as moot and avoids any further consideration of the merits of that claim, it does so because the claim no longer satisfies the case or controversy requirement of Article III, a requirement rooted in the separation of powers. Although the Commission commonly looks to Article III concepts for guidance, we are not required to automatically follow them in all respects because NRC proceedings are not subject to Article III. *See Envirocare of Utah v. NRC*, 194 F.3d 72, 75 (D.C. Cir. 1999); *Quivira Mining Co.* (Ambrosia Lake Facility, Grants, New Mexico), CLI-98-11, 48 NRC 1, 6 n.2 (1998); *International Uranium (USA) Corp.* (Receipt of Material from Tonawanda, New York), CLI-98-23, 48 NRC 259, 264 (1998).
- F A finding of mootness does not necessarily preclude all consideration of the merits in NRC proceedings, even if it would have that effect in federal court, and that we may consider the merits to the extent doing so will promote the fair and expeditious resolution of the case before us and there are no significant countervailing concerns.
- G A finding that a license applicant has cured an omission does not preclude litigation concerning the adequacy of the information the applicant has supplied.
- H NRC regulations permit the filing of new or amended contentions based on new information, and the filing of late contentions if sufficient justification is provided. 10 C.F.R. § 2.309(f)(2) and (c).

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- I We find sufficient basis in both the text and structure of the regulations and the administrative history to show that a COLA must provide reasonable assurance of adequate decommissioning funding, that this assurance must identify the method or methods of funding the applicant plans to use, and that the assurance must provide the information required by 10 C.F.R. § 50.75(e)(1)(iii)(B) if the applicant plans to use a parent company guarantee.
- J For COLs, the final signed documents providing the financial assurance are not due until 30 days after the notice issued pursuant to 10 C.F.R. § 52.103(a).
- K The requirement that the decommissioning report specify not only the amount of financial assurance but the method of providing such assurance follows from the language and structure of 10 C.F.R. § 50.75(b). That section both requires that power reactor applicants submit a decommissioning report and, in section 50.75(b)(1)-(4), specifies information that the report must include. We must construe the four numbered paragraphs of section 50.75(b) in light of their placement in the regulatory scheme. *Bailey v. United States*, 516 U.S. 137, 145 (1995).
- L The most natural way to read a provision that sets forth a general obligation (in this instance, the obligation to submit the decommissioning report) followed by a set of specific requirements is that the specific requirements provide the details necessary to fulfilling the general obligation. That is how we read section 50.75(b) in its entirety. See *Textron Lycoming Reciprocating Engine Division, Avco Corp. v. United Automobile, Aerospace, Agricultural Implement Workers of America, International Union*, 523 U.S. 653, 657 (1998) (“[I]t is a ‘fundamental principle of statutory construction . . . that the meaning of a word cannot be determined in isolation, but must be drawn from the context in which it is used.’” (quoting *Deal v. United States*, 508 U.S. 129, 132 (1993))).
- M Under the plain meaning of the regulations, the requirement that the designated amount of financial assurance be “covered by” an acceptable method arises concurrently with the requirement that the applicant submit a decommissioning report to the NRC. It cannot plausibly be construed as remaining inchoate for years after the report is submitted, and only springing into life after the license is issued and the licensee is ready to load fuel.
- N Since the requirement of section 50.75(b)(3) applies to the amount of financial assurance specified in the decommissioning report, we think it readily apparent that the report must explain how that requirement will be fulfilled.
- O Section 50.75(b)(3) requires that the decommissioning amount be covered by a method acceptable to the NRC. Section 50.75(b)(3) appears within a section of the regulations that lists the requirements for the decommissioning report. That context means that the report must explain how the requirement of section 50.75(b)(3) will be satisfied. The report must do so for the NRC Staff to determine whether the amount of financial assurance stated in the decommissioning report is in fact covered by a method acceptable to the NRC, as section 50.75(b)(3) states that it must be.
- P The decommissioning report must identify the method of providing financial assurance if the report is to “indicat[e] how reasonable assurance will be provided that funds will be available to decommission the facility,” as required by 10 C.F.R. § 50.33(k)(1).
- Q The fact that the Commission included language deferring the obligation that would otherwise apply to COL applicants in section 50.75(b)(4), but included no equivalent provision in section 50.75(b)(3), confirms that the Commission did not intend to defer the requirement of section 50.75(b)(3) until after the license is issued. We interpret the failure to include such a deferral in section 50.75(b)(3) as deliberate, not inadvertent. Accordingly, the requirement imposed upon COL applicants by section 50.75(b)(3), which on its face applies concurrently with the duty to submit a decommissioning report, may not be deferred until after the COL is issued.
- R The report itself must explain “how reasonable assurance will be provided.” 10 C.F.R. § 50.33(k)(1). This means that the COL applicant must identify the method of decommissioning funding assurance it proposes to use and show that the method complies with any applicable financial test. If the applicant merely stated the method of funding but failed to show that an applicable financial test is satisfied, it would fail to demonstrate that the amount of financial assurance is “covered by” one or more of the funding methods identified in section 50.75(e) as acceptable to the NRC. 10 C.F.R. § 50.75(b)(3). A parent company guarantee, standing alone, is not a funding method identified in section 50.75(e) as acceptable to the NRC. A parent company guarantee is only an acceptable method of providing financial assurance “if the guarantee and test are as contained in appendix A to 10 CFR part 30.” 10 C.F.R. § 50.75(e)(1)(iii)(B).

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

Compliance with section 50.75(b)(3) therefore requires that the applicant demonstrate compliance with any applicable financial test.

S The holder of a COL must begin filing biannual reports on the status of decommissioning funding once the Commission has made a finding that all acceptance criteria in the license have been met. 10 C.F.R. § 50.75(f)(1) (citing 10 C.F.R. § 52.103(g)). The reports must include the information specified in section 50.75(f)(1), including “any modification occurring to a licensee’s current method of providing financial assurance since the last submitted report.” *Id.*

T We recognize that the Commission provided flexibility to licensees to change their method of decommissioning funding during the many years that will elapse before decommissioning actually takes place. But this in no way alters the requirement that the amount of financial assurance certified in the decommissioning report must be covered by a method acceptable to the NRC. If the licensee changes its method of decommissioning funding assurance, the new method will also have to pass any applicable financial test.

U The Commission allows COL applicants to delay submission of the financial instrument until after licensing, reasoning that “requiring the combined license applicant to comply with the current requirement in § 50.75(b)(4) . . . would place a more stringent requirement on the combined license applicant, inasmuch as that applicant would be required to fund decommissioning assurance at an earlier date as compared with the operating license applicant.” Licenses, Certifications, and Approvals for Nuclear Power Plants, 72 Fed. Reg. 49,352, 49,406-7, 49,502-3 (Aug. 28, 2007).

V The Commission did not change the requirement of section 50.75(b)(3) that decommissioning funding must be covered by one of several methods as set forth in section 50.75(e); nor did it modify section 50.75(e)(1)(iii)(B), which precludes an applicant from relying on a parent company guarantee unless the parent meets the financial test in Appendix C to 10 C.F.R. Part 30. Thus, the Commission did not excuse a COL applicant from identifying in its license application the funding mechanism it has chosen, or from showing that it is eligible to rely on that decommissioning funding mechanism.

W These requirements do not force applicants to actually fund decommissioning assurance, but only to explain how it will be funded and to show that the funding mechanism can satisfy any applicable financial test.

X The applicant’s compliance with these requirements is a material factor in the COL proceeding and, as such, may properly be challenged in an adjudicatory hearing.

Y Contention 2 is moot because the Applicant has shown that it provided the information required by Appendix A to Part 30, and because the Intervenor has not set forth facts sufficient to create a genuine dispute on that issue as required to survive a motion for summary disposition.

LBP-09-16 DETROIT EDISON COMPANY (Fermi Nuclear Power Plant, Unit 3), Docket No. 52-033-COL (ASLBP No. 09-880-05-COL-BD01); COMBINED LICENSE; July 31, 2009; MEMORANDUM AND ORDER (Ruling on Hearing Requests)

A This 10 C.F.R. Part 52 proceeding concerns the application of Detroit Edison Company (DTE) to construct and to operate a new boiling water reactor on its existing Fermi nuclear facility site near Newport City in Monroe County, Michigan. The proposed reactor is designated Unit 3 and would employ the GE-Hitachi Economic Simplified Boiling Water Reactor (ESBWR) design. The Licensing Board ruled that all the Petitioners met the necessary prerequisites for the Board to grant a hearing request by establishing standing to intervene in the proceeding and advancing, in part, four admissible contentions.

B NRC’s proximity presumption does not disregard contemporaneous judicial concepts of standing, as suggested by the Applicant, but rather the Commission applied its expertise to determine that persons living within a 50-mile radius of a nuclear reactor “face a realistic threat of harm if a release of radioactive material were to occur from the facility.” *Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), LBP-09-4, 69 NRC 170, 183 (2009). It is for this reason that the Commission has chosen not to require independent showings of injury, causation, and redressibility. *Florida Power & Light Co.* (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325, 329 (1989); *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-01-6, 53 NRC 138, 150 (2001). The nontrivial increased risk constitutes injury-in-fact, is traceable to the challenged action (the NRC’s licensing of a new nuclear reactor), and is likely to be redressed by a favorable decision that either denies a license or mandates compliance with legal requirements that protect the interests of the petitioners. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992).

DIGESTS

ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- C In *Yankee Rowe* the Commission ruled that “once a party demonstrates that it has standing to intervene on its own accord, that party may then raise any contention that, if proved, will afford the party relief from the injury it relies upon for standing.” *Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-96-1, 43 NRC 1, 6 (1996). The Commission recently confirmed that, rather than requiring a “nexus” between the claimed injury and the contention, “*Yankee Rowe* requires a nexus between the injury and the relief.” *Crow Butte Resources, Inc.* (In Situ Leach Facility, Crawford, Nebraska), CLI-09-9, 69 NRC 331, 340 (2009). When the denial of a license would alleviate a petitioner’s asserted potential injury, the Commission held that any admissible contention with such a result can be prosecuted by a petitioner, regardless of whether that contention is directly related to that petitioner’s articulated injury. *Crow Butte Res., Inc.*, CLI-09-9, 69 NRC at 340.
- D Petitioners state that they are concerned that the construction and operation of Fermi Unit 3 might adversely affect their health and safety and the environment in which they live. The safety-related contentions the Petitioners raise, if successful, will afford relief from the asserted injuries by requiring denial or modification of the license.
- E Because NEPA is a procedural statute, the Petitioners need not show that favorable rulings on their NEPA contentions will require denial of the license, but rather that favorable rulings will require that procedures intended for protection of their members’ concrete interests will be observed. *Lujan v. Defenders of Wildlife*, 504 U.S. at 573 n.7. Favorable rulings on the Petitioners’ NEPA contentions would ensure that procedures are observed that require adequate analysis of potential impacts to their members’ health and safety and to the environment where the members reside. Thus, all of the Petitioners’ contentions, if proved, will afford relief from the injuries relied upon for standing.
- F The Petition refers to safety and security issues only in the context of discussing the environmental effects that must be evaluated under NEPA. The Petition fails to identify any NRC safety regulations requiring that the COLA be supplemented with additional information concerning LLRW management. Only in their reply brief did the Petitioners claim that Contention 3 includes a separate safety contention and provide citations to NRC safety regulations that they claim require the Applicant to provide updated information concerning LLRW management. But “a reply cannot expand the scope of the arguments set forth in the original hearing request.” *Crow Butte Resources, Inc.* (North Trend Expansion Project), CLI-09-12, 69 NRC 535, 568 (2009).
- G The portion of a contention disputing the cost estimate for decommissioning is an indirect challenge to 10 C.F.R. § 50.75(c). The Applicant developed the cost estimate using the formula required by the regulation, which includes, among other things, an escalation factor for waste burial. The Petitioners do not claim that the Applicant used the formula incorrectly. Rather, they appear to argue that the cost estimate should be increased above the estimate developed pursuant to the regulation because of the alleged need to permanently store or dispose of LLRW onsite during decommissioning. When a Commission regulation permits the use of a particular analysis, a contention asserting that a different analysis or technique should be utilized is inadmissible because it indirectly attacks the Commission’s regulations. *Metropolitan Edison Co.* (Three Mile Island Nuclear Station, Unit 1), LBP-83-76, 18 NRC 1266, 1273 (1983).
- H A licensing board may not admit a contention that directly or indirectly challenges Table S-3 of 10 C.F.R. § 51.51. *Tennessee Valley Authority* (Bellefonte Nuclear Power Plant, Units 3 and 4), CLI-09-3, 69 NRC 68, 75 (2009). Table S-3 assumes that solid, low-level waste from reactors will be disposed of through shallow land burial, and concludes that this kind of disposal will not result in the release of any “significant effluent to the environment.” *Bellefonte*, CLI-09-3, 69 NRC at 75 n.30. We may not admit a contention that directly or indirectly challenges that assumption or conclusion. Thus, the Applicant must rely upon Table S-3 to evaluate the environmental consequences of the permanent disposal of LLRW from Fermi Unit 3, as it did, and we may not require it to reexamine issues resolved by Table S-3.
- I A petitioner could proffer an application-specific contention suitable for litigation on the subject of onsite storage of low-level radioactive waste. *Bellefonte*, CLI-09-3, 69 NRC at 77 n.42. The questions of the safety and environmental impacts of onsite low-level waste storage are largely site- and design-specific, and appropriately decided in an individual licensing proceeding, provided that litigants proffer properly framed and supported contentions. *Bellefonte*, CLI-09-3, 69 NRC at 76-77.
- J A Licensing Board may, without creating a conflict with Table S-3, admit an application-specific contention concerning the environmental and public health consequences of the need for extended onsite storage of LLRW, assuming that contention satisfies the requirements of 10 C.F.R. § 2.309(f)(1).

DIGESTS

ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- K Boards may reformulate contentions to “eliminate extraneous issues or to consolidate issues for a more efficient proceeding.” *North Trend*, CLI-09-12, 69 NRC at 552.
- L NEPA requires that an EIS provide a detailed statement concerning among other things, “the environmental impact of the proposed action,” “any adverse environmental effects which cannot be avoided should the proposal be implemented,” and “any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.” 42 U.S.C. § 4332(C)(i), (ii), (v). The NRC regulations governing preparation of the ER require that it discuss the same subjects. 10 C.F.R. § 51.45(b)(1), (2), (5). In addition, the NRC regulations provide that the information submitted in the ER pursuant to these requirements “should not be confined to information supporting the proposed action but should also include adverse information.” *Id.* § 51.45(e). In substance, Contention 3 alleges that the discussion of LLRW management in the ER does not reflect current conditions but rather those that existed when Michigan reactors could ship LLRW to an offsite disposal facility, and therefore the ER fails to accurately describe the proposed action and its impact on the environment. Contention 3 thus alleges omissions from the analysis required by NEPA and 10 C.F.R. § 51.45(b) and (e). Accordingly, it is material to the ER’s compliance with the NRC’s Part 51 regulations and to the Agency’s compliance with NEPA.
- M Even if the text of Part 51 does not conclusively resolve a question concerning the content of the ER, we may resort to case law and regulations construing the NEPA requirements for the EIS that correspond to the requirements section 51.45(b) imposes upon the ER.
- N Section 51.45(b)(2) requires that the ER discuss “[a]ny adverse environmental effects which cannot be avoided should the proposal be implemented,” the same subject that NEPA § 102(2)(C)(ii) requires be covered in the EIS. Because the NRC regulation repeats verbatim the NEPA language that the Supreme Court construed to require “a detailed discussion of possible mitigation measures,” and because the analysis in the ER is the foundation upon which the Agency’s EIS will be prepared, the ER should also discuss the measures the Applicant intends to use to mitigate adverse environmental consequences. If it did not, it would not provide the Staff with the information it needs to prepare the EIS in compliance with NEPA.
- O NEPA case law and CEQ regulations concerning NEPA § 102(2)(C)(i)-(v) provide useful guidance in interpreting the corresponding provisions in 10 C.F.R. § 51.45(b)(1)-(5). 40 C.F.R. §§ 1500-1517. “[A] regulation must be interpreted so as to harmonize with and further [] not to conflict with the objective of the statute it implements. [Courts] must construe [regulations] in light of the statute[s] they implement [], keeping in mind that where there is an interpretation of an ambiguous regulation which is reasonable and consistent with the statute, that interpretation is to be preferred.” *Western Fuels-Utah, Inc.*, 900 F.2d 318, 320 (D.C. Cir. 1990).
- P Given that the ER provides the foundation upon which the EIS is built, the environmental considerations the applicant must address in the ER pursuant to section 51.45(b)(1)-(5) should be construed consistently with the environmental issues the Staff must address in the EIS pursuant to NEPA § 102(2)(C)(i)-(v). The Commission has made it clear that issues arising under NEPA, not just those arising under Part 51, are a material basis for challenging the ER.
- Q For a contention of omission, the petitioner’s burden is to show the facts necessary to establish that the application omits information that should have been included.
- R For purposes of a NEPA contention, the crucial question is not merely whether the Applicant has a plan for managing its Class B and C wastes but whether that plan, and any onsite environmental impacts it may produce, is disclosed in the ER. NEPA § 102(2)(C) requires a “detailed statement” from the agency of the environmental consequences of the planned federal action. Similarly, section 51.45(b) directs that the ER “discuss” the environmental consequences that will be the subject of the agency’s detailed statement.
- S Under section 2.309(f)(1)(vi), when an application is alleged to be deficient, the petitioner must identify the deficiencies and provide supporting reasons for its position that such information is required.
- T Contention 5 properly asserts a contention of omission with regard to onsite measurements of distribution coefficients, retardation factors, and porosity from the COLA. The Petitioners provide a regulatory citation to 10 C.F.R. § 100.20(c)(3), which states that “[f]actors important to hydrological radionuclide transport (such as soil, sediment, and rock characteristics, adsorption and retention coefficients, ground water velocity, and distances to the nearest surface body of water) must be obtained from on-site measurements.” 10 C.F.R. § 100.20(c)(3). The Petitioners contend that the Applicant itself acknowledges in its response to the RAI that the COLA does not present site-specific measurements of adsorption and retention coefficients. Thus, this is a properly pleaded contention of omission and we admit it as such.

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- U The Petitioners identify an exceedance of regulatory limits in the Applicant's radionuclide transport in groundwater as documented in the FSAR. The Applicant stated in its FSAR that its proposed mitigating design features preclude an accidental release of liquid effluents, and thus an accidental release to ground and surface water was not assessed in the FSAR. Even though the Applicant asserts that this issue is not material because of forthcoming data and analysis, a Licensing Board must analyze issues based on information currently at hand. Thus, the Petitioners have correctly demonstrated a dispute with the Applicant on a material issue of law. *See* 10 C.F.R. § 2.309(f)(1)(vi).
- V A bare assertion without the requisite support for those claims is inadequate to support the admission of a contention. *Fansteel, Inc.* (Muskogee, Oklahoma Site), CLI-03-13, 58 NRC 195, 203 (2003).
- W Issues associated with the Applicant's compliance, or lack thereof, with NRC facility decommissioning regulations are outside of the scope of this proceeding. This issue addresses a concern that is purely speculative at this juncture, and will more appropriately be addressed at the license termination stage. Thus, the claims related to the decommissioning of the facility are not currently ripe for review and outside the scope of this proceeding. 10 C.F.R. § 2.309(f)(1)(iii).
- X We deny the Petitioners' request for an opportunity to modify this contention. The rules for filing of new or amended contentions based on previously unavailable information, as well as untimely contentions, 10 C.F.R. § 2.309(f)(2)(c), allow procedural opportunities for the Petitioners to raise these concerns at a time more appropriate for addressing them.
- Y The fact that an environmental impact is regulated by another federal agency or by a state does not justify the exclusion of the analysis in the Applicant's ER or the NRC's EIS. *See* 10 C.F.R. § 51.71(d) n.3 and Part 51, Appendix A, § 5. *See also* 40 C.F.R. § 1502.14(c); *Natural Resources Defense Council, Inc. v. Morton*, 458 F.2d 827, 834-36 (D.C. Cir. 1972). Thus, we are not persuaded by the Staff's argument that the impact to water quality from effluent discharge at the proposed Fermi Unit 3 is outside the scope of this proceeding simply because FWPCA prohibits federal agencies other than EPA from imposing their own effluent limits. While NEPA requires the consideration of information regarding other regulatory requirements and permits, the fact that the applicant is subject to and complying with them "does not obviate the NEPA mandate that the federal agency perform an EIS covering these topics." *Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), LBP-06-20, 64 NRC 131, 179 (2006). We thus hold that the impacts raised by the Petitioners speak precisely to the mandates of NEPA, and thus these issues are material to findings the NRC must make prior to issuance of the COL for Fermi Unit 3.
- Z A presentation of excerpts from the COLA without further explanation does not provide sufficient support for a contention. *See USEC Inc.* (American Centrifuge Plant), LBP-05-28, 62 NRC 585, 597 (2005), *aff'd*, CLI-06-10, 63 NRC 451, 472 (2006).
- AA Neither NEPA nor Part 51 requires applicants to eliminate adverse environmental impacts. Courts have consistently interpreted NEPA as a procedural statute that requires disclosure and analysis of environmental impacts, not one that imposes substantive obligations for the protection of natural resources. *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989). Thus, to the extent Contention 8 asks that we require the Applicant to adopt additional mitigation measures for the protection of the eastern fox snake, it exceeds our authority under NEPA and Part 51.
- BB NRC regulations require that procedures be established to provide for early notification and clear instructions to the populace within the plume exposure pathway EPZ. *See* 10 C.F.R. § 50.47(b)(5). In accordance with the regulations, the plume exposure pathway EPZ shall generally consist of an area covering a radius of "about 10 miles." *See* 10 C.F.R. § 50.47(c)(2). As pled, the Petitioners provide no basis for the assertion that the EPZ should be increased to a 50-mile radius. 10 C.F.R. § 2.309(f)(1)(ii). In addition, the Petitioners provide no alleged facts or expert opinion to support their assertion that the EPZ should be increased. 10 C.F.R. § 2.309(f)(1)(v).
- CC Under the NRC's Part 51 regulations, the ER must "contain a description of the proposed action, a statement of its purposes, [and] a description of the environment affected," 10 C.F.R. § 51.45(b), and it must also discuss "[a]lternatives to the proposed action. . . ." *Id.* § 51.45(b)(3). The requirement to discuss alternatives in the ER parallels NEPA's requirement that an EIS provide a detailed statement of reasonable alternatives to a proposed action. 42 U.S.C. § 4332(2)(C)(iii). The alternatives discussion in the ER or EIS, however, need not include "every possible alternative, but every reasonable alternative." *Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), CLI-91-2, 33 NRC 61, 71 (1991) (emphasis added). Reasonable alternatives do not include alternatives that are "impractical[:] . . . that present unique problems; or that cause extraordinary costs." *Private Fuel Storage, L.L.C.* (Independent

DIGESTS

ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

Spent Fuel Storage Installation), LBP-03-30, 58 NRC 454, 479 (2003). Thus, an alternative need not be considered in detail if it is technologically unproven, unsafe, too costly, or otherwise impracticable. See *Kelley v. Selin*, 42 F.3d 1501, 1521 (6th Cir. 1995).

DD If the Applicant disqualified an environmentally preferable alternative on the ground that it was too costly compared to the cost of the proposed new reactor, then the reasonableness of the Applicant's cost estimate for the new reactor could be a material issue under NEPA.

EE The NRC's NEPA regulations mandate balancing the economic and other benefits of the proposed new reactor against the environmental and other costs that the project might incur. The need for power is therefore a material issue under NEPA when the Applicant claims, as it does here, that the benefit of the project is satisfying the need for power. 68 Fed. Reg. 55,905, 55,905 (Sept. 29, 2003). This implies that the NRC must analyze the need for additional power when it relies upon such a benefit in performing the balancing of benefits and costs required by 10 C.F.R. § 51.107(a)(3). The issue of the need for power may therefore fall within the scope of the findings the NRC must make under NEPA when reviewing an application for a new reactor, and a petitioner may obtain a hearing on the issue if it satisfies the other requirements of section 2.309(f)(1).

LBP-09-17 LUMINANT GENERATION COMPANY, LLC (Comanche Peak Nuclear Power Plant, Units 3 and 4), Docket Nos. 52-034-COL, 52-035-COL (ASLBP No. 09-886-09-COL-BD01); COMBINED LICENSE; August 6, 2009; MEMORANDUM AND ORDER (Ruling on Standing and Contentions of Petitioners, and Other Pending Matters)

A Section 189a of the Atomic Energy Act (AEA) provides the basis for the standing of a petitioner in an NRC proceeding, requiring the NRC to provide a hearing "upon the request of any person whose interest may be affected by the proceeding."

B The Commission has implemented the requirements of section 189a in its regulations in 10 C.F.R. § 2.309(d)(1), which provides in relevant part that a licensing board shall consider three factors when deciding whether to grant standing to a petitioner: the nature of the petitioner's right under the AEA to be made a party to the proceeding; the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and the possible effect of any order that may be entered in the proceeding on the petitioner's interest.

C For an organization to establish standing, it must show either immediate or threatened injury to its organizational interests or to the interests of identified members.

D Under Commission case law, there are some circumstances in which petitioners may be presumed to have standing based on their geographical proximity to a facility or source of radioactivity. In nuclear power reactor licensing proceedings, a "rule of thumb" has been developed whereby persons who reside or frequent the area within a 50-mile radius of the reactor are presumed to have standing to participate in a proceeding involving that reactor.

E Strict contention admissibility standards, adopted in 1989 and rendered more stringent in 2004 amendments, exist to ensure that hearings cover only genuine and pertinent issues of concern and focus on real, concrete issues. Although technical perfection is not an essential element of contention pleading, the rules bar contentions where petitioners have only what amount to generalized suspicions, hoping to substantiate them later.

F The requirements of 10 C.F.R. § 2.309(f)(1)(i) and (ii) — that a "specific statement of the issue of law or fact to be raised or controverted" and a "brief explanation of the basis for the contention" be provided — are fairly straightforward, and the issue that generally arises under the first of these is whether a contention is stated with sufficient specificity.

G Subsection (iii) of section 2.309(f)(1) requires that a petitioner must "[d]emonstrate that the issue raised in the contention is within the scope of the proceeding," which may be defined by statute, rule, or the Commission notice or order referring the proceeding to the Atomic Safety and Licensing Board Panel. In addition, under 10 C.F.R. § 2.335(a), no NRC rule may be attacked in an adjudicatory proceeding; the appropriate procedure to raise such a challenge is to file a petition for rulemaking pursuant to 10 C.F.R. § 2.802.

H The materiality requirements of 10 C.F.R. § 2.309(f)(1)(iv) and (vi) mandate that petitioners show that any issue raised in a contention has significance regarding the "findings the NRC must make to support the action that is involved in the proceeding." In other words, does the issue make any difference to, or have any impact on, the grant or denial of an application at issue in a given proceeding?

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- I Disputes often arise among parties as to the nature and extent, or amount, of information that must be provided to support a contention in order for it to be admitted. Section 2.309(f)(1)(v) concerns the nature of the information that is required, and section 2.309(f)(1)(vi) concerns the sufficiency — i.e., the extent or amount — of supportive information offered.
- J Taken literally, 10 C.F.R. § 2.309(f)(1)(v) might be read to require a petitioner to provide a statement that is both “concise” and also covers the full universe of “the alleged facts or expert opinions” and additional information and material that supports a contention. The Commission has, however, interpreted 10 C.F.R. § 2.309(f)(1)(v), quite reasonably and simply, to require a petitioner to support its contentions with documents, expert opinion, or at least a fact-based argument. On the other hand, as was observed even before the 1989 procedural rule amendments, a protestant does not become entitled to an evidentiary hearing merely on request, or on a bald or conclusory allegation that a dispute exists. The protestant must make a minimal showing that material facts are in dispute, thereby demonstrating that an inquiry in depth is appropriate. In other words, as the Commission has more recently observed, a petitioner must present sufficient information to show a genuine dispute and reasonably indicating that a further inquiry is appropriate.
- K More than mere notice pleading is required, and a petitioner’s contention will be ruled inadmissible if the petitioner has offered no tangible information, no experts, no substantive affidavits, but instead only bare assertions and speculation. Petitioners need not, however, proffer facts in formal affidavit or evidentiary form, sufficient to withstand a summary disposition motion. A board may appropriately view petitioners’ support for a contention in a light favorable to petitioners, but it is the petitioners’ burden to establish the admissibility of a contention.
- L Simply attaching material or documents in support of a contention, without explaining their significance, is inadequate to support the admission of a contention, and any supporting material that is provided by a petitioner, including those portions of the material that are not relied upon, is subject to board scrutiny. In making a ruling on contention admissibility a board is not, however, to look to the merits of the contention, and a petitioner is not required to prove its case at the contention stage.
- M Section 2.309(f)(1)(vi) has been interpreted to require a petitioner to read the pertinent portions of the license application, including the Safety Analysis Report [SAR] and the Environmental Report [ER], state the applicant’s position and the petitioner’s opposing view, and explain why petitioner disagrees with the applicant. Petitioners in a contention must explain why the application is deficient, through reference to specific portions of the application, and must directly controvert a position taken by the applicant in the application. Enough material must be provided to show an actual and genuine dispute on a material issue. If a contention neither raises a genuine, material dispute with any specific part of an application nor identifies any omission from the application along with the reasons petitioners believe the material should be included, it must be denied.
- N If a petitioner, through reference to the application itself, as well as through expert opinion, a document or documents, a fact-based argument, or some combination of all three, provides support for an otherwise admissible contention, sufficient to show a genuine dispute on a material issue of fact or law and reasonably indicating that further inquiry is appropriate, it should be admitted. Particularly if no expert opinion or supporting relevant documents are submitted, any fact-based argument that is provided must be reasonably specific, coherent, and logical, sufficient to show such a dispute and indicate the appropriateness of further inquiry.
- O Contentions amounting to challenges to the Waste Confidence Rule in 10 C.F.R. § 51.23(a) are denied, because the history of the rule indicates it was intended to cover new reactors as well as existing ones, and in any event the Commission is currently involved in a rulemaking to amend the rule, and it has long been agency policy that Licensing Boards should not accept in individual license proceedings contentions which are (or are about to become) the subject of general rulemaking by the Commission.
- P Contentions that amount to challenges to NRC decommissioning rules are found not to be admissible.
- Q The Commission has ruled terrorism-related issues to be outside the scope of NRC adjudications.
- R With regard to management of high-level waste, 10 C.F.R. § 51.51(b), Table S-3, when read together with the “background documents” referenced in Note 1 to the Table, indicates small or no radiological release into the environment. Thus, contentions challenging the ER’s finding of “SMALL” impact, and effectively challenging Table S-3, must be denied in accordance with 10 C.F.R. § 2.335(a); and contentions that fail to address the ER’s supplementation of Table S-3 fail to dispute provisions in the application as required under 10 C.F.R. § 2.309(f)(1)(vi).

DIGESTS

ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- S A contention challenging the absence in the ER of consideration of impacts from a severe radiological accident at one unit on other collocated units, supported by fact-based argument demonstrating a genuine dispute on a material issue and identifying supporting reasons for petitioners' belief, is admitted. In considering the question of the level of credibility of impacts asserted to require consideration in the ER, the Licensing Board consulted NUREG-1555, the NRC's Standard Review Plans for Environmental Reviews for Nuclear Power Plants; although a guidance document, with no binding effect, it is entitled to special weight so as to make it appropriate to consider in evaluating contentions, and it provides insight into the information the NRC considers necessary for a complete ER.
- T A contention challenging ER's omission of consideration of alternatives — consisting of combinations of renewable energy sources such as wind and solar power, with technological advances in storage methods and supplemental use of natural gas, to create baseload power — is admitted. Although portions of the original contention, including those concerning alternatives that do not address baseload power generation, are not admissible under Commission precedent, relevant NEPA court precedent mandates admission of the contention, supported by fact-based argument provided in the report attached to the petition, which concerns combinations of renewable sources with storage and other methods to create baseload power. Under this case law, applicant may not define its goals so narrowly as to unreasonably circumscribe the range of alternatives that must be considered.
- LBP-09-18 PPL BELL BEND, LLC (Bell Bend Nuclear Power Plant), Docket No. 52-039-COL (ASLBP No. 09-890-10-COL-BD01); COMBINED LICENSE; August 10, 2009; MEMORANDUM AND ORDER (Ruling on Petitions to Intervene and Requests for Hearing)
- A This case arises from an application by PPL Bell Bend, LLC (PPL) for a combined license (COL) to construct and operate one U.S. Evolutionary Power Reactor (U.S. EPR) which it proposes to locate adjacent to the PPL Susquehanna Steam Electric Station (SSES or Susquehanna) in Luzerne County, Pennsylvania. Petitions to intervene and requests for hearing were timely filed by Gene Stilp and Taxpayers and Ratepayers United (Stilp/TRU) and Eric Joseph Epstein (Mr. Epstein). The Board found that (1) Stilp/TRU have standing to participate but have not proffered any admissible contentions, and (2) Mr. Epstein does not have standing and has not proffered any admissible contentions. Based on these rulings, the Board did not admit either Stilp/TRU or Mr. Epstein as parties and terminated this proceeding.
- B Any person or organization that seeks to intervene as a party in an adjudicatory proceeding addressing a proposed licensing action must: (1) establish that it has standing; and (2) proffer at least one admissible contention.
- C Under NRC regulations, a petitioner must provide certain basic information to demonstrate that it has standing to intervene in the licensing process. This information includes: (1) the nature of the petitioner's right under the governing statutes to be made a party; (2) the nature of the petitioner's interest in the proceeding; and (3) the possible effect of any decision or order on the petitioner's interest. In determining whether an individual or organization should be granted party status "as of right," the NRC applies judicial standing concepts that require a participant to establish: (1) it has suffered or will suffer a distinct and palpable harm that constitutes injury-in-fact within the zone of interests arguably protected by the governing statutes (*e.g.*, the Atomic Energy Act of 1954 (AEA) and the National Environmental Policy Act of 1969 (NEPA)); (2) the injury is fairly traceable to the challenged action; and (3) the injury is likely to be redressed by a favorable decision.
- D The Commission recognizes that a petitioner may have standing based upon its geographic proximity to the proposed facility. In certain circumstances, a petitioner's proximity to the facility triggers a presumption that it has standing to intervene without the need to specifically plead injury, causation, and redressability if the petitioner lives within, or otherwise has frequent contacts with, the zone of possible harm. In reactor licensing proceedings, that zone is generally deemed to constitute the area within a 50-mile radius of the site.
- E When an organization wants to intervene in a representational capacity it must: (1) demonstrate that the licensing action will affect at least one of its members; (2) identify that member by name and address; and (3) show that it is authorized by that member to request a hearing on his or her behalf. Additionally, the member must qualify for standing in his or her own right, the interests that the organization seeks to protect must be germane to its own purpose, and neither the petitioner's contentions nor the requested relief must require an individual member to participate in the proceeding. In determining whether a petitioner has established standing, the Commission has directed us to construe the petition in favor of the petitioner.

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- F Licensing boards have been lenient in permitting *pro se* petitioners the opportunity to cure procedural defects in petitions to intervene regarding standing. The benefit of the doubt should be given to the potential intervenor in order to prevent the dismissal of a petition due to inarticulate draftsmanship or procedural or pleading defects. Petitioners are usually permitted to amend petitions containing curable defects and *pro se* petitioners are held to a less rigorous standard.
- G Because agencies are not constrained by Article III of the Constitution; nor are they governed by judicially created standing doctrines restricting access to federal courts. The criteria for establishing administrative standing may permissibly be less demanding than the criteria for judicial standing.
- H The proximity presumption is neither outdated nor overly simplified and obsolete.
- I Every petitioner bears the burden of demonstrating standing in order to participate in hearings before a licensing board. When a petitioner lives more than 50 miles from the proposed site, he must explain the extent of his day-to-day activities within the vicinity of the plant site in order to demonstrate he has standing in this proceeding.
- J However, a petitioner has an affirmative duty to demonstrate that it has standing in each proceeding in which it seeks to participate because a petitioner's status can change over time and the bases for its standing in an earlier proceeding may no longer apply.
- K It is the burden of the petitioner to clearly state the distance from his home to the proposed facility, the extent, frequency, and duration which the petitioner's business and community service work take him to the vicinity, etc., in a petition to intervene. Merely because a petitioner might have had standing in an earlier proceeding does not automatically grant standing in subsequent proceedings. Absent a showing of specific information regarding the geographic proximity, the timing and the duration of a petitioner's visits, the Board is unable to conclude that a petitioner has standing to intervene.
- L In order to participate as a party in this proceeding, a petitioner for intervention must not only establish standing, but must also proffer at least one admissible contention that meets the requirements of 10 C.F.R. § 2.309(f)(1). An admissible contention must: (1) provide a specific statement of the legal or factual issue sought to be raised; (2) provide a brief explanation of the basis for the contention; (3) demonstrate that the issue raised is within the scope of the proceeding; (4) demonstrate that the issue raised is material to the findings the NRC must make to support the action that is involved in the proceeding; (5) provide a concise statement of the alleged facts or expert opinions, including references to specific sources and documents, that support the petitioner's position and upon which the petitioner intends to rely at the hearing; and (6) provide sufficient information to show that a genuine dispute exists with regard to a material issue of law or fact, including references to specific portions of the application that the petitioner disputes, or if the application is alleged to be deficient, the identification of such deficiencies and the supporting reasons for this allegation.
- M A contention that attacks applicable statutory requirements, challenges the basic structure of the NRC's regulatory process, or merely expresses generalized policy grievances is not appropriate for a licensing board hearing. A contention that attacks a Commission rule, or seeks to litigate a matter that is, or clearly is about to become, the subject of a rulemaking, is inadmissible.
- N A petitioner must provide some minimal basis indicating the potential validity of the contention. The Commission's rules bar contentions where petitioners have only what amounts to generalized suspicions, hoping to substantiate them later. Although a petitioner does not have to prove its contention at the admissibility stage, mere notice pleading is insufficient. If a petitioner fails to provide the requisite support for its contentions, the Board may not make assumptions of fact that favor the petitioner or supply information that is lacking. Simply attaching materials or documents, without explaining their significance, is also insufficient. Moreover, any contention that fails to controvert the application directly, or that mistakenly asserts the application fails to address an issue that the application does address, is defective. A petitioner cannot demonstrate the existence of a genuine issue of material fact by simply restating information provided in the application and asserting that further analysis is required.
- O The Commission in its Waste Confidence Rule has determined that there is reasonable assurance that a geologic repository will be available by 2025 and that sufficient repository capacity will be available within 30 years beyond the licensed life to dispose of high-level waste and spent fuel generated by any reactor up to that time. The Commission has also determined that spent fuel generated in any reactor can be stored safely and without significant environmental impacts for at least 30 years in an onsite spent fuel pool or an onsite or offsite independent spent fuel storage installation.

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- P The Waste Confidence Rule is applicable to all new reactor proceedings, and contentions challenging the rule or seeking its reconsideration are inadmissible.
- Q In order to challenge a regulation, a petitioner must submit a supporting affidavit setting forth “with particularity” the special circumstances that justify the waiver or exception requested.
- R The Commission recently ruled that for a contention to be held in abeyance, it must otherwise be admissible. A decision may be referred to the Commission if it raises significant and novel legal or policy issues, and resolution of the issues would materially advance the orderly disposition of the proceeding.
- S The Commission has made its position clear that — outside the Ninth Circuit — NEPA does not require the NRC to consider the environmental consequences of hypothetical terrorist attacks on NRC-licensed facilities. Furthermore, the Third Circuit upheld the Commission’s determination that NEPA does not demand any terrorism inquiry. Licensing boards lack the authority to reconsider these legal rulings and must apply the Commission’s directive that outside the Ninth Circuit, NEPA does not require the evaluation of the impact of terrorist attacks by aircraft or other means.
- T NRC regulations in Part 52 allow a COLA to reference a certified design that has been docketed but not yet approved. Until the design is certified and the rulemaking proceeding concluded, the design continues to change, creating potentially new safety and environmental concerns. Petitioners can challenge any generic issues as part of the design certification rulemaking process and will have an opportunity to file new contentions related to material new information regarding site-specific plant design issues.
- U The regulations require that at the time the combined license application is submitted, it must identify the method of decommissioning funding assurance that the applicant proposes to use and to show that the method complies with any applicable financial test. Thus a parent company guarantee is only acceptable if it and the financial test are as contained in Appendix A to 10 C.F.R. Part 30.
- V The regulations are clear that a COL applicant does not need to provide the NRC, at the time the application is submitted, with its final signed documents assuring the decommissioning funding, and that the holder of a COL must do so 30 days after notice is published regarding the fuel load. The role of a licensing board is to decide whether an applicant has supplied the requisite information to the NRC, and whether the petitioners have identified any defect in that information.
- W The regulations do not dictate which financial assurance method an applicant must use. Instead, an applicant can choose “one or more” of the funding methods provided in 10 C.F.R. § 50.75(e). It is beyond the authority of this Board to say which method an applicant must use to fulfill the decommissioning funding assurance requirement. The Board can only decide whether or not the current funding proposal fulfills NRC requirements. Thus, a petitioner’s assertion that an applicant must submit prepayment is inadmissible.
- X The AEA states that a license may not be issued “to an alien or any corporation or other entity if the Commission knows or has reason to believe it is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government.” The Commission makes clear that a foreign entity must be able to control or dominate an applicant in order for it to be considered a foreign owner. When the entity in question is simply a contractor working for an applicant that has no ownership, control, or domination over the applicant, they cannot be considered foreign owners.
- Y NEPA is the only legal grounds for an admissible contention relating to environmental justice issues. To qualify as an environmental justice contention, a petitioner must show that the affected local population qualifies as a minority or low-income population. Second, an admissible environmental justice contention must allege with the requisite documentary basis and support as required by 10 C.F.R. Part 2, that the proposed action will have significant adverse impacts on the physical or human environment that were not considered because the impacts to the community were not adequately evaluated. Accordingly, to be admissible, an environmental justice contention must show there are significant, adverse, environmental impacts that will result from the licensing of the reactor that will disproportionately affect minority and low-income populations.
- LBP-09-19 SOUTHERN NUCLEAR OPERATING COMPANY (Early Site Permit for Vogtle ESP Site), Docket No. 52-011-ESP (ASLBP No. 07-850-01-ESP-BD01); EARLY SITE PERMIT; August 17, 2009; SECOND AND FINAL PARTIAL INITIAL DECISION (Mandatory/Uncontested Proceeding)
- A In this 10 C.F.R. Part 52 proceeding regarding the application of Southern Nuclear Operating Company (SNC) for an early site permit (ESP), and an associated limited work authorization (LWA), for two additional reactors at the existing Vogtle Electric Generating Plant (VEGP) site, in a second and final partial initial decision regarding the mandatory or uncontested portion of the proceeding, based on

DIGESTS

ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

its review of the pending SNC ESP application and its LWA supplement, as well as the NRC Staff's final environmental impact statement (FEIS) and final safety evaluation report (FSER) regarding these SNC licensing requests, the Board concludes that Staff issuance of the ESP and the LWA for the Vogtle ESP site should be authorized, effective immediately.

B Under the Commission's 10 C.F.R. Part 52 regulations, an applicant who may apply for a construction permit under Part 50, or a combined license (COL) under Part 52, may apply for an ESP. *See* 10 C.F.R. § 52.15(a). If granted, an ESP, which is defined as "a partial construction permit," evidences Commission approval of a site for one or more nuclear power facilities. *Id.* § 52.1(a).

C An ESP applicant may also request that an LWA under 10 C.F.R. § 50.10 be issued in conjunction with the ESP. *See id.* § 52.17(c).

D The Atomic Energy Act (AEA) of 1954, as amended, provides that "[t]he Commission shall hold a hearing . . . on each application under section 2133 or 2134(b) of this title for a construction permit for a facility." 42 U.S.C. § 2239(a)(1)(A). ESP applications, as partial construction permit applications, *see* 10 C.F.R. § 52.1(a), are subject to the AEA hearing requirement, as well as "all procedural requirements in 10 CFR part 2," *id.* § 52.21; *see also System Energy Resources, Inc.* (Early Site Permit for Grand Gulf ESP Site), LBP-07-1, 65 NRC 27, 35, *permit issuance authorized*, CLI-07-14, 65 NRC 216 (2007).

E When reviewing an ESP application in an uncontested proceeding, licensing boards are instructed to "conduct a simple 'sufficiency' review" rather than a de novo review on both AEA and National Environmental Policy Act (NEPA) of 1969 issues. *Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), CLI-05-17, 62 NRC 5, 39 (2005). Thus, boards "should decide simply whether the safety and environmental record is 'sufficient' to support license issuance. In other words, the boards should inquire whether the NRC Staff performed an adequate review and made findings with reasonable support in logic and fact." *Id.* With respect to certain NEPA findings, boards are instructed to make independent environmental judgments, though they "need not rethink or redo every aspect of the NRC Staff's environmental findings or undertake their own fact-finding activities." *Id.* at 44; *see also Dominion Nuclear North Anna, LLC* (Early Site Permit for North Anna ESP Site), LBP-07-9, 65 NRC 539, 559-60, *permit issuance authorized*, CLI-07-27, 66 NRC 215 (2007). The board's role is to "carefully probe [Staff] findings by asking appropriate questions and by requiring supplemental information when necessary," but "the NRC Staff's underlying technical and factual findings are not open to board reconsideration unless, after a review of the record, the board finds the NRC Staff review inadequate or its findings insufficient." *Clinton ESP*, CLI-05-17, 62 NRC at 39-40.

F In a mandatory hearing, a licensing board "must narrow its inquiry to those topics or sections in Staff documents that it deems most important and should concentrate on portions of the documents that do not on their face adequately explain the logic, underlying facts, and applicable regulations and guidance." *Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), CLI-06-20, 64 NRC 15, 21-22 (2006).

G Pursuant to the AEA and agency regulations in effect at the time the notice of hearing for this proceeding was published, the board was required to make two safety findings — answering the first in the negative and the second in the affirmative — before an ESP could be issued: "(1) Whether the issuance of an ESP will be inimical to the common defense and security or to the health and safety of the public (Safety Issue 1); and (2) whether, taking into consideration the criteria contained in 10 CFR part 100, a reactor, or reactors, having characteristics that fall within the parameters for the site, can be constructed and operated without undue risk to the health and safety of the public (Safety Issue 2)." Notice of Hearing and Opportunity to Petition for Leave to Intervene on an [ESP] for the Vogtle ESP Site, 71 Fed. Reg. 60,195, 60,195 (Oct. 12, 2006) [hereinafter ESP Hearing Notice]. Subsequent to the publication of the notice of hearing in this proceeding, the 10 C.F.R. Part 52 regulations were revised to, among other things, clarify what is required in the findings associated with the issuance of an ESP. *See Licenses, Certifications, and Approvals for Nuclear Power Plants*, 72 Fed. Reg. 49,352, 49,524 (Aug. 28, 2007). Under a new section 52.24, an ESP may issue if the Commission, or, presumably, the Licensing Board, as the Commission's delegate, finds, among other things, that: "(1) [The ESP application] meets the applicable standards and requirements of the [AEA] and the Commission's regulations; (2) Notifications, if any, to other agencies or bodies have been duly made; (3) There is reasonable assurance that the site is in conformity with the provisions of the Act, and the Commission's regulations; (4) The applicant is technically qualified to engage in any activities authorized; (5) The proposed inspections, tests, analyses and acceptance criteria, including any on emergency planning, are necessary and sufficient, within the scope of the early site permit,

DIGESTS

ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- to provide reasonable assurance that the facility has been constructed and will be operated in conformity with the license, the provisions of the Act, and the Commission's regulations; [and] (6) Issuance of the permit will not be inimical to the common defense and security or to the health and safety of the public." 10 C.F.R. § 52.24(a)(1)-(6). In addition, section 52.24 states that if the Commission decides to authorize issuance of the ESP, the issued ESP "must specify the site characteristics, design parameters, and terms and conditions of the [ESP] the Commission deems appropriate." *Id.* § 52.24(b).
- H Because the substantive findings that must be made under the pre-2007 regime overlap to a significant degree those required under the current regulations, and the Applicant has both revised its application to reflect the new rule and provided information in this proceeding to address both sets of provisions, the Board will address the findings outlined in each.
- I In authorizing issuance of an ESP, to fulfill its NEPA obligations the Board must: "(1) Determine whether the requirements of Sections 102(2)(A), (C), and (E) of NEPA and the [10 C.F.R. Part 51, Subpart A] regulations have been met; (2) Independently consider the final balance among conflicting factors contained in the record of the proceeding with a view to determining the appropriate action to be taken; (3) Determine, after . . . considering reasonable alternatives, whether the [ESP] should be issued, denied, or appropriately conditioned to protect environmental values; [and] (4) Determine, in an uncontested proceeding, whether the NEPA review conducted by the NRC Staff has been adequate." *Id.* § 51.105(a)(1)-(4); *see also* ESP Hearing Notice, 71 Fed. Reg. at 60,195. These findings are consistent with the requirement under 10 C.F.R. § 52.24(a) that, prior to issuance of an ESP, "[t]he findings required by subpart A of 10 CFR Part 51 have been made." 10 C.F.R. § 52.24(a)(8).
- J With regard to the first three of these findings, i.e., the "baseline" NEPA issues, the Board must reach its own independent determination, but should do so without "second-guess[ing] underlying technical or factual findings by the NRC Staff." *Clinton ESP*, CLI-05-17, 62 NRC at 45.
- K An ESP applicant may request that an LWA be issued in conjunction with the ESP. *See* 10 C.F.R. § 52.17(c). Before the LWA can issue, the Staff must issue an FEIS in connection with the LWA, and the Board must perform essentially the same NEPA analysis described above for the ESP, with respect to the LWA activities, although, instead of making a finding on NEPA Baseline Issue 3, the Board is to "[d]etermine whether the redress plan will adequately redress the activities performed under the [LWA]" should the activities be terminated by either the holder of the LWA or by Commission denial of any corresponding ESP or COL. *See id.* §§ 50.10(e)(1)(ii), 51.105(c); *see also* Supplementary Notice of Hearing and Opportunity to Petition for Leave to Intervene on an [ESP] for the VOGTLE ESP Site, 72 Fed. Reg. 64,686, 64,686 (Nov. 16, 2007) [hereinafter LWA Hearing Notice]. Finally, the Board must find that (1) "the applicable standards and requirements of the Act, and the Commission's regulations applicable to the activities to be conducted under the [LWA] have been met"; (2) "[t]he applicant is technically qualified to engage in the activities authorized"; (3) "[i]ssuance of the [LWA] will provide reasonable assurance of adequate protection to public health and safety and will not be inimical to the common defense and security"; and (4) "there are no unresolved safety issues relating to the activities to be conducted under the [LWA] that would constitute good cause for withholding the authorization." 10 C.F.R. § 50.10(e)(1)(iii)-(iv); *see* LWA Hearing Notice, 72 Fed. Reg. at 64,686.
- L Although section 50.10(e)(1)(iii) and the LWA hearing notice give the responsibility in the first instance for making three of these findings to the Director, Office of New Reactors (NRO), *see* 10 C.F.R. § 50.10(e)(1)(iii); LWA Hearing Notice, 72 Fed. Reg. at 64,686, in light of the fact that the LWA hearing notice attributes to the Board the authority to make the three additional ESP safety findings found in section 52.24(a)(1), (4), (6) in the context of the LWA, *see* LWA Hearing Notice, 72 Fed. Reg. at 64,686, which, in turn, are essentially the same as the three findings in section 50.10(e)(iii), the Board likewise will make these findings in accord with 10 C.F.R. § 50.10(e)(iii) and the LWA hearing notice.
- M In an instance when an ESP is issued with an associated LWA, the Board must find relative to the LWA that "[a]ny significant adverse environmental impact resulting from activities requested under § 52.17(c) can be redressed." 10 C.F.R. § 52.24(a)(7). In addition, if LWA activities are approved by the NRC in conjunction with an ESP, the ESP as issued "shall specify those 10 CFR 50.10 [authorized] activities." 10 C.F.R. § 52.24(c).
- N Licensing board initial decisions in earlier ESP proceedings have not been effective until they were reviewed by the Commission. *See, e.g., North Anna ESP*, LBP-07-9, 65 NRC at 629. Subsequently, however, the 10 C.F.R. Part 2 regulations were revised to provide for immediate effectiveness of initial decisions in certain proceedings. *See* 72 Fed. Reg. at 49,416, 49,475-76. Accordingly, under the current

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- rules, “[a]n initial decision directing the issuance or amendment of a limited work authorization under 10 CFR 50.10 [or] an early site permit under subpart A of part 52 of this chapter . . . is immediately effective upon issuance unless the presiding officer finds that good cause has been shown by a party why the initial decision should not become immediately effective.” 10 C.F.R. § 2.340(f).
- O The agency’s NEPA regulations require that the Staff prepare an environmental impact statement (EIS) in connection with the issuance of an ESP. *See* 10 C.F.R. § 51.20(b)(1). The Staff must first prepare a draft EIS (DEIS), *see id.* §§ 51.70, 51.75(b), that includes, among other things, “an evaluation of the environmental effects of construction and operation of a reactor, or reactors, which have design characteristics that fall within the site characteristics and design parameters for the [ESP] application, but only to the extent addressed in the [ESP] environmental report [(ER)] or otherwise necessary to determine whether there is any obviously superior alternative to the site proposed.” *Id.* § 51.75(b). Though the DEIS may rely in part on the applicant’s ER, the regulations require the Staff to “independently evaluate and be responsible for the reliability of all information used in the [DEIS].” *Id.* § 51.70(b). The DEIS is then distributed for public comment and, based on the comments received, a review of information provided by the applicant, and supplemental independent information and analysis, the Staff prepares and issues an FEIS. *See id.* §§ 51.73, 51.91.
- P Additionally, in implementing NEPA, the NRC uses certain of the definitions provided in Council on Environmental Quality regulations. *See id.* § 51.14(b). Among those is section 1508.25, which states that an agency EIS must consider direct, indirect, and cumulative impacts of an action. *See* 40 C.F.R. § 1508.25. Direct impacts are those caused by the federal action, and occurring at the same time and place as that action, while indirect impacts are caused by the action at a later time or more distant place, yet are still reasonably foreseeable. *See id.* § 1508.8. In addition, cumulative impacts are defined as “the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.” *Id.* § 1508.7.
- Q The NEPA-driven environmental review is more outward looking and involves a one-time impacts evaluation emphasizing a “reasonableness” approach. In contrast, the AEA-driven safety review, which is both more inward looking and ongoing, takes a “conservative” approach.
- R Potential radiological impacts of the proposed units have both environmental and safety aspects. On the safety side, 10 C.F.R. § 52.17 specifies that an ESP application must contain “[a] description and safety assessment of the site” that includes “an analysis and evaluation of the major structures, systems, and components of the facility that bear significantly on the acceptability of the site under the radiological consequence evaluation factors identified in paragraphs (a)(1)(ix)(A) and (a)(1)(ix)(B) of this section.” 10 C.F.R. § 52.17(a)(1)(ix). That section requires that “[t]he applicant . . . perform an evaluation and analysis of the postulated fission product release . . . to evaluate the offsite radiological consequences.” *Id.* Under 10 C.F.R. § 52.17, individuals located at the boundary of the exclusion area cannot be exposed to more than 25 rem total effective dose equivalent (TEDE) in any 2-hour period, and any individual located at the outer boundary of the low population zone cannot be exposed to more than 25 rem TEDE during the entire period of any radioactive release. *See id.* § 52.17(a)(1)(ix)(A)-(B).
- S Additionally, 10 C.F.R. § 52.18 directs the Staff to review ESP applications “according to the applicable standards set out in 10 CFR part 50 and its appendices and 10 CFR part 100.” *Id.* § 52.18. Section 50.34a, in turn, directs an applicant to describe “equipment to be installed to maintain control over radioactive materials in gaseous and liquid effluents produced during normal reactor operations, including expected operational occurrences,” and, for applications filed after January 2, 1971, directs the applicant to identify design objectives and means to maintain levels of radioactive effluents “as low as is reasonably achievable [(ALARA)].” *Id.* § 50.34a(a). Part 50, Appendix I, sets forth numerical guidelines for meeting the ALARA standard. *See id.* Part 50, App. I. Further, Part 100 instructs the Staff to consider physical characteristics of the site, specifically noting that “[f]actors important to hydrological radionuclide transport . . . must be obtained from on-site measurements.” *Id.* § 100.20(c)(3). Finally, Part 20 sets out numerical limits for radiation exposure, including occupational dose limits and radiation dose limits for members of the public. *See id.* §§ 20.1201 to .1302.
- T On the environmental side, the Environmental Protection Agency (EPA) has established radiation exposure standards under 40 C.F.R. Part 190, the applicability of which the Commission has acknowledged in Part 20 of the agency’s regulations. *See id.* § 20.1003 (defining “generally applicable environmental

DIGESTS

ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- radiation standards” as the “standards issued by the [EPA]”; *id.* § 20.1301(e) (providing that “licensee[s] subject to the provisions of EPA’s generally applicable environmental radiation standards in 40 CFR part 190 shall comply with those standards”). Additionally, the Staff evaluates individual and population exposure under the 10 C.F.R. Part 20 and the ALARA standards discussed above in connection with safety.
- U Among other things, pursuant to section 52.17(a)(1) the site safety analysis report (SSAR) submitted with an ESP application must contain “[t]he seismic, meteorological, hydrologic, and geologic characteristics of the proposed site” and “[a] description and safety assessment of the site on which a facility is to be located.” *Id.* § 52.17(a)(1)(vi), (ix). In addition, section 100.20 states that the Commission, “in determining the acceptability of a site for a stationary power reactor,” will consider the “[p]hysical characteristics of the site, including seismology, meteorology, geology, and hydrology.” *Id.* § 100.20(c).
- V NEPA § 102(2)(C)(iii) requires that an EIS address alternatives to the proposed action. *See* 42 U.S.C. § 4332(2)(C)(iii). NRC’s regulations implementing this NEPA provision require an applicant for an ESP to file an environmental report (ER), *see* 10 C.F.R. § 51.50(b), addressing the following factors: “(1) . . . impact of proposed action on the environment; (2) . . . [unavoidable] adverse environmental impacts; (3) [a]lternatives to the proposed action; (4) [t]he relationship between local short-term uses of man’s environment and the maintenance and enhancement of long-term productivity; and (5) . . . irreversible and irretrievable commitments of resources.” *Id.* § 51.45(b)(1)-(5). If the proposed siting of a plant slated for an ESP involves unresolved conflicts concerning alternative uses of available resources, then this discussion must be sufficiently complete to allow the Staff to develop and to explore appropriate alternatives to the ESP pursuant to NEPA § 102(2)(E). *See id.* § 51.45(b)(3). The ER must also include “an evaluation of alternative sites to determine whether there is any obviously superior alternative to the site proposed.” *Id.* § 51.50(b)(1).
- W Additionally, 10 C.F.R. § 51.45(b)(3) and 10 C.F.R. Part 51, App. A, § 1(a)(5), call for a presentation of alternatives in an applicant’s ER and in an NRC EIS, respectively, in comparative form. All reasonable alternatives are to be identified. *See Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), CLI-91-2, 33 NRC 61, 71 (1991). The Staff must prepare an EIS during review of an ESP application, *see* 10 C.F.R. § 52.18, and this EIS “must include an evaluation of alternative sites to determine whether there is any obviously superior alternative to the site proposed.” *Id.* § 51.75(b). The EIS must be prepared in accordance with 10 C.F.R. § 51.71, which, *inter alia*, considers and weighs the environmental impacts of alternatives to the proposed action and alternatives available for reducing or avoiding adverse environmental effects. *See id.* § 51.71(d). In addition, with regard to alternative sites, the Commission has recently emphasized that the Staff must evaluate “‘both the process (i.e., methodology) used by the applicant and the reasonableness of the product (e.g., potential sites) identified by that process.’” *North Anna ESP*, CLI-07-27, 66 NRC at 223-24 (quoting ESRP at 9.3-8); *see also id.* at 228-32 (finding FEIS discussion of alternative sites insufficient but independently reviewing record on greenfield, competitors’ brownfield, noncompetitors’ brownfield, and applicant’s other nuclear sites to conclude that the Staff’s underlying alternative site review was adequate).
- X Section 50.10 of Title 10 of the *Code of Federal Regulations* provides the terms for requesting and issuing an LWA, which authorize an applicant to perform certain site-preparation activities that would otherwise only be permitted following the issuance of a 10 C.F.R. Part 50 construction permit or a 10 C.F.R. Part 52 COL. *See* 10 C.F.R. § 50.10(d)-(g). Section 52.17(c) allows an ESP applicant to request that a section 50.10 LWA be issued in conjunction with an ESP. Section 50.10(a)(1) identifies LWA construction activities, while section 50.10(a)(2) identifies activities that can be performed without an LWA (i.e., as “preconstruction” activities that do not require NRC approval). An LWA allows for the performance of these LWA construction activities prior to issuance of a COL, *see id.* § 50.10(d)(1) (LWA authorizes activities “for which either a construction permit or [COL] is otherwise required”), but the LWA application must include a plan for site redress that provides for restoration if the project is cancelled, the LWA is revoked, or a construction permit or COL is denied. *See id.* § 50.10(d)(3)(iii). The site redress plan (SReP) also remains in effect for an ESP applicant even if the ESP with which the LWA is issued is not referenced in a construction permit or COL application during the period that the ESP remains valid. *See id.* § 52.25.
- Y Under section 50.10(a)(1), activities constituting construction, and thus requiring an LWA, are the driving of piles; subsurface preparation; placement of backfill, concrete, or permanent retaining walls within an excavation; installation of foundations; or in-place assembly, erection, fabrication, or testing that are for safety-related structures, systems, or components (SSCs). Also included are construction activities

DIGESTS

ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- associated with onsite emergency facilities necessary to comply with section 50.47 and 10 C.F.R. Part 50, App. E. *See id.* § 50.10(a)(1).
- Z Under section 50.10(a)(2), “construction” is defined as not including site exploration; preparation of the site for construction, including site clearing, grading, and installation of environmental mitigation measures; erection of fences and other access control measures; excavation; erection of support buildings for use in connection with construction; building of service facilities, such as paved roads, parking lots, railroad spurs, exterior lighting systems, potable water systems and sewerage treatment facilities, and transmission lines; and procurement or offsite fabrication of facility components. *See id.* § 50.10(a)(2).
- AA The SSAR filed with the ESP application must include information that “identif[ies] physical characteristics of the proposed site, such as egress limitations from the area surrounding the site, that could pose a significant impediment to the development of emergency plans.” *Id.* § 52.17(b)(1). If the applicant determines that there are physical characteristics “that could pose a significant impediment to the development of emergency plans, the application must identify measures that would, when implemented, mitigate or eliminate the significant impediment.” *Id.*
- BB In addition, an ESP applicant has the option of either proposing a complete and integrated emergency plan or proposing major features of the emergency plan “for review and approval by NRC, in consultation with the Department of Homeland Security (DHS).” *Id.* § 52.17(b)(2)(i), (ii). The regulations provide that either option should be proposed in accordance with the “pertinent” or “applicable” standards in 10 C.F.R. § 50.47 and the requirements of Appendix E to 10 C.F.R. Part 50. *Id.* Section 50.47(b) contains sixteen planning standards related to the emergency preparedness function, and Appendix E to 10 C.F.R. Part 50, establishes minimum requirements for emergency plans. *See id.* § 50.47(b); *id.* Part 50, App. E. Among other requirements in Part 50 Appendix E, section IV outlines the content of emergency plans, while section V specifies provisions for submitting emergency implementing procedures to the NRC for review, and section VI sets forth provisions for the Emergency Response Data System (ERDS). *See id.* Part 50, App. E, §§ IV-VI.
- CC If an applicant chooses to submit a complete and integrated emergency plan with its ESP application, complete and integrated emergency plans “must include the proposed inspections, tests, and analyses that the holder of a combined license referencing the [ESP] shall perform, and the acceptance criteria that are necessary and sufficient” to support a finding of “reasonable assurance that, if the inspections, tests, and analyses are performed and the acceptance criteria met, the facility has been constructed and will be operated in conformity with the emergency plans, the provisions of the Act, and the Commission’s rules and regulations.” *Id.* § 52.17(b)(3). The inspections, tests, analyses, and acceptance criteria (ITAAC) associated with emergency planning reflect those aspects of the emergency plan that cannot be described or completed until the plant is further along in the licensing and construction process. They are essentially placeholders that reflect requirements that could not be addressed under Part 52 prior to physical construction of the plant.
- DD If an applicant submits a complete and integrated emergency plan in conjunction with an ESP application, the Staff must find “that the emergency plans provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency.” 10 C.F.R. § 50.47(a)(1)(iii). The Staff’s review focuses primarily on the applicant-prepared onsite provisions of the plans, which include the evacuation time estimate provided by the applicant, and the ITAAC. *See id.* § 50.47(b), (d). The offsite provisions, which generally are the responsibility of state and local governments, are reviewed by the Federal Emergency Management Agency (FEMA). *See id.* § 50.47(b), (d). FEMA performs its evaluation independently of the NRC, also using NUREG-0654/FEMA-REP-1, and provides its review findings to the NRC. The Staff must take into account FEMA’s findings, as section 50.47(a)(2) provides: “[t]he NRC will base its finding on a review of the [FEMA] findings and determinations as to whether State and local emergency plans are adequate and whether there is reasonable assurance that they can be implemented, and on the NRC assessment as to whether the applicant’s onsite emergency plans are adequate and whether there is reasonable assurance that they can be implemented.” *Id.* § 50.47(a)(2). Moreover, FEMA’s finding “constitute[s] a rebuttable presumption on questions of adequacy and implementation capability” in NRC licensing proceedings. *Id.* Ultimately, the reasonable assurance finding for complete and integrated plans includes the successful completion of ITAAC and resolution of any permit conditions.
- EE Under 10 C.F.R. § 52.17(a)(1)(vi), an applicant’s SSAR must include “[t]he seismic . . . and geologic characteristics of the proposed site with appropriate consideration of the most severe of the natural

DIGESTS

ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- phenomena that have been historically reported for the site and surrounding area and with sufficient margin for the limited accuracy, quantity, and period of time in which the historical data have been accumulated.” In providing this information, applicants must conform to the requirements of 10 C.F.R. § 100.23, which stipulates that the information provides “the principal geologic and seismic considerations that guide the Commission in its evaluation of the suitability of a proposed site and adequacy of the design bases established in consideration of the geologic and seismic characteristics of the proposed site, such that, there is a reasonable assurance that a nuclear power plant can be constructed and operated at the proposed site without undue risk to the health and safety of the public.” Among other things, this provision, in conjunction with Appendix A to 10 C.F.R. Part 100, sets forth in detail the geologic, seismic, and engineering characteristics as well as the siting factors and criteria that govern an applicant’s seismic suitability showing.
- FF Severe accident mitigation alternatives (SAMAs), encompass potential plant modifications, sometimes referred to as severe accident mitigation design alternatives (SAMDA), as well as plant procedural changes or training program changes that can reduce the risks of severe accidents.
- GG Severe accidents are defined as accidents “in which substantial damage is done to the reactor core whether or not there are serious offsite consequences.” Policy Statement on Severe Reactor Accidents Regarding Future Designs and Existing Plants, 50 Fed. Reg. 32,138, 32,138 (Aug. 8, 1985). NRC safety and environmental regulations require consideration of the consequences of severe accidents. Section 52.17 of Title 10 of the *Code of Federal Regulations* requires an ESP applicant to submit a safety assessment that includes an analysis of a fission product release from an accident, “using the expected demonstrable containment leak rate and any fission product cleanup systems intended to mitigate the consequences of the accidents.” 10 C.F.R. § 52.17(a)(1)(ix). The fission product releases in question are associated with accidents that have “generally been assumed to result in substantial meltdown of the core with subsequent release into the containment of appreciable quantities of fission products.” *Id.* § 52.17(a)(1)(ix) n.1. Thus, implicitly, some discussion of SAMAs is required under the safety regulations.
- HH On the environmental side, NEPA § 102(2)(C) “implicitly requires agencies to consider measures to mitigate [environmental] impacts.” [NEI]; Denial of Petition for Rulemaking, 66 Fed. Reg. 10,834, 10,836 (Feb. 20, 2001); *see also Progress Energy Florida, Inc.* (Levy County Nuclear Power Plant, Units 1 and 2), LBP-09-10, 70 NRC 51, 107-08 (2009). NRC regulations also require an applicant’s ER to include an analysis of “alternatives available for reducing or avoiding adverse environmental effects.” 10 C.F.R. § 51.45(c). NRC’s policy statement on Nuclear Power Plant Accident Considerations Under the National Environmental Policy Act of 1969, 45 Fed. Reg. 40,101 (Jun. 13, 1980), specifically provides for consideration of measures to prevent or to mitigate the consequences of severe accidents in the ER and EIS of certain categories of nuclear plants. *See id.* at 40,103. The agency’s 1985 severe accident policy statement, 50 Fed. Reg. at 32,138, provides for consideration of severe accidents for new plant designs.
- II In evaluating ESP applications, where detailed design information is not available, the Commission may defer resolution of SAMA issues until the 10 C.F.R. Part 50 construction permit (CP) or 10 C.F.R. Part 52 COL stage. *See North Anna ESP*, CLI-07-27, 66 NRC at 237 & n.126. If an application has selected a certified design for its proposed units, because NRC regulations require design certification applicants to address SAMDA, *see, e.g.*, 10 C.F.R. §§ 51.30(d), 51.55(a), enough information may be available through the design certification document (DCD), to conduct a limited SAMDA analysis for the application.
- JJ Although the ESP process is designed, among other things, to permit an applicant to resolve various safety, environmental, and emergency planning issues associated with the particular site at issue prior to the submission of a COL application, items for which sufficient information is lacking at the ESP stage of the licensing process may be subject to deferral for consideration at the COL stage of the process. *See Grand Gulf ESP*, LBP-07-1, 65 NRC at 90.
- KK The concept of attaching permit conditions to an ESP arises from 10 C.F.R. § 52.24(b), which states: “The [ESP] must specify the . . . terms and conditions of the [ESP] the Commission deems appropriate. Before issuance of either a construction permit or combined license referencing an [ESP], the Commission shall find that any relevant terms and conditions of the [ESP] have been met. Any terms or conditions of the [ESP] that could not be met by the time of issuance of the construction permit or combined license, must be set forth as terms or conditions of the construction permit or combined license.” 10 C.F.R. § 52.24(b). Thus, any permit conditions imposed that are not met before a COL referencing the ESP is issued will attach to the COL.

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- LL An ESP is an approval for a nuclear plant site, *see id.* § 52.1, and specifies design parameters for the site, *see id.* § 52.24(b). The ER for an ESP application may evaluate the environmental impacts of a reactor or reactors falling “within the site characteristics and design parameters for the [ESP] application.” *Id.* § 51.50(b)(2). At the COL stage, an applicant may reference both an ESP and a standard design certification in its application. *See id.* § 52.73(a). If the application references an ESP, the applicant must demonstrate that the chosen design (e.g., the certified design) falls within the parameters specified in the ESP or, on the safety side, request a variance. *See id.* §§ 51.50(c)(1)(i), 52.79(b)(1)-(2).
- MM Additionally, an LWA applicant must submit, as part of the safety analysis report for the LWA, design information related to activities within the scope of the requested LWA. *See id.* § 50.10(d)(3)(i).
- NN To grant an ESP, the Commission must find that “[t]he proposed [ITAAC], including any on emergency planning, are necessary and sufficient, within the scope of the [ESP], to provide reasonable assurance that the facility has been constructed and will be operated in conformity with the license, the provisions of the Act, and the Commission’s regulations.” *Id.* § 52.24(a)(5). An applicant has the option of submitting a complete and integrated emergency plan under section 52.17(b)(2)(ii), but if the applicant chooses to do so, it must include in the ESP application the proposed inspections, tests, and analyses that will be performed, and the acceptance criteria that are “necessary and sufficient” for the Commission’s required findings for issuance of the ESP. *See id.* § 52.17(b)(3). In addition, the Commission will review any proposed ITAAC relative to a request for an LWA submitted with an ESP application. *See also id.* § 50.10(d)(3).
- OO At the COL stage, a COL application likewise must include, among other things, the “proposed inspections, tests and analyses, including those applicable to emergency planning,” to be performed and “the acceptance criteria that are necessary and sufficient” to support the Commission’s finding that a COL can be granted. *See id.* § 52.80(a). If a COL application “references an early site permit with ITAAC or a standard design certification or both, the application may include a notification that a required inspection, test, or analysis in the ITAAC has been successfully completed and that the corresponding acceptance criterion has been met.” *Id.* § 52.80(a)(3). If the applicant makes this notification, which is essentially a request for a Commission finding on the completion of ITAAC needed for issuance of a COL, the Commission is required to identify these ITAAC in the notice of hearing published in the *Federal Register* for the COL proceeding. *See id.* §§ 52.80(a)(3), 52.85.
- PP If the Commission finds that these ESP or design certification ITAAC have been met, “[t]his finding will finally resolve that those acceptance criteria have been met, those acceptance criteria will be deemed to be excluded from the combined license, and findings under § 52.103(g) [(i.e., findings required before operation of the facility)] with respect to those acceptance criteria are unnecessary.” *Id.* § 52.97(a)(2). Upon issuance of a COL, the Commission also must identify any ITAAC that have not yet been met. *See id.* § 52.97(b). Thereafter, but no later than “1 year after issuance of the [COL] or at the start of construction as defined in 10 CFR 50.10(a), whichever is later” the COL licensee must submit “its schedule for completing the inspections, tests, or analyses in the ITAAC.” *Id.* § 52.99(a). The licensee must provide schedule updates as outlined in section 52.99(a), with appropriate notifications of completed ITAAC as required by section 52.99(c) and with the NRC reviewing the licensee’s ITAAC submissions to “ensure that the prescribed inspections, tests, and analyses in the ITAAC are performed.” *Id.* § 52.99(e). Prior to operation under a COL, a notice of intended operation will be published in the *Federal Register* “[n]ot less than 180 days before the date scheduled for initial loading of fuel.” *Id.* § 52.103(a). An opportunity for hearing will be provided in this notice regarding certain matters, one of which is ITAAC that have not been found to have been met under section 52.97(a)(2) prior to issuance of the COL. *See id.* § 52.103(a), (b). To this end, “[a]t appropriate intervals” during the time between issuance of a COL and “the last date for submission of requests for hearing under § 52.103(a), the NRC shall publish notices in the *Federal Register* of the NRC staff’s determination of the successful completion of inspections, tests, and analyses.” *Id.* § 52.99(e)(1). Additionally, the NRC is required to make publicly available any notifications from the COL licensee indicating that the licensee believes certain ITAAC have been met as well as any notifications that any uncompleted ITAAC will be met prior to operation. *See id.* § 52.99(e)(2).
- QQ The following technical issues are discussed: Accident Dose Estimates; Alternative Site Consideration; Alternative Sources of Energy; Alternatives (and Consideration of); Capability of Fault(s); Cooling Systems; Cooling Water Supply; Earthquake Motions; Emergency Operations Facilities; Emergency Plan(s); Groundwater Diversion (Cumulative Impacts); Groundwater Impacts (Safety-Related Structures, Saltwater Intrusion, Tritium); Inspections, Tests, Analyses, and Acceptance Criteria; Limited Work Au-

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

thorization Impacts; Peak Ground Acceleration; Preconstruction Impacts; Radiological Consequences of Design Basis Accidents; Radiological Consequences of Severe Accidents; Radiological Impacts; Radiological Releases; Release of Radioactive Materials in Effluents; River Water Diversion (Cumulative Impacts); Safe Shutdown Earthquake (Intensity, Resulting Vibratory Ground Motion); Seismic Design; Seismic Evaluation of Limited Work Authorization Activities; Severe Accident Mitigation Alternatives; Severe Accident Mitigation Design Alternatives; Site Hydrology; Site Redress; Site Subsurface Characteristics; Surface Water Impacts; Technical Support Center.

LBP-09-20 DETROIT EDISON COMPANY (Fermi Power Plant Independent Spent Fuel Storage Installation), Docket No. 72-71-EA (ASLBP No. 09-888-03-EA-BD01); LICENSE MODIFICATION; August 21, 2009; MEMORANDUM AND ORDER (Ruling on Standing and Contention Admissibility)

A For an order issued under 10 C.F.R. § 2.202, the time for filing a hearing request runs from the date of the order, not the date of publication of the order in the *Federal Register*.

B Publication of notice of the opportunity to request a hearing in the *Federal Register* will generally be sufficient to provide constructive notice to aggrieved persons, even if they lack actual notice.

C A provision of the Federal Register Act, 44 U.S.C. § 1508, requires that agency notices provide at least 15 days before the opportunity for a hearing is forfeited unless a shorter period is reasonable. This implies that, if the period between publication of the *Federal Register* notice and the date fixed for termination of the opportunity to be heard is less than the minimum number of days required, then the notice is legally ineffective to provide constructive notice of the right to be heard.

D A hearing request is timely when the petitioner lacks both actual and constructive notice of its opportunity to request a hearing as of the deadline specified by the agency, and the petitioner files the hearing request promptly upon receipt of actual notice.

E Petitioners have shown good cause for their late filing where, due to the lack of constructive or actual notice before the filing deadline, they could not have filed within the time specified in the notice of opportunity for hearing, and they filed as soon as possible thereafter.

F A petitioner must always request a remedy that falls within the scope of the proceeding, as articulated in the notice of hearing. In *Bellotti v. NRC*, 725 F.2d 1380, 1381 (D.C. Cir. 1983), the court affirmed that the Commission holds the authority to define the scope of a proceeding, as opposed to a petitioner. Thus, where the notice of hearing limits the scope to whether this Order should be sustained, a petitioner's sole remedy is rescission of the order. A petitioner cannot obtain a hearing by simply suggesting that the order should be strengthened in some way. Rather, a petitioner must show that he would be better off in the absence of any order at all.

G In nonreactor cases, the Commission decides on a case-by-case basis whether the proximity presumption should apply, taking into account any obvious potential for offsite radiological consequences, as well as the nature of the proposed action and the significance of the radioactive source. We decline to adopt a proximity presumption where petitioners have not shown how the action at issue — a Commission order modifying an ISFSI license — creates any potential for offsite consequences.

LBP-09-21 SOUTH TEXAS PROJECT NUCLEAR OPERATING COMPANY (South Texas Project, Units 3 and 4), Docket Nos. 52-012-COL, 52-013-COL (ASLBP No. 09-885-08-COL-BD01); COMBINED LICENSE; August 27, 2009; MEMORANDUM AND ORDER (Ruling on Standing and Admissibility of Certain Contentions)

A This 10 C.F.R. Part 52 proceeding concerns the application of South Texas Project Nuclear Operating Co. (STP or the Applicant) to the Nuclear Regulatory Commission (NRC) for two combined operating licenses (COL) that would authorize STP to construct and to operate two new units employing the Advanced Boiling Water Reactor (ABWR) certified design on its South Texas site, located in Matagorda County, Texas. Ruling on a petition filed jointly by the three organizations — the Sustainable Energy and Economic Development Coalition (SEED), the South Texas Association for Responsible Energy, and Public Citizen (Petitioners) — seeking to intervene and to contest the STP Application, the Licensing Board concludes that, having established the requisite standing and proffering one admissible contention, Petitioners are admitted as parties to the proceeding. Additionally, the Licensing Board refrained from ruling on nine contentions and indicated it would issue a decision on the admissibility of those nine at a later date.

B A petitioner's participation in a licensing proceeding hinges on a demonstration of the requisite standing. The agency has established requirements for standing derived from section 189a of the Atomic

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- Energy Act of 1954 (AEA), which instructs the NRC to provide a hearing “upon the request of any person whose interest may be affected by the proceeding.”
- C The Commission’s implementing regulation, 10 C.F.R. § 2.309(a) and (d), directs a licensing board, in ruling on a request for a hearing, to consider (1) the nature of the petitioner’s right under the AEA or the National Environmental Policy Act (NEPA) to be made a party to the proceeding; (2) the nature and extent of the petitioner’s property, financial, or other interest in the proceeding; and (3) the possible effect of any decision or order that may be issued in the proceeding on the petitioner’s interest.
- D In cases involving the possible construction or operation of a nuclear power reactor, physical proximity to the proposed facility has been considered sufficient to establish the requisite standing elements. *See Florida Power & Light Co.* (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325, 329 (1989) (proximity presumption generally applies where a petitioner has physical proximity to a nuclear power plant within 50 miles).
- E For an organization to establish standing, it must show either organizational or representational standing.
- F Organizational standing requires the party to “demonstrate a palpable injury in fact to its organizational interests that is within the zone of interests protected by the AEA or NEPA.” *Hydro Resources, Inc.* (2929 Coors Road, Suite 101, Albuquerque, NM 87120), LBP-98-9, 47 NRC 261, 271 (1998), *rev’d on other grounds*, CLI-98-16, 48 NRC 119 (1998); *see also Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), ALAB-952, 33 NRC 521, 528-30 (1991).
- G Representational standing requires the organization (1) to demonstrate that the interest of at least one of its members will be harmed, (2) to identify that member by name and address, and (3) to show that the organization is authorized to request a hearing on behalf of that member. *See GPU Nuclear, Inc.* (Oyster Creek Nuclear Generating Station), CLI-00-6, 51 NRC 193, 202 (2000). The organization must show that the member has individual standing in order to assert representational standing on his or her behalf, and “the interests that the representative organization seeks to protect must be germane to its own purpose.” *Consumers Energy Co.* (Palisades Nuclear Plant), CLI-07-18, 65 NRC 399, 409 (2007).
- H The Commission has indicated that in evaluating a petitioner’s standing, we are to construe the petition in favor of the petitioner. *See Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Georgia), CLI-95-12, 42 NRC 111, 115 (1995).
- I Once establishing standing to intervene in the licensing process, petitioners will then be free to assert any contention, which, if proved, will afford them the relief they seek.
- J Admissible contentions are governed by 10 C.F.R. § 2.309(f)(1). Another Board recently summarized well the six criteria of 10 C.F.R. § 2.309(f)(1) that govern the admissibility of contentions as follows: (i) Specificity: Provide a specific statement of the issue of law or fact to be raised or controverted; (ii) Brief Explanation: Provide a brief explanation of the basis for the contention; (iii) Within Scope: Demonstrate that the issue raised in the contention is within the scope of the proceeding; (iv) Materiality: Demonstrate that the issue raised in the contention is material to the findings the NRC must make to support the action that is involved in the proceeding; (v) Concise Statement of Alleged Facts or Expert Opinion: Provide a concise statement of the alleged facts or expert opinions which support the requestor’s/petitioner’s position on the issue and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the requestor/petitioner intends to rely to support its position on the issue; and (vi) Genuine Dispute: Provide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact. This information must include references to specific portions of the application (including the applicant’s environmental report and safety report) that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner’s belief. *Progress Energy Florida, Inc.* (Levy County Nuclear Power Plant, Units 1 and 2), LBP-09-10, 70 NRC 51, 71-72 (2009).
- K Failure to comply with any of the 10 C.F.R. § 2.309(f)(1) requirements is grounds for dismissing a contention. *See Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 325 (1999); *Arizona Public Service Co.* (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), CLI-91-12, 34 NRC 143, 155-56 (1991).
- L The assertion that the Applicant might need to obtain a Part 72 license is irrelevant at this time, as a grant of the COL could be accompanied by grant of a Part 72 general license if the Applicant complies with certain conditions. *See* 10 C.F.R. § 72.210; *see also* 10 C.F.R. § 72.212(a)(2). The

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- Commission has determined that “the environmental impacts related to storage of spent fuel under part 72 have been generically evaluated under two previous rulemakings and the Commission’s waste confidence proceedings. Thus, these potential environmental impacts need not be reassessed.” *Storage of Spent Fuel in NRC-Approved Storage Casks at Power Reactor Sites*, 55 Fed. Reg. 29,181, 29,188 (1990).
- M In the context of NEPA, the NRC is obligated to study matters that may be far afield of its primary mission, including the environmental impacts related to the permits and licenses issued by other governmental agencies. 10 C.F.R. § 51.71(d) & n.3 and Part 51, Appendix A, § 5; *see also Natural Resources Defense Council, Inc. v. Morton*, 458 F.2d 827, 834-36 (D.C. Cir. 1972).
- N Whenever a contention of omission encompasses issues that are addressed completely in materials the Applicant subsequently files, the contention is rendered moot. *Duke Energy Corp. (McGuire Nuclear Station, Units 1 and 2, Catawba Nuclear Station, Units 1 and 2), CLI-02-28*, 56 NRC 373, 383 (2002).
- O Under 10 C.F.R. § 2.335(a), a licensing board may not admit any contention that challenges a Commission rule or regulation, unless a waiver is requested under 10 C.F.R. § 2.335(b).
- P The Commission is currently assessing the applicability of the Waste Confidence Rule to “all reactors” — both current and anticipated. *See* Waste Confidence Decision Update, 73 Fed. Reg. 59,551 (Oct. 9, 2008). As the Commission has stated “[i]t has long been agency policy that Licensing Boards ‘should not accept in individual license proceedings contentions which are (or are about to become) the subject of general rulemaking by the Commission.’” *Duke Energy Corp. (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11*, 49 NRC 328, 345 (1999).
- Q Mere statements of government officials are insufficient to overturn 10 C.F.R. § 51.23.
- R As the Commission has emphasized, the contention requirements were never intended to be turned into a “fortress to deny intervention.” *Oconee, CLI-99-11*, 49 NRC at 335 (citing *Philadelphia Electric Co. (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216*, 8 AEC 13, 21 (1974)). The NRC’s pleading rules require merely that a petitioner provide a simple nexus between the contention and the referenced factual or legal support. *See* 10 C.F.R. § 2.309(f)(1)(v). They require nothing more.
- S In addition to the Commission’s determination that there will be a national geologic repository available for the storage of high-level waste, 10 C.F.R. § 51.51, Table S-3 is definitive with respect to radioactivity releases from such a geologic repository.
- T Expert statements must contain sufficient support to demonstrate a genuine dispute on a material issue of fact or law in order to support admission of a contention. *See* 10 C.F.R. § 2.309(f)(1)(v), (vi).
- U The Commission has generically dealt with land use commitment and the environmental effects of the uranium fuel cycle by creating numerical values in Table S-3, and absent a waiver, petitioners cannot challenge the Commission’s determination.
- V Although NUREG-1555 is only a guidance document, this Board considers this guidance to provide sufficient indication to support contention admissibility where the subject discussions may be required in the ER.
- W To demonstrate that this contention is within the scope of this proceeding requires some minimal showing that the alternative is reasonable and feasible in the electrical area that the nuclear units are to serve. As explained in *Dominion Nuclear North Anna, LLC (Early Site Permit for North Anna ESP Site), LBP-07-9*, 65 NRC 539, 607 (2007): Federal courts now review the range of alternatives in an EIS under the “rule of reason.” *Westlands Water District v. U.S. Department of Interior*, 376 F.3d 853, 868 (9th Cir. 2004); *City of Bridgeton v. Federal Aviation Administration*, 212 F.3d 448, 458 (8th Cir. 2000). Under this rule, “the EIS need not consider an infinite range of alternatives, only reasonable or feasible ones.” *Westlands Water Dist.*, 376 F.3d at 868.
- X The subject decommissioning rules are designed “(1) to minimize the administrative effort of licensees and the Commission and (2) to provid[e] reasonable assurance that funds will be available to carry out decommissioning in a manner which protects public health and safety.” *Consolidated Edison Co. of New York (Indian Point, Units 1 and 2), CLI-01-19*, 54 NRC 109, 143 (2001) (citing Final Rule: “General Requirements for Decommissioning Nuclear Facilities,” 53 Fed. Reg. 24,018, 24,030 (June 27, 1988) (internal quotations omitted)). In furtherance of this objective, the Commission revised its decommissioning rules in 2007 to address the unique status of COLs — as the prior rules were too stringent upon applicants for both a construction and operating license, where they had yet to even break ground on the subject reactor. *See* Licenses, Certifications, and Approvals for Nuclear Power Plants, 72 Fed. Reg. 49,352, 49,406 (Aug. 28, 2007). The Commission specifically revised section 50.75(b)(4) as it applies to COLs under Part 52 because the requirements in place (decommissioning report and certification

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

of financial assurance at the application phase) were too stringent. *See* 72 Fed. Reg. at 49,406. Under the revised rule, the COL applicant must submit a decommissioning report containing a certification that the funding assurance will be provided no later than 30 days after the NRC publishes notice in the *Federal Register* of its scheduled date for initial fuel loading. *See* 10 C.F.R. § 52.103(a); *see also* 10 C.F.R. § 50.75(b)(1); 72 Fed. Reg. at 49,406.

Y As NRC guidance, *see* NUREG-1577, “Standard Review Plan on Power Reactor Licensee Financial Qualifications and Decommissioning Funding Assurance,” at 6 (Rev. 1) (Feb. 1999), and rules, 10 C.F.R. § 50.75(e)(1)(ii), suggest, an applicant or licensee is not obligated to choose prepayment, sinking fund, or some other funding assurance method to cover for the total estimated decommissioning cost.

Z As another Licensing Board explained: This Board does not decide energy policy, nor do we adjudicate the business wisdom of a proposed investment. Instead, at this stage, we are simply looking for some indication that Petitioners have identified and articulated some concrete allegation as to how or why the ER fails to satisfy some legal requirement (*e.g.*, Part 51), and some understanding as to what will actually be litigated at the evidentiary hearing. *Levy*, LBP-09-10, 70 NRC at 135.

LBP-09-22 PROGRESS ENERGY FLORIDA, INC. (Levy County Nuclear Power Plant, Units 1 and 2), Docket Nos. 52-029-COL, 52-030-COL (ASLBP No. 09-879-04-COL-BD01); COMBINED LICENSE; August 27, 2009; INITIAL SCHEDULING ORDER

LBP-09-23 AMERENUE (Callaway Plant, Unit 2), Docket No. 52-037-COL (ASLBP No. 09-884-07-COL-BD01); COMBINED LICENSE; August 28, 2009; MEMORANDUM AND ORDER (Approving Settlement Agreement and Terminating Contested Adjudicatory Proceeding)

A In this 10 C.F.R. Part 52 proceeding regarding the application of AmerenUE (AUE) for a combined license (COL) to authorize the construction and operation of an additional reactor at the existing Callaway Plant site, in ruling on a joint motion for approval of a settlement agreement filed by AUE, the NRC Staff, and the various Petitioners who seek to intervene to challenge the AUE COL application, finding the agreement is consistent with the content and form provisions of 10 C.F.R. § 2.338(g)-(h) and is in the public interest in accord with section 2.338(i), the Licensing Board grants the participants’ motion, approves the settlement agreement, and terminates the contested adjudicatory hearing in the proceeding.

B As is reflected in 10 C.F.R. § 2.107(a), when an applicant decides it no longer wishes to have the agency evaluate its application, the usual approach is for the applicant to request that the agency permit it to withdraw its licensing request. Such a termination would, of course, end all agency consideration of the matter, including any Staff technical review and any adjudicatory proceeding, either as to contested matters raised by any intervenors or any uncontested/mandatory hearing that might be required.

C In an instance in which a hearing notice has been issued, the withdrawal would be subject to “such terms as the presiding officer may prescribe.” 10 C.F.R. § 2.107(a).

D Whatever authority a licensing board might have to order the renoticing of a licensing proceeding pending before it, *see Rochester Gas & Electric Corp.* (R.E. Ginna Nuclear Plant, Unit 1), LBP-83-73, 18 NRC 1231, 1233 (1983), in an instance in which an adjudicatory proceeding has been terminated before a licensing board pursuant to a settlement agreement, the board loses its jurisdiction over, and thus its authority to act with respect to, that licensing action. *See Eastern Testing & Inspection, Inc.*, LBP-96-11, 43 NRC 279, 282 n.1 (1996).

E When a licensing board will have no remaining role in a COL proceeding once the contested hearing is terminated because the board is not empowered to conduct the mandatory hearing, if the previously terminated contested hearing is subsequently renoticed, a new licensing board would need to be established to preside over the renoticed litigation.

F The section 2.341(a)(2) sua sponte review process that applies to a licensing board determination approving a settlement agreement, *see* 10 C.F.R. § 2.338(i), affords the Commission the opportunity to correct any participant or Board misapprehensions regarding the items contemplated in the settlement agreement.

G A settlement agreement provision whereby the applicant agrees not to contest the standing of specified petitioners in any renoticed licensing proceeding would not bind a future licensing board to make any particular determination regarding whether any of those petitioners has established its standing, either as of right or as a matter of discretion in accord with 10 C.F.R. § 2.309(d)-(e). *See* 10 C.F.R. § 2.309(a), (d)(3) (in ruling on hearing request/intervention petition, licensing board will determine whether petitioner has interest affected by the proceeding); *id.* § 2.309(e) (in ruling on discretionary intervention request, licensing board will consider and balance enumerated factors weighing in favor of and against allowing

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

intervention); *see also Southern Nuclear Operating Co.* (Vogtle Electric Generating Plant, Units 3 and 4), LBP-09-3, 69 NRC 139, 149 (in assessing intervention petition, licensing board must determine whether standing elements are met even though there are no objections to petitioner's standing), *appeals denied*, CLI-09-16, 70 NRC 33 (2009).

H The form for a settlement in a contested proceeding conducted under 10 C.F.R. Part 2 is set forth in section 2.338(g), which states that it "must be in the form of a proposed settlement agreement, a consent order, and a motion for its entry that includes the reasons why it should be accepted." Also, the settlement must be signed by the consenting parties or their authorized representatives.

I Even though, as a potential 10 C.F.R. § 2.315(c) interested governmental entity rather than a potential party to the proceeding, a governmental entity would not have a formal role in the proceeding absent the admission of parties and contentions, such an entity nonetheless should be kept appropriately apprised of the other participants' settlement efforts. *See* Licensing Board Memorandum and Order (Postponing Initial Prehearing Conference and Setting Schedule for Submission of Settlement Agreement) (July 16, 2009) at 4 n.3 (citing *Pa'ina Hawaii, LLC*, CLI-06-18, 64 NRC 1, 7 (2006)) (unpublished).

J As to the content of a settlement agreement in a contested proceeding, what the agreement "must" contain is governed by 10 C.F.R. § 2.338(h), which specifies four items. An agreement that fulfills each of the elements in paragraph (h) must have provisions that include (1) an admission of all jurisdictional facts; (2) an express waiver of further procedural steps before the presiding officer, of any right to challenge the validity of any order entered into in accord with the agreement, and of all rights to seek judicial review or otherwise contest the validity of this consent order; (3) a statement that this consent order has the same force and effect as an order made after a full hearing; and (4) a statement that matters identified in the agreement, required to be adjudicated, have been resolved by the agreement and consent order.

K In accord with 10 C.F.R. § 2.338(i), when a notice of hearing has been issued by the Commission in a COL proceeding, the licensing board assigned to preside over the adjudication of any hearing petitions has jurisdiction to approve a settlement agreement relating to that contested hearing.

L In accord with 10 C.F.R. § 2.338(i), a settlement agreement must be approved as appropriate so as to be binding in the proceeding.

M A licensing board decision dismissing the contested adjudication relating to a COL application has no impact on the subsequent need to conduct a mandatory hearing relating to the application. Under current Commission policy, the Commission would preside over that uncontested adjudicatory proceeding. *See Southern Nuclear Operating Co.* (Early Site Permit for Vogtle ESP Site), CLI-07-24, 66 NRC 38, 38 & n.2 (2007).

LBP-09-24 DAVID GEISEN, Docket No. IA-05-052 (ASLBP No. 06-845-01-EA); ENFORCEMENT; August 28, 2009; INITIAL DECISION

A In this Initial Decision concerning the validity of an Enforcement Order brought by the NRC Staff against David Geisen, a former employee of the Davis-Besse Nuclear Power Station located in northwestern Ohio and operated by FirstEnergy Nuclear Operating Company ("FENOC" or "Licensee"), a majority of the Board concluded that the Staff failed to show by a preponderance of the evidence that Mr. Geisen engaged in the deliberate misrepresentation with which he was charged. Accordingly, the Board set aside the charges in the Enforcement Order as unsupported by the evidence. As a consequence, also set aside were the immediately effective sanctions the Enforcement Order imposed against Mr. Geisen, including the 5-year ban on his employment in the nuclear industry.

B A Licensing Board reviews a Staff Enforcement Order *de novo* and determines on the basis of the hearing record whether the charges are sustained and the sanction imposed is warranted. *Atlantic Research Corp.* (Alexandria, Virginia), ALAB-594, 11 NRC 841, 849 (1980); *Radiation Technology, Inc.* (Lake Denmark Road, Rockaway, New Jersey 07866), ALAB-567, 10 NRC 533, 536 (1979).

C The NRC Staff's role at a hearing in an enforcement proceeding is "akin to that of a prosecutor," and it has the burden to prove its allegations "by a preponderance of the reliable, probative, and substantial evidence." *Radiation Tech., Inc.*, ALAB-567, 10 NRC at 536-37; Revisions to Procedures to Issue Orders; Deliberate Misconduct by Unlicensed Persons, 56 Fed. Reg. 40,644, 40,673 (Aug. 15, 1991).

D To prevail, the Staff was called upon to demonstrate by a preponderance of the evidence that Mr. Geisen had actual knowledge of the information associated with his actions and that he deliberately acted contrary to that knowledge. 10 C.F.R. § 50.5(a)(2).

E Section 50.5(a)(2) states that an employee of a licensee may not "[d]eliberately submit to the NRC . . . information that [he] knows to be incomplete or inaccurate in some respect material to the NRC."

DIGESTS

ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

Deliberate misconduct within the meaning of that regulation refers to “an intentional act or omission” that the person “knows” would cause a licensee to be in violation of any rule. *See* 10 C.F.R. § 50.5(c)(1). In this regard, the Staff’s practice is to charge a person with deliberate misconduct only when that person is knowledgeable about information associated with his actions and willfully and deliberately acts in contradiction to that knowledge. Thus, careless disregard in the execution of one’s duties does not amount to deliberate misconduct or a violation of 10 C.F.R. § 50.5(a)(2). Therefore, as the Staff interprets the regulation, the element of “actual knowledge” must be present to sustain a charge of deliberate misconduct under the NRC’s regulations.

F An inquiry into an individual’s “actual knowledge is entirely factual, requiring examination of the record.” *Ziegler v. Connecticut General Life Insurance Co.*, 916 F.2d 548, 553 (9th Cir. 1990). Where, as is common in proceedings of this nature, the record may be devoid of direct evidence to establish knowledge (e.g., a defendant’s admission, or documents drafted by the defendant that include representations entirely inconsistent with what he had written elsewhere), the Staff may have to build its case upon circumstantial evidence alone. The issue then becomes the quality of circumstantial evidence sufficient to give rise to a finding that the person charged actually knew the information.

G Establishing a party’s actual knowledge requires showing more than that a party had a suspicion “that something was awry.” *Brock v. Nellis*, 809 F.2d 753, 755 (11th Cir. 1987). Thus, constructive knowledge (that is, knowledge of facts sufficient to prompt an inquiry which would have uncovered the misrepresentations) is not actual knowledge. *Gluck v. Unisys Corp.*, 960 F.2d 1168, 1176 (3d Cir. 1992); *see also Radiology Center, S.C. v. Stifel, Nicolaus & Co.*, 919 F.2d 1216, 1222-23 (7th Cir. 1990) (district court erred in using constructive knowledge because the law required actual knowledge).

H The evidence at the hearing confirmed the commonsense view that not every document, whether paper or electronic, processed by an individual gets the same level of attention. But the degree of attention paid to a document initially can later be a strong determinant of the extent to which a person can later recall the contents of, and therefore can be said to have “knowledge” of, that particular document.

I An individual’s later recall of the contents of any document will turn on several factors, including (1) the effort, or lack thereof, that the worker put into its creation or application; (2) the need, or lack thereof, for the worker to have responded to the document in the course of employment; and (3) the significance, or lack thereof, of the information in the document to those tasks assigned to the worker that are viewed as having higher priority or greater significance than others.

J If a person can be charged — as always, in *retrospect* — with knowledge of a *particular* sentence in a document he once saw, then — looked at *prospectively* (i.e., at the time the document first came to his attention) — he is subject to being later held accountable for *every* sentence in that document, and, for that matter, for every word in all the documents that ever came before him. For at the time he first examines a document, he has no inkling of what will later be viewed as a crucial fact that he will be held to have “known.” The overly simplistic view that “he saw it, so he knew it” is an analytical conundrum that cannot be the rule.

K Collateral estoppel is a form of issue preclusion that prevents “the relitigation of issues of law or fact which have been finally adjudicated by a tribunal of competent jurisdiction in a proceeding involving the same parties or their privies.” *Toledo Edison Co.* (Davis-Besse Nuclear Power Station, Units 1, 2, and 3), ALAB-378, 5 NRC 557, 561 (1977). As a general matter, collateral estoppel may be applied in administrative adjudicatory proceedings. *Id.* at 562-63.

L In order to apply collateral estoppel and to preclude the relitigation of an issue, four factors must be present: (1) the issue sought to be precluded must be the same as that involved in the prior action; (2) that issue must have been actually litigated; (3) it must have been determined by a valid and final judgment; and (4) the determination must have been essential to the prior judgment. *Houston Lighting and Power Co.* (South Texas Project, Units 1 and 2), LBP-79-27, 10 NRC 563, 566 (1979), *aff’d*, ALAB-575, 11 NRC 14 (1980).

M In applying collateral estoppel principles, the question is not whether the subsequent tribunal believes that the prior tribunal correctly decided the issue at hand; rather, if all factors of the doctrine are met, collateral estoppel comes into play. *Davis-Besse*, ALAB-378, 5 NRC at 563-64 & n.7; *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-02-20, 56 NRC 169, 173 (2002).

N Even where all of the factors are met, the application of collateral estoppel by the subsequent tribunal is to some degree a discretionary matter. *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 331 (1979).

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

Thus, Boards have some leeway to consider the existence of other considerations that could outweigh the jurisprudential reasons for applying the doctrine.

- O Examples of such considerations that can lead a Board to exercise its discretion not to apply collateral estoppel, as found in this proceeding, are: (1) the pendency of an appeal of the criminal court judgment upon which estoppel would be based; (2) the questions over the equivalence of the “knowledge” standard that governed the jury and the standard applicable in this administrative proceeding; and (3) the possibility that the jury verdict was internally inconsistent.
- P Ordinarily, the pendency of an appeal need not preclude reliance upon the decision being appealed to estop relitigation of the same matter in another forum. *Southern Pacific Communication Co. v. American Telephone & Telegraph Co.*, 740 F.2d 1011, 1018 (D.C. Cir. 1984). Under that generally useful view, the potentially duplicative and unnecessary litigation in the second forum does not take place while the appeal is pending, but if the appeal later proves successful — thus invalidating the original judgment upon which collateral estoppel had been based — then the litigation in the second forum is allowed to proceed. *Davis-Besse*, ALAB-378, 5 NRC at 563. There might be many circumstances in which such an efficient approach would be entirely workable, and acceptable to both parties, if the estoppel ruling covered the whole case and neither party was hurt by the ensuing trial delay. But that is not the only way to proceed, and where delay is already a problematic factor, it may clearly not be the way to proceed.
- Q “[C]are should be taken in dealing with judgments that are final, but still subject to direct review,” so as to avoid “the risks of denying relief on the basis of a judgment that is subsequently overturned.” *Martin v. Malhoyt*, 830 F.2d 237, 264 (D.C. Cir. 1987). To avoid those risks, a court may want to avoid the question by staying the case pending the appeal. *See* 18A Charles A. Wright et al., *Federal Practice and Procedure: Jurisdiction* 2d § 4433 (1981).
- R Where the impact of delay is a concern, the desirability of avoiding any further delay in reaching a final merits determination can be a key discretionary factor counseling nonreliance upon the collateral estoppel principle (even if that doctrine otherwise appeared applicable).
- S The complexity of the issues and facts underlying both the Staff’s Enforcement Order and the jury verdict in the criminal case raises at least a question as to whether the issues essential to the prior judgment are the same as those before us. Where a serious question exists as to whether the law regarding “knowledge” applied in a parallel criminal case was the same as the law governing a Board proceeding, the existence of that question may cause a Board to invoke its discretion not to preclude full litigation of the pending charges.
- T The “deliberate ignorance” theory is not embraced within the “deliberate misconduct” standard that governs NRC proceedings.
- U A Licensing Board is in no position, and has no authority, to express a direct opinion on the legitimacy of a jury verdict from a criminal trial; determining whether a conviction can stand is a matter for the appellate court with jurisdiction over the appeal. But even if possible deficiencies in the verdict are not of sufficient weight to warrant a reversal in the appellate court, the existence of such questions may nonetheless appear sufficiently colorable or weighty to provide a discretionary reason not to apply collateral estoppel principles to preclude litigation of the similar matter pending before a Board.
- V Given the extensive concern federal courts have exhibited over the legitimacy of the “deliberate ignorance” jury instruction, its use in a parallel criminal case — when it is not embraced by NRC regulations — makes the two proceedings sufficiently different that the ruling in the one cannot be binding in the other. And, even if application of collateral estoppel were permissible in these circumstances, it would not be required, and a Board may exercise its discretion not to apply it: to win on direct appeal, a litigant might need to show that the expanded instruction actually tainted the jury verdict, while he need raise before a Board only a legitimate concern that it did so.
- W With the jury in the parallel criminal case not having been asked to render a special verdict, the general verdict provides the Board insufficient guidance from which to determine whether the jury conviction was premised on actual knowledge or on deliberate ignorance.
- X The fact that the original judgment is subject to alternative interpretations provides reason for a Board to exercise its discretion not to apply collateral estoppel. For the Board to conduct a realistic and rational examination of the record in the criminal case to determine whether a reasonable jury could have grounded its verdict on any basis other than that asserted by the Staff as having been the controlling issue would require the Board to perform a thorough examination of the evidence underlying the Government’s case in the criminal trial. But performing such a duplicative examination is precisely what application of

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- collateral estoppel is intended to prevent. If a Board must reexamine the issue one way or another, it makes more sense to do it on the evidence presented to us than on the evidence presented elsewhere.
- Y The Staff brings the charges that frame our review of enforcement orders. Boards should not be in the position of upholding Staff enforcement orders on legal theories that (1) the Staff did not and does not embrace and (2) in any event do not fit the circumstances of the case before them.
- Z The nuclear regulatory system depends upon the agency being able to depend upon applicants and licensees, and their employees, not to submit information that they know to be false. For the decisions of the agency's dedicated regulators to be effective in protecting the public health and safety, there is no room for the submission of falsified information.
- AA The appropriateness of a 5-year ban may not depend upon a Board's upholding all of the several charges and then imposing a multiyear ban on a sort of "one year for each violation" approach. To the contrary, a single charge, if serious enough, could itself justify a 5-year ban.
- BB One of the key factors in establishing the length of a potential ban is whether the subject has taken responsibility for his actions and expressed the appropriate remorse. Just because an individual does not admit to his guilt does not necessarily mean that this factor should be weighed against him in setting the length of the employment ban. Neither should the continuing refusal to admit his guilt exacerbate the weight of this factor. Instead, if an individual engages in searching self-examination and in retrospect confirms an earlier wish that he had done far more to uncover the problems with the submissions to the NRC and to address the entire matter much more aggressively, those factors should be given weight. An agonizing admission of what the subject of an Enforcement Order "should have done" does not prove the deliberate misconduct charges against him; but what it does do is at least eliminate the negative aspects that might be assigned to "taking responsibility" and "expressing regret" factors — and to some degree turn them into positive attributes that count in his favor.
- CC Anyone who would willfully provide falsified information on a reactor safety matter should bear in mind that a 5-year ban may well be the result, both in light of its consistency with other enforcement measures taken through the years, and for its deterrent effect, advising other nuclear industry workers of the standards by which their own future conduct will be judged.
- DD There is a need to ensure that those who by their conduct have shown they cannot be trusted to operate a nuclear power plant are removed from a position in which they can harm the public health and safety. There will be instances in which such steps must be taken immediately. But this type of immediately effective deprivation of the legally acknowledged right to pursue one's livelihood should not be imposed without the Staff having substantial reason to do so and explaining its reasons in advance and in some detail.
- EE The agency's procedural regulations provide two measures that might be seen as alleviating the risk that an immediately effective order will be set aside after it has already had its adverse impact. The first is the chance to challenge the immediate effectiveness; the second is the promise of an expedited hearing. 10 C.F.R. § 2.202(c)(1) and (c)(2)(i).
- LBP-09-25 SOUTH TEXAS PROJECT NUCLEAR OPERATING COMPANY (South Texas Project, Units 3 and 4), Docket Nos. 52-012-COL, 52-013-COL (ASLBP No. 09-885-08-COL-BD01); COMBINED LICENSE; September 29, 2009; MEMORANDUM AND ORDER (Ruling on Admissibility of Contentions 8-16)
- A This 10 C.F.R. Part 52 proceeding concerns the application of South Texas Project Nuclear Operating Co. (STP or the Applicant) which has applied to the Nuclear Regulatory Commission (NRC) for two combined operating licenses (COL) under 10 C.F.R. Part 52 that would authorize STP to construct and to operate two new units employing the Advanced Boiling Water Reactor (ABWR) certified design on its South Texas site, located in Matagorda County, Texas. Having previously ruled on a petition filed jointly by Petitioners, in LBP-09-21, and having found standing on behalf of Petitioners and one admissible contention, the Licensing Board now rules on the remaining contentions. Of the remaining nine contentions, the Licensing Board finds that four are admissible.
- B The NRC's pleading rules require merely that a petitioner provide a simple nexus between the contention and the referenced factual or legal support. *See* 10 C.F.R. § 2.309(f)(1)(v). They require nothing more.
- C A fully adequate ER is a prerequisite to issuance of a COL. *See* 10 C.F.R. § 51.45(b) ("The environmental report shall . . . discuss the following considerations: (1) The impact of the proposed action on the environment. Impacts shall be discussed in proportion to their significance").

DIGESTS

ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- D Section 1371(c)(2) of 33 U.S.C. provides that “[n]othing in the National Environmental Policy Act of 1969 (83 Stat. 852) shall be deemed to . . . authorize any Federal agency . . . to review any effluent limitation or other requirement established pursuant to [the Clean Water Act] . . . ; or . . . authorize any such agency to impose any effluent limitation other than” those set by the Environmental Protection Agency or a state agency that has been delegated such authority — which here means the TCEQ. This is a clear federal prohibition on the NRC regulating effluent discharges subject to TPDES permit limits or mandating that TCEQ adopt discharge limitations different than those TCEQ deems appropriate.
- E Even if this contention concerned subject matter regulated by another governmental agency, such as TCEQ, the issue before us is whether the ER must analyze the environmental impacts of unregulated seepage from the MCR into adjacent groundwater. Section 51.71(d) n.3 and Part 51, Appendix A, § 5, of 10 C.F.R. mandate that the NRC Staff address such matters in its EIS, *see also Natural Resources Defense Council, Inc. v. Morton*, 458 F.2d 827, 834-36 (D.C. Cir. 1972); *Progress Energy Florida, Inc.* (Levy County Nuclear Power Plant, Units 1 and 2), 70 NRC 51, 86 (2009), and concomitantly, that Applicant address such potentially adverse environmental effects in its ER, *cf.* 10 C.F.R. §§ 51.45(b)(2), 51.41, and 51.45(b)(3).
- F The law has been clear for some time that “the scope of an adjudicatory hearing is specified by the Notice of Hearing.” *PPL Bell Bend, LLC* (Bell Bend Nuclear Power Plant), LBP-09-18, 70 NRC 385, 431 (2009) (citing *Public Service Co. of Indiana* (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-316, 3 NRC 167, 170-71 (1976)). *See also Florida Power & Light Co.* (St. Lucie Nuclear Power Plant, Unit 1), LBP 88-10A, 27 NRC 452, 463 (1988) (citing *Commonwealth Edison Co.* (Zion Station, Units 1 and 2), ALAB-616, 12 NRC 419, 426 (1980) (“the scope of the contention is bounded by the scope of the notice of hearing”). Here, the Notice of Hearing establishes that the permissible scope of the hearing is confined solely to the application. *See* [STP], Notice of Order, Hearing, and Opportunity to Petition for Leave to Intervene, 74 Fed. Reg. 7934 (Feb. 20, 2009). *See also U.S. Department of Energy* (High-Level Waste Repository), CLI-09-14, 69 NRC 580, 590 (2009).
- G Section 1371(c)(2) of 33 U.S.C. of the Clean Water Act expressly prohibits an agency such as the NRC from using NEPA to impose additional effluent limitations on Applicant’s wastewater discharges to surface waters. Section 1371(c)(2) does not affect the permissible reach of the NRC’s NEPA obligations with respect to discharges to groundwater. Section 1371(c)(2) provides that nothing in NEPA shall be deemed to “authorize any such agency to impose, as a condition precedent to the issuance of any license or permit, any effluent limitation other than any such limitation established pursuant to this chapter.” The reach of “this chapter” of the Clean Water Act is confined to navigable waters, which do not even encompass all surface waters. *Solid Waste Agency of Northern Cook County v. United States Army Corps of Engineers*, 531 U.S. 159 (2001). Certainly, the Clean Water Act does not authorize regulation of discharges to groundwater. *Exxon Corp. v. Train*, 554 F.2d 1310 (5th Cir. 1977). This is the case even if such groundwater is adjacent to navigable water. *See San Francisco Baykeeper v. Cargill Salt Division*, 481 F.3d 700, 709 (9th Cir. 2009).
- H The word “material” appears in two separate places in the NRC pleading requirements. One requires a petitioner to demonstrate that the issue raised is material to the findings the NRC must make to support the action that is involved in the proceeding. The second requires a petitioner to provide sufficient information to show that a genuine dispute exists on a material issue of law or fact. This second requirement is not a second hurdle of materiality a petitioner must meet, but rather reiterates that a petitioner must demonstrate that its dispute is “material” under the first requirement. Thus, a contention is admissible if it raises a genuine dispute that is material to the findings the NRC must make to support the action involved. 10 C.F.R. § 2.309(f)(1)(iv).
- I Litigation over the term “genuine” is not easy to find, but a dispute that is not genuine would be one that would be contrived, and hence not justiciable. “[A] justiciable controversy must involve adverse parties representing a true clash of interests. The questions raised must be ‘presented in an adversary context and in a form historically viewed as capable of resolution through the judicial process.’” *Hydro Resources, Inc.* (P.O. Box 777, Crownpoint, New Mexico 87313), LBP-05-17, 62 NRC 77, 91 (2005) (quoting *Flast v. Cohen*, 392 U.S. 83, 95 (1968)).
- J NEPA does not command one outcome over another; it merely requires that the proposed action and alternatives to such proposed action be examined. *See Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989) (“NEPA itself does not mandate particular results, but simply prescribes the necessary process”). It is important to keep in mind that “10 C.F.R. § 2.309(f)(2) recognizes that, when

DIGESTS

ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

NRC issues the EIS, petitioners have the opportunity to file a second wave of environmental contentions. Such new contentions focus on the adequacy of the NRC Staff's EIS (or EA) under NEPA." *Levy County*, LBP-09-10, 69 NRC at 88.

LBP-09-26 TENNESSEE VALLEY AUTHORITY (Watts Bar Nuclear Plant, Unit 2), Docket No. 50-391-OL (ASLBP No. 09-893-01-OL-BD01); OPERATING LICENSE; November 19, 2009; MEMORANDUM AND ORDER (Granting Petition to Intervene)

A In this proceeding arising from the license application of the Tennessee Valley Authority (TVA or Applicant) to operate a second nuclear power reactor at the Watts Bar Nuclear Plant (WBN Unit 2), the Licensing Board — ruling on a petition to intervene jointly filed by five organizations — concludes that one petitioner which has received an extension of time within which to file a petition to intervene demonstrated standing, filed a timely petition to intervene, and proffered admissible contentions, and was admitted as a party to the proceeding; and that the other four petitioners did not file timely petitions and did not demonstrate that their late intervention should be permitted.

B Pursuant to 10 C.F.R. § 2.309(d)(ii)-(iv), a petitioner seeking to establish standing to intervene in an NRC proceeding must provide information in the petition including (1) the nature of the petitioner's right to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any decision or order that might be issued in the proceeding on the petitioner's interest.

C To demonstrate standing, an organization seeking to intervene in a proceeding must allege that the challenged action will cause a cognizable injury to the organization's interests or to the interests of one or more of its members.

D If an organization seeks to intervene as a representative of its members, it must identify at least one member by name and address, show that member would have standing in his or her own right, and demonstrate that the member has authorized the organization to intervene on his or her behalf.

E In the context of an operating license proceeding the NRC applies a proximity presumption, under which a petitioner who lives within 50 miles of a nuclear power reactor is presumed to have standing without the need specifically to plead injury, causation, and redressability.

F Pursuant to the 10 C.F.R. Part 2 regulations, a licensing board may consider contentions submitted after the initial 60-day filing deadline under two sets of circumstances. Section 2.309(f)(2) allows contentions to be filed after the initial 60-day deadline if the petitioner shows that: "(i) The information upon which the amended or new contention is based was not previously available; (ii) The information upon which the amended or new contention is based is materially different than information previously available; and (iii) The amended or new contention has been submitted in a timely fashion based on the availability of the subsequent information." Otherwise, pursuant to 10 C.F.R. § 2.309(c), petitions and contentions filed after the initial 60-day deadline are admissible only upon a balancing of the following factors: "(i) Good cause, if any, for the failure to file on time; (ii) The nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (iii) The nature and extent of the requestor's/petitioner's property, financial or other interest in the proceeding; (iv) The possible effect of any order that may be entered in the proceeding on the requestor's/petitioner's interest; (v) The availability of other means whereby the requestor's/petitioner's interest will be protected; (vi) The extent to which the requestor's/petitioner's interests will be represented by existing parties; (vii) The extent to which the requestor's/petitioner's participation will broaden the issues or delay the proceeding; and (viii) The extent to which the requestor's/petitioner's participation may reasonably be expected to assist in developing a sound record."

G Of the 10 C.F.R. § 2.309(c)(1) factors, good cause for the failure to file on time is the most important. Absent good cause, a petitioner's demonstration on the other factors must be "compelling."

H Where petitioners failed to file on time or seek an extension because they had not yet decided whether to seek to intervene, such indecision does not constitute good cause.

I For a contention to be admissible, under 10 C.F.R. § 2.309(f)(1), it must (i) provide a specific statement of the legal or factual issue sought to be raised; (ii) provide a brief explanation of the basis for the contention; (iii) demonstrate that the issue raised is within the scope of the proceeding; (iv) demonstrate that the issue raised is material to the findings the NRC must make to support the action that is involved in the proceeding; (v) provide a concise statement of the alleged facts or expert opinions, including references to specific sources and documents that support the petitioner's position and upon which the petitioner intends to rely at hearing; and (vi) provide sufficient information to show that a genuine dispute exists

DIGESTS

ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- with regard to a material issue of law or fact, including references to specific portions of the application that the petitioner disputes or, where the application is alleged to be deficient, the identification of such deficiencies and supporting reasons for this belief.
- J A petitioner must provide some sort of minimal basis indicating the potential validity of the contention.
- K Because the reach of a contention necessarily hinges upon its terms and its stated bases, the brief explanation helps define the scope of the contention.
- L The scope of a proceeding is defined in the Commission's initial hearing notice and order referring the proceeding to the Licensing Board. Contentions that fall outside the scope of the proceeding must be rejected.
- M In order to be admissible, a contention must assert an issue of law or fact that is material to the findings the NRC must make to support the action that is involved in the proceeding. In other words, the petitioner must show that the subject matter of the contention could impact the grant or denial of the license application at issue in the proceeding.
- N "Materiality" requires a showing that the alleged error or omission is of possible significance to the result of the proceeding, i.e., that some significant link exists between the claimed deficiency and either the health and safety of the public, or the environment.
- O It is the petitioner's obligation to present the factual and expert support for its contention. Failure to do so requires that the contention be rejected. Mere notice pleading is insufficient. A petitioner's issue will be ruled inadmissible if the petitioner has offered no tangible information, no experts, no substantive affidavits, but instead only bare assertions and speculation. Likewise, providing any material or document as the foundation for a contention, without setting forth an explanation of its significance, is inadequate to support the admission of a contention.
- P If a petitioner neglects to provide the requisite support for its contentions, the Board should not make assumptions of fact that favor the petitioner or supply information that is lacking.
- Q Any supporting material provided by a petitioner, including those portions of the material that are not relied upon, is subject to Board scrutiny.
- R Determining whether the contention is adequately supported by a concise allegation of the facts or expert opinion is not a hearing on the merits. The petitioner does not have to prove its contention at the admissibility stage. The contention admissibility threshold is also less than is required at the summary disposition stage. Nevertheless, while a Board may appropriately view petitioners' support for its contention in a light that is favorable to the petitioner, a petitioner must provide some support for his or her contention, in the form of either facts or expert testimony.
- S A contention must show that a genuine dispute exists on a material issue of law or fact with regard to the license application in question, challenge and identify either specific portions of, or alleged omissions from, the application, and provide the supporting reasons for each dispute. Any contention that fails to directly controvert the application, or that mistakenly asserts that the application does not address a relevant issue, may be dismissed.
- T With limited exceptions no rule or regulation of the Commission is subject to attack in any adjudicatory proceeding. Thus, a contention that attacks applicable statutory requirements or represents a challenge to the basic structure of the Commission's regulatory process must be rejected. Similarly, the NRC's adjudicatory process is not the proper venue for the evaluation of a petitioner's own view regarding the direction that regulatory policy should take.
- U The requirements of NEPA and, by extension, the NRC's regulations implementing NEPA (10 C.F.R. Part 51) are subject to a rule of reason, and only reasonably foreseeable environmental impacts must be addressed.
- V Section 51.53(b) of 10 C.F.R. establishes the requirements for an applicant's submission of environmental information at the operating license stage. Pursuant to this regulation, the applicant must submit a document denominated as the "Supplement to Applicant's Environmental Report — Operating License Stage." In this document "the applicant shall discuss the same matters described in §§ 51.45, 51.51, and 51.52 [which would have been initially discussed in the ER at the construction permit stage], but only to the extent that they differ from those discussed or reflect new information . . ." The clear intent of this provision is to avoid duplication and to highlight new information. However, this regulation specifies limitations on this general requirement. It goes on to state that: "No discussion of need for power, or of alternative energy sources . . . is required in this report [the Supplement to Applicant's Environmental

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- Report — Operating License Stage].” Since an OL applicant is thus not obligated to include any discussion of the need for power or of alternative energy sources in its application for an operating license, a challenge to the adequacy of the applicant’s discussion of these issues is not within the scope of the proceeding.
- W In order for the Board to allow a petitioner to amend a contention, the petitioner must demonstrate that the information upon which the amended contention is based was not previously available, is materially different from information previously available, and that the amended contention has been submitted in a timely fashion.
- X The standard for whether information is new is whether the information was available to the public, not whether the petitioner has recently become aware of its availability.
- Y At the contention admissibility stage of the proceedings, the Board admits “contentions,” not “bases.”
- LBP-09-27 VIRGINIA ELECTRIC AND POWER COMPANY d/b/a DOMINION VIRGINIA POWER and OLD DOMINION ELECTRIC COOPERATIVE (North Anna Power Station, Unit 3), Docket No. 52-017-COL (ASLBP No. 08-863-01-COL); COMBINED LICENSE; November 25, 2009; MEMORANDUM AND ORDER (Admitting Contention 10 in Part)
- A In this Combined License Proceeding, Intervenor filed a new contention challenging the Applicant’s new plan for the onsite storage of low-level radioactive waste. The Licensing Board ruled that the new contention was timely and admitted it in part.
- B Several Licensing Boards have recognized a dichotomy between “new” contentions filed under section 2.309(f)(2) and “nontimely” contentions filed under 10 C.F.R. § 2.309(c), based on both the regulatory text and the apparent absurdity of requiring intervenors with contentions rooted in new material information (“new” contentions) to make the same showing as intervenors who have simply delayed filing their contentions until after expiration of the regulatory deadline (“nontimely” contentions). Simply put, “[i]f a contention satisfies the timeliness requirement of 10 C.F.R. § 2.309(f)(2)(iii), then, by definition, it is *not* subject to 10 C.F.R. § 2.309(c) which specifically applies to ‘nontimely filings.’” *Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), LBP-06-14, 63 NRC 568, 573 n.14 (2006) (emphasis in original).
- C The adequacy of a COL applicant’s plan for the storage and management of LLRW is a material issue in a COL proceeding.
- D Part 61 does not apply to onsite facilities where a licensee plans on storing its own low-level radioactive waste prior to eventual disposal offsite; it only governs land disposal facilities receiving waste from others.
- E Thirty days is a reasonable limit for fulfilling the timing requirement of 10 C.F.R. § 2.309(f)(2)(iii) because of “the significant effort involved in (a) identifying new information, (b) assembling the required expertise, and then (c) drafting a contention that satisfies 10 C.F.R. § 2.309(f)(1).” *Vermont Yankee*, LBP-06-14, 63 NRC at 574.
- F To satisfy 10 C.F.R. § 2.309(f)(1)(iv)’s materiality requirements for contentions of omission, there must be some significant link between the claimed deficiency and the agency’s ultimate determination whether the license applicant will adequately protect the health and safety of the public and the environment.
- G The proponent of a contention is not required to prove its case on the merits at the contention admissibility stage.
- H Section 2.309(f)(1)(vi) of 10 C.F.R. requires that the proponent of a contention identify the specific parts of the COLA it disputes and show that resolution of those disputes is material to the licensing decision.
- I An admissible contention may not be based solely on a general allegation that an applicant’s Safety Analysis Report contains an unsubstantiated claim of conservatism. Such allegations, “without specific ties to NRC regulatory requirements or to safety in general . . . do not provide adequate support demonstrating the existence of a genuine dispute of fact or law with respect to the . . . application.” *U.S. Department of Energy* (High-Level Waste Repository), CLI-09-14, 69 NRC 580, 588 (2009).
- J If an applicant has underestimated radioactive waste volumes, this raises the question whether the applicant will “control[] and limit[] radioactive effluents and radiation exposures within the limits set forth in [10 C.F.R. Part 20].” 10 C.F.R. § 52.79(a)(3).
- K The Commission has recently held that 10 C.F.R. § 52.79(a)(3) “sets no quantity or time restrictions relative to onsite storage of . . . [low level radioactive] waste” in an applicant’s Final Safety Analysis Report. *Southern Nuclear Operating Co.* (Vogtle Electric Generating Plant, Units 3 and 4), CLI-09-16, 69

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

NRC 33, 36 (2009). Rather, the information required in this part of the application is largely dependent on the individual applicant's plans. *Id.* at 37.

- LBP-09-28 WESTINGHOUSE ELECTRIC COMPANY, LLC (Hematite Decommissioning Project), Docket No. 70-36-MLA (ASLBP No. 10-894-01-MLA-BD01); MATERIALS LICENSE AMENDMENT; December 3, 2009; MEMORANDUM AND ORDER (Ruling on Request for Hearing)
- A In this proceeding regarding the application by Westinghouse Electric Company for authorization to dispose of low-activity radioactive waste at the U.S. Ecology Inc. site near Grand View, Idaho, the Licensing Board rules that Citizens for a Clean Idaho, Inc. (CCI) did not demonstrate standing to participate as a party. Therefore, the Board denies CCI's request for hearing.
- B Anyone who wishes to request a hearing concerning a proposed licensing action must (1) establish standing and (2) proffer at least one admissible contention.
- C Pursuant to 10 C.F.R. § 2.309(d), a request for hearing must state: (1) the name, address, and telephone number of the requestor; (2) the nature of the requestor's right under the governing statutes to be made a party to the proceeding; (3) the nature and extent of the requestor's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order that may be issued in the proceeding on the requestor's interest.
- D The Commission applies judicial concepts of standing, requiring anyone who requests a hearing to show that (1) it has suffered or will suffer a distinct and palpable harm that constitutes injury-in-fact within the zone of interests arguably protected by the governing statutes; (2) the injury is fairly traceable to the challenged action; and (3) the injury is likely to be redressed by a favorable decision.
- E The requisite injury for standing may be either actual or threatened, but must nonetheless be concrete and particularized, not conjectural, or hypothetical.
- F Although the Commission recognizes a 50-mile proximity presumption to establish standing in nuclear power reactor construction and operating license proceedings, in other cases, licensing boards must address standing on a case-by-case basis, taking into account the nature of the proposed action and the significance of the radioactive source.
- G Organizations may demonstrate standing in either an organizational or representational capacity.
- H For organizational standing, an organization must, in its own right, satisfy the same requirements of injury, causation, and redressability as an individual.
- I For representational standing, an organization must (1) demonstrate that the licensing action in issue will affect at least one of its members; (2) identify that member by name and address; (3) show that it is authorized by that member to request a hearing on his or her behalf; (4) demonstrate that the member would qualify for standing in his or her own right; (5) show that the interests the organization seeks to protect are germane to its own purpose; and (6) show that neither the proffered contentions nor the requested relief would require an individual member to participate in the proceeding.
- J To state a sufficiently concrete and particularized injury-in-fact, a potential party must not merely repeat the language of 10 C.F.R. § 2.309(d), but rather must explain how the action in issue would adversely affect its interests. Absent an obvious potential for harm, it is a requestor's burden to show how harm will or may occur.
- LBP-09-29 U.S. DEPARTMENT OF ENERGY (High-Level Waste Repository), Docket No. 63-001-HLW (ASLBP No. 09-892-HLW-CAB04); CONSTRUCTION AUTHORIZATION; December 9, 2009; MEMORANDUM AND ORDER (Addressing Contentions Filed After Initial Petitions)
- A A legal issue contention need not satisfy all the contention admissibility criteria of 10 C.F.R. § 2.309(f)(1).
- B A legal issue contention is not required to provide "facts or expert opinions," as called for in section 2.309(f)(1)(v).
- LBP-09-30 PROGRESS ENERGY FLORIDA, INC. (Levy County Nuclear Power Plant, Units 1 and 2), Docket Nos. 52-029-COL, 52-030-COL (ASLBP No. 09-879-04-COL-BD01); COMBINED LICENSE; December 29, 2009; ORDER (Denying Motion to Compel Disclosure of Bases for Expert Opinion)
- A The Board denies Progress Energy Florida's Motion to compel disclosure of bases for expert opinions filed by Joint Intervenors.
- B 10 C.F.R. § 2.336(a)(1) requires only the disclosure of the written "analysis or other authority," if any, that is extant and reasonably available to the party when the mandatory disclosure is made.
- C 10 C.F.R. § 2.336(a)(1) creates no substantive criteria for the quality of the expert "analysis or other authority" that must be disclosed.

DIGESTS

ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- D 10 C.F.R. § 2.336(a) simply governs the mandatory exchange of certain discovery information and documents and imposes no *evidentiary* hurdle or “burden of going forward” with the *evidence* that must be met in the mandatory disclosure.
- E The phrase “claims and contentions” as used in 10 C.F.R. § 2.336(a)(1) includes any assertion, statement, or argument, positive or negative, in support of an intervenor’s or applicant’s position, that is advanced by any party. It is not limited to the formal “contentions” that meet the criteria of 10 C.F.R. § 2.309(f)(1).
- LBP-10-1 SOUTHERN NUCLEAR OPERATING COMPANY (Vogtle Electric Generating Plant, Units 3 and 4), Docket Nos. 52-025-COL, 52-026-COL (ASLBP No. 09-873-01-COL-BD01); COMBINED LICENSE; January 8, 2010; MEMORANDUM AND ORDER (Ruling on Petition to Intervene)
- A In this 10 C.F.R. Part 52 proceeding regarding the application of Southern Nuclear Operating Company (SNC) for a combined license (COL) to construct and operate two new nuclear reactors at its existing Vogtle Electric Generating Plant (VEGP) site, ruling on a petition filed jointly by five individuals seeking to intervene to contest the SNC COL application, the Licensing Board concludes that although one of the five petitioners has established the requisite standing, because they have failed to proffer one admissible contention, their hearing request must be denied.
- B In determining whether an individual or organization is an “interested person” under section 189a of the Atomic Energy Act (AEA) of 1954, 42 U.S.C. § 2239(a)(1)(A), that has standing “as of right” such that it can be granted party status in a proceeding in accord with 10 C.F.R. § 2.309(d), the Commission applies contemporaneous judicial standing concepts that require a participant to establish that (1) it has suffered or will suffer a distinct and palpable injury that constitutes injury-in-fact within the zones of interests arguably protected by the governing statutes (e.g., the AEA, 42 U.S.C. § 2011 et seq., the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. § 4321 et seq.); (2) the injury is fairly traceable to the challenged action; and (3) the injury is likely to be redressed by a favorable decision. *See Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-96-1, 43 NRC 1, 6 (1996).
- C In proceedings involving the possible construction or operation of a nuclear power reactor, proximity to the proposed facility has been considered sufficient to establish standing. *See PPL Bell Bend, LLC* (Bell Bend Nuclear Power Plant), CLI-10-7, 71 NRC 133, 138 (2010); *Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-09-20, 70 NRC 911, 915-16 (2009).
- D The proximity presumption applies when petitioners live within 50 miles of the proposed facility or when they have “frequent contacts” with the area affected by the proposed facility. *Calvert Cliffs, CLI-09-20, 70 NRC at 915-16; see Bell Bend, CLI-10-7, 71 NRC at 138.*
- E To establish the requisite proximity, a petitioner must clearly indicate where he lives and/or what contact he has with the site. *See Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-91-2, 33 NRC 42, 47 (1991) (no standing when petitioner alleged proximity but failed to state his physical address or elaborate on the extent of his activities in the area).
- F To establish standing based on “frequent contacts,” the petitioner must show that it “‘frequently engages in *substantial* business and related activities in the vicinity of the facility,’ engages in ‘normal, *everyday* activities’ in the vicinity, has ‘*regular*’ and ‘*frequent*’ contacts’ in an area near a licensed facility, or otherwise has visits of a ‘length’ and ‘nature’ showing ‘an ongoing connection and presence,’” but standing is not presumed “where contact has been limited to ‘*mere occasional trips*’ to areas located close to reactors.” *Consumers Energy Co.* (Big Rock Point Independent Spent Fuel Storage Installation), CLI-07-21, 65 NRC 519, 523-24 (2007) (footnotes omitted); *see also PPL Bell Bend, LLC* (Bell Bend Nuclear Power Plant), LBP-09-18, 70 NRC 385, 402 (2009) (no proximity-based standing when petitioner failed to supply “more specific information regarding the frequency, nature, and length of his contacts” within the proximity zone), *aff’d*, CLI-10-7, 71 NRC at 139; *Tennessee Valley Authority* (Sequoyah Nuclear Plant, Units 1 and 2; Watts Bar Nuclear Plant, Unit 1), LBP-02-14, 56 NRC 15, 26 (2002) (no proximity-based standing when petitioner “demonstrate[d] only occasional contact with the zone of harm”).
- G Ultimately, it is the petitioner’s responsibility to “provide enough detail to allow the Board to distinguish a casual interest from a substantial one.” *Bell Bend, CLI-10-7, 71 NRC at 139.*
- H Regardless of whether there is a challenge to a petitioner’s standing, given the jurisdictional nature of standing under the AEA, a licensing board has an independent obligation to make a standing determination. *Cf. Summers v. Earth Island Institute*, 129 S. Ct. 1142, 1152 (2009) (court must make independent assessment of Article III standing claims).

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- I Petitioner's claim to have fished "regularly," does not necessarily convey the same meaning as the term "frequently" that is referenced in Commission standing cases. One who performs an act "regularly" does so "in a regular, orderly, . . . or methodical way," *Webster's Third New International Dictionary* 1913 (Philip B. Gove ed. in chief, 1976) (unabridged) (definition of "regularly"), while one who does something "frequently" does so "at frequent or short intervals," "frequent" being defined as "often or habitually," *id.* at 909 (definitions of "frequently" and "frequent"). Thus, an individual who fishes once a year, every year, might be considered to do so "regularly," but not necessarily "frequently."
- J Petitioners bear the burden of providing sufficient relevant, specific information, whether by good-faith estimate or otherwise, to establish the basis for their standing claims. *See Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 325 (1999) (intervenors who fail to provide specific information regarding proximity or frequency of contacts only complicate matters for themselves); *see also Bell Bend*, CLI-10-7, 71 NRC at 139 ("a petitioner's lack of specificity concerning the nature, extent, and duration of his contacts with the area surrounding the proposed site is a sufficient basis to reject a claim of standing"); *id.* at 140 (affirming licensing board finding that petitioner's claim that he "routinely pierces" 50-mile radius around reactor site is too vague to support standing).
- K While the nature of the activities undertaken within the affected area undoubtedly impacts the amount of detail that must be provided to establish whether the activity is sufficiently "frequent," *see Northern States Power Co.* (Pathfinder Atomic Plant), LBP-90-3, 31 NRC 40, 45 (1990) ("regular" commute that takes petitioner past plant entrance once or twice a week sufficient to establish standing), in describing a discretionary recreational activity such as fishing, providing more, rather than less, detail would generally be prudent.
- L The distinction between "frequently" and "regularly" might seem overly formalistic/legalistic, but it highlights the importance of making a more detailed factual showing (rather than relying on conclusory adjectives and adverbs) in situations in which a standing claim rests upon the nature of a petitioner's activities purportedly near to, or bearing some connection with, the reactor facility at issue. Without question, a large number of individuals who do not reside within a 50-mile radius of a reactor site may undertake a variety of activities (e.g., going to work or school, shopping, attending meetings or religious services, visiting friends and relatives) within that distance from the reactor site. The degree to which those activities are sufficient to afford standing in a reactor licensing proceeding, as a question that "will require the Board to weigh the information provided," *Bell Bend*, CLI-10-7, 71 NRC at 139, undoubtedly is a matter that benefits from more, rather than less, factual information.
- M A Licensing Board has responsibility to construe a hearing petition in a light most favorable to the petitioner. *See Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Georgia), CLI-95-12, 42 NRC 111, 115 (1995).
- N Even if a party seeking standing has some intent to return to an area, when such intentions are not supported by "concrete plans" or a "specification of when" future visits would take place, they do not support a finding of injury in the standing context. *Summers*, 129 S. Ct. at 1151 (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 564 (1992)).
- O NRC's regulations provide for the possibility of discretionary intervention in circumstances when one petitioner has standing as of right and has proffered at least one admissible contention, but other petitioners have not demonstrated their standing. *See* 10 C.F.R. § 2.309(e). If a petitioner did not request discretionary intervention in the event the petitioner is found to lack standing as of right, a licensing board need not consider affording such intervention status.
- P Under section 2.309(c), whether a "nontimely" petition and its associated contentions should be considered is based upon a balancing of eight factors: "(i) Good cause, if any, for the failure to file on time; (ii) The nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (iii) The nature and extent of the requestor's/petitioner's property, financial or other interest in the proceeding; (iv) The possible effect of any order that may be entered in the proceeding on the requestor's/petitioner's interest; (v) The availability of other means whereby the requestor's/petitioner's interest will be protected; (vi) The extent to which the requestor's/petitioner's interests will be represented by existing parties; (vii) The extent to which the requestor's/petitioner's participation will broaden the issues or delay the proceeding; and (viii) The extent to which the requestor's/petitioner's participation may reasonably be expected to assist in developing a sound record."
- Q Of the section 2.309(c) factors, the first factor regarding good cause for the failure to file timely is the most important element in that, absent a demonstration of good cause under this factor, a compelling

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- showing must be made on the other factors if a nontimely petition is to be granted or a nontimely contention is to be admitted. *See Commonwealth Edison Co.* (Braidwood Nuclear Power Station, Units 1 and 2), CLI-86-8, 23 NRC 241, 244 (1986). Moreover, among the remaining four nonstanding elements in this balance (i.e., factors (v) through (viii)), factors five and six generally are given less weight than factors seven and eight. *See id.* at 244-45.
- R Also potentially relevant to the admissibility of a hearing petition filed after the initial filing deadline is 10 C.F.R. § 2.309(f)(2), which provides: “The petitioner may amend those contentions or file new contentions [on issues arising under NEPA] if there are data or conclusions in the NRC draft or final environmental impact statement [(EIS)], environmental assessment [(EA)], or any supplements relating thereto, that differ significantly from the data or conclusions in the applicant’s documents. Otherwise, contentions may be amended or new contentions filed after the initial filing only with leave of the presiding officer upon a showing that — (i) The information upon which the amended or new contention is based was not previously available; (ii) The information upon which the amended or new contention is based is materially different than information previously available; and (iii) The amended or new contention has been submitted in a timely fashion based on the availability of the subsequent information.”
- S The initial, good cause factor under section 2.309(c)(1) favors a petitioner when, in accord with a previous licensing board directive, the petitioner has filed its petition within 30 days of what it has asserted is the trigger date for the new filing — that is, within 30 days of the availability of the document the petitioner contends contains new and significant information so as to form the basis for its contention.
- T If a petitioner is found to have standing, standing-related factors two through four of section 2.309(c)(1) favor the petitioner.
- U Although a petitioner also could participate in another federal agency’s comment process relating to a proposed environmental assessment that is the focus of a new contention and thus does have some alternative means for protecting its interests, for the purpose of factor five of section 2.309(c)(1) that process is not analogous to participation in an NRC adjudicatory proceeding and therefore does not weigh heavily against the petitioner’s intervention in the NRC proceeding.
- V With respect to factor six of section 2.309(c)(1), the presence of another admitted party to the proceeding, particularly when that party previously raised the issue that is the subject of the new contention, weighs against a petitioner.
- W Regarding factor seven of section 2.309(c)(1), although admitting the new contention would broaden the issues in dispute, in the early stage of the proceeding, this does not weigh heavily against a petitioner.
- X Relative to section 2.309(c)(1) factor eight, when a petitioner has filed an expert declaration with its petition, indicating that it can assist, through expert opinion, in the development of a sound record, this is a factor that weighs in favor of admission.
- Y When the Staff’s draft or final EIS regarding the COL application has not been issued so as to provide the petitioner with a basis for framing its contention, the licensing board must look to the three other factors specified in section 2.309(f)(2) in assessing the admissibility of a new NEPA-related issue statement.
- Z Under the first section 2.309(f)(2) element, when the particular draft EA prepared by another federal agency that is the focus of a new contention was not issued until recently, it was not available previously.
- AA Although the licensing board did not consider a draft EA prepared by another federal agency that is the focus of the new contention document to be “material” in the context of its assessment of the substantive admissibility of the issue statement, relative to the second factor under section 2.309(f)(2), the licensing board concludes that the potential difference in temporal coverage — as compared to a previous EA by that federal agency regarding the same subject matter — makes that federal agency’s later draft EA “materially different” from other information previously available.
- BB Materiality in the context of section 2.309(f)(2) differs from materiality in the context of section 2.309(f)(1). Whereas the former relates to the magnitude of the difference between previously available information and currently available information, the latter relates to the impact of the information on the proceeding at hand.
- CC Given an earlier licensing board directive that any new or amended contention should be submitted within 30 days of the occurrence or circumstance under which the contention arises, a petitioner’s hearing submission focusing on another agency’s draft EA that is filed within 30 days of issuance of the EA would be considered timely based on the public availability of the document.

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- DD A contention based on another agency's draft EA that does not apply to the time period in which proposed reactor units would be operational is not material to the findings the licensing board must make in the proceeding. *See* 10 C.F.R. § 2.309(f)(1)(iv).
- LBP-10-2 SOUTH TEXAS PROJECT NUCLEAR OPERATING COMPANY (South Texas Project, Units 3 and 4), Docket Nos. 52-012-COL, 52-013-COL (ASLBP No. 09-885-08-COL-BD01); COMBINED LICENSE; January 29, 2010; ORDER (Rulings on the Admissibility of New Contentions and on Intervenors' Challenge to Staff Denial of Documentary Access)
- A In this 10 C.F.R. Part 52 proceeding regarding the application of South Texas Project Nuclear Operating Company ("STP") for a combined license ("COL") to construct and operate two new nuclear units, using the Advanced Boiling Water Reactor certified design, at its site in Matagorda County, Texas, ruling on motions by Intervenors seeking (1) to admit seven new contentions into the contested portion of this proceeding that challenge the adequacy of STP's May 26, 2009 Mitigative Strategies Report; and (2) to obtain access to a Draft Interim Staff Guidance document that the NRC Staff had designated as containing Sensitive Unclassified Non-Safeguards Information ("SUNSI"), the Licensing Board (1) directs the NRC Staff to provide Intervenors with a copy of all non-SUNSI portions of the guidance document; (2) directs the NRC Staff to reevaluate Intervenors' request for access to the guidance document, using the standard for access to SUNSI in a licensing board proceeding articulated herein, and file a memorandum explaining its reevaluation; and (3) denies the motion to admit seven new contentions.
- B A participant in administrative litigation — having an even greater interest in obtaining access to SUNSI than does the general public — is entitled to obtain documents under standards no more restrictive than would be accorded the general public under FOIA.
- C FOIA provides, with nine enumerated exceptions, that each agency make copies of all records available to the public. 5 U.S.C. § 552(a)-(b). NRC regulations implement and repeat this FOIA obligation. *See* 10 C.F.R. §§ 9.15, 2.390. In addition, NRC regulations provide, with certain very limited exceptions, that "all hearings will be public." 10 C.F.R. § 2.328, and that the public is entitled to copies of the transcripts of all hearings, 10 C.F.R. § 2.327(c).
- D If it seeks to withhold a document from a party or the public, or to bar a party or member of the public from attending any adjudicatory proceeding before a Licensing Board, NRC Staff bears the burden of proving that the document or situation meets one of FOIA's specifically enumerated exceptions. *See* 10 C.F.R. §§ 2.325 and 2.390 (proponent of protective order shoulders burden of proof).
- E Even if a document contains information that is exempt from disclosure, FOIA mandates that "[a]ny reasonably segregable portion of the record shall be provided to any person requesting such record after deletion of the portions which are exempt." 5 U.S.C. § 552(b)(9).
- F For decades, the Commission has restricted public access to classified information and SGI. *See* 10 C.F.R. §§ 95.34, 73.21; 38 Fed. Reg. 35,430 (Dec. 28, 1973). These restrictions on the dissemination and handling of such materials have a clear statutory and regulatory foundation. *See* 10 C.F.R. § 9.19. Safeguards Information ("SGI") is an example of a FOIA exemption. Under FOIA, and the NRC regulations implementing FOIA, the duty to make all documents available does not apply to records "specifically exempted from disclosure by statute." 5 U.S.C. § 552(b)(3); 10 C.F.R. § 2.390(a)(3). SGI qualifies for this exemption because the Atomic Energy Act specifically exempts it from disclosure. 42 U.S.C. § 2167. The NRC has promulgated regulations implementing the FOIA exemption for SGI. *See* 10 C.F.R. § 73.21. Likewise, FOIA exempts classified information from disclosure, 5 U.S.C. § 552(b)(1), and NRC regulations implement this exemption. 10 C.F.R. § 2.390(a)(1); 10 C.F.R. Part 2, Subpart I; 10 C.F.R. Part 95.
- G The term "sensitive unclassified non-safeguards information" or SUNSI is apparently used only twice in the NRC regulations. First, the regulations authorize the Secretary of the Commission to establish procedures for obtaining access to SUNSI prior to granting intervention in a licensing proceeding. 10 C.F.R. § 2.307(c). Second, the regulations authorize interlocutory appeal to the Commission of certain rulings relating to SUNSI. 10 C.F.R. §§ 2.311(a)(3), 2.311(d)(2). But these regulations never define the term.
- H Although 10 C.F.R. § 2.390(d) never uses the term SUNSI, this regulation seems to fit NRC Staff's claim that SUNSI is "security-related," and it is our best lodestar as to the meaning of this term. Under this regulation, in order for a document to qualify as exempt from FOIA disclosure as "SUNSI" the document must: (1) qualify as commercial or financial information under 10 C.F.R. § 9.17(a)(4) (commonly referred to as "FOIA Exemption 4"); (2) constitute "correspondence and reports to or from NRC"; (3) contain

DIGESTS

ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

information or records concerning a licensee's or applicant's (i) physical protection of special nuclear material, (ii) classified matter protection, or (iii) material control and accounting program relating to special nuclear material; (4) not constitute Safeguards Information; and (5) not constitute classified information (National Security Information or Restricted Data).

I In conjunction with a licensing board's reevaluation of the NRC Staff's refusal to provide intervenors with access to a SUNSI document, a board may direct the Staff to segregate those paragraphs of the document that contain SUNSI from those that do not contain SUNSI. NRC regulations require that documents containing classified information or SGI be evaluated paragraph by paragraph, that those paragraphs containing classified information or SGI be redacted, and that the remaining paragraphs (not containing such sensitive material) be available for disclosure to the public. *See* 10 C.F.R. 95.37(f); NRC Safeguards Information Security Program Handbook 12.7 Part II (June 25, 2008) at 8-9.

J The implications of excessively broad claims of SUNSI in a licensing proceeding impact not just an intervenors' access to documents, but, as importantly, the public's access to the adjudicatory process.

K The public is normally to be afforded full access to all NRC proceedings involving the issuance of a license, and the extraordinary step of closure (e.g., to ensure that SUNSI is not disclosed to the public) should not be instituted unless a party can establish that closure is the only reasonable alternative available. Before a licensing board will close future proceedings, the party (or parties) seeking closure must demonstrate that the need to close the hearing outweighs the strong presumption that all licensing board proceedings will be open to the public.

L Anglo-American jurisprudence has long ensured that judicial proceedings will be open to the public. *Pennekamp v. Florida*, 328 U.S. 331, 361 (1946) (Frankfurter, J., concurring) ("Of course trials must be public and the public have a deep interest in trials"); *Craig v. Harney*, 331 U.S. 367, 374 (1947) ("A trial is a public event. What transpires in the court room is public property."); *see also In re Oliver*, 333 U.S. 257, 278 (1948); *Sheppard v. Maxwell*, 384 U.S. 333, 349 (1966) ("The principle that justice cannot survive behind walls of silence has long been reflected in the 'Anglo-American distrust for secret trials'" (citation omitted)). In a 1980 decision, *Richmond Newspapers v. Virginia*, 448 U.S. 555 (1980), the U.S. Supreme Court enunciated a constitutional basis for public access to courts, grounded in the First Amendment: "Free speech carries with it some freedom to listen." *Id.* at 576. The First Amendment requires public access not only to criminal proceedings, *id.*, but as well both to civil trials, *see, e.g., Gitto Global Corp. v. Worcester Telegram & Gazette Corp.*, 422 F.3d 1 (1st Cir. 2005), and to trial-type administrative proceedings, *see, e.g., Detroit Free Press v. Ashcroft*, 303 F.3d 681, 702 (6th Cir. 2002), such as a combined licensing proceeding.

M Public access to judicial proceedings is not absolute. Instead, *Richmond Newspapers* only creates a "presumption of openness." 448 U.S. at 573. To determine whether a tribunal should block public access to a judicial proceeding, *Richmond Newspapers* established a two-part "experience and logic" test. *See, e.g., North Jersey Media Group, Inc. v. Ashcroft*, 308 F.3d 198, 209-20 (3d Cir. 2002); *Detroit Free Press*, 303 F.3d at 703.

N Withholding from public access an entire document — just because it may contain some SUNSI information — is not only a misuse of the SUNSI designator, but fails the logic test of *Richmond Newspapers* by excluding the public from access to information that is not security-related.

O A wholesale closure of a licensing proceeding, effectively shutting out the public, cannot be justified under the *Richmond Newspapers* test as long as there is material, not properly designated as SUNSI, to which the public should have access. Under *Richmond Newspapers*, it is essential that such proceedings be accessible to the public and that they be closed only where specific information — legitimately designated as SUNSI — must be discussed.

LBP-10-3 IDAHO STATE UNIVERSITY, Docket No. 70-1374-MLR (ASLBP No. 10-897-01-MLR-BD01) (Special Nuclear Materials License No. SNM-1373); MATERIALS LICENSE; February 24, 2010; MEMORANDUM AND ORDER (Granting Motion to Withdraw Hearing Request and Intervention Petition and Terminating Proceeding)

LBP-10-4 U.S. ARMY INSTALLATION COMMAND (Schofield Barracks, Oahu, Hawaii, and Pohakuloa Training Area, Island of Hawaii, Hawaii), Docket No. 40-9083 (ASLBP No. 10-895-01-ML-BD01); MATERIALS LICENSE; February 24, 2010; MEMORANDUM AND ORDER (Denying Requests for Hearing)

A Because Petitioners were not represented by counsel, this Board — consistent with longstanding precedent (*see, e.g., Public Service Electric and Gas Co.* (Salem Nuclear Generating Station, Units 1 and

DIGESTS

ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- 2), ALAB-136, 6 AEC 487, 489 (1973) — held them to less rigid pleading standards than we would ordinarily apply to litigants who are represented by counsel.
- B Although we acknowledge that complying with Commission regulations “may be especially difficult for *pro se* petitioners . . . it has long been a basic principle that a person who invokes the right to participate in an NRC proceeding also voluntarily accepts the obligations attendant upon such participation.” *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 26 (2001) (internal quotation marks omitted).
- C In determining whether a petitioner has demonstrated a sufficient interest to intervene under section 2.309(d)(1), the Commission long has applied contemporaneous judicial concepts of standing. *See, e.g., Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Georgia), CLI 95-12, 42 NRC 111, 115 (1995). Those concepts require a petitioner to allege “(1) an actual or threatened, concrete and particularized injury, that (2) is fairly traceable to the challenged action, (3) falls among the general interests protected by the [AEA] (or other applicable statute, such as the National Environmental Policy Act), and (4) is likely to be redressed by a favorable decision.” *Sequoyah Fuels Corp.* (Gore, Oklahoma Site Decommissioning), CLI-01-2, 53 NRC 9, 13 (2001).
- D In proceedings involving construction permits and operating licenses for nuclear power plants, the Commission recognizes a “‘proximity presumption’ in favor of standing for persons who [reside or] have ‘frequent contacts’ within a 50-mile radius of a nuclear power plant.” *PPL Bell Bend, LLC* (Bell Bend Nuclear Power Plant), CLI-10-7, 71 NRC 133, 138 (2010).
- E No “proximity presumption” is automatically applied in proceedings that, like this, do not involve nuclear power plants. Instead, “[w]hether and at what distance a petitioner can be presumed to be affected must be judged on a case-by-case basis, taking into account the nature of the proposed action and the significance of the radioactive source.” *Georgia Tech*, CLI-95-12, 42 NRC at 116-17. Pursuant to this so-called “proximity-plus” approach, a “presumption based on geographical proximity (albeit at distances much closer than 50 miles) may be applied where there is a determination that the proposed action involves a significant source of radioactivity producing an obvious potential for offsite consequences.” *Sequoyah Fuels Corp. and General Atomics* (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 75 n.22 (1994).
- F In cases where the record fails to support the existence of a significant source of radioactivity producing an obvious potential for offsite consequences at a particular distance frequented by a petitioner, “it becomes the petitioner’s ‘burden to show a specific and plausible means’ of how the challenged action may harm him or her.” *USEC Inc.* (American Centrifuge Plant), CLI-05-11, 61 NRC 309, 312 (2005). In other words, when a petitioner cannot establish proximity plus standing, he or she must resort to establishing standing under traditional standing principles. *See Exelon Generation Co.* (Peach Bottom Atomic Power Station, Units 2 and 3), CLI-05-26, 62 NRC 577, 581 (2005).
- G The “petitioner bears the burden to provide facts sufficient to establish standing.” *Bell Bend Nuclear Power Plant*, CLI-10-7, 71 NRC at 139; *accord Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 and 2), CLI-00-5, 51 NRC 90, 98 (2000). In meeting this burden, it is generally sufficient if the petitioner provides plausible factual allegations that satisfy each element of standing. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992).
- H In proceedings where a petitioner’s factual assertions in support of standing are challenged, untenable, conjectural, or conclusory, a Board need not uncritically accept such assertions. *See Consumers Energy Co.* (Palisades Nuclear Plant), CLI-07-18, 65 NRC 399, 410 (2007); *Zion Nuclear Power Station*, CLI-00-5, 51 NRC at 98. In such circumstances, a Board may be required to “weigh the information” and exercise judgment to determine if a standing element has been satisfied. *See Bell Bend Nuclear Power Plant*, CLI-10-7, 71 NRC at 139. *See also Babcock and Wilcox* (Apollo, Pennsylvania Fuel Fabrication Facility), LBP-93-4, 37 NRC 72, 82-83 (1993).
- I To be admissible, a contention must (10 C.F.R. § 2.309(f)(1)(i)-(vi)): (1) provide a specific statement of the issue of law or fact to be raised; (2) provide a brief explanation of the basis for the contention; (3) demonstrate that the issue raised is within the scope of the proceeding; (4) demonstrate that the issue raised is material to the findings the NRC must make to support the action involved in the proceeding; (5) provide a concise statement of the alleged facts or expert opinions that support the petitioner’s position and on which the petitioner intends to rely at the hearing; and (6) provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Failure to satisfy any of these requirements is sufficient grounds to render the contention inadmissible. *See Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 325 (1999).

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- J It is emphatically the petitioner's burden to produce some "alleged facts or expert opinion which support [a contention]." 10 C.F.R. § 2.309(f)(1)(v).
- K Any member of the public may provide the NRC Staff with comments relating to health and safety at any time during the license-review process, and the NRC Staff "will consider and resolve all safety questions regardless of whether any hearing takes place." *Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 339 (1999) (internal quotation marks omitted). If an interested person wishes to propose health and safety measures after a license has been issued, such proposals may be submitted to the NRC by filing a petition pursuant to the enforcement process set forth in 10 C.F.R. § 2.206.
- LBP-10-5 LUMINANT GENERATION COMPANY, LLC (Comanche Peak Nuclear Power Plant, Units 3 and 4), Docket Nos. 52-034-COL, 52-035-COL (ASLBP No. 09-886-09-COL-BD01); COMBINED LICENSE; March 11, 2010; MEMORANDUM AND ORDER (Ruling on New SUNSI Contentions, Mootness of Original Contention 7, and Intervenor's Access to ISG-016)
- A Section 2.390(d)(1) of 10 C.F.R. provides legal authority for nondisclosure and protection of security-related information concerning the physical protection of nuclear power plants, and for the closing of portions of hearings and other sessions in which such information will necessarily be discussed. During closed portions of oral argument, only the Board, NRC Staff, Applicant, and individuals who signed nondisclosure affidavits pursuant to protective order would be permitted to remain in the hearing room. After the session, parties could propose creation of a public copy of the transcript, with appropriate redactions for protected information.
- B Under Commission precedent on contentions of omission, once information asserted to have been omitted is supplied, the original contention is moot and Intervenor must timely file new or amended contention(s) in order to raise specific challenges regarding the new information.
- C Intervenor's original Contention 7, asserting omission of information addressing requirements of 10 C.F.R. §§ 52.80(d) and 50.54(hh)(2), is ruled to be moot based on information newly supplied by Applicant, but the ruling does not address the adequacy of newly supplied information. Questions of adequacy will be addressed in rulings on Intervenor's new contentions.
- D A party requesting access to a document withheld as sensitive unclassified nonsafeguards information (SUNSI) protected under 10 C.F.R. § 2.390(d)(1) must, in the event no protective order addresses the matter and/or in the event of a dispute concerning such access, show that it needs the document in order to participate meaningfully in the proceeding, a standard that is not onerous.
- E The Licensing Board finds that Intervenor met the standard of showing need for the document in order to participate meaningfully in the proceeding, based on the following factors: (1) Intervenor noted expected issuance of the document and informed the Board and other parties about it at a reasonable time; (2) they followed its progress thereafter and requested access to it within a reasonable time after it was issued; (3) they have shown its relevance to matters at issue in the proceeding relating to the requirements of sections 52.80(d) and 50.54(hh)(2), which have been a concern of Intervenor from the outset of this proceeding; and (4) they have an expert who can provide support for any new contentions relating to these requirements and to any provisions of the document. Board also considered: lack of a publicly available version of the document; the fact that the document, even though merely guidance and not binding legal authority, has the purpose of assisting applicants and licensees with meeting requirements of 10 C.F.R. §§ 52.80(d) and 50.54(hh)(2), which provide somewhat minimal information themselves; the fact that Intervenor had signed nondisclosure affidavits pursuant to a joint protective order regarding related information; the fact that Intervenor could not use the document in preparation of current contentions because it was not then available to them; the inefficiency of waiting until the Commission finalizes the document; and considerations of basic fairness.
- F After obtaining access to a draft Staff guidance document, Intervenor would need to show that any future contentions based on the document are timely and that the information on which they are based was not available from any other reasonably available source prior to obtaining the document, and to provide more than merely what is in the guidance document, in the form of expert and/or other documentary support.
- G While a guidance document alone does not provide sufficient support for a contention, where there is expert support a guidance document may be part of the support for a contention.
- LBP-10-6 SOUTH CAROLINA ELECTRIC & GAS COMPANY and SOUTH CAROLINA PUBLIC SERVICE AUTHORITY (also referred to as SANTEE COOPER) (Virgil C. Summer Nuclear Station, Units

DIGESTS

ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- 2 and 3), Docket Nos. 52-027-COL, 52-028-COL (ASLBP No. 09-875-03-COL-BD01); COMBINED LICENSE; March 17, 2010; MEMORANDUM AND ORDER ON REMAND (Denying on Remand the Sierra Club and Friends of the Earth's Petition to Intervene)
- A The conditions for admission of a contention are "strict by design," *AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-06-24, 64 NRC 111, 118 (2006) (quoting *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 NRC 349, 358 (2001), *petition for reconsideration denied*, CLI-02-1, 55 NRC 1 (2002)); *see also Progress Energy Carolinas, Inc.* (Shearon Harris Nuclear Power Plant, Units 2 and 3), CLI-10-9, 71 NRC 245, 253 (2010); for a contention to be admissible it must satisfy, without exception, each of the criteria set out in 10 C.F.R. § 2.309(f)(1)(i) through (vi). *See* Changes to Adjudicatory Process, 69 Fed. Reg. 2182, 2221 (Jan. 14, 2004); *see also Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 325 (1999); *Arizona Public Service Co.* (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), CLI-91-12, 34 NRC 149, 155 (1991). Mere notice pleading is insufficient. *Fansteel, Inc.* (Muskogee, Oklahoma Site), CLI-03-13, 58 NRC 195, 203 (2003); *Oyster Creek*, CLI-06-24, 64 NRC at 119.
- B In order to be admissible, a contention must assert an issue of law or fact that is "material to the findings the NRC must make to support the action that is involved in the proceeding." 10 C.F.R. § 2.309(f)(1)(iv). Thus, the petitioner must show that "the subject matter of the contention would impact the grant or denial of a pending license application." *Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), LBP-08-13, 68 NRC 43, 62 (2008).
- C "Materiality" requires a showing that the alleged error or omission is of possible significance to the result of the proceeding, i.e., that some significant link exists between the claimed deficiency and either the health and safety of the public, or the environment. *Indian Point*, LBP-08-13, 68 NRC at 62 (citing *Portland Cement Ass'n v. Ruckelshaus*, 486 F.2d 375, 394 (D.C. Cir. 1973), *cert. denied sub nom. Portland Cement Corp. v. Administrator, Environmental Protection Agency*, 417 U.S. 921 (1974)). A dispute is material "if its resolution would 'make a difference in the outcome of the licensing proceeding.'" *Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 333-34 (1999) (citing Final Rule: "Rules of Practice for Domestic Licensing Proceedings — Procedural Changes in the Hearing Process," 54 Fed. Reg. 33,168, 33,170 (Aug. 11, 1989)).
- D Where a contention challenges the Applicant's compliance with the Commission's rules implementing NEPA, materiality relates not only to the Commission's determination regarding denial, issuance, or conditioning of the requested COL, but also to the Commission's fulfillment of its obligations under NEPA.
- E Contentions must be accompanied by "a concise statement of the alleged facts or expert opinions which support the requestor's/petitioner's position on the issue . . . together with references to the specific sources and documents on which [it] intends to rely to support its position." 10 C.F.R. § 2.309(f)(1)(v).
- F It is the petitioner's obligation to present the factual and expert support for its contention. *Palo Verde*, CLI-91-12, 34 NRC at 155-56; *Southern Nuclear Operating Co.* (Early Site Permit for Vogtle ESP Site), LBP-07-3, 65 NRC 237, 253 (2007); *Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Georgia), LBP-95-6, 41 NRC 281, 305, *vacated in part and remanded on other grounds*, CLI-95-10, 42 NRC 1, *and aff'd in part*, CLI-95-12, 42 NRC 111 (1995). Failure to do so requires that the contention be rejected. *Palo Verde*, CLI-91-12, 34 NRC at 155-56; *Vogtle*, LBP-07-3, 65 NRC at 253.
- G A contention "will be ruled inadmissible if the petitioner 'has offered no tangible information, no experts, no substantive affidavits,' but instead only 'bare assertions and speculation.'" *Fansteel*, CLI-03-13, 58 NRC at 203 (quoting *GPU Nuclear, Inc.* (Oyster Creek Nuclear Generating Station), CLI-00-6, 51 NRC 193, 208 (2000)); *see also Consumers Energy Co.* (Palisades Nuclear Plant), CLI-07-18, 65 NRC 399, 414 (2007). "[E]xpert opinion that merely states a conclusion (e.g., the application is 'deficient,' 'inadequate,' or 'wrong') without providing a reasoned basis or explanation for that conclusion is inadequate because it deprives the Board of the ability to make the necessary, reflective assessment of the opinion." *USEC Inc.* (American Centrifuge Plant), CLI-06-10, 63 NRC 451, 472 (2006) (quoting *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-98-7, 47 NRC 142, 181, *aff'd*, CLI-98-3, 48 NRC 26 (1998)).
- H Providing any material or document as the foundation for a contention, without setting forth an explanation of its significance, is inadequate to support the admission of a contention. *Fansteel*, CLI-03-13, 58 NRC at 204; *Indian Point*, LBP-08-13, 68 NRC at 63.

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- I If a petitioner neglects to provide the requisite support for its contentions, the Board should not make assumptions of fact that favor the petitioner or supply information that is lacking. *Georgia Tech*, LBP-95-6, 41 NRC at 305 (citing *Palo Verde*, CLI-91-12, 34 NRC at 155-56); see also *Crow Butte Resources, Inc.* (North Trend Expansion Project), CLI-09-12, 69 NRC 535, 552-53 (2009); *Duke Cogema Stone & Webster* (Savannah River Mixed Oxide Fuel Fabrication Facility), LBP-01-35, 54 NRC 403, 422 (2001).
- J A petitioner does not have to prove its contention at the admissibility stage. *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-04-22, 60 NRC 125, 139 (2004); *North Anna*, LBP-08-15, 68 NRC at 335. That said, although a “Board may appropriately view [p]etitioners’ support for its contention in a light that is favorable to the [p]etitioner,” *Palo Verde*, CLI-91-12, 34 NRC at 155; see also *AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-09-7, 69 NRC 235, 275 (2009), a petitioner must provide that support for his or her contention.
- K The information, alleged facts, and expert opinions provided by the petitioner will be examined by the Board to confirm that the petitioner does indeed supply adequate support for the contention. *Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), ALAB-919, 30 NRC 29, 48 (1989), vacated in part on other grounds and remanded, CLI-90-4, 31 NRC 333 (1990); see also *American Centrifuge*, CLI-06-10, 63 NRC at 457; *Shearon Harris*, CLI-10-9, 71 NRC at 261-62.
- L A contention must “show that a genuine dispute exists . . . on a material issue of law or fact” with regard to the license application in question, challenge and identify either specific portions of, or alleged omissions from, the application, and provide the supporting reasons for each dispute. 10 C.F.R. § 2.309(f)(1)(vi). Any contention that “fails to controvert the application,” *Crow Butte*, CLI-09-12, 69 NRC at 557, or that mistakenly asserts that the application does not address a relevant issue, may be dismissed. See *American Centrifuge*, CLI-06-10, 63 NRC at 462-63 (rejecting contention asserting failure to analyze an alternative actually analyzed in the application).
- M It is the petitioner’s responsibility “to provide the necessary information to satisfy the basis requirement for the admission of its contentions and demonstrate that a genuine dispute exists within the scope of th[e] proceeding.” *Baltimore Gas & Electric Co.* (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), CLI-98-14, 48 NRC 39, 41 (1998). If a petitioner fails to offer alleged facts or expert opinion and a “reasoned statement” explaining any alleged inadequacy in the application, the petitioner has not demonstrated a genuine dispute. See *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-90-16, 31 NRC 509, 521 & n.12 (1990).
- N The contention admissibility standards do not require dispositive proof of the contention or its bases, but they do require “a clear statement as to the bases for the contention[] and . . . supporting information and references to documents and sources that establish the validity of the contention.” *South Carolina Electric & Gas Co.* (Virgil C. Summer Nuclear Station, Units 2 and 3), CLI-10-1, 71 NRC 1, 8 (2010) (citations omitted).
- O Under 10 C.F.R. Part 51, the NRC’s regulations implementing NEPA, an ER must, in relevant part, contain a “discussion of alternatives . . . sufficiently complete to aid the Commission in developing and exploring, pursuant to section 102(2)(E) of NEPA, ‘appropriate alternatives to recommended courses of action’” 10 C.F.R. § 51.45(b)(3). However, the agency’s NEPA responsibilities (and, by extension, the applicant’s responsibilities under 10 C.F.R. Part 51) are subject to a “rule of reason.” *Louisiana Energy Services, L.P.* (National Enrichment Facility), LBP-06-8, 63 NRC 241, 258-59 (2006); *Long Island Lighting Co.* (Shoreham Nuclear Power Station), ALAB-156, 6 AEC 831, 836 (1973).
- P In the context of alternatives analyses, “[a]gencies need only discuss those alternatives that are reasonable and ‘will bring about the ends’ of the proposed action.” *Hydro Resources, Inc.* (P.O. Box 15910, Rio Rancho, NM 87174), CLI-01-4, 53 NRC 31, 55 (2001) (quoting *Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 195 (D.C. Cir.), cert. denied, 502 U.S. 994 (1991)).
- Q Where the agency’s action is to approve or deny a proposal by a private party, the agency should ordinarily “accord substantial weight to the preferences of the applicant and/or sponsor in the siting and design of the project.” Nuclear Energy Institute; Denial of Petition for Rulemaking, 68 Fed. Reg. 55,905, 55,909 (Sept. 29, 2003) (internal quotations omitted); accord *Citizens Against Burlington*, 938 F.2d at 199 (“An agency cannot redefine the goals of the proposal that arouses the call for action; it must evaluate alternative ways of achieving its goals, shaped by the application at issue and by the function that the agency plays in the decisional process.”).

DIGESTS

ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- R General assertions of insufficient consideration are inadequate to raise an admissible contention. *See* 10 C.F.R. § 2.309(f)(1)(v), (vi) (requiring “references to specific sources and documents” and “references to specific portions of the application . . . that the petitioner disputes and the supporting reasons for each dispute.”). To have presented an admissible contention, Petitioners needed to allege specific inadequacies in the Applicant’s analysis and provide some support or reasoning for any such alleged deficiencies.
- S Where Petitioners fail to connect the information and assertions contained in their supporting statements to alleged deficiencies or omissions in the Application, these statements do not provide the requisite support, in the form of alleged facts or reasoned (as opposed to merely conclusory) expert opinion, to show that Petitioners have raised a genuine dispute with the Application on a material issue of law or fact.
- T It is well established that there is no obligation under NEPA to consider every possible alternative. *Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), CLI-91-2, 33 NRC 61, 71 (1991) (“An agency’s environmental review ‘must consider not every possible alternative, but every reasonable alternative.’” (quoting *Citizens for a Better Henderson v. Hodel*, 768 F.2d 1051, 1057 (9th Cir. 1985)); *see also Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 435 U.S. 519, 551 (1978) (“the ‘detailed statement of alternatives’ cannot be found wanting simply because the agency failed to include every alternative device and thought conceivable by the mind of man”).
- U The burden rests upon a petitioner to propose a particular alternative, and bare generalizations will not support an admissible contention. *Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), LBP-05-19, 62 NRC 134, 158 (2005); *see also Shearon Harris*, CLI-10-9, 71 NRC at 264 (“The question before us . . . is whether [petitioner] has stated [a contention asserting] an environmentally preferable alternative to the proposed reactors.”); *id.* at 264-65 (affirming Board ruling that petitioner had not “properly challenged” applicant’s conclusion that no environmentally preferable alternative existed where “[t]he only alternative that [petitioner] mentions on appeal is the ‘no reactor’ option,” and petitioner neither raised that option before the Board nor supported its argument that it would always be environmentally preferable); *cf. Olmsted Citizens for a Better Community v. United States*, 793 F.2d 201, 209 (8th Cir. 1986); *Morongo Band of Mission Indians v. Federal Aviation Administration*, 161 F.3d 569, 576-77 (9th Cir. 1998). A board may not supply information that is missing or make assumptions of fact not provided by the petitioner. *Georgia Tech*, LBP-95-6, 41 NRC at 305; *see also Crow Butte*, CLI-09-12, 69 NRC at 552-53; *MOX*, LBP-01-35, 54 NRC at 422.
- V Where demand side management (DSM) reduces by a small portion Applicant’s demand for power, it should be analyzed as a surrogate for need for power. *See Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), LBP-05-19, 62 NRC 134, 159, *aff’d*, CLI-05-29, 62 NRC 801, 805-08 (2005); *see also Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), LBP-04-17, 60 NRC 229, 245 (2004).
- W Since it is widely recognized that energy sales projections are inherently uncertain, and the Commission is clear that it does not impose “burdensome attempts” to predict future conditions, and that it “should be sufficient to reasonably characterize the costs and benefits associated with proposed licensing actions,” *Summer*, CLI-10-1, 71 NRC at 17 (quoting 68 Fed. Reg. at 55,910), a contribution from DSM that would simply result in shifting the need curve back by 2 years cannot be material to the decision the NRC must make.
- X The ultimate objective of the NEPA requirement to examine alternatives is to ensure the NRC has made an informed decision by examining reasonable alternatives to the proposed action.
- Y The only alternatives which are, in the end, relevant to the NRC’s decision are those alternatives that are environmentally preferable.
- LBP-10-7 TENNESSEE VALLEY AUTHORITY (Bellefonte Nuclear Plant, Units 1 and 2), Docket Nos. 50-438-CP, 50-439-CP (ASLBP No. 10-896-01-CP-BD01); CONSTRUCTION PERMIT; April 2, 2010; MEMORANDUM AND ORDER (Ruling on Intervention Petition)
- A In this proceeding regarding the reinstatement of the Tennessee Valley Authority’s (TVA) previously withdrawn construction permits (CPs) for two partially completed reactors located on TVA’s existing Bellefonte Nuclear Power Plant site, the Licensing Board concludes that although two of the three named petitioners have established the requisite standing, because they failed to proffer an admissible contention in accord with the “good cause” standard that governs the proceeding, their intervention petition and hearing request must be denied.

DIGESTS

ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- B The 10 C.F.R. Part 52 combined license (COL) process has been described as follows: “an entity may apply for a single COL that authorizes both new reactor construction and operation. Specifically, Subpart C of Part 52 establishes procedures for the issuance of a combined construction permit and conditional operating license for a nuclear power plant and the conduct of the hearing that is afforded for a COL. The COL is ‘essentially a construction permit which also requires consideration and resolution of many of the issues currently considered at the operating license stage.’ *See* Early Site Permits; Standard Design Certifications; and Combined Licenses for Nuclear Power Reactors, 53 Fed. Reg. 32,060, 32,062 (Aug. 23, 1988).” *Tennessee Valley Authority* (Bellefonte Nuclear Power Plant, Units 3 and 4), LBP-08-16, 68 NRC 361, 374 (2008), *rev’d in part*, CLI-09-3, 69 NRC 68 (2009), and *referred ruling declined*, CLI-09-21, 70 NRC 927 (2009).
- C In contrast, the 10 C.F.R. Part 50 CP/operating license (OL) process has been described as follows: “[t]he 10 C.F.R. Part 50 licensing process that was applied to the 104 commercial nuclear power plants currently operating in the United States requires that an applicant first obtain a construction permit for the facility, followed by an operating license. Both licenses are issued separately and, under section 189a of the Atomic Energy Act (AEA) of 1954, as amended, 42 U.S.C. § [2239(a)], hearing rights accrue separately as to each requested permission.” *Id.*
- D In the statement of considerations accompanying the initial Part 52 proposed rule, the Commission offered this explanation of the reasons for, as well as the scope of, the two elements of the Part 50 CP/OL process: “In the early years of the nuclear power industry, there were many first-time nuclear plant applicants, designers, and consultants, and many novel design concepts. Accordingly, the process was structured to allow licensing decisions to be made while design work was still in progress and to focus on case-specific reviews of individual plant and site considerations. Construction permits were commonly issued with the understanding that open safety issues would be addressed and resolved during construction, and that issuance of a construction permit did not constitute Commission approval of any design feature. Consequently, the operating license review was very broad in scope.” 53 Fed. Reg. at 32,065.
- E In addition to the broad scope of the OL proceeding, however, it was also a well-established precept regarding the risk that accrues to an applicant under the Part 50 process that “[w]hen an applicant receives a construction permit . . . , it proceeds at its own risk. Prior to operation, the applicant must satisfy all safety requirements; and if additional research performed or data acquired during construction indicates that any safety requirement cannot be satisfied, the operating license must be denied or appropriately conditioned. . . . [T]his is so regardless of the amount of money which an applicant may have expended during construction.” *Consumers Power Co.* (Midland Plant, Units 1 and 2), ALAB-123, 6 AEC 331, 355 (1973); *see also Northern Indiana Public Service Co.* (Bailly Generating Station, Nuclear-1), CLI-79-11, 10 NRC 733, 742-43 (1979) (possession of CP no guarantee that OL will be received; if any aspect of facility fails to pass muster at OL stage, applicant bears risk the plant will not be allowed to operate).
- F Following (1) a safety and environmental review of a CP application by the Staff, (2) a safety review of the application by the Advisory Committee on Reactor Safeguards, (3) an adjudicatory hearing on any safety or environmental challenges to the application raised by any intervening party, and (4) a “mandatory hearing” in which safety and environmental matters not at issue in the contested adjudication are considered by a presiding officer (which could be either the Commission or a three-member Atomic Safety and Licensing Board), assuming all issues are appropriately resolved, a CP is issued to an applicant.
- G Consistent with AEA § 185a, 42 U.S.C. § 2235(a), a CP specifies a date by which construction of the unit is to be completed. If the CP holder is unable to finish construction by the date specified in the permit, under 10 C.F.R. § 50.55(b) the CP holder can apply for and obtain an extension of the CP. In doing so, it must provide “good cause” for the extension, a standard that is specified in AEA § 185a. As was the case with an initial CP application, an extension request could be the subject of an adjudicatory hearing challenge by a petitioner.
- H If for some reason a CP holder wishes to discontinue construction activities at a facility but continue to have its 10 C.F.R. Part 50 construction authorization remain effective, it can do so under the terms of the 1987 Commission Policy Statement on Deferred Plants. In that policy statement, the Commission outlines the maintenance, preservation, and documentation requirements that would apply to a facility in such a “deferred” status. *See* Commission Policy Statement on Deferred Plants, 52 Fed. Reg. 38,077, 38,078-79 (Oct. 14, 1987).
- I The 1987 Commission Policy Statement on Deferred Plants also describes the process under which, at the CP holder’s request, the facility can be reactivated from deferred status so that construction can begin

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

again, which includes providing 120 days' notice to the Staff before restarting construction activities. *See id.* at 38,079.

- J The 1987 Commission Policy Statement on Deferred Plants sets forth the process under which a plant could be placed in a terminated status pending the withdrawal of the CP, as well as the procedures and requirements associated with reactivating the facility from terminated status (assuming the CP has not been withdrawn). *See id.* at 38,079-80.
- K In determining whether an individual or organization is an "interested person" under section 189a of the Atomic Energy Act (AEA) of 1954, 42 U.S.C. § 2239(a)(1)(A), that has standing "as of right" such that it can be granted party status in a proceeding in accord with 10 C.F.R. § 2.309(d), the Commission applies contemporaneous judicial standing concepts that require a participant to establish that (1) it has suffered or will suffer a distinct and palpable injury that constitutes injury-in-fact within the zones of interests arguably protected by the governing statutes (e.g., the AEA, 42 U.S.C. § 2011 et seq., NEPA, 42 U.S.C. § 4321 et seq.); (2) the injury is fairly traceable to the challenged action; and (3) the injury is likely to be redressed by a favorable decision. *See Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-96-1, 43 NRC 1, 6 (1996).
- L In pertinent part, section 2.309(d)(1) requires that a hearing request/intervention petition must state (1) the name, address, and telephone number of the requestor/petitioner; (2) the nature of the requestor's/intervenor's right under the AEA to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order issued in the proceeding on the petitioner's/requestor's interest. Additionally, section 2.309(d)(3) mandates that the presiding officer determine whether, considering these factors, the requestor/petitioner is a person whose interest may be affected by the proceeding in accord with AEA § 189a.
- M In proceedings involving the possible construction or operation of a nuclear power reactor, including proceedings regarding the extension of a construction permit, proximity to the proposed facility has been considered sufficient to establish standing. *See PPL Bell Bend, LLC* (Bell Bend Nuclear Power Plant), CLI-10-7, 71 NRC 133, 138 (2010); *Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-09-20, 70 NRC 911, 915 (2009); *Northern Indiana Public Service Co.* (Bailly Generating Station, Nuclear 1), ALAB-619, 12 NRC 558, 564-65 (1980).
- N The proximity presumption applies when an individual or organization, or an individual authorizing an organization to represent his or her interests as the organization seeks to establish its representational standing, resides within 50 miles of the proposed facility or has "frequent contacts" with the area affected by the proposed facility. *Calvert Cliffs*, CLI-09-20, 70 NRC at 915; *see Bell Bend*, CLI-10-7, 71 NRC at 138.
- O To establish the requisite proximity, a petitioner must clearly indicate where he or she resides and/or what contact he or she has with the site. *See Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-91-2, 33 NRC 42, 47 (1991) (no standing when petitioner alleged proximity but failed to state his physical address or elaborate on the extent of his activities in the area).
- P Ultimately, it is the petitioner's responsibility to "provide enough detail to allow the Board to distinguish a casual interest from a substantial one." *Bell Bend*, CLI-10-7, 71 NRC at 139.
- Q The notice of appearance information identifying the individual or individuals authorized to act on behalf of each participant should provide the means whereby any participant needing to reach another participant's authorized representatives to serve a filing or have a discussion about any litigation-related matters will be able to do so. The failure of an organizational participant to have a representative provide an appearance notice in accord with section 2.314(b) might, as could be the case for any other unresolved procedural deficiency that persists without adequate justification, provide cause for an appropriate sanction for failure properly to prosecute the litigation. Such a failure, however, does not fall into the same category as, for example, the failure under 10 C.F.R. § 2.309(d) to support an intervention petition with affidavits providing necessary information regarding the basis for representational standing, a deficiency directly associated with a petitioner's standing that could interpose a jurisdictional flaw potentially warranting the participant's dismissal from the proceeding.
- R Exactly when a notice of appearance must be filed (or a notice of withdrawal submitted when an attorney or representative is no longer acting as a participant representative) is not specified in the agency's rules of practice.

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- S It is well established in NRC jurisprudence that each intervening participant that wishes to be a party to a proceeding must establish his or her own standing, *see Commonwealth Edison Co.* (Dresden Nuclear Power Station, Unit 1), CLI-81-25, 14 NRC 616, 623 (1981), a showing that depends on the particular circumstances associated with that participant rather than the standing of other entities or individuals with whom it may claim to be aligned relative to the substance of the matters at issue in the proceeding.
- T The Commission stated with respect to the scope of review governing a licensing board's consideration of a hearing request in a proceeding regarding reinstatement of a previously withdrawn CP that the board should "decide in the first instance whether Petitioners have established standing and have raised admissible contentions and if so, given their claims, whether reinstatement on the particular facts presented here is lawful and proper — that is, *whether there is 'good cause' for the reinstatement.*" CLI-10-6, 71 NRC 113, 126 (emphasis added). The Commission thus expressly directed the board to restrict its inquiry in the proceeding, including its consideration of contention admissibility matters, in line with the "good cause" standard of AEA § 185a, 42 U.S.C. § 2235(a), and the Commission's regulation implementing the good cause standard, 10 C.F.R. § 50.55(b).
- U As AEA § 185 and 10 C.F.R. § 50.55(b) adumbrate, up to this point the good cause standard's bailiwick has been the CP extension proceeding. Nonetheless, given the Commission's direction in CLI-10-6 that "good cause" should be the standard that governs consideration of a CP reinstatement request, a principal task for a licensing board is to determine how that standard should apply in the CP reinstatement proceeding before it.
- V Guidance regarding the meaning and scope of the "good cause" standard as the Commission intended it to be applied in a CP reinstatement proceeding is provided by an earlier Commission decision regarding the application of "good cause" in the context of a CP extension proceeding. In *Washington Public Power Supply System* (WPPSS Nuclear Project Nos. 1 & 2), CLI-82-29, 16 NRC 1221 (1982), a case involving a request for construction permit extension, the Commission noted that AEA § 185a indicated "no intent on the part of Congress to require the periodic relitigation of health, safety, or environmental questions in agency adjudications between the time a construction permit is granted and the time the facility is authorized to operate." *Id.* at 1228. The Commission further declared that section 50.55(b)'s "thrust is clearly that the Commission's inquiry will be into reasons that have contributed to the delay in construction and whether those reasons constitute 'good cause' for the extension," and that "[t]his same limitation should apply if any interested person seeks to challenge the request for an extension." *Id.*
- W Limitations on the scope of a CP extension proceeding "does not mean that those who wish to raise health, safety, or environmental concerns before the agency have no remedy prior to the operating license proceeding. This opportunity is afforded all persons under 10 CFR § 2.206, which allows any person to seek the institution of a show-cause proceeding under 10 CFR § 2.202." *Id.*
- X "[T]he most 'common sense' approach to the interpretation of section 185 and 10 CFR § 50.55 is that the scope of a construction permit extension proceeding is limited to direct challenges to the permit holder's asserted reasons that show 'good cause' justification for the delay." *Id.* at 1229.
- Y A CP holder who requests an extension of the CP completion date "must put forth reasons, founded in fact, that explain why the delay occurred and those reasons must, as a matter of law, be sufficient to sustain a finding of good cause." An intervenor thus is "always free to challenge a request for a permit extension by seeking to prove that, on balance, delay was caused by circumstances that do not constitute 'good cause.'" *Id.* at 1229-30.
- Z Two Commission-endorsed principles are apparent relative to the "good cause" standard. One is that an AEA § 185-related Part 50 CP proceeding is not to become a substitute for an ongoing or future Part 50 OL proceeding, albeit with section 2.206 providing an avenue for raising safety and environmental concerns regarding a proposed facility pending the OL proceeding. The other is that the "good cause" rationale that must be put forth by the CP holder to justify the relief sought is to be the focus of any intervenor challenge to the CP holder's request.
- AA A number of subsequent agency cases, such as the Commission's *Seabrook* case, *Public Service Co. of New Hampshire* (Seabrook Station, Unit 2), CLI-84-6, 19 NRC 975, 978 (1984), and the later Commission decision in *Texas Utilities Electric Co.* (Comanche Peak Steam Electric Station, Unit 1), CLI-86-15, 24 NRC 397 (1986), have devoted substantial attention to exploring the parameters of the latter precept regarding the scope of "good cause" in the context of making CP extension request contention admissibility determinations. None of these rulings, however, suggests any diminution of the tenet that for Part 50 applications, safety and environmental issues are generally to be adjudicated in the OL proceeding

DIGESTS

ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

rather than an AEA § 185 “good cause” proceeding regarding the continued viability of a previously issued CP. Certainly, nothing in the Commission’s more-recent adoption of the Part 52 COL process suggests that the Commission has identified any basis under the Part 50 rules to back away from the traditional application of that two-step licensing process, notwithstanding its acknowledged tendency to “backload” issues and thereby create substantial scheduling and resource uncertainties.

BB A general concern regarding the potential for a significant squandering of time and resources if, at the OL stage, one or more of the matters sought to be raised in a CP reinstatement proceeding are found to mandate the denial of, or substantial revisions to an OL license is not untoward. Nonetheless, it is not a sufficient basis for a board to deviate from the well-established, Commission-endorsed approach to the application of the “good cause” standard in AEA § 185-related Part 50 CP proceedings as outlined in the Commission’s *WPPSS* decision and subsequent determinations.

CC Section 2.309(f) of the Commission’s rules of practice specifies the requirements that must be met if a contention is to be deemed admissible. Specifically, a contention must provide (1) a specific statement of the legal or factual issue sought to be raised; (2) a brief explanation of the basis of the contention; (3) a concise statement of the alleged facts or expert opinions, including references to specific sources and documents, that support the petitioner’s position and upon which the petitioner intends to rely at hearing; and (4) sufficient information demonstrating that a genuine dispute exists in regard to a material issue of law or fact, including references to specific portions of the application that the petitioner disputes, or in the case when the application is alleged to be deficient, the identification of such deficiencies and supporting reasons for this belief. *See* 10 C.F.R. § 2.309(f)(1)(i), (ii), (v), and (vi). In addition, the petitioner must demonstrate that the issue raised in the contention is both “within the scope of the proceeding” and “material to the findings the NRC must make to support the action that is involved in the proceeding.” 10 C.F.R. § 2.309(f)(1)(iii)-(iv). Failure to comply with any of these requirements is grounds for dismissing a contention. *See Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 325 (1999); *see also Arizona Public Service Co.* (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), CLI-91-12, 34 NRC 149, 155-56 (1991).

DD An adjudication is not the proper forum for challenging applicable statutory requirements or the basic structure of the agency’s regulatory process. *See Philadelphia Electric Co.* (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20, *aff’d in part on other grounds*, CLI-74-32, 8 AEC 217 (1974). Similarly, a contention that attacks a Commission rule, or which seeks to litigate a matter that is, or clearly is about to become, the subject of a rulemaking, is inadmissible. *See* 10 C.F.R. § 2.335; *Potomac Electric Power Co.* (Douglas Point Nuclear Generating Station, Units 1 and 2), ALAB-218, 8 AEC 79, 85, 89 (1974). This includes contentions that advocate stricter requirements than agency rules impose or that otherwise seek to litigate a generic determination established by a Commission rulemaking. *See Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-01-6, 53 NRC 138, 159 (2001); *Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), LBP-93-1, 37 NRC 5, 29-30 (1993); *Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), LBP-82-106, 16 NRC 1649, 1656 (1982); *see also Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-96-7, 43 NRC 235, 251 (1996); *Arizona Public Service Co.* (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), LBP-91-19, 33 NRC 397, 410, *aff’d in part and rev’d in part on other grounds*, CLI-91-12, 34 NRC 149 (1991). By the same token, a contention that simply states petitioner’s views about what regulatory policy should be does not present a litigable issue. *See Peach Bottom*, ALAB-216, 8 AEC at 20-21 & n.33.

EE All proffered contentions must be within the scope of the proceeding as defined by the Commission in its initial hearing notice and order referring the proceeding to the licensing board. *See* 10 C.F.R. § 2.309(f)(1)(iii); *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-00-23, 52 NRC 327, 329 (2000); *Duke Power Co.* (Catawba Nuclear Station, Units 1 and 2), ALAB-825, 22 NRC 785, 790-91 (1985). As a consequence, any contention that falls outside the specified scope of the proceeding must be rejected. *See Portland General Electric Co.* (Trojan Nuclear Plant), ALAB-534, 9 NRC 287, 289 n.6 (1979).

FF It is the petitioner’s obligation to present factual information and/or expert opinion necessary to support its contention. *See* 10 C.F.R. § 2.309(f)(1)(v); *Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Georgia), LBP-95-6, 41 NRC 281, 305, *vacated in part and remanded on other grounds*, CLI-95-10, 42 NRC 1, and *aff’d in part*, CLI-95-12, 42 NRC 111 (1995). While a Board may appropriately view a petitioner’s supporting information in a light favorable to the petitioner, failure

DIGESTS

ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- to provide such information regarding a proffered contention requires that the contention be rejected. *See Palo Verde*, CLI-91-12, 34 NRC at 155. In this connection, neither mere speculation nor bare or conclusory assertions, even by an expert, alleging that a matter should be considered will suffice to allow the admission of a proffered contention. *See Fansteel, Inc.* (Muskogee, Oklahoma Site), CLI-03-13, 58 NRC 195, 203 (2003). If a petitioner neglects to provide the requisite support for its contentions, it is not within the Board's power to make assumptions of fact that favor the petitioner, nor may the Board supply information that is lacking. *See Palo Verde*, CLI-91-12, 34 NRC at 155; *Duke Cogema Stone & Webster* (Savannah River Mixed Oxide Fuel Fabrication Facility), LBP-01-35, 54 NRC 403, 422 (2001); *Georgia Tech Research Reactor*, LBP-95-6, 41 NRC at 305.
- GG Simply attaching material or documents as a basis for a contention, without setting forth an explanation of that information's significance, is inadequate to support the admission of the contention. *See Fansteel*, CLI-03-13, 58 NRC at 204-05. Along these lines, any supporting material provided by a petitioner, including those portions of the material that are not relied upon, is subject to Board scrutiny. *See Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), LBP-96-2, 43 NRC 61, 90 (1996), *rev'd in part on other grounds*, CLI-96-7, 43 NRC 235 (1996). Thus, the material provided in support of a contention will be carefully examined by the Board to confirm that on its face it does supply adequate support for the contention. *See Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), ALAB-919, 30 NRC 29, 48 (1989), *vacated in part on other grounds and remanded*, CLI-90-4, 31 NRC 333 (1990).
- HH To be admissible, NRC regulations require that all contentions assert an issue of law or fact that is material to the outcome of a licensing proceeding, meaning that the subject matter of the contention must impact the grant or denial of a pending license application. *See* 10 C.F.R. § 2.309(f)(1)(iv). This requirement of materiality often dictates that any contention alleging deficiencies or errors in an application also indicate some significant link between the claimed deficiency and either the health and safety of the public or the environment. *See Yankee Nuclear*, LBP-96-2, 43 NRC at 75-76; *see also Pacific Gas and Electric Co.* (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), LBP-02-23, 56 NRC 413, 439-41 (2002), *petition for review denied*, CLI-03-12, 58 NRC 185, 191 (2003).
- II All properly formulated contentions must focus on the license application in question, challenging either specific portions of or alleged omissions from the application (including the Safety Analysis Report and the Environmental Report) so as to establish that a genuine dispute exists with the applicant on a material issue of law or fact. *See* 10 C.F.R. § 2.309(f)(1)(vi). Any contention that fails directly to controvert the application or that mistakenly asserts the application does not address a relevant issue will be dismissed. *See Sacramento Municipal Utility District* (Rancho Seco Nuclear Generating Station), LBP-93-23, 38 NRC 200, 247-48 (1993), *review declined*, CLI-94-2, 39 NRC 91 (1994); *Texas Utilities Electric Co.* (Comanche Peak Steam Electric Station, Unit 2), LBP-92-37, 36 NRC 370, 384 (1992).
- JJ The failure to specify the language of the issue framed by a contention and distinguish it from the discussion that provides the supporting foundation for that issue statement might be grounds for dismissing a contention. This approach to contention formulation is not one that should be emulated in future proceedings.
- LBP-10-8 SOUTHERN NUCLEAR OPERATING COMPANY (Vogtle Electric Generating Plant, Units 3 and 4), Docket Nos. 52-025-COL, 52-026-COL (ASLBP No. 09-873-01-COL-BD01); COMBINED LICENSE; May 19, 2010; MEMORANDUM AND ORDER (Ruling on Dispositive Motion Regarding Contention SAFETY-1)
- A In this proceeding regarding the application of Southern Nuclear Operating Company (SNC) for a 10 C.F.R. Part 52 combined license (COL) to construct and operate two new nuclear reactors at its existing Vogtle Electric Generating Plant (VEGP) site, in ruling on an SNC motion for summary disposition regarding contention SAFETY-1, which is the sole admitted contention and challenges the adequacy of SNC's final safety analysis report (FSAR) discussion of SNC's plans for storage of the low-level radioactive waste (LLRW) associated with proposed Units 3 and 4, finding that no material factual dispute has been interposed in connection with contention SAFETY-1 and concluding as a matter of law that the LLRW plan outlined in SNC's FSAR is in accord with the applicable regulatory provision, 10 C.F.R. § 52.79(a)(3), the Licensing Board grants SNC's dispositive motion and enters a judgment in SNC's favor regarding the contention, thereby resolving all the contested issues in the proceeding.
- B For proceedings such as this one conducted pursuant to the 10 C.F.R. Part 2, Subpart L "informal" hearing procedures, *see* LBP-09-3, 69 NRC 139, 165, *aff'd*, CLI-09-16, 70 NRC 33 (2009), summary

DIGESTS

ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

disposition motions are to be resolved in accord with the same standards for dispositive motions that are utilized for “formal” hearings as set forth in 10 C.F.R. Part 2, Subpart G. *See* 10 C.F.R. § 2.1205(c). Under Subpart G, 10 C.F.R. § 2.710 provides that summary disposition may be entered with respect to “all or any part of the matters involved in the proceeding” if the motion, along with any appropriate supporting materials (including affidavits, discovery responses, and documents), shows that there is “no genuine issue as to any material fact and that the moving party is entitled to a decision as a matter of law.” *Id.* § 2.710(a), (d)(2).

C The party proffering the motion bears the burden of making the requisite showing by providing “a separate, short, and concise statement of the material facts as to which the moving party contends that there is no genuine issue to be heard.” *Id.* § 2.710(a). A party opposing the motion must counter any adequately supported material facts provided by the movant with its own “separate, short, and concise statement of the material facts as to which it is contended there exists a genuine issue to be heard,” with the recognition that, to the degree the responsive statement fails to contravene any adequately supported material facts proffered by the movant, the movant’s facts “will be considered to be admitted.” *Id.*

D On the matter of whether paragraph (3) or paragraph (4) is the controlling provision of section 52.79(a) in this instance, although paragraph (a)(4) might require the more detailed design, location, and worker health impacts information sought by the intervenor, paragraph (a)(4) governs only those structures that are “a component of the facility to be constructed under the COL.” [SNC] Motion for Summary Disposition of Contention SAFETY-1 (Jan. 29, 2010) at 9; *see* NRC Staff Answer in Support of [SNC] Motion for Summary Disposition of Contention SAFETY-1 (Feb. 12, 2010) at 6. A contention declaring that a long-term onsite LLRW storage facility would only be needed “in the event an off-site waste disposal facility remains unavailable” when a new reactor unit begins operation and supporting information that at best suggests the COL applicant might not have an offsite option when needed following the beginning of facility operation is not the same as showing that an applicant must build an additional long-term onsite storage facility under the auspices of its COL to manage LLRW generated by a proposed facility because it is certain offsite storage or disposal will be unavailable when needed after facility operations begin. In such circumstances, a long-term LLRW storage facility for the proposed reactor would not be considered one that must be constructed under the COL. Certainly, such an interpretation is consistent with the longstanding agency recognition of the availability of the mechanisms under 10 C.F.R. §§ 50.59 or 50.90 for obtaining authorization to construct additional onsite LLRW storage facilities. *See* Office of Nuclear Reactor Regulation, NRC, NRC [RIS] 2008-32, Interim [LLRW] Storage at Reactor Sites at 2-4 (Dec. 30, 2008). The COL applicant’s contingent long-term onsite LLRW storage facility and the contents of the applicant’s FSAR with regard to that facility thus are not governed by section 52.79(a)(4) as a part of the reactor facilities to be constructed under the requested COL.

E Because section 52.79(a)(4) does not govern, the requisite content of the applicant’s FSAR discussion of long-term LLRW storage depends on the application of 10 C.F.R. § 52.79(a)(3) and what is meant by its requirement to provide information on the “means for controlling and limiting radioactive effluents and radiation exposures.” Nothing in the rule or cited Commission statements regarding LLRW indicates section 52.79(a)(3) requires the detailed design, location, and health impacts information outlined in the contention at issue. Unlike section 52.79(a)(4), section 52.79(a)(3) does not list “principal design criteria,” “design bases,” or “[i]nformation relative to materials of construction, arrangement, and dimensions” as items that must be discussed in the FSAR. *Compare* 10 C.F.R. § 52.79(a)(3) with *id.* § 52.79(a)(4)(i)-(iii). Nor does the Commission’s language in CLI-09-16 indicate that “means” includes actual design, location, or health impacts information. Rather, the Commission seems merely to have been stating that the information required under section 52.79(a)(3) is tied to the applicant’s “particular plans for compliance through,” but not necessarily the details of, “design, operational organization, and procedures” associated with any contingent long-term LLRW facility. CLI-09-16, 70 NRC at 37.

LBP-10-9 DETROIT EDISON COMPANY (Fermi Nuclear Power Plant, Unit 3), Docket No. 52-033-COL (ASLBP No. 09-880-05-BD01); COMBINED LICENSE; June 15, 2010; ORDER (Ruling on Proposed New Contentions 15 and 16)

A Several Licensing Boards have recently recognized a dichotomy between “new” contentions filed under 10 C.F.R. § 2.309(f)(2) and “nontimely” contentions filed under 10 C.F.R. § 2.309(c), based on both the regulatory text and the apparent absurdity of requiring intervenors with contentions rooted in new material information (“new” contentions) to make the same showing as intervenors who have simply delayed filing their contentions until after expiration of the regulatory deadline (“nontimely” contentions).

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- B** Intervenor acted reasonably in waiting for NRC Staff to announce the results of its inspection and its determination, based on the Inspection Report, that DTE had in fact violated Appendix B requirements in three specific ways. To force intervenors to file contentions before the results of an ongoing NRC investigation are announced to the public would effectively force intervenors to speculate about the results of such investigations and the conclusions the Staff might reach. We doubt the Commission would want to encourage the filing of such speculative contentions.
- C** Intervenor has standing based upon their proximity to the proposed Fermi Unit 3. The nature of their interest in the proceeding is based upon the fact that members of the intervenor organizations reside, work, or recreate within 50 miles of the proposed nuclear power plant. Any order that may be entered in this proceeding concerning QA issues may affect those interests.
- D** Contention 15 will broaden the issues in this proceeding because none of the other admitted contentions concern QA violations. This might delay the proceeding to some extent, although we doubt any delay would be significant. To the extent there will be any delay, it is the price for affording the public the opportunity to litigate questions arising from an applicant's failure to comply with QA requirements. Licensing boards have recognized compliance with QA requirements as an important factor in the licensing decision, and we are reluctant to deny intervenors the chance to address this important issue based solely on the possibility of a minor delay.
- E** Boards have the discretion to reformulate contentions so as to clarify the issues for litigation. We therefore need not reject a contention based solely on technical pleading defects. Instead, the Board will restate the contention to clarify the specific issues arising from the NOV that intervenors want to litigate and that relate to the licensing decision for Fermi Unit 3.
- F** The scope of the proceeding is defined by the Commission in its initial hearing notice and order referring the proceeding to the Licensing Board; any contention that falls outside the specified scope of the proceeding is inadmissible.
- G** DTE's QA violations create substantial uncertainty over whether the agency can rely on the tainted information in the FSAR to make the safety-related findings required to issue the license. The quality of the safety-related information in the FSAR is material to the licensing decision, and Contention 15A, by calling into question the quality of that information, raises a material issue.
- H** The question asserted in Contention 15B of whether the COL applicant will in fact implement the QA program required by Appendix B is also material to the licensing decision. If the NRC is not confident that DTE will implement the QA program described in the FSAR, this would certainly raise a substantial question whether the agency could find "reasonable assurance that the facility will be constructed and will operate in conformity with the license, the provisions of the Act, and the Commission's regulations," and that "issuance of the license will not be inimical to the health and safety of the public."
- I** An intervenor need not provide all supporting facts for a contention in the original submission or prove its case to have the contention admitted.
- J** Intervenor has provided a concise statement of the alleged facts or expert opinions, including references to specific sources and documents, that support their position and upon which they intend to rely at the hearing. This is all that section 2.309(f)(1)(v) demands. To be sure, Applicant contends it did not violate any QA requirement, and NRC Staff maintains that DTE's QA violations are less extensive than intervenors allege. These disputes go to the merits, however, and we need not resolve them now in order to admit Contentions 15A and 15B.
- K** As a general matter, a party may not present a new contention, or a new basis for a proposed contention, in its reply.
- L** Arguments concerning the interpretation of debatable evidence are inappropriate in the context of a contention admissibility ruling, where we do not decide the merits or draw factual inferences in favor of the party opposing the admission of a contention.
- M** While perfection in the applicant's QA program is not required, once a pattern of QA violations has been shown, the license applicant has the burden of showing that the license may be granted notwithstanding the violations.
- N** Intervenor has provided no legal or factual basis for the Board to order partial suspension of the COLA adjudication. We see no realistic prospect of injury to intervenors if the adjudication continues because intervenors will have the opportunity to fully litigate Contentions 15A and 15B before the Commission makes a final decision whether to issue the license. The Commission's general policy is

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

to avoid unnecessary delays in adjudicatory proceedings, and Intervenor has not provided a sufficient justification to show that a delay in this proceeding is necessary.

O Because Intervenor cannot reasonably be expected to discover the QA issues that gave rise to the November NOV without the NOV itself as notice, we find that Intervenor has plausibly argued that the November NOV is new and materially different information. Because Contention 16 was filed within 30 days of the release of the NOV, as our Scheduling Order requires, we consider Contention 16 timely filed.

P Under 10 C.F.R. § 52.55(c), an applicant may reference a design certification that the Commission has docketed but not granted. Citing this regulation, the Commission has previously rejected a request to hold a license application in abeyance until the design certification rulemaking is completed. *Progress Energy Carolinas, Inc.* (Shearon Harris Nuclear Power Plant, Units 2 and 3), CLI-08-15, 68 NRC 1, 4 (2008).

Q Intervenor requests that “the ASLB and Commission . . . suspend design activities related to use of the ESBWR design by DTE until the quality problems at GEH are resolved.” This request must be denied because, although it sounds like a request for something analogous to injunctive relief, it actually represents another attempt by Intervenor to circumvent the regulation permitting license applicants to reference design certification applications that have not been granted. The fact that NRC Staff issued a NOV to GEH based on alleged QA violations in connection with the DCD for the standard design does not affect application of the regulation. DTE may accept the risk that the standard design certification will not be granted, because of GEH’s alleged QA violations or for any other reason.

R A licensing board may not ordinarily consider the validity of or a challenge to a Commission regulation. Although an intervenor may petition the Commission for permission to challenge a rule, the party must make a showing of “special circumstances.” The special circumstances required to obtain a waiver have been described as a prima facie showing that application of a rule in a particular way would not serve the purposes for which the rule was adopted.

S To comply with 10 C.F.R. § 2.309(f)(1)(vi), Intervenor must present sufficient information to demonstrate a genuine dispute with the application on a material issue of law or fact. Merely quoting or citing documents as the basis for a contention, as Intervenor has done for Contention 16, is not enough to fulfill this requirement.

T Commission policy dictates that, when a COLA references a docketed design certification application, a contention challenging an aspect of the standard reactor design should be resolved in the rulemaking proceeding for the standard design, not in the COL proceeding. Such a contention may be held in abeyance by a licensing board pending completion of the rulemaking, but for a board to take that action the contention must be “otherwise admissible.” Licensing Boards have interpreted “otherwise admissible” to mean a contention that meets the contention admissibility requirements of 10 C.F.R. § 2.309(f)(1) but for the fact that it challenges a yet-to-be-certified reactor design.

LBP-10-10 LUMINANT GENERATION COMPANY, LLC (Comanche Peak Nuclear Power Plant, Units 3 and 4), Docket Nos. 52-034-COL, 52-035-COL (ASLBP No. 09-886-09-COL-BD01); COMBINED LICENSE; June 25, 2010; MEMORANDUM AND ORDER (Ruling on Mootness of Contentions 13 and 18, and New Environmental Contentions)

A The Licensing Board majority finds one existing contention moot and another moot in part, denies admission of a number of new environmental contentions, and consolidates admissible portions of other new contentions with the remaining part of an existing contention on a proposed renewable fuels NEPA alternative.

B Where a contention alleges the omission of particular information or an issue from an application, and the information is later supplied by the applicant, the contention is moot and Intervenor must timely file a new or amended contention in order to raise specific challenges regarding the new information.

C Mootness occurs when a justiciable controversy no longer exists, or when an issue is no longer “live,” such that a party no longer has a legal interest in the issue.

D Admission of a contention establishes a legal interest on the part of intervenors in that contention being resolved in a legally appropriate manner. If all matters at issue in a “contention of omission” are addressed by an applicant through the actual (not purported or claimed) provision of information on all such matters, then no legal interest in that contention remains, and the contention is moot. The information need not be such that an intervenor agrees with it, but it must actually address in some way all of the issues encompassed within the admitted contention it purports to moot. If, on the other hand, not all matters at

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- issue in such a contention are addressed in information submitted by applicant, then intervenors retain a legal interest in having any unaddressed matter(s) appropriately resolved.
- E On issues of whether a contention has been rendered moot by provision of information by an applicant, the applicant bears the burden of persuasion.
- F A contention that impacts from a severe radiological accident at any one unit on operation of other units at the site had not been, and should be, considered in the application's environmental report is found to be moot. Although the original contention might arguably be viewed as conceptually including impacts from spent fuel pool accidents, intervenors' arguments are found unpersuasive in light of the bounding analysis provided by applicant, which is not overcome by intervenors, in light of the lack of any support in the original contention or subsequent arguments that the impact of such accidents would add meaningfully to the applicant's bounding analysis of severe accidents at all four units simultaneously.
- G A contention that the application's environmental report was inadequate, because it did not include consideration of alternatives to the proposed new units consisting of renewable energy sources such as wind and solar with technological advances in storage methods and supplemental use of natural gas to create baseload power, is found to be moot in part. The contention is found not to be moot insofar as it alleges applicant did not consider the combination of wind (relatively more productive at night) and solar (more productive during the day) to produce a uniform generating profile, notwithstanding applicant's argument that even if this combination were considered its overall impacts would not be significantly different from the impacts of either solar or wind in combination with storage methods and natural gas. Both the original contention and its support, and the contention as admitted, included references to wind and solar, and this combination would obviously be the most likely to have any chance of achieving the goal of producing baseload power. Passing references in the environmental report to wind and solar did not constitute significant consideration of the combination alternative at issue.
- H Although the requirements of NEPA are directed to federal agencies and the primary duties of NEPA accordingly fall on the NRC Staff in NRC proceedings, the initial requirement to analyze the environmental impacts of an action is directed to applicants under 10 C.F.R. § 51.45. Thus, at the outset of a proceeding, NEPA-related contentions are to be filed based on an applicant's environmental report, under 10 C.F.R. § 2.309(f)(2). Thereafter, the NRC Staff's issuance of its draft and final environmental impact statements may lead to the filing of additional contentions if the data or conclusions contained in them are significantly different from the data or conclusions found in the applicant's documents.
- I A contention that applicant's "failure to address externally initiated accident scenarios is a material omission from the Environmental Report" is found inadmissible, because applicant did address externally initiated events. Even if applicant addressed such events in less detail than intervenors would like, intervenors provided no evidence to dispute applicant's conclusion that the release frequency for such external events is "negligible compared to internal events." Also, applicant addressed related safety and emergency planning concerns raised in the contention in other parts of the application, and there is no requirement that such concerns must be raised in the environmental report.
- J A contention that applicant failed to consider and evaluate the impacts of severe accident scenarios, regardless of probability, with release times shorter than the duration needed to achieve cold shutdown, is found inadmissible, because intervenors ignored case law that "low probability is the key to applying NEPA's rule of reason test to contentions" on the environmental impacts of specific accident scenarios, and did not context the probability calculations in the application.
- K A contention alleging a failure to evaluate the impact of a severe accident at one unit on other units when the initiating event is an external event such as an earthquake is found inadmissible, because intervenors overlooked applicant's actual consideration of such events as well as applicant's bounding analysis of simultaneous accidents at all four units, which bounds any impacts of external events on a collocated unit.
- L A contention that applicant failed to address the radiological impacts of a severe accident at one unit during shutdown, when the primary containment head is removed, on other units is found inadmissible, because intervenors did not substantively contest applicant's determination that such events are remote and speculative or applicant's bounding analysis of simultaneous accidents at all four units.
- M A contention that applicant failed to address the impact of a chain reaction that leads to more than one unit experiencing a severe accident is found inadmissible, because intervenors provide no facts or expert opinion to challenge applicant's actual consideration of the potential for a chain reaction resulting from simultaneous accidents at all four units, nor demonstrate that applicant's conclusion that such a

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- chain reaction would not occur is incorrect, nor show that the analysis they request would result in any appropriate new SAMDA or cost-beneficial SAMA.
- N Parts of a contention concerning the impacts of wind power generation and storage are found inadmissible, because intervenors show no cause why they could not have raised the issues earlier. Other parts, relating to the combination of wind and storage, overlapping uses of land, and feasibility, amounted to more than “flyspecking” of the environmental report and are admitted, as consolidated with nonmoot and admissible parts of other contentions.
- O Parts of a contention concerning impacts of solar and storage are found inadmissible, because intervenors showed no cause why they could not have raised the issues earlier, and they are unrelated to baseload power, which the board already determined defines the scope of relevant issues relating to renewable fuels, or were actually addressed by applicant. Other parts, relating to the feasibility of thermal energy storage and combination with wind and an “integrated gas turbine,” and to some cost issues, are admitted, as consolidated with nonmoot and admissible parts of other contentions.
- P A contention challenging applicant’s determination that nuclear is environmentally preferable to renewable energy with storage and supplemental natural gas, was denied in part and admitted in part, insofar as it fits in the four-part solar/wind/storage/natural gas supplementation alternative consolidated contention. Intervenors’ experts are found to have provided enough support to warrant further inquiry.
- Q The central issue found admissible from Alternatives Contentions 1 through 3 is the feasibility of intervenors’ proposed four-part wind/solar/storage/natural gas supplementation combination, and all other admissible issues relate to this “feasibility” issue in one way or another.
- R The NEPA alternatives analysis is the “heart of the environmental impact statement,” and all “reasonable alternatives” must be identified and discussed in such analysis, under a “rule of reason.” The duty to consider alternatives originates with two provisions of NEPA: (1) 42 U.S.C. § 4322(2)(C)(iii), which requires that an agency’s environmental impact statement (EIS) include “a detailed statement [of the] alternatives to the proposed action,” and (2) 42 U.S.C. § 4322(2)(E), which requires that an agency “study, develop and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources.” The goals — the central one in this case being the production of baseload power — of an applicant are accorded substantial weight in determining what is “reasonable,” but such goals may not be defined so narrowly as to unreasonably circumscribe the range of alternatives considered.
- S In order to “make an impact statement something more than an exercise in frivolous boilerplate the concept of alternatives must be bounded by some notion of feasibility,” *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 435 U.S. 519, 551 (1978). Alternatives that are “remote and speculative” do not require detailed discussion, and a “detailed statement of alternatives” cannot be found wanting simply because [not] every alternative device and thought conceivable by the mind of Man” has not been included. *Id.* at 552-53. Moreover, while “the concept of ‘alternatives’ is an evolving one, requiring the agency to explore more or fewer alternatives as they become better known and understood,” it is “incumbent upon intervenors who wish to participate to structure their participation so that it is meaningful [and] alerts the agency to the intervenors’ position and contentions.” *Id.* Comments “must be significant enough to step over a threshold requirement of materiality . . . [.] cannot merely state that a particular mistake was made[, but] must show why the mistake was of possible significance.” *Id.* “[A]dministrative proceedings should not be a game or a forum to engage in unjustified obstructionism by making cryptic and obscure references to matters that ‘ought to be’ considered.” *Id.* at 553-54. The court viewed favorably the Commission’s statement that an intervenor should not be held to a prima facie burden at the contention admissibility stage of a proceeding, but that “the showing should be sufficient to require reasonable minds to inquire further.” *Id.* at 555.
- T The “notion of feasibility” includes the concept of “reasonable availability.” *Natural Resources Defense Council, Inc. v. Morton*, 458 F.2d 827, 834 (D.C. Cir. 1972). On the question whether “reasonably available” is essentially the same concept as “developed, proven, and available,” as used in NUREG-1555, a guidance document does not have the binding force of law but is entitled to some level of deference. To the extent that NUREG-1555’s standard of “developed, proven, and available in the relevant region” directs the inquiry to the question of reasonableness, this standard is relevant to the determination of “reasonable availability” and feasibility, and ultimately, to that of the overall reasonableness of the four-part combination. But to the extent this standard from NUREG-1555 would require a narrower

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

inquiry, it cannot, of course, overcome the legal principles of reasonableness, feasibility, and “reasonable availability” that are found in binding case law.

U On appropriately defining terms and reconciling concepts such as “reasonable,” “feasible,” and “reasonably available,” in an alternatives analysis, the board majority observes that the D.C. Circuit has noted that a “problem for agencies” is that even the term “alternatives” is “not self-defining.” *Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 195 (D.C. Cir. 1991). The “rule of reason governs ‘both which alternatives [must be discussed] and the extent to which [they must be discussed].’” *Id.* If an alternative is “viable,” it may not be rejected as not “reasonable” without appropriate examination or evaluation, according to several Courts of Appeals. Thus, to the extent that Staff, in making statements to the effect that if the Applicant rejects an alternative it is not required to do a detailed discussion of its impacts, appears to imply that Applicant’s elimination of alternatives from consideration is essentially beyond challenge, this is in error.

V Just because one or more parts of a proposed alternative taken separately would not be feasible as baseload power, if it is feasible to combine aspects of existing separate parts, which together might reasonably be able to produce baseload power, then the combination is an alternative that must be considered.

W The Board majority finds that Intervenor’s in the first three of their new contentions provide sufficient information to meet the requirements of 10 C.F.R. § 2.309(f)(1) and to warrant “further inquiry” on the feasibility and reasonable availability of the four-part alternative of wind and solar energy combined with storage (including CAES and molten salt) and natural gas supplementation, and certain related subissues, as consolidated and reformulated by the board majority. Intervenor’s arguments regarding such combinations and their components are perhaps not as well organized as they might be, but they are also neither cryptic nor obscure, and rather provide a sufficient showing to require reasonable minds to inquire further. The Board majority finds that both common sense and the interest in efficiency support reformulation of the admissible parts of the contentions in question.

X A contention on the viability of a baseload wind system is found inadmissible because it is insufficiently supported to show a genuine dispute on a material issue of law or fact, as required by 10 C.F.R. § 2.309(f)(1)(vi).

Y A contention alleging applicant did not take into account new ERCOT demand data, and the positive impacts of modular additions of renewable/storage combinations in meeting a declining and uncertain demand, is found inadmissible, because it could have been raised at a much earlier time and is thus untimely under 10 C.F.R. § 2.309(c).

Z A contention alleging that applicant has not shown that its proposed project is developed, proven, and available in the relevant ERCOT region is found inadmissible because it is untimely, not within the scope of the proceeding, and does not show a genuine dispute on a material issue of law or fact, as required by 10 C.F.R. § 2.309(f)(1)(vi).

LBP-10-11 U.S. DEPARTMENT OF ENERGY (High-Level Waste Repository), Docket No. 63-001-HLW (ASLBP No. 09-892-HLW-CAB04); CONSTRUCTION AUTHORIZATION; June 29, 2010; MEMORANDUM AND ORDER (Granting Intervention to Petitioners and Denying Withdrawal Motion)

A In this 10 C.F.R Part 63 proceeding regarding the application of the Department of Energy (DOE) to construct a national high-level nuclear waste repository at Yucca Mountain, Nevada, ruling on a motion of DOE to withdraw the application and five new intervention petitions, the Board denies the withdrawal motion and grants the five new intervention petitions.

B The Nuclear Waste Policy Act of 1982, as amended (NWPAA), does not permit the Secretary to withdraw the Application that the NWPAA mandates the Secretary file. Specifically, the NWPAA does not give the Secretary the discretion to substitute his policy for the one established by Congress in the NWPAA.

C Congress directed both that DOE file the Application and that the NRC consider the Application and issue a final, merits-based decision approving or disapproving the construction authorization application. Unless Congress directs otherwise, DOE may not single-handedly derail the legislated decisionmaking process by withdrawing the Application.

D The NWPAA set out a detailed, specific procedure for site selection and review by the Secretary of Energy, the President, and the Congress, followed by submission of the Application for a construction permit, review, and final decision thereon by the NRC. *See* 42 U.S.C. §§ 10132-10135.

E Allowing DOE to withdraw the Application at this stage in the process would be contrary to congressional intent, as reflected in the legislative history of the NWPAA.

DIGESTS

ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- F In 42 U.S.C. § 10135, Congress clearly stated that Congress itself was to decide the policy question as to whether the Yucca Mountain project was to move forward by reserving final review authority of site selection. By overruling Nevada's disapproval of the Yucca Mountain site, Congress was commanding, as a matter of policy, that Yucca Mountain was to move forward and its acceptability as a possible repository site was to be decided based on its technical merits.
- G Surely Congress did not contemplate that, by withdrawing the Application, DOE might unilaterally terminate the Yucca Mountain review process in favor of DOE's independent policy determination that alternatives will better serve the public interest. At this point in the process created by Congress, it is not for DOE to do so.
- H Although the NWPA does not expressly repeal the Atomic Energy Act (AEA) — indeed, it specifically refers to it — it would be erroneous to interpret the AEA in a manner that would contravene the statutory scheme that Congress specifically adopted in the NWPA. The language, structure, and legislative history of the NWPA all contravene the notion that Congress intended to allow DOE to terminate the NRC's consideration of the Application. *See* 42 U.S.C. §§ 10101-10270.
- I Section 2.107 of 10 C.F.R. does not "authorize" withdrawal here, but rather clarifies that licensing boards have authority to impose reasonable conditions upon voluntary withdrawals in appropriate circumstances. In effect, section 2.107 authorizes licensing boards to deny unconditional withdrawals.
- J Congress "does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions — it does not, one might say, hide elephants in mouseholes." *Whitman v. American Trucking Association*, 531 U.S. 457, 468 (2001). It would require a strained and tortured reading of the NWPA to conclude that Congress intended that its explicit mandate to the NRC — to consider and decide the merits of the Application — might be nullified by a nonspecific reference to an obscure NRC procedural regulation as being among the "laws" to be applied.
- K But where the statute is clear on its face, or is clear in light of its statutory scheme and legislative history, deference is inappropriate. *See Chevron U.S.A., Inc v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-43 (1984). This is especially so where, as here, DOE's interpretation is reflected in nothing more formal than a motion before this Board — and not, for example, in a formal agency adjudication or notice-and-comment rulemaking. *See Christensen v. Harris County*, 529 U.S. 576, 587 (2000).
- L Under the framework of the NWPA, however, DOE's application is not like any other application, and DOE is not just "any litigant," because its policy discretion is clearly limited by the NWPA. The obvious difference is that Congress has never imposed a duty on private NRC applicants to pursue license applications, nor has Congress required that the Commission reach a decision on a private licensing application that the applicant chooses to withdraw. In contrast, Congress here required DOE to file the Application.
- M Statutes should not be interpreted so as to create internal inconsistencies, an absurd result, or an interpretation inconsistent with congressional intent. *See United States v. Turkette*, 452 U.S. 576, 580 (1981); *United States v. Raynor*, 302 U.S. 540, 547 (1938).
- N The possibility that the Application might not be granted — or, if granted, that the repository might ultimately not be constructed and become operational for any number of reasons — does not entitle DOE to terminate a statutorily prescribed review process.
- O In including funding for the Blue Ribbon Commission in the 2010 Appropriations Bill, Congress did not repeal the NWPA or declare that the Yucca Mountain site is inappropriate.
- P DOE says that it would be "absurd and unreasonable" to require DOE to proceed with an application that it no longer favors on policy grounds. Where the law is declared to require it, however, DOE and other agencies within the Executive Branch are often required to implement legislative directives in a manner with which they do not necessarily agree.
- Q In NRC practice, "it is highly unusual to dispose of a proceeding on the merits, *i.e.*, with prejudice, when in fact the health, safety and environmental merits of the application have not been reached." *Puerto Rico Electric Power Authority* (North Coast Nuclear Plant, Unit 1), ALAB-662, 14 NRC 1125, 1133 (1981) (emphasis in original).
- R In determining whether an individual or organization should be granted party status "as of right," the NRC applies judicial standing concepts that require a petitioner to establish: (1) a distinct and palpable harm that constitutes injury-in-fact; (2) the harm is fairly traceable to the challenged action; and (3) the

DIGESTS

ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- harm is likely to be redressed by a favorable decision. *See U.S. Department of Energy* (High-Level Waste Repository), LBP-09-6, 69 NRC 367, 381-82 (2009).
- S Where Aiken County relies on precisely the same legal arguments as South Carolina — arguments that do not require any factual support — we see no reason to prohibit its adoption of South Carolina’s contentions.
- T Where Aiken County’s contentions are based on the same triggering event as those of South Carolina — namely, DOE’s decision to seek withdrawal — we accept Aiken County’s incorporation of South Carolina’s timeliness arguments.
- U There is no requirement that a petitioner identify the time at which the asserted harm will occur when the subject is the storage of high-level waste any more than a petitioner must identify the moment an asserted accident might happen in a reactor proceeding.
- V To establish representational standing, an organization must: (1) demonstrate that the licensing action will affect at least one of its members; (2) identify that member by name and address; and (3) show it is authorized by that member to request a hearing on his or her behalf. *Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), CLI-00-20, 52 NRC 151, 163 (2000).
- W NARUC states that ratepayers, via the pass-throughs of regulated utilities, have contributed over 17 billion dollars to the Nuclear Waste Policy Fund (NWF) established under the NWPA, and will continue to pay into the NWF, even if DOE is permitted to abandon Yucca Mountain. We agree with NARUC that, because state utility commissioners are responsible for protecting ratepayers’ interests and overseeing the operations of regulated electric utilities, these economic harms constitute its members’ injury-in-fact.
- X The availability of new information is central to determining whether a petitioner has good cause for late filing. A petitioner must show that the information on which its new contention is based was not reasonably available to the public previously and that it filed its intervention petition promptly after learning of such new information. *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-05-24, 62 NRC 551, 565 (2005).
- Y A petitioner cannot base an intervention petition on an unforeseeable “possibility” that an applicant might later withdraw an application, or on the possibility that the Commission might ultimately deny an application.
- Z *Amicus curiae* participation does not provide the same rights of participation as party status and cannot be considered a substitute means to protect a petitioner’s interest or preserve a petitioner’s appellate rights. *See* 10 C.F.R. § 2.309(c)(1)(v).
- AA Factor six instructs the Board to consider the extent a petitioner’s interests are represented by existing parties, not potential parties. *See* 10 C.F.R. § 2.309(c)(1)(vi).
- BB The Staff’s argument that somehow an admissible contention is relevant to analyzing whether a nontimely factor weighs in favor of a petitioner, an analysis that is a prerequisite to determining contention admissibility, is without merit.
- CC The Board does not read the Commission’s initial hearing notice without regard for the Commission’s subsequent pronouncements.
- DD Because the contention is purely legal in nature, petitioners need not satisfy all of the contention admissibility requirements applicable to a factual contention.
- LBP-10-12 TENNESSEE VALLEY AUTHORITY (Watts Bar Nuclear Plant, Unit 2), Docket No. 50-391-OL (ASLBP No. 09-893-01-OL-BD01); OPERATING LICENSE; June 29, 2010; MEMORANDUM AND ORDER (Denial of Petition to Waive 10 C.F.R. §§ 51.53(b), 51.95(b), 51.106(c) in the Watts Bar Operating License Proceeding)
- A While Commission regulations may not be directly attacked in adjudicatory proceedings, a party may petition for a waiver of the application of a regulation on the sole ground that special circumstances exist such that the application of the regulation would not serve the purpose for which it was adopted. 10 C.F.R. § 2.335(b).
- B As was outlined in the Commission’s 2005 ruling in *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-05-24, 62 NRC 551, 559-60 (2005), to justify the waiver of a Commission rule or regulation, a party generally must show that: (1) the regulation’s application would not serve its original purpose; (2) special circumstances exist in the instant proceeding that were not considered in the rulemaking; (3) the special circumstances are unique to the instant proceeding; and (4) the waiver would be necessary in order to address a significant safety or environmental issue.

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- C Although a Licensing Board is not empowered to grant a waiver, if it concludes that a *prima facie* showing has been made, the Board must certify the matter to the Commission for a determination of whether the application of the regulation should be waived or an exception granted under the specific circumstances presented. 10 C.F.R. § 2.335(d).
- D Although the term *prima facie* is not defined in the Commission's regulations, we interpret it to mean a substantial showing. That is, the affidavits supporting the petition must present each element of the case for waiver in a persuasive manner with adequate supporting facts. See *Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), ALAB-895, 28 NRC 7, 22 (1988); *Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-653, 16 NRC 55, 72 (1981).
- E To certify a waiver petition the Board must find that the petitioner has met "extremely high standards" showing the existence of "compelling circumstances in which the rationale of [the regulation] is undercut." *Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), CLI-89-20, 30 NRC 231, 245 (1989).
- F Given the NRC's two-step licensing process (CP/OL), the need for power and alternative energy sources generally are not considered at the OL stage. Proposed Rule: "Need for Power and Alternative Energy Issues in Operating Licensing Proceedings," 46 Fed. Reg. 39,440 (Aug. 3, 1981). The need for power analysis was at the CP stage because, prior to construction, little environmental disturbance would have occurred and real alternatives, including the no-action alternative, existed. *Id.*
- G In promulgating the final rule in 1982, the Commission recognized that "in very unusual cases [at the OL stage], such as where it appears that an alternative exists that is clearly and substantially environmentally superior, the NRC Staff would be obligated under NEPA to address [the need for power and alternatives] in its environmental impact statement." Final Rule: "Need for Power and Alternative Energy Issues in Operating License Proceedings," 47 Fed. Reg. 12,940, 12,941 (Mar. 26, 1982). However, it is clear from these provisions that the petitioner has the burden of demonstrating that there is warrant for the waiver of the rule prohibiting consideration of the need for power and energy alternatives at the OL stage. See *Commonwealth Edison Co.* (Byron Nuclear Power Station, Units 1 and 2), ALAB-793, 20 NRC 1591, 1614-16 (1984).
- H When it published this rule, the Commission expressly stated that the *prima facie* showing needed to support a waiver request was a "much stricter standard than the current requirements for raising need for power and alternative energy sources in OL proceedings." 47 Fed. Reg. at 12,941.
- I Under the case law governing waiving the application of the "OL stage need for power rule," to meet its burden to justify certification of its waiver request, a petitioner must make a *prima facie* showing that the proposed facility "would not be needed: (1) to meet increased energy needs; (2) to replace older, less economical operating capacity; and (3) that there are viable alternatives . . . likely to exist which could tip the NEPA cost-benefit balance against issuance of the operating license." *Duquesne Light Co.* (Beaver Valley Power Station, Unit 2), LBP-84-6, 19 NRC 393, 401 (1984); see also *Georgia Power Co.* (Vogtle Electric Generating Plant, Units 1 and 2), LBP-84-35, 20 NRC 887, 893-94 (1984).
- J There is no NRC regulation that expressly governs the timing of waiver petitions. Accordingly, the appropriate standard for determining whether a waiver petition is timely is reasonableness.
- K The Commission has limited such waivers to "very unusual cases, such as where it appears that an alternative exists that is clearly and substantially environmentally superior," in which "the Commission would be obligated under NEPA to address [the need for power and alternatives] in its environmental impact statement." 47 Fed. Reg. at 12,941.
- L The Commission promulgated the OL-stage need-for-power rule based, in part, on its experience that at the time the OL application was submitted the vast majority of the environmental disruption would have already occurred and that an electric utility would use the new nuclear plant to meet increased energy demand or, in the alternative, if there was no increase in demand, to replace older, less economical generation capacity. *Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant), ALAB-837, 23 NRC 525, 547 (1986).
- M In *Shearon Harris*, which is binding precedent for the ASLBP, the Appeal Board held that, in order for intervenors to demonstrate that the purpose of the regulation excluding consideration of alternatives and the need for power from the OL phase would not be served, they must make a *prima facie* showing that the proposed facility "is not needed to meet increased energy demand and that it need not be used to displace an equivalent amount of older, less economical capacity." *Shearon Harris*, ALAB-837, 23 NRC at 547. The Appeal Board went on to state that "the petition [for waiver] must establish that all of the

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- applicant's fossil fuel baseload generation that is less efficient than [the facility under consideration] has been accounted for" to make its *prima facie* showing. *Id.* at 548.
- LBP-10-13 ENTERGY NUCLEAR OPERATIONS, INC. (Indian Point, Units 2 and 3), Docket Nos. 50-247-LR, 50-286-LR (ASLBP No. 07-858-03-LR-BD01); LICENSE RENEWAL; June 30, 2010; MEMORANDUM AND ORDER (Ruling on the Admissibility of New York's New and Amended Contentions 12B, 16B, 35, and 36)
- A In this license renewal proceeding, Intervenor filed two amended and two new contentions challenging the Applicant's SAMA Reanalysis. The Licensing Board ruled that one of the amended contentions was admissible in whole and one was admissible in part, while both new contentions were admissible in part.
- B The NRC has the authority and responsibility to supplement or to amend conditions to the current licensing basis (CLB) of an existing operating license at the time of license renewal if such supplements or amendments are deemed necessary to protect the environment.
- C Relative to the agency's acknowledged NEPA responsibilities in the license renewal context, the NRC's regulatory framework divides NEPA issues between Category 1 issues, which are those generically addressed by the NRC's Generic Environmental Impact Statement for License Renewal and thus inadmissible in a license renewal proceeding, and Category 2 issues, which are those issues that must be analyzed on a site-by-site basis and thus are within the scope of license renewal proceedings.
- D The NRC Staff's obligation regarding SAMAs under NEPA and Part 51 is met by taking a hard look at those SAMAs identified as potentially cost-beneficial. While the only cost-beneficial SAMAs that an applicant must implement as part of a license renewal safety review are those dealing with aging management, an order by the NRC Staff to implement SAMAs not dealing with aging management can be issued concurrently as part of a Part 50 CLB review. Consistent with the mandate of the Administrative Procedure Act (APA) and NEPA, if properly carried out, the NRC Staff's hard-look analysis of all potentially cost-beneficial SAMAs under NEPA and Part 51 (not just those that are aging-related) ensures that it has given proper consideration to all relevant factors in granting a license renewal.
- E If the benefit-to-cost ratio is glaringly large for a potentially cost-beneficial SAMA, the NRC Staff must, as a prerequisite to extending the license, impose implementation of that SAMA as a license condition or, in the alternative, explain why it is not requiring implementation of that SAMA. The failure to do either of these alternatives would be to act arbitrarily and capriciously.
- F The adequacy of emergency planning is outside the scope of license renewal proceedings.
- G While it may be that implementation of non-aging-related SAMAs cannot be directly required as license conditions within a Part 54 license renewal review, the NRC Staff nonetheless is authorized to impose such conditions that are necessary to protect the environment to an applicant's CLB under a Part 50 backfit procedure. Thus, when faced with cost-beneficial SAMAs, an alleged failure by the NRC Staff to explain why it has not instituted a backfit to a CLB as a condition precedent to license renewal could constitute a failure to meet the hard-look obligations the NRC Staff has under the APA and NEPA. Moreover, simply saying that implementation of SAMAs is outside of the scope of license renewal review is not sufficient to meet that obligation because the NRC Staff must review SAMAs under Part 51 and has the option, if necessary, to institute a backfit prior to license renewal under Part 50 as a result of its SAMA review.
- H As a part of a license renewal proceeding, an applicant is required pursuant to 10 C.F.R. § 51.53(c)(3)(ii)(L) to incorporate, as part of its ER, a consideration of alternatives to mitigate severe accidents. This review is not limited to consideration of accidents that would be the result of aging. Pursuant to NRC regulations, as required by the *Limerick* decision, the NRC Staff must evaluate an applicant's submission and take appropriate action in deciding whether to grant the requested license renewal. In order to meet its obligations under NEPA, once a SAMA has been identified as plainly cost-effective, the NRC Staff must either require implementation or, in the alternative, explain why it has decided not to require implementation prior to license renewal. Likewise, the applicant must supply information that is sufficiently complete for the Commission to be able to explain its decision.
- LBP-10-14 SOUTH TEXAS PROJECT NUCLEAR OPERATING COMPANY (South Texas Project, Units 3 and 4), Docket Nos. 52-12-COL, 52-13-COL (ASLBP No. 09-885-08-COL-BD01); COMBINED LICENSE; July 2, 2010; MEMORANDUM AND ORDER (Rulings on Motions to Dismiss Contentions 8, 9, 14, 16, 21; Amended Contentions 8 and 21; New Colocation Contentions; and New Main Cooling Reservoir Contentions)

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- A In this 10 C.F.R. Part 52 proceeding regarding the application of South Texas Project Nuclear Operating Company (STP) for a combined license (COL) to construct and operate two new nuclear units, using the Advanced Boiling Water Reactor (ABWR) certified design, at its site in Matagorda County, Texas, ruling on motions by Intervenor seeking to admit nine new contentions and to amend two other contentions, and by STP seeking to dismiss previously admitted contentions, the Licensing Board (1) grants Applicant's motion to dismiss Contentions 8, 9, 14, 16, and 21; (2) denies Intervenor's motion to amend Contentions 8 and 21; (3) denies Intervenor's motion to admit Contentions CL-1, MCR-1, MCR-2, MCR-3, MCR-4, and MCR-5; and (4) grants Intervenor's motion to admit Contentions CL-2, CL-3, and CL-4, reformulating them as Contention CL-2.
- B The Commission has recognized that a contention challenging an applicant's ER can be "superseded by the subsequent issuance of licensing-related documents" — whether a draft EIS or an applicant's response to a request for additional information." *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-28, 56 NRC 373, 382 (2002) (quoting *Duke Power Co.* (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 NRC 1041, 1050 (1983)). In such situations, the Commission has distinguished between "contentions that merely allege an 'omission' of information and those that challenge substantively and specifically how particular information has been discussed in a license application." *Id.* at 382-83. For a contention of omission, if "the information is later supplied by the applicant or considered by the Staff in a draft EIS, the contention is moot [and] Intervenor must timely file a new or amended contention . . . in order to raise specific challenges regarding the new information." *Id.* at 383. Were it otherwise, parties could transform the original contention of omission into several new claims and circumvent the contention admissibility standards of 10 C.F.R. § 2.309(f)(1). *McGuire/Catawba*, CLI-02-28, 56 NRC at 383.
- C Generally, NEPA imposes procedural requirements on the NRC to take a "hard look" at the environmental impacts of building and operating a nuclear reactor. *Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-05-28, 62 NRC 721, 726 (2005). The NEPA "hard look" doctrine is subject to a "rule of reason," *Louisiana Energy Services, L.P.* (National Enrichment Facility), LBP-06-8, 63 NRC 241, 258-59 (2006), that the Commission has interpreted as obligating the agency to consider "all reasonable alternatives" to the proposed action. 10 C.F.R. Part 51, Subpart A, App. A. The alternatives analysis is the "heart of the environmental impact statement." *Id.* However, the agency is not required to consider every imaginable alternative to a proposed action; rather, it only need evaluate reasonable alternatives. *See, e.g., Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), CLI-91-2, 33 NRC 61, 71 (1991).
- D The agency has broad discretion to determine how thoroughly it needs to analyze a particular subject for NEPA compliance. *Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), CLI-98-3, 47 NRC 77, 103 (1998). For example, the Commission has held that where impacts are "remote and speculative" or "inconsequential small," they need not be examined. *Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), ALAB-919, 30 NRC 29, 44 (1989) (citing *Limerick Ecology Action, Inc. v. NRC*, 869 F.2d 719, 739 (3d Cir. 1989)), *vacated on other grounds*, CLI-90-4, 31 NRC 333 (1990). In the Commission's estimation, the agency can dispense with an examination of these less significant impacts because NEPA requires only an estimate of anticipated, but not unduly speculative, impacts. *Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-05-20, 62 NRC 523, 536 (2005). Finally, in the Commission's view, because issuing a license involves oversight of a private project, rather than a federally sponsored project, the agency is entitled to give the applicant's preferences substantial weight when considering project design alternatives. *See, e.g., Hydro Resources, Inc.* (P.O. Box 15910, Rio Rancho, NM 87174), CLI-01-4, 53 NRC 31, 55 (2001) (citing *Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 197 (D.C. Cir. 1991)).
- E Where an Intervenor challenges an issue already addressed in the Final Safety Evaluation Report (FSER) for the ABWR Design Control Document (DCD), the issue is closed to Licensing Boards as an impermissible attack on the ABWR certified design, as codified in 10 C.F.R. Part 52, Appendix A. *See* 10 C.F.R. § 2.335(a) ("no rule or regulation of the Commission . . . concerning the licensing of production and utilization facilities . . . is subject to attack by way of discovery, proof, argument, or other means in any adjudicatory proceeding"); *Northeast Nuclear Energy Co.* (Millstone Nuclear Power Station, Units 2 and 3), LBP-01-10, 53 NRC 273, 286-87 (2001).
- F Under NEPA, an agency must consider alternatives to the proposed action. 42 U.S.C. § 4332(2)(C)(iii). In the NRC licensing context, 10 C.F.R. § 51.45 requires an applicant's ER to discuss alternatives. 10

DIGESTS

ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

C.F.R. § 51.45(b)(3). The Commission has stated that severe accident mitigation alternatives (SAMA) analyses “are rooted in a cost-benefit assessment” and that the purpose of the assessment is to identify plant changes whose costs would be less than their benefit (i.e., the “potential for significantly improving severe accident safety performance”). *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-17, 56 NRC 1, 5 (2002). Thus, challenges to a severe accident mitigation design alternative (SAMDA) analysis, which is a subset of SAMA analysis, are within the scope of a COL proceeding.

G Section 2.309(f)(1)(v) of 10 C.F.R. requires that contentions be supported by alleged facts or expert opinion. This requirement “generally is fulfilled when the sponsor of an otherwise acceptable contention provides a brief recitation of the factors underlying the contention or references to documents and text that provide such reasons.” *Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), LBP-09-4, 69 NRC 170, 194-95 (2009) (quoting *Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), LBP-06-23, 64 NRC 257, 356 (2006) (internal quotations omitted)).

H Section 521(c)(2) of the Clean Water Act prohibits an agency such as the NRC from using NEPA to impose additional effluent limitations on an applicant’s wastewater discharges to surface waters, such as the Main Cooling Reservoir. 33 U.S.C. § 1371(c)(2). That section provides that nothing in NEPA shall be deemed to “authorize any such agency to impose, as a condition precedent to the issuance of any license or permit, any effluent limitation other than any such limitation established pursuant to this chapter.” Certainly, the Clean Water Act does not authorize regulation of discharges to groundwater, *Exxon Corp. v. Train*, 554 F.2d 1310, 1312 (5th Cir. 1977), and so the Applicant’s ER must address those discharges to groundwater. Still, the provisions of the Texas Pollutant Discharge Elimination System (TPDES) permit cannot be adjudicated in this forum — responsibility for the terms and conditions of that TPDES permit lie with the State of Texas and the U.S. Environmental Protection Agency.

LBP-10-15 PACIFIC GAS AND ELECTRIC COMPANY (Diablo Canyon Nuclear Power Plant, Units 1 and 2), Docket Nos. 50-275-LR, 50-323-LR (ASLBP No. 10-890-01-LR-BD01); LICENSE RENEWAL; August 4, 2010; MEMORANDUM AND ORDER (Rulings on Standing, Contention Admissibility, Waiver Petition, and Selection of Hearing Procedures)

A The Board’s role, in considering a petition for waiver under 10 C.F.R. § 2.335, is limited to deciding whether the petitioner has made a *prima facie* showing of special circumstances that would support a waiver. 10 C.F.R. § 2.335(c)-(d). If no *prima facie* showing has been made, then the Board “may not further consider the matter.” 10 C.F.R. § 2.335(c). If the petitioner has made a *prima facie* showing of special circumstances, then the Board certifies the matter to the Commission. 10 C.F.R. § 2.335(d).

B A *prima facie* showing merely requires the presentation of enough information to allow the Board to infer (absent disproof) that special circumstances exist to support a waiver. It is not a ruling on the merits that a waiver is indeed warranted.

C NRC regulations require that a license renewal ER include a SAMA analysis (if not previously considered by the Staff). 10 C.F.R. § 51.53(c)(3)(ii)(L). Thus, the adequacy, or inadequacy, of PG&E’s SAMA analysis is certainly within the scope of this license renewal proceeding.

D The Commission’s NEPA review in the license renewal process is unlike the Commission’s Part 54 review because the NEPA review covers all environmental impacts associated with license renewal and is not limited to aging-related issues.

E A petitioner need not submit a sensitivity analysis in order to establish that a SAMA-related contention is “material” under 10 C.F.R. § 2.309(f)(1)(iv).

F A petitioner does not need to provide “expert opinion” or a “substantive affidavit” in order to satisfy 10 C.F.R. § 2.309(f)(1)(v).

G The Staff’s propositions at this point regarding what would effectively cure the omission are matters for a merits decision, not for a determination of whether or not a contention of omission is admissible. The determination of the sufficiency of any cure submitted by the Applicant is a matter for a later day, once such a cure has been submitted to the Staff.

H If the petitioner alleges that a new earthquake fault has been discovered within 600 meters of the nuclear reactors, and that the fruits of several new studies concerning the new fault will be available in the near term, then the contention that the environmental report is based on incomplete information (*see* 10 C.F.R. § 1502.22) is admissible and is not an improper request that the Board suspend the license renewal proceeding until the current studies are completed. To the contrary, once the contention is admitted, the

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

evidentiary hearing will proceed in the normal course and the Board will decide the merits of whether the environmental report is, or is not, adequate and complete.

I If the petitioner alleges that a new earthquake fault has been discovered within 600 meters of the nuclear reactors, and that the fruits of several new studies concerning the new fault will be available in the near term, then the contention that the environmental report is based on incomplete information (*see* 10 C.F.R. § 1502.22) is admissible and will not be rejected on the basis that there “will always be more data that could be gathered.”

J If the admission of a contention requires the grant of a waiver request under 10 C.F.R. § 2.335, then the Board’s role is to decide (a) whether the petitioner has made a *prima facie* showing for waiver, and (b) whether the contention is otherwise admissible. If both criteria are met, then the matter is referred to the Commission for a merits decision on the waiver. If either criterion is not met, the contention is dismissed.

K In order for a contention regarding environmental impacts of spent fuel storage to be “within the scope” of this proceeding, as required by 10 C.F.R. § 2.309(f)(1)(iii), and not violate 10 C.F.R. § 2.335(a), the Petitioner must obtain a waiver under 10 C.F.R. § 2.335(d).

L A *prima facie* case is defined as “1. The establishment of a legally required rebuttable presumption. 2. A party’s production of enough evidence to allow the fact-trier to infer the fact at issue and rule in the party’s favor.” *Black’s Law Dictionary* 1310 (9th ed. 2009).

M In the context of waiver petitions, “a *prima facie* showing . . . is one that is ‘legally sufficient to establish a fact or case unless disproved,’” *Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), ALAB-895, 28 NRC 7, 22 (1988) (quoting *Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-653, 16 NRC 55, 72 (1982)).

N The existence of a *prima facie* case is determined based on the sufficiency of the movant’s assertions and informational/evidentiary support alone. We need not find that the Petitioner would ultimately prevail on the merits for a waiver, or whether the fact or case has been disproved, in order to certify its waiver petition to the Commission. Indeed, the issue of the merits of the waiver request is not before us. *See* 10 C.F.R. § 2.335(c)-(d). We only address whether the Petitioner has provided sufficient information in support of its waiver request to warrant requiring a substantive response by the Applicant and the NRC Staff.

O In deciding whether the petitioner has established a *prima facie* case in support of a waiver petition, the Commission has said that the petitioner must show that the “*strict* application” of the regulation (from which waiver is sought) “‘would not serve the purposes for which [it] was adopted.’” *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-05-24, 62 NRC 551, 559-60 (2005) (emphasis added). In this case, the central purpose of Part 51 Appendix B and 10 C.F.R. § 51.53(c)(2) is to allow the NRC to comply with NEPA by identifying and evaluating certain environmental impacts (in this instance, relating to the storage of spent fuel) that are generic to reactor license renewal proceedings, and then allowing the Applicant and NRC to dispense with site-specific evaluations of such environmental impacts in situations covered by the generic analysis. The purpose of the Part 51 rules is not simply to expedite the NEPA process. It is to apply generic determinations where the generic determinations are appropriate.

P Compliance with NEPA requires that, if new and significant information arises after the date of the issuance of the EIS and before the Agency decision, then the Agency must supplement or revise its EIS and consider such information. *Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 371-72 (1989).

Q SLOMFP has alleged sufficient new information concerning the seismic situation at Diablo Canyon to raise a *prima facie* showing for the first element needed for a waiver, i.e., that the strict application of the generic NEPA analysis of the management of spent fuel in nuclear reactors that is contained in NRC’s 1996 GEIS would not serve the purpose for which Part 51 Appendix B and 10 C.F.R. § 51.53(c)(2) were adopted.

R SLOMFP has alleged sufficient new information concerning the seismic situation at Diablo Canyon to raise a *prima facie* showing for the third element needed for a waiver, i.e., that the seismic risk factors at Diablo Canyon are unique and different from the NEPA analysis contained in NRC’s 1996 GEIS.

S The Commission has stated that, in the context of a safety contention, the petitioner must show a waiver of the regulation is necessary to reach a “significant safety problem.” *Millstone*, CLI-05-24, 62 NRC 560. In the context of an environmental contention, the petitioner needs to show that the waiver of the regulation is needed to reach a significant environmental problem. This is consistent with 10 C.F.R.

DIGESTS

ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- §§ 51.53(c)(iv) and 51.92(a)(2) which require NRC to consider new and significant information that arises after the environmental impact statement.
- T Although the terms “severe accident,” “severe accident mitigation alternatives,” and “SAMA” are not defined in NRC’s NEPA regulations, the NRC policy documents that originated these terms clearly limit them to nuclear reactors, and do not include spent fuel pools or storage. *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 21 (2001) (citing Policy Statement on Severe Reactor Accidents Regarding Future Designs and Existing Plants, 50 Fed. Reg. 32,138 (Aug. 8, 1985)).
- U SAMA analyses are not required for the spent fuel storage impacts associated with license renewals. *Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-10-14, 71 NRC 449, 471-75 (2010).
- V If the petition’s “header” for a contention uses the phrase “SAMA Analysis,” but the “statement of the contention” does not refer to the phrase “SAMA Analysis,” the petition never refers to the SAMA analysis regulation (10 C.F.R. § 51.53(c)(3)(ii)(L)), and the primary thrust of the briefing by all parties does not focus on SAMA analysis issues, then the Board may interpret the contention in accordance with the express “statement of the contention” and not reject it as an impermissible “SAMA analysis” contention.
- W NEPA requires the NRC to make an informed decision regarding the environmental consequences of the grant of this license renewal, and such information must either include consideration of the likelihood and consequences of such an event or indicate through reasonable analyses satisfactory under Ninth Circuit guidelines that the event is remote and speculative as the term is used in NEPA analyses. We believe that NEPA’s duty to consider the environmental impacts of a proposed action incorporates, at least implicitly, considerations of the probability of a particular consequence occurring.
- X The requirement of 10 C.F.R. § 2.335(d) that a waiver petition be accompanied by an affidavit that identifies the aspects of the subject matter of the licensing proceeding that warrant the waiver and that states the special circumstances that justify the waiver, does not require that the affiant be an expert.
- Y The petitioner has presented a *prima facie* showing for the waiver of the NRC regulation covering the environmental impacts of spent fuel pool accidents generically, and has shown that Contention EC-2 (concerning earthquake-induced spent fuel pool accidents at Diablo Canyon) is otherwise admissible. Accordingly, the contention is referred to the Commission for a ruling as to whether a waiver is warranted.
- Z A *prima facie* showing in support of a waiver requires a showing that there are special circumstances that are unique to the Diablo Canyon facility. The fact that NRC has evaluated the threat of terrorist attack at spent fuel pools at every power plant site in the United States does not show that the Diablo Canyon site is unique. Therefore Contention EC-3 is inadmissible because it is not supported by a *prima facie* showing of waiver.
- AA Under the Commission’s regulations implementing NEPA, the environmental report submitted by a license renewal applicant must include a SAMA analysis if such an analysis has not already been performed. 10 C.F.R. § 51.53(c)(3)(ii)(L).
- BB Although the obligations under NEPA fall to the agency (and therefore the NRC Staff), petitioners are required to raise environmental objections based on the ER, 10 C.F.R. § 2.309(f)(2), and therefore the assertion that there is relevant information missing from the SAMA analysis, which is part of the ER, is appropriate at this point.
- CC Given that consideration of terrorist attacks is part of the NRC’s NEPA obligations in the Ninth Circuit, the issue of whether terrorist attacks have been fully considered in the NEPA analysis for Diablo Canyon is plainly material to the decision the NRC must make, and thus satisfies 10 C.F.R. § 2.309(f)(1)(iv).
- DD This situation is distinguishable from the Commission’s ruling in *McGuire/Catawba*, where the Commission found a SAMA analysis contention to be inadmissible because it lacked supporting information regarding the relative costs and benefits of that proposed alternative. *See Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-17, 56 NRC 1, 11-12 (2001). Moreover, the Commission noted that the Applicant’s ER did address SAMAs related to the severe accident sequence at issue in the contention. *Id.* at 12. Here, by contrast, SLOMFP has alleged that “it’s an entire field that’s been neglected, just not addressed at all.” The Commission’s concern in *McGuire/Catawba* that, “[f]or any severe accident concern, there are likely to be numerous conceivable SAMAs and thus it will always be possible to come up with some type of mitigation alternative that has

DIGESTS

ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- not been addressed by the Licensee,” CLI-02-17, 56 NRC at 11, therefore is inapplicable to the present situation because SLOMFP asserts the omission of an entire class of scenarios.
- EE SLOMFP’s assertion that terrorist-act-originated SAMA analysis is required by Ninth Circuit law also satisfies the requirements of 10 C.F.R. § 2.309(f)(1)(iii) that the issue be within the scope of this proceeding. We are not persuaded that this issue has been generically addressed in the 1996 GEIS through its statement that the consequences of terrorist-act-initiated incidents would be “no worse than” those already considered in the ER and the GEIS resulting from other initiators. While the *consequences* may be no worse, that fact has no bearing upon the potential cost-benefit analysis of various mechanisms to *prevent* such a release by a terrorist attack, and possibly none upon mechanisms that might *ameliorate* its consequences. The referenced findings of the 1996 GEIS regard only the consequences; thus we do not find that this contention challenges the generic finding of the NRC.
- FF EC-4 raises the questions of: (a) whether because of the quantitative nature of the cost-benefit analyses which are the end product of SAMA analyses, a quantitative, as opposed to qualitative, analysis of terrorist attacks and the alternatives for mitigation and prevention is necessary; (b) how Staff should approach such an analysis when the data are, at best, sparse; and (c) the extent to which, and manner by which, SAMA analyses should consider matters and mechanisms already addressed by the NRC’s Design Basis Threat programs. In our view, these are novel legal or policy issues that would benefit from Commission review. *See* 10 C.F.R. § 2.323(f)(1).
- GG The NRC is not barred from considering a licensee’s past and continuing managerial and performance problems when it determines, under 10 C.F.R. § 54.29(a), whether the licensee has demonstrated that actions “will be taken” with respect to managing the effects of aging during the period of extended operation.
- HH The potential scope of adjudicatory hearings in license renewal proceedings is the same as the scope of the Staff’s review. If the ability of an applicant to adequately implement an aging management program cannot be raised in an adjudicatory proceeding, then, likewise, it cannot be considered by the Staff when it decides whether to allow the applicant to operate a nuclear power plant for an additional 20 years.
- II Under the limited circumstances of this case, the NRC’s determination under 10 C.F.R. § 54.29(a) can be informed by the applicant’s past performance that involved an alleged ongoing pattern of difficulty in managing current activities that have a direct link to the applicant’s ability to implement the aging management program during the proposed license renewal period.
- JJ The plain language of 10 C.F.R. § 54.29(a) requires that the NRC make predictive determinations about what the applicant will actually do in the future. The Commission must conclude that there is reasonable assurance that the required aging management activities have already “been taken” or “will be taken.” Identification of the needed actions, such as in an aging management program, is not enough. There must be assurance that the actions will actually be taken and “will continue to be conducted” in accordance with the current licensing basis during the period of extended operation.
- KK Nothing in 10 C.F.R. § 54.29(a) says that a licensee’s current noncompliance history or patterns of management problems or difficulties cannot be considered.
- LL The regulation does not say that the only thing the NRC can consider in making the 10 C.F.R. § 54.29(a) determination is the adequacy of the paperwork, i.e., the aging management program that states the applicant’s plan for satisfying the regulation. Neither 10 C.F.R. § 54.29 nor any of the Part 54 regulations ever use the terms “aging management program,” “aging management plan,” or “AMP.” The regulation does not say — “submit an adequate AMP.”
- MM Part 54 requires that the applicant demonstrate that the “effects of aging will be adequately managed.” 10 C.F.R. § 54.21(a)(3). The NRC must determine, to a reasonable assurance, that such a demonstration has been made. 10 C.F.R. § 54.29(a).
- NN The Commission has rejected the proposition that a “license renewal proceeding is *per se* an inappropriate forum” to consider the adequacy of the applicant’s current or past managerial performance. *Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Georgia), CLI-95-12, 42 NRC 111, 120 (1995).
- OO The Commission has stated that “[i]n determining whether . . . to renew a license[], the Commission makes what is in effect predictive findings about the qualifications of an applicant. The past performance of management may help indicate whether a licensee will comply with agency standards. . . . Of course, the past performance must bear on the licensing action [renewal] currently under review.” *Georgia Tech*, CLI-95-12, 42 NRC at 120 (footnotes omitted).

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- PP It is not credible for the applicant to argue, in the face of three current and consecutive NRC inspections finding numerous violations at the applicant's facility and a continuing "adverse trend" in such violations, that it is "unsupported speculation" that the applicant will violate the NRC requirements in the future. These inspections rebut the assumption of compliance.
- QQ The Commission's general policy of not assuming that an applicant will violate NRC regulations is rebuttable. Past performance, such as NRC inspection reports of current and continuing patterns of violations, can undermine and rebut that assumption.
- RR In the context of 10 C.F.R. § 54.29, we reject the notion that the presumption of compliance is irrefutable or that, despite evidence to the contrary, the NRC must blindly assume that an applicant will always comply and/or will always be able to adequately implement future programs under any and all circumstances. This is especially so if there is a narrow and specific concern that has existed for years and continues to exist regarding the ability of a license renewal applicant to properly understand the very same CLB that it must comply with during the PEO.
- SS Trivial and random noncompliances that have no link to the essential elements of implementing an aging management program will not support the admission of a contention alleging that the applicant has failed to demonstrate, as required by 10 C.F.R. § 54.29(a), a reasonable assurance that it will in fact (as opposed to on paper) adequately manage aging during the period of extended operations in the PEO.
- TT Whether or not the current instances of noncompliance are of sufficient magnitude and pervasiveness to support a finding of no reasonable assurance" under 10 C.F.R. § 54.29(a) is a merits determination. Here we are only concerned with whether the contention is within the scope of this license renewal proceeding and admissible.
- UU The absence of perfect compliance does not rebut the presumption of compliance or support admission of a contention that the application does not satisfy 10 C.F.R. § 54.29(a). But a consistent, longstanding, and continuing pattern of problems in a specific area that is relevant to managing aging equipment will.
- VV Asserting that an applicant has not demonstrated a reasonable assurance that it will actually be able to adequately manage aging during the period of extended operation, as is required by 10 C.F.R. § 54.29(a) is not the same as asserting that the applicant does not meet the "character" test of Atomic Energy Act § 182. Contention TC-1 is not an attack on the character or integrity of the applicant.
- WW A narrow and specific contention that alleges facts, with supporting documentation, of a longstanding and continuing pattern of noncompliance or management difficulties, which are reasonably linked to whether the licensee will actually be able to adequately "manage aging" in accordance with the current licensing basis during the PEO, can be an admissible contention under 10 C.F.R. § 54.29(a).
- XX Nothing in 10 C.F.R. § 54.30, "Matters not subject to a renewal review," bars a contention that the applicant has failed to demonstrate that it will actually be able to adequately manage aging in the future, as required by 10 C.F.R. § 54.29. Section 54.30(a) says that a licensee is obliged to correct current noncompliances now. Section 54.30(b) says that whether or not the licensee complies with 10 C.F.R. § 54.30(a) is not within the scope of license renewal review. Neither provision prohibits a contention that challenges the applicant's demonstration regarding its future compliance during the license renewal period.
- YY The fact that current noncompliances are used as evidence to support the allegation that the applicant will not be able to manage aging in the future does not render the contention outside of the scope of 10 C.F.R. § 54.29 nor does it violate 10 C.F.R. § 54.30.
- ZZ The concept of "age-related degradation unique to license renewal" or "ARDUTL" was deleted from the license renewal regulations in 1995 because the NRC realized that aging is a continuous process and the aging in question does not need to be *unique* to the period of extended operation in order to be relevant to 10 C.F.R. § 54.29.
- AAA The current regulatory process, and compliance with the CLB, is not the primary focus of license renewal. We note, however, that there are exceptions. For example, the Commission states: "the portion of the CLB that can be impacted by the detrimental effects of aging is limited to the design bases aspects of the CLB." Nuclear Power Plant License Renewal; Revisions, 60 Fed. Reg. 22,461, 22,475 (May 8, 1995).
- BBB An ongoing pattern of management failures and/or past or current violations can be the subject of an admissible contention under 10 C.F.R. § 54.29(a) because the scope of adjudicatory review and the scope of the Staff's review are the same, see *Turkey Point*, CLI-01-17, 54 NRC at 10, and the Staff is not forbidden from considering a company's past performance when evaluating its license renewal application.

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- CCC As required by 10 C.F.R. § 2.310, upon admission of a contention, the Board must identify the specific hearing procedures to be used.
- DDD The standard for allowing the parties to conduct cross-examination is the same under Subparts G and L, to wit — the Administrative Procedure Act (APA) standard for cross-examination in formal administrative proceedings as set forth in 5 U.S.C. § 556(d) (“A party is entitled . . . to conduct such cross examination as may be required for a full and true disclosure of the facts.”). See *Citizens Awareness Network, Inc. v. NRC*, 391 F.3d 338, 351 (1st Cir. 2004); see also *Changes to Adjudicatory Process*, 69 Fed. Reg. 2182, 2195-96 (Jan. 14, 2004).
- EEE APA § 556(d), which is the standard for allowing cross-examination under Subparts G and L, is a liberal standard, but does not provide an absolute right to conduct cross-examination. See *Seacoast Anti-Pollution League v. Costle*, 572 F.2d 872, 880 (1st Cir. 1978).
- FFF Even though the APA § 556(d) substantive standard is the same under Subparts G and L, NRC’s procedures differ. Cross-examination occurs virtually automatically in Subpart G hearings, subject to normal judicial management and the requirement to file a cross-examination plan. See 10 C.F.R. §§ 2.319, 2.711(c). In contrast, under Subpart L, a party seeking to conduct cross-examination must file a written motion and obtain leave of the Board. 10 C.F.R. § 2.1204(b).
- GGG The Board determines which hearing procedure to use on a contention-by-contention basis. See, e.g., 10 C.F.R. §§ 2.309(g), 2.310(d).
- HHH Section 2.310(b)-(h) enumerates specific situations where a certain procedure is mandated or available. If a contention does not fall within one of those categories, then proceedings may be conducted under Subpart L. 10 C.F.R. § 2.310(a). Thus, if no particular procedure is compelled, the Board must exercise its discretion and select the hearing procedure most appropriate for the newly admitted contentions.
- III The parties have not provided the Board with any showing that a particular procedure is compelled or that the Board should exercise its discretion to use a procedure other than Subpart L on any of the contentions. Therefore the Board exercises its discretion and selects Subpart L as the appropriate hearing procedure for the four admitted contentions.
- LBP-10-16 POWERTECH (USA), INC. (Dewey-Burdock In Situ Uranium Recovery Facility), Docket No. 40-9075-MLA (ASLBP No. 10-898-02-MLA-BD01); MATERIALS LICENSE AMENDMENT; August 5, 2010; MEMORANDUM AND ORDER (Ruling on Petitions to Intervene and Requests for Hearing)
- A A petitioner’s participation in a licensing proceeding hinges on a demonstration that the petitioner has standing. Section 189a of the Atomic Energy Act of 1954 (AEA), 42 U.S.C. §§ 2011 to 2297h-13 (2006), mandates that the NRC provide a hearing “upon the request of any person whose interest may be affected by the proceeding.” *Id.* § 2239(a)(1)(A). The Commission’s regulations specify that a petition for review and request for hearing must include a showing that the petitioner has standing and that the Board should consider (1) the nature of the petitioner’s right under the AEA or the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 (2006), to be made a party to the proceeding; (2) the nature and extent of the petitioner’s property, financial, or other interest in the proceeding; and (3) the possible effect of any decision or order that may be issued in the proceeding on the petitioner’s interest. 10 C.F.R. § 2.309(a), (d)(1)(ii)-(iv).
- B The Commission customarily follows judicial concepts of standing. *Quivira Mining Co.* (Ambrosia Lake Facility, Grants, New Mexico), CLI-98-11, 48 NRC 1, 5-6 (1998) (citing *Portland General Electric Co.* (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 613-14 (1976)). In order to establish standing in federal court, a party must show three key elements: injury-in-fact, causation, and redressability. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). As the Commission has stated, standing requires that a petitioner allege “a particularized injury that is fairly traceable to the challenged action and is likely to be redressed by a favorable decision.” *Quivira*, CLI-98-11, 48 NRC at 6 (citing *Cleveland Electric Illuminating Co.* (Perry Nuclear Power Plant, Unit 1), CLI-93-21, 38 NRC 87, 92 (1993)).
- C In proceedings involving nuclear power reactors a petitioner is presumed to have standing to intervene without the need to specifically plead injury, causation, and redressability if the petitioner lives within 50 miles of the nuclear power reactor. See, e.g., *Florida Power & Light Co.* (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325, 329 (1989) (observing that the presumption applies in proceedings for nuclear power plant “construction permits, operating licenses, or significant amendments thereto”). However, no such proximity presumption applies in source materials cases such as this one. See *USEC Inc.* (American Centrifuge Plant), CLI-05-11, 61 NRC 309, 311-12 (2005).

DIGESTS

ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- D Under judicial concepts of standing, a petitioner must suffer from, or be in imminent danger of suffering, an injury-in-fact. The Supreme Court has defined injury-in-fact as “an invasion of a legally protected interest which is . . . concrete and particularized and actual or imminent rather than conjectural or hypothetical.” *Lujan*, 504 U.S. at 560. An injury-in-fact must go beyond generalized grievances to affect a petitioner “in a personal and individual way.” *Id.* at 560 n.1. Thus, standing generally has been denied when the threat of injury is not concrete and particularized. *See, e.g., Whitmore v. Arkansas*, 495 U.S. 149, 158-59 (1990); *Los Angeles v. Lyons*, 461 U.S. 95, 105-06 (1983).
- E A petitioner’s claimed injury must be arguably within the zone of interests protected by the governing statute in the proceeding. *Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-98-21, 48 NRC 185, 195-96 (1998). “In order to determine whether an interest is in the ‘zone of interests’ of a statute, it is necessary ‘first [to] discern the interests ‘arguably . . . to be protected’ by the statutory provision at issue,’ and ‘then [to] inquire whether the [petitioner’s] interests affected by the agency action are among them.’” *U.S. Enrichment Corp.* (Paducah, Kentucky Gaseous Diffusion Plant), CLI-01-23, 54 NRC 267, 273 (2001) (citing *National Credit Union Administration v. First National Bank*, 522 U.S. 479, 492 (1998)).
- F To establish causation, a petitioner must show that there is “a causal connection between the injury and the conduct complained of — the injury has to be ‘fairly . . . trace[able] to the challenged action of the defendant, and not . . . th[e] result [of] the independent action of some third party not before the court.’” *Lujan*, 504 U.S. at 560 (citing *Simon v. Eastern Kentucky Welfare Rights Organization*, 426 U.S. 26, 41-42 (1976)). In source materials cases, the petitioner has the burden of showing a “specific and plausible means” by which the proposed license activities may affect him or her. *See American Centrifuge*, CLI-05-11, 61 NRC at 311-12 (“Where there is no ‘obvious’ potential for [offsite] harm, . . . [the petitioner] must show a ‘specific and plausible means’ of how the challenged action may harm him or her.” (internal citations omitted)). Petitioners must therefore demonstrate a plausible chain of causation between the licensed activity and the alleged injury. A Board’s determination of standing does “not depend[] on whether the cause of the injury flows directly from the challenged action, but whether the chain of causation is plausible.” *Sequoyah Fuels Corp. and General Atomics* (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 75 (1994). *See also Crow Butte Resources, Inc. (Crow Butte II)* (In Situ Leach Facility, Crawford, Nebraska), CLI-09-9, 69 NRC 331, 345 (2009).
- G The third requirement necessary for a petitioner to demonstrate standing is redressability. Redressability requires a petitioner to show that its alleged injury-in-fact could be cured or alleviated by some action of the tribunal. *Sequoyah Fuels Corp.* (Gore, Oklahoma Site Decommissioning), CLI-01-2, 53 NRC 9, 13-14 (2001); *Westinghouse Electric Corp.* (Nuclear Fuel Export License for Czech Republic — Temelin Nuclear Power Plants), CLI-94-7, 39 NRC 322, 331 (1994). For example, if a petitioner showed that the modification or denial of the Application would mitigate or eliminate her alleged injuries, then she would have satisfied the redressability requirement.
- H While an individual may establish standing by satisfying the foregoing criteria, an organization, such as an environmental group, state or local government, or Indian Tribe, must satisfy one of two additional criteria. It must demonstrate either “organizational” standing or “representational” standing. *Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Georgia), CLI-95-12, 42 NRC 111, 115 (1995) (“An organization may base its standing on either immediate or threatened injury to its organizational interests, or to the interests of identified members. To derive standing from a member, the organization must demonstrate that the individual member has standing to participate, and has authorized the organization to represent his or her interests.” (internal citations omitted)).
- I To establish organizational standing under 10 C.F.R. § 2.309(d)(1), an organization must demonstrate that (1) the action at issue will cause an injury-in-fact to the organization’s interests and (2) the injury is within the zone of interests protected by NEPA or the AEA. *See Sierra Club v. Morton*, 405 U.S. 727, 739 (1972); *Georgia Tech*, CLI-95-12, 42 NRC at 115; *Yankee Atomic*, CLI-98-21, 48 NRC at 194-95; *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), ALAB-952, 33 NRC 521, 530 (1991). To assert an appropriate injury for organizational standing, an organization must demonstrate a palpable injury in fact to its organizational interests. *Turkey Point*, ALAB-952, 33 NRC at 530. The Supreme Court in *Sierra Club v. Morton*, 405 U.S. 727, explained that the injury-in-fact necessary to establish organizational standing must be more than “a mere ‘interest in a problem,’ no matter how longstanding the interest and no matter how qualified the organization is in evaluating the problem” *Id.* at 739. Instead, an organization must go beyond asserting an injury to a broad, generalized interest —

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

i.e., an interest in protecting the environment, an interest in preserving national parks — and establish that it is suffering, or will suffer, from a specific, concrete harm caused by a third party.

- J An organization asserting “representational” standing must (1) demonstrate that the interest of at least one of its members will be harmed; (2) demonstrate that the member would have standing in his or her own right; (3) identify that member by name and address; and (4) demonstrate that the organization is authorized to request a hearing on behalf of that member. *See GPU Nuclear, Inc.* (Oyster Creek Nuclear Generating Station), CLI-00-6, 51 NRC 193, 194 (2000); *Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), CLI-00-20, 52 NRC 151, 163 (2000). Representational standing is based on an alleged harm to an organization’s members, whereas organizational standing involves an alleged harm to the organization itself.
- K In cases involving ISL uranium mining and other source materials licensing, a petitioner must demonstrate the requisite elements of standing, i.e., injury, causation, and redressability, because the Commission has held that proximity to the proposed facility alone is not adequate to demonstrate standing. *See Consumers Energy Co.* (Big Rock Point Independent Spent Fuel Storage Installation), CLI-07-19, 65 NRC 423, 426 (2007); *International Uranium (USA) Corp.* (White Mesa Uranium Mill), CLI-98-6, 47 NRC 116, 117 n.1 (1998).
- L The Commission has placed the burden on the petitioner to allege a “specific and plausible means” by which contaminants from mining activities may adversely affect him or her, *Nuclear Fuel Services, Inc.* (Erwin, Tennessee), CLI-04-13, 59 NRC 244, 248 (2004) (citing *Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 and 2), CLI-00-5, 51 NRC 90, 98 (2000)); that is to say, each individual Petitioner must show that there is a “specific and plausible means” by which contaminants from the applicant’s proposed mine will reach the aquifer or surface waters from which that Petitioner draws water.
- M In *HRI*, the Board held that standing can be granted to a petitioner in a materials licensing case where that petitioner “uses a substantial quantity of water personally or for livestock from a source that is reasonably contiguous to either the injection or processing sites,” as such a showing demonstrates a plausible injury-in-fact. *Hydro Resources, Inc.* (2929 Coors Road, Suite 101, Albuquerque, NM 87120), LBP-98-9, 47 NRC 261, 275 (1998). Where no petitioner claims to live on or immediately adjacent to the applicant’s proposed mining site, the Board must determine whether the individual Petitioners have presented sufficient evidence to establish that a plausible pathway exists through which contaminants could migrate from the proposed mining site to the Petitioners’ water sources. *See Crow Butte II*, CLI-09-9, 69 NRC at 345.
- N A Board’s standing analysis must “avoid ‘the familiar trap of confusing the standing determination with the assessment of a petitioner’s case on the merits.’” *HRI*, LBP-98-9, 47 NRC at 272 (citing *Sequoyah Fuels Corp. and General Atomics* (Gore, Oklahoma Site Decontamination and Decommissioning Funding), LBP-94-5, 39 NRC 54 (1994)). Petitioners are not required to demonstrate their asserted injury with certainty at this stage, or to “provide extensive technical studies” in support of their standing argument. *Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant), LBP-99-25, 50 NRC 25, 31 (1999) (citing *Sequoyah Fuels*, CLI-94-12, 40 NRC at 72). Such determinations are reserved for adjudication of the merits. A determination that “the injury is fairly traceable to the [challenged] action . . . [does] not depend[] on whether the cause of the injury flows directly from the challenged action, but *whether the chain of causation is plausible.*” *Sequoyah Fuels*, CLI-94-12, 40 NRC at 75 (emphasis added).
- O An individual petitioner may not request to intervene in his or her own right while simultaneously authorizing other petitioners to represent his or her interests in the proceeding. The Commission has stated that such multiple representation might lead to confusion as to whether the individual or the organization was speaking for the petitioner. *Big Rock*, CLI-07-19, 65 NRC at 426 (citing *Northern States Power Co.* (Pathfinder Atomic Plant), LBP-89-30, 30 NRC 311, 316 (1989) (“[A petitioner] can have her interest protected by participating as an individual or by having [an organization] represent her interest. It would be detrimental to the process to have a person appear in the proceeding individually and to be represented by an organization. . . .”).
- P A federally recognized Indian tribe may seek to participate in this proceeding as provided in 10 C.F.R. § 2.309(d)(2). However, where the proposed facility will not be located within the Tribe’s boundaries, the Tribe must meet the standing requirements imposed by 10 C.F.R. § 2.309(d)(1) by showing “a concrete and particularized injury that is . . . fairly traceable to the challenged action and [is] likely to be redressed by a favorable decision.” *See, e.g., Yankee Atomic*, CLI-98-21, 48 NRC at 195; *Georgia Tech*, CLI-95-12, 42 NRC at 115; *Perry*, CLI-93-21, 38 NRC at 92 (citing *Lujan*, 504 U.S. at 561).

DIGESTS

ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- Q The preservation of Native American cultural traditions is a protected interest under federal law. *See Havasupai Tribe v. United States*, 752 F. Supp. 1471 (D. Ariz. 1990); *United States ex rel. Chunie v. Ringrose*, 788 F.2d 638 (9th Cir. 1986); *United States v. Pend Oreille County Public Utility District No. 1*, 585 F. Supp. 606 (D. Wash. 1984); *Ute Indians v. United States*, 28 Fed. Cl. 768 (1993). If this interest is endangered or harmed, it qualifies as a cognizable injury for AEA standing purposes under *Crow Butte II*.
- R Section 106 of the NHPA provides the Tribe with a procedural right to protect its interests in cultural resources. The Supreme Court has held that a party claiming violations of this procedural right is to be accorded a special status when it comes to standing: “The person who has been accorded a procedural right to protect his concrete interests can assert that right without meeting all the normal standards for redressability and immediacy.” *Lujan*, 504 U.S. at 572 n.7. To establish an injury-in-fact, a party merely has to show “some threatened concrete interest personal” to the party that NHPA was designed to protect. *Nulankeyutmonen Nkihtaqmikon v. Impson*, 503 F.3d 18 (1st Cir. 2007) (citing *Lujan*, 504 U.S. at 572-73 nn.7-8).
- S Federal law not only recognizes that Native American tribes have a protected interest in cultural resources found on their aboriginal land, but as well has imposed on federal agencies a consultation requirement under the NHPA to ensure the protection of tribal interests in cultural resources.
- T In order to participate as a party in a proceeding before the Board, a petitioner must not only establish standing, but must also proffer at least one admissible contention that meets the requirements of 10 C.F.R. § 2.309(f)(1). *See* 10 C.F.R. § 2.309(a). An admissible contention must: (i) provide a specific statement of the legal or factual issue sought to be raised; (ii) provide a brief explanation of the basis for the contention; (iii) demonstrate that the issue raised is within the scope of the proceeding; (iv) demonstrate that the issue raised is material to the findings the NRC must make to support the action that is involved in the proceeding; (v) provide a concise statement of the alleged facts or expert opinions, including references to specific sources and documents, that support the petitioner’s position and upon which the petitioner intends to rely at the hearing; and (vi) provide sufficient information to show that a genuine dispute exists in regard to a material issue of law or fact, including references to specific portions of the application that the petitioner disputes, or, in the case when the application is alleged to be deficient, the identification of such deficiencies and supporting reasons for this belief. *Id.* § 2.309(f)(1).
- U The purpose of these section 2.309(f)(1) requirements is to “focus litigation on concrete issues and result in a clearer and more focused record for decision.” Changes to Adjudicatory Process, 69 Fed. Reg. 2182, 2202 (Jan. 14, 2004). The Commission has stated that “the hearing process [is intended only for] issues that are ‘appropriate for, and susceptible to, resolution in an NRC hearing.’” *Id.* Furthermore, “[w]hile a board may view a petitioner’s supporting information in a light favorable to the petitioner . . . the petitioner (not the board) [is required] to supply all of the required elements for a valid intervention petition.” *AmerGen Energy Co. (Oyster Creek Nuclear Generating Station)*, CLI-09-7, 69 NRC 235, 260 (2009).
- V The rules on contention admissibility are “strict by design.” *See, e.g., Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, Unit 2)*, CLI-03-14, 58 NRC 207, 213 (2003); *Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, Units 2 and 3)*, CLI-01-24, 54 NRC 349, 358-59 (2001); *Duke Energy Corp. (Oconee Nuclear Station, Units 1, 2, and 3)*, CLI-99-11, 49 NRC 328, 334-35 (1999). Further, absent a waiver, contentions challenging applicable statutory requirements or Commission regulations are not admissible in agency adjudications. 10 C.F.R. § 2.335(a). Failure to comply with any of these requirements is grounds for not admitting a contention. *Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, Units 2 and 3)*, CLI-04-36, 60 NRC 631, 636 (2004).
- W A contention of omission claims that “the application fails to contain information on a relevant matter as required by law . . . and [provides] the supporting reasons for the petitioner’s belief.” 10 C.F.R. § 2.309(f)(1)(vi). To satisfy section 2.309(f)(1)(i)-(ii), the contention of omission must describe the information that should have been included in the ER and provide the legal basis that requires the omitted information to be included. The petitioner must also demonstrate that the contention is within the scope of the proceeding. *Id.* § 2.309(f)(1)(iii).
- X Section 2.309(f)(1)(v) requires the petitioner to provide a concise statement of the alleged facts that support its position and upon which the petitioner intends to rely at the hearing. However, “the pleading requirements of 10 C.F.R. § 2.309(f)(1)(v), calling for a recitation of facts or expert opinion supporting the issue raised, are inapplicable to a contention of omission beyond identifying the legally required missing information.” *Virginia Electric and Power Co. (North Anna Power Station, Unit 3)*, LBP-08-15,

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- 68 NRC 294, 317 (2008) (quoting *Pa'ina Hawaii, LLC*, LBP-06-12, 63 NRC 403, 414 (2006)). Thus, for a contention of omission, the petitioner's burden is only to show the facts necessary to establish that the application omits information that should have been included. The facts relied on need not show that the facility cannot be safely operated, but only that the application is incomplete.
- Y If an applicant cures the omission, the contention will become moot. *North Anna*, LBP-08-15, 68 NRC at 317; *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-28, 56 NRC 373, 383 (2002).
- Z If the contention makes a *prima facie* allegation that the application omits information required by law, "it necessarily presents a genuine dispute with the Applicant on a material issue in compliance with 10 C.F.R. § 2.309(f)(1)(vi) [and] . . . raises an issue plainly material to an essential finding of regulatory compliance needed for license issuance," *Pa'ina*, LBP-06-12, 63 NRC at 414, in accordance with section 2.309(f)(1)(iv).
- AA A petitioner, especially one represented by counsel, bears the burden of going forward and specifically addressing each of the six elements in 10 C.F.R. § 2.309(f)(1) for each contention proffered. A single sentence labeled a contention, with no reference to the six elements of section 2.309(f)(1), does not an admissible contention make.
- BB Commission case law supports the conclusion that it is not the Board's duty to forage through a petition in order to find statements or other support that may be located in various portions of the petition but not referenced in the contention. *Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), CLI-89-3, 29 NRC 234, 240-41 (1989) ("The Commission expects parties to bear their burden and to clearly identify the matters on which they intend to rely with reference to a specific point. The Commission cannot be faulted for not having searched for a needle that may be in a haystack."). A properly pled contention needs to lay out explicitly the required criteria of 10 C.F.R. § 2.309(f)(1)(i)-(vi) in order to be admissible, 69 Fed. Reg. at 2221; a licensing board cannot be expected to go on a veritable scavenger hunt to find the missing pieces needed for an admissible contention.
- CC Issues of disorganization in an application cannot be said to be germane to the licensing process. According to the Board in *HRI*, "[a]ny area of concern is germane if it is relevant to whether the license should be denied or conditioned." LBP-98-9, 47 NRC at 280. The organization or format of an application was not considered by that Board to be germane because the objection to the application's organization was not an objection to the licensing action at issue in the proceeding.
- DD It is not within the province of a Licensing Board to piece together and create an admissible contention from a lengthy petition with numerous affidavits, declarations, and exhibits in an effort to create a viable contention. Rather, it is the responsibility of the petitioner to submit a contention containing all six elements required by 10 C.F.R. § 2.309(f)(1) in an orderly and organized fashion. Simply put, it is a petitioner's burden of going forward at this stage of the proceeding to submit a complete, self-contained contention addressing each of the elements required by 10 C.F.R. § 2.309(f)(1). To be admissible, a contention must comply with every requirement listed in 10 C.F.R. § 2.309(f)(1).
- EE While the duty to comply with NEPA falls upon the agency and not upon the applicant or licensee, *Progress Energy Florida, Inc.* (Levy County Nuclear Power Plant, Units 1 and 2), CLI-10-2, 71 NRC 27, 34 (2010), the requirements of Part 51 must be met by the applicant. Section 51.45 clearly requires an applicant to discuss in its ER "[t]he impact of the proposed action on the environment." 10 C.F.R. § 51.45(b)(1). Since an impact analysis under NEPA requires that cultural and historic resources be considered, we conclude that a sufficient discussion of cultural and historic resources must be included in an applicant's ER.
- FF As the Commission made clear in *Crow Butte II*, it is not the duty of an applicant to consult with a Tribe regarding cultural resources at a proposed site, but instead is the duty of the agency to initiate and follow through with the consultation process. 36 C.F.R. § 800.2(c)(2)(ii)(D) (stating that "[w]hen Indian tribes . . . attach religious and cultural significance to historic properties off tribal lands, section 101(d)(6)(B) of the act requires *Federal agencies* to consult with such Indian tribes" (emphasis added)). The alleged failure to consult in this proceeding, therefore, cannot be the fault of the applicant. And, because the NRC Staff has not completed its environmental review of the proposed project, this Board cannot find that they have been dilatory in their duty to consult with the Tribe. As noted by the Commission in its *Crow Butte II* ruling, the Tribe is free to file a contention later on in this proceeding if, after the Staff releases its environmental documents, the Tribe believes that the Staff has failed to satisfy its obligations under NEPA and the NHPA. *Crow Butte II*, CLI-09-9, 69 NRC at 351.

DIGESTS

ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- GG Commission precedent makes clear that 10 C.F.R. § 40.31(h) applies to uranium mills, and not to ISL facilities. *Hydro Resources, Inc.* (2929 Coors Road, Suite 101, Albuquerque, NM 87120), CLI-99-22, 50 NRC 3, 8 (1999). In fact, the Commission has held that, while Part 40 generally applies to ISL mining, Appendix A to Part 40, including Criterion 1, was “designed to address the problems related to mill tailings and not problems related to injection mining.” *Id.* (citing *Hydro Resources, Inc.* (2929 Coors Road, Suite 101, Albuquerque, NM 87120), LBP-99-1, 49 NRC 29, 33 (1999)). There are, however, certain safety provisions in Appendix A, such as Criterion 2, that are relevant and do apply to ISL mining. *Id.* The Presiding Officer in *HRI* concluded that the principal regulatory standards for ISL applications are 10 C.F.R. § 40.32(c) and (d), “which mandate protection of public health and safety,” *HRI*, CLI-99-22, 50 NRC at 9; an exceedingly general requirement.
- HH It is settled law that an applicant is not bound by NEPA, but by NRC regulations in Part 51. *Levy County*, CLI-10-2, 71 NRC at 34. The NRC Staff, however, is bound by NEPA.
- II While this agency gives substantial deference to CEQ regulations, it is not bound to follow them. *Hydro Resources, Inc.* (P.O. Box 777, Crownpoint, New Mexico 87313), LBP-06-19, 64 NRC 53, 62 n.3 (2006) (citing *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-02-25, 56 NRC 340, 348 n.22 (2002)). As an independent agency, the NRC has the authority to promulgate its own regulations implementing NEPA and is only bound by CEQ regulations when the NRC expressly adopts them. *Louisiana Energy Services, L.P.* (National Enrichment Facility), LBP-06-8, 63 NRC 241, 257 n.14 (2006); *Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), LBP-05-19, 62 NRC 134, 154 (2005). The NRC has recognized its obligation to comply with NEPA, however, and has promulgated the regulations in Part 51, which govern “the consideration of the environmental impact of the licensing and regulatory actions of the agency.” *Limerick Ecology Action, Inc. v. NRC*, 869 F.2d 719, 725 (3d Cir. 1989).
- JJ The regulations clearly state that a petitioner must file a NEPA contention challenging an applicant’s ER at the time the petitioner requests a hearing. 10 C.F.R. § 2.309(f)(2) (“On issues arising under the National Environmental Policy Act, the petitioner shall file contentions based on the applicant’s environmental report.”). Any challenge to this regulation is not litigable in this proceeding, and cannot be admitted as a contention under 10 C.F.R. § 2.335. Absent a showing of “special circumstances” under 10 C.F.R. § 2.335(b), this matter must be addressed through Commission rulemaking.
- KK In the context of the NEPA review process, the duty of the lead agency to consider the actions of other federal agencies involved in a licensing action, is the responsibility of the NRC and not of the applicant. *Levy County*, CLI-10-2, 71 NRC at 34.
- LL As required by 10 C.F.R. § 2.310(a), upon admission of a contention in a licensing proceeding, the Board must identify the specific hearing procedures to be used to settle the contention. NRC regulations provide for a number of different hearing procedures. First, there is Subpart G, 10 C.F.R. Part 2, which is mandated for certain proceedings, *see, e.g., id.* § 2.310(d), and establishes NRC “Rules for Formal Adjudications,” in which parties are permitted to “propound interrogatories, take depositions, and cross-examine witnesses without leave of the Board.” *Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), LBP-06-20, 64 NRC 131, 201-02 (2006). Second, there is Subpart L, 10 C.F.R. Part 2, which provides for more “informal” proceedings in which discovery is generally prohibited (except for (1) specified mandatory disclosures under 10 C.F.R. § 2.336(f), (a), and (b); and (2) the mandatory production of the hearing file under 10 C.F.R. § 2.1203(a)). *Id.* § 2.1203(d). Under Subpart L, the Board has the primary responsibility for questioning the witnesses at any evidentiary hearing. *Id.* § 2.1207(b)(6).
- MM The selection of hearing procedures for contentions at the outset of a proceeding is not immutable because, *inter alia*, the availability of Subpart G procedures under 10 C.F.R. § 2.310(d) depends critically on whether the credibility of eyewitnesses is important in resolving a contention, and witnesses relevant to each contention are not identified, under 10 C.F.R. § 2.336(a)(1), until *after* contentions are admitted. *See Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), LBP-07-15, 66 NRC 261, 272 (2007); *see also* 10 C.F.R. § 2.1402(b).
- LBP-10-17 VIRGINIA ELECTRIC AND POWER COMPANY d/b/a DOMINION VIRGINIA POWER and OLD DOMINION ELECTRIC COOPERATIVE (North Anna Power Station, Unit 3), Docket No. 52-017-COL (ASLBP No. 08-863-01-COL); COMBINED LICENSE; September 2, 2010; MEMORANDUM AND ORDER (Rulings on Motion to Dismiss Contention 10 and Proposed New Contention 11)
- A In this combined license proceeding, Intervenor filed a new contention challenging Applicant’s ability to revise its Combined License Application and the NRC Staff’s authority to review those revisions

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- without requiring the Applicant to file a new Application. Applicant filed a Motion to Dismiss the only admitted contention because the revisions in Applicant's Combined License Application rendered that contention moot. The Licensing Board granted Applicant's Motion to Dismiss the previously admitted contention on mootness grounds and denied admission of Intervenor's new contention for failure to demonstrate materiality and a genuine dispute of a material issue of law or fact. However, the Licensing Board did not terminate the proceeding because of the time it previously permitted Intervenor to file new contentions arising out of Applicant's revisions to its Combined License Application.
- B "[W]here a contention is 'superseded by the subsequent issuance of licensing-related documents' . . . the contention must be disposed of or modified." *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-28, 56 NRC 373, 382 (2002)) (quoting *Duke Power Co.* (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 NRC 1041, 1050 (1983)).
- C An applicant's change of reactor design constitutes new and materially different information for the purposes of filing a new contention.
- D A Licensing Board is under an obligation to evaluate the timeliness of a proposed contention even if no party raises the issue. *See, e.g., Commonwealth Edison Co.* (Braidwood Nuclear Power Station, Units 1 and 2), CLI-86-8, 23 NRC 241, 250-51 (1986); *Boston Edison Co.* (Pilgrim Nuclear Power Station), ALAB-816, 22 NRC 461, 466 (1985).
- E A submission of a new contention within 30 days of the event giving rise to that contention is timely. *See, e.g., Progress Energy Florida, Inc.* (Levy County Nuclear Power Plant, Units 1 and 2), LBP-09-22, 70 NRC 640, 647 (2009); *Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), LBP-06-14, 63 NRC 568, 574 (2006).
- F The agency's procedural "rules permit contentions that raise issues of law as well as contentions that raise issues of fact." *U.S. Department of Energy* (High-Level Waste Repository), CLI-09-14, 69 NRC 580, 590 (2009).
- G Contentions raising legal issues, like fact-based contentions, must fall within the allowable scope of the proceeding to be admissible. *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-01-6, 53 NRC 138, 154 (2001). The scope of the proceeding is defined by the Commission in its initial hearing notice and order referring the proceeding to the Licensing Board. *Duke Power Co.* (Catawba Nuclear Station, Units 1 and 2), ALAB-825, 22 NRC 785, 790-91 (1985). Any contention that falls outside the specified scope of the proceeding is inadmissible. *See Portland General Electric Co.* (Trojan Nuclear Plant), ALAB-534, 9 NRC 287, 289-90 n.6 (1979).
- H Section 52.55(c) of 10 C.F.R. permits an applicant, at its own risk, to reference a pending design certification application, and that the Staff need not complete a design certification rulemaking before proceeding to evaluate an applicant's revised Combined License Application. The Commission has held that "[t]he design certification rulemaking and individual COL adjudicatory proceedings may proceed simultaneously, and issues raised in an adjudicatory proceeding that are appropriately addressed in the generic design certification rulemaking are to be referred to the rulemaking for resolution." *Progress Energy Carolinas, Inc.* (Shearon Harris Nuclear Power Plant, Units 1 and 2), CLI-09-8, 69 NRC 317, 329 (2009).
- I Licensing "[b]oards do not direct the staff in the performance of [its] administrative functions." *Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant, Units 1, 2, 3, and 4), CLI-80-12, 11 NRC 514, 516 (1980). *See also U.S. Department of Energy* (High-Level Waste Repository), CLI-08-20, 68 NRC 272, 274-75 (2008); *New England Power Co.* (NEP, Units 1 and 2), LBP-78-9, 7 NRC 271, 278-79 (1978). Therefore, a board may not order the Staff to cease review of an applicant's revised application or direct the Staff to require an applicant to submit a new application.
- J The sufficiency of an application is not a matter committed solely to the NRC Staff's discretion and thus is within the scope of an adjudicatory proceeding. *Progress Energy Florida, Inc.* (Levy County Nuclear Power Plant, Units 1 and 2), Licensing Board Order (Ruling on Joint Intervenor's Motion to File and Admit New Contention 8A) (Aug. 9, 2010) at 14-15 (unpublished).
- K Far from prohibiting amendments to a license application, the agency's regulations expressly contemplate such amendments. *See* 10 C.F.R. § 52.3(b)(2). The application may be modified or improved during the NRC review process. *See Curators of the University of Missouri* (TRUMP-S Project), CLI-95-8, 41 NRC 386, 395 (1995). Amendments are not limited to minor details, but may include significant changes to the application. *See Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), LBP-74-36, 7 AEC 877, 879 (1974).

DIGESTS

ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- L NRC regulations preserve the right to a hearing when an application is amended by allowing new or amended contentions to be filed in response to material new information. 10 C.F.R. § 2.309(f)(2). See *Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), LBP-04-33, 60 NRC 749, 754 (2004) (citing 10 C.F.R. § 2.309(c) and (f)(2)). Thus, an intervenor may request a hearing on issues arising from a revision that adds material new information to the original application.
- M No regulation requires a license application to be completely resubmitted because someone might find it difficult to understand. Such concerns can be addressed, as they were here, through a request for modification of a board's scheduling order.
- N The agency's NEPA-implementing regulations anticipate the possibility of "substantial changes in the proposed action that are relevant to environmental concerns," and provide that when this happens "the NRC staff will prepare a supplement to a final environmental impact statement." 10 C.F.R. § 51.92(a)(1). The filing of a revised application thus does not prevent the NRC from complying with its obligations under NEPA. It simply means that, in some instances, the NRC Staff may have to prepare a supplement to the environmental impact statement.
- LBP-10-18 BABCOCK & WILCOX NUCLEAR OPERATIONS GROUP, INC. (Lynchburg, VA Facility), Docket No. 70-27-EA (ASLBP No. 10-902-01-EA-BD01); ENFORCEMENT ACTION; October 12, 2010; MEMORANDUM AND ORDER (Approving Proposed Settlement Agreement and Dismissing Proceeding)
- LBP-10-19 ENTERGY NUCLEAR VERMONT YANKEE, LLC, and ENTERGY NUCLEAR OPERATIONS, INC. (Vermont Yankee Nuclear Power Station), Docket No. 50-271-LR (ASLBP No. 06-849-03-LR); LICENSE RENEWAL; October 28, 2010; MEMORANDUM AND ORDER (Ruling on Motion to Reopen Proffering New Contention)
- A This Board denies Intervenors' motion to reopen this proceeding to introduce a new contention asserting issues related to aging management of the effects of moist or wet environments on buried, below-grade, underground, or hard-to-access safety-related electrical cables, because the motion satisfies neither the timeliness nor the materially different result requirements of 10 C.F.R. § 2.326(a)(1) and (3).
- B Motions to reopen a proceeding to introduce an entirely new contention (i.e., a contention not previously in controversy among the parties) must successfully navigate at least nineteen different regulatory factors under 10 C.F.R. §§ 2.326, 2.309(c), and 2.309(f)(1).
- C At some point, a proceeding before an Atomic Safety and Licensing Board must end. Once the Board has admitted original contentions, conducted the evidentiary hearing, and issued its ruling on the merits, and after the parties have appealed that decision, and the Commission has rendered its decision on the merits of the matter, the adjudicatory proceeding should be over, absent some extenuating circumstances.
- D Under 10 C.F.R. § 2.326(a)(1), the timeliness of a motion to reopen in which the proponent of the motion proffers a new contention depends primarily on an assessment as to when the proponent of the motion first knew, or should have known, enough information to raise the issues presented in the new contention. If the motion and the proposed new contention are based on material information that was not previously available, then it qualifies as timely.
- E For purposes of the timeliness analysis under 10 C.F.R. § 2.326(a)(1), the question is: when should these issues have been identified and asserted? Are these complaints based on new information, or on information that has been available for a significant time period?
- F Where an issue has been apparent from information that has been available from the outset of a proceeding, a petitioner or intervenor may not wait to raise that issue in a new contention by proffering it in a motion to reopen after the record has been closed in that proceeding. Such a submission is not timely under 10 C.F.R. § 2.326(a)(1).
- G The proponent of a motion to reopen must do more than simply raise a safety issue. The proponent of the motion to reopen must show that the safety issue it raises is significant.
- H Under 10 C.F.R. § 2.326(a)(3), the proponent of a motion to reopen must demonstrate more than the mere possibility that the newly proffered evidence might warrant a materially different result. The movant must show that it is *likely* that the result would have been materially different, i.e., that it is more probable than not that the movant would have prevailed on the merits of the proposed new contention. A motion to reopen requires a demonstration that the movant is likely to succeed.
- LBP-10-20 PROGRESS ENERGY FLORIDA, INC. (Levy County Nuclear Power Plant, Units 1 and 2), Docket Nos. 52-029-COL, 52-030-COL (ASLBP No. 09-879-04-COL-BD01); COMBINED LICENSE;

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

November 18, 2010; MEMORANDUM AND ORDER (Denying Motion for Summary Disposition of Contention 8A)

- A Contention 8A (C-8A) alleges that the combined license application (COLA) by Progress Energy Florida, Inc. (PEF), which addresses the means by which PEF will manage low-level radioactive waste (LLRW) onsite for the period of time beyond the initial storage period (2 years) specified in the AP1000 Design Control Document (DCD), is inadequate. PEF's motion for summary disposition of C-8A is denied because PEF's LLWR plan (after the initial 2 years) fails to specify the "means for controlling and limiting radioactive effluent and radiation exposures within the limits set forth in Part 20," 10 C.F.R. § 52.79(a)(3), at "a level of information sufficient to enable the Commission to reach a final conclusion on all safety matters that must be resolved by the Commission before the issuance of a combined license" as required by 10 C.F.R. § 52.79(a). 10 C.F.R. § 52.79(a) (emphasis added).
- B Absent the existence of an offsite LLRW disposal facility that is currently licensed and available to accept LLRW from the Applicant's facility, it is reasonably foreseeable that LLRW generated by the normal operations of the facility will need to be stored onsite for longer than the 2-year term that is currently envisioned by the AP1000 DCD that is referenced in the COLA.
- C Disputes as to whether an offsite LLRW disposal facility will (or will not) be licensed and available within the initial 2-year term of the license are not material to this motion for summary disposition, because the motion assumes that more than 2 years of onsite management is needed, and asserts that PEF's extended LLRW plan is legally adequate to cover that extended time period.
- D An LLWR plan that states that "implementation of additional waste minimization strategies could extend the duration of temporary radwaste storage capability" and that the Applicant "will consider strategies to reduce generation of [LLRW] including reducing the in-service run length of resin beds, as well as resin selection, short loading, and point of generation aggregation techniques" provides no enforceable commitments as to whether the Applicant will implement a waste minimization plan, or, if so, what the plan will contain.
- E An LLRW plan that provides that "if additional storage capacity for [LLRW] is required, further temporary storage would be developed in accordance with NUREG-0800, Standard Review Plan 11.4, Appendix 11.4-4" does not provide enforceable commitments or a level of information sufficient to satisfy 10 C.F.R. § 52.79(a)(3). The NRC guidance document provides broad and general principles for designing an appropriate waste storage facility but does not provide sufficient information for the Commission to make a final safety determination, now, as to whether PEF has demonstrated the "means for controlling and limiting . . . radiation exposures" to be within the Part 20 limits. 10 C.F.R. § 52.79(a)(3).
- F Section 52.79(a) of 10 C.F.R. does not require the submission of design details or detailed construction plans. The term "details" is an unnecessary pejorative term that implies minutiae. But the regulation does require that the Final Safety Analysis Report specify the means for controlling and limiting radioactive effluents and radiation exposures within the limits set forth in Part 20 at a "level of information sufficient" to enable the Commission to reach a "final conclusion" on all safety matters that must be resolved by the Commission "before" issuance of a combined license." 10 C.F.R. § 52.79(a) and (a)(3).
- G The words of 10 C.F.R. § 52.79(a)(3), specify that an FSAR in a COL application must contain a "level of information" that is "sufficient" to enable the Commission to make the necessary safety determination. Thus, the relevant question is: Does the Extended LLRW Plan contain that level of information?
- H Committing to follow a process or a method by which compliance can be achieved does not, by itself, provide a level of information sufficient to allow the Commission to make the Part 20 determination now, before the COL is issued. While procedures can be a part of an LLRW plan, a plan which is entirely procedural is not sufficient to meet 10 C.F.R. § 52.79(a)(3). A commitment to comply with the law and NRC guidance, even with the normal presumption of compliance, does not, itself, provide sufficient information to satisfy 10 C.F.R. § 52.79(a)(3).
- I The Commission's holding that 10 C.F.R. § 52.79(a)(3) can be satisfied by an FSAR that states "how the COL applicant intends, through its design, operational organization, and procedures, to comply with relevant substantive radiation protection requirements in 10 C.F.R. Part 20" is stated in the conjunctive ("and"), not the disjunctive ("or"). The Commission did not state that an FSAR that is only procedural can satisfy the regulation.
- J The fact that the current FSAR does not specify concrete information about the additional onsite LLRW storage capacity during the extended time period (after 2 years), but instead specifies that the

DIGESTS

ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

Applicant will perform a risk and safety review pursuant to 10 C.F.R. § 50.59 later, before it constructs and operates such additional storage indicates, almost per se, that the current FSAR does not provide “a level of information sufficient to . . . reach a final conclusion on all safety matters . . . before issuance of the combined license” as required by 10 C.F.R. § 52.79(a).

K NRC Regulatory Issue Summary 2008-32, which repeatedly acknowledges that onsite storage of LLRW at reactor sites may be for a long and indefinite term and is not otherwise subject to independent licensing under Part 30, emphasizes the importance of carefully and fully reviewing the adequacy of extended onsite storage of LLRW now, as required by 10 C.F.R. § 52.79(a).

L The fact that the PEF’s extended LLRW plan is contingent does not mean that it does not need to comply with 10 C.F.R. § 52.79 or that it is subject to a relaxed standard. The “level of information sufficient” to satisfy 10 C.F.R. § 52.79(a) is the same, whether the plan is for the first 2 years and noncontingent, or it is for the second 2 years, and is contingent. In either case, the level of information must be sufficient for the Commission to be able to make the necessary Part 20 determination before the COL is issued.

M The fact that an LLRW plan postpones some decisions does not necessarily mean that it does not provide sufficient information. For example, an LLRW plan could specify that if, after 2 years, additional storage is needed, then the licensee will build an additional storage building with a capacity of 3900 cubic feet, or 7800 cubic feet, or 11,700 cubic feet. If each of these three options is described with a level of information sufficient for NRC to make the necessary safety determinations now, then postponing the decision between them would not violate 10 C.F.R. § 52.79(a). The problem with PEF’s Extended LLRW Plan is not postponement, but is its utter lack of content. The Extended LLRW Plan keeps *all* options open to PEF and does not provide sufficient information to make the necessary Part 20 determinations now.

N Requiring PEF to provide a level of information sufficient to meet 10 C.F.R. § 52.79(a) does not rob it of the flexibility necessary to deal with changes in circumstances (e.g., if Levy generates more LLRW per year than expected, or less LLRW, or different types of LLRW). Requiring PEF to provide sufficient information, now, to allow the NRC to make the necessary safety determinations, now, does not prevent PEF from *changing* these plans, as circumstances warrant, via the 10 C.F.R. § 50.59 and/or license amendment processes. Under our reading, PEF has all the flexibility it needs to deal with future contingencies.

LBP-10-21 SOUTHERN NUCLEAR OPERATING COMPANY (Vogtle Electric Generating Plant, Units 3 and 4), Docket Nos. 52-025-COL, 52-026-COL (ASLBP No. 10-903-01-COL-BD02); COMBINED LICENSE; November 30, 2010; MEMORANDUM AND ORDER (Ruling on Request to Admit New Contention)

A In this 10 C.F.R. Part 52 proceeding regarding the application of Southern Nuclear Operating Company (SNC) for a combined license (COL) to construct and operate two new nuclear reactors at its existing Vogtle Electric Generating Plant (VEGP) site, ruling on jointly filed motions by three public interest organizations seeking to (1) admit a new contention into the previously terminated contested portion of this proceeding; and (2) file out of time their reply pleading supporting their contention admission motion, the Licensing Board (1) grants the motion for leave to file the reply pleading out of time; and (2) denies the motion to admit new contention SAFETY-2 regarding the adequacy of SNC’s containment/coating inspection program for the two new proposed units, concluding that (a) despite having established their standing to intervene as of right, the organizations failed to meet their burden with respect to the reopening, nontimely petition, and new contention standards of 10 C.F.R. §§ 2.309(c)(1), (f)(2), 2.326, principally because they did not timely submit their new contention for consideration in the adjudicatory process, preferring to provide the report upon which they now place principal reliance as support for their contention initially to the Advisory Committee on Reactor Safeguards (ACRS) for review and action; and (b) the organizations failed with respect to the section 2.309(f)(1) contention admissibility standards because they sought to challenge aspects of the Advanced Passive (AP)1000 certified design and NRC regulations adopting American Society of Mechanical Engineers (ASME) inspection standards.

B The Commission’s rules of practice provide the licensing board with substantial authority to regulate hearing procedures. See *Statement of Policy on Conduct of Adjudicatory Proceedings*, CLI-98-12, 48 NRC 18, 19 (1998) [hereinafter 1998 Policy Statement]; *Statement of Policy on Conduct of Licensing Proceedings*, CLI-81-8, 13 NRC 452, 453-54 (1981) [hereinafter 1981 Policy Statement]. This authority encompasses, among other things, the power to set a proceeding’s schedule and to ensure compliance with

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

that schedule. *See* 10 C.F.R. § 2.319 (power of the presiding officer); *id.* § 2.332 (general case scheduling management); *id.* § 2.334 (implementing hearing schedule for proceeding).

- C While the participants generally must comply with the proceeding schedule established by the presiding officer, it has been recognized that participants might, in what one might hope are rare circumstances, be unable to meet established deadlines. *See* 1998 Policy Statement, CLI-98-12, 48 NRC at 21. Therefore, participants are permitted to request a filing deadline extension. In an instance when the licensing board established that a participant may file a written motion for extension of time at least 3 business days before the due date for the pleading or other submission for which an extension is sought, *see* Licensing Board Memorandum and Order (Initial Prehearing Order) (Dec. 2, 2008) at 6 (unpublished) [hereinafter Initial Prehearing Order]; *see also* 1981 Policy Statement, CLI-81-8, 13 NRC at 454-55 (“Requests for an extension of time should generally be in writing and should be received by the Board well before the time specified expires.”), a time extension motion must (1) indicate whether the request is opposed or supported by the other participants to the particular proceeding; and (2) demonstrate appropriate cause that supports allowing the extension, *see* Initial Prehearing Order at 6.
- D In establishing and enforcing schedule deadlines, a licensing board must remain cognizant that it must take care not to compromise the Commission’s fundamental commitment to a fair and thorough hearing process. *See* 1981 Policy Statement, CLI-81-8, 13 NRC at 453; *see also* 1998 Policy Statement, CLI-98-12, 48 NRC at 18-19. The Commission has long endorsed a balanced approach to hearings — one that both expedites the hearing process and ensures fairness — in an effort to produce a record that leads to high-quality decisions that adequately protect the public health and safety, the common defense and security, and the environment. *See* 1998 Policy Statement, CLI-98-12, 48 NRC at 19; 1981 Policy Statement, CLI-81-8, 13 NRC at 453. To achieve these ends, the Commission regards “good sense, judgment, and managerial skills” as the proper guideposts for conducting an efficient hearing. 1981 Policy Statement, CLI-81-8, 13 NRC at 453.
- E While sanctions may be necessary for a participant that breaches its obligations under a proceeding’s schedule, with an eye toward mitigating prejudice to the nonbreaching participants, the licensing board also must tailor those sanctions to bring about improved future compliance. *See* 1981 Policy Statement, CLI-81-8, 13 NRC at 454.
- F The Commission in its 1981 Policy Statement, CLI-81-8, 13 NRC at 454, mentioned a list of factors to aid in selecting the appropriate sanction, including “the relative importance of the unmet obligation, its potential for harm to other parties or the orderly conduct of the proceeding, whether its occurrence is an isolated incident or a part of a pattern of behavior, the importance of the safety or environmental concerns raised by the party, and all of the circumstances.”
- G In its recent decision in the *Bellefonte* construction permit proceeding in which the Commission elaborated on the standards for accepting an appeal filed out of time, *see Tennessee Valley Authority* (*Bellefonte* Nuclear Plant, Units 1 and 2), CLI-10-26, 72 NRC 474, 476-78 (2010), the Commission reiterated its longstanding rule that deadlines are to be strictly enforced. According to the Commission, strict enforcement furthers the dual interests of efficient case management and prompt resolution of adjudications. *See id.* at 476. Only in truly “unavoidable and extreme circumstances,” the Commission noted, would late filings be accepted. *See id.* (quoting 1998 Policy Statement, CLI-98-12, 48 NRC at 21); *see also Yankee Atomic Electric Co.* (*Yankee Nuclear Power Station*), CLI-98-21, 48 NRC 185, 202 (1998) (“extraordinary and unanticipated circumstances” (quoting *Consumers Power Co.* (*Midland Plant, Units 1 and 2*), ALAB-684, 16 NRC 162, 165 n.3 (1982))).
- H In making a determination about a request to file out of time, the Commission relied upon several factors. First, the Commission observed that a party at risk of filing out of time arguably never needs to file out of time because the party can first request an extension, doing so “well before the time specified expires.” *Bellefonte*, CLI-10-26, 72 NRC at 477 (quoting 1981 Policy Statement, CLI-81-8, 13 NRC at 455). In *Bellefonte*, the petitioners had the opportunity to request an extension of the appeal filing deadline in a timely fashion, but failed to do so. The Commission also noted that the petitioners knew when the board would likely issue its decision with an appeal deadline 10 days later, but the petitioners took no advanced action to request an extension for filing their appeal. *See id.* at 476.
- I A second element of concern to the Commission in *Bellefonte* was the need for a participant filing out of time to offer a satisfactory explanation for its lateness, including, if necessary, an account as to why a request for extension could not have been filed beforehand. *See id.* at 477 n.17. In that regard, however, the Commission did not find counsel’s alleged unfamiliarity with the agency’s rules of practice, *see id.* at

DIGESTS

ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

476 (citing *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-91-5, 33 NRC 238, 240 (1991)), or counsel's asserted busy schedule, *see id.* (citing 1981 Policy Statement, CLI-81-8, 13 NRC at 454), to be satisfactory explanations.

J In contrast, if a party can demonstrate that its filing out of time was truly the product of unavoidable and extreme circumstances, then the agency's case law indicates that the filing may be accepted on a motion for leave to file out of time. For instance, in *Kansas Gas and Electric*, an appeal board accepted a filing that was 3 days late, which the board characterized as not "excessively late," based on findings that the intervenor offered a reasonable explanation for the delay and the 3-day delay did not prejudice any of the other parties to the proceeding. *Kansas Gas and Electric Co.* (Wolf Creek Generating Station, Unit 1), ALAB-424, 6 NRC 122, 124 (1977).

K The unexpected action of intervenors' former attorney withdrawing from the proceeding, which left them without a responsive pleading on the day that pleading was due or any opportunity to file a timely motion requesting an extension of the filing deadline, presents the type of unavoidable and extreme circumstances that support the grant of a motion for leave to file out of time. To be sure, the agency's rules of practice permit a participant to appear on its own behalf, but the timing of the unexpected withdrawal of intervenors' counsel presented a setback not easily overcome in an afternoon and provides a satisfactory explanation for their request to file out of time.

L No Commission rule appears to apply directly to a situation in which counsel unilaterally withdraws from a proceeding, although 10 C.F.R. § 2.314(a) broadly provides that parties *and their representatives* are expected to conduct themselves "as they should before a court of law." Absent written consent of the party and the prior appearance of another attorney, many courts require a motion to withdraw. *See, e.g.*, D.D.C. R. 83.6(c). Further, ethical rules in most jurisdictions generally do not permit an attorney to withdraw from representing a client unless withdrawal can be accomplished without material adverse effect to the client's interests. *See, e.g.*, D.C. Rules of Prof'l Conduct R. 1.16.

M In determining whether an individual or organization should be granted party status in a proceeding based on standing "as of right" consistent with 10 C.F.R. § 2.309(d), the agency has applied contemporaneous judicial standing concepts that require a participant to establish (1) it has suffered or will suffer a distinct and palpable injury that constitutes injury-in-fact within the zones of interests arguably protected by the governing statutes (e.g., Atomic Energy Act of 1954 (AEA), 42 U.S.C. §§ 2011-2297; National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. §§ 4321-4370); (2) the injury is fairly traceable to the challenged action; and (3) the injury is likely to be redressed by a favorable decision. *See Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-96-1, 43 NRC 1, 6 (1996).

N In cases involving the possible construction or operation of a nuclear power reactor, proximity to the proposed facility has been an essential element in establishing the requisite standing elements. *See Florida Power & Light Co.* (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325, 329 (1989).

O When an entity seeks to intervene on behalf of its members, that entity must show it has an individual member who can fulfill all the necessary standing elements and who has formally authorized the organization to represent his or her interests. *See Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), CLI-00-20, 52 NRC 151, 163-64 (2000).

P In the context of a COL proceeding in which intervenors seek to resurrect a previously terminated contested portion of the proceeding by gaining the admission of a new contention, potentially pertinent is the Commission's case law that a petitioner must make a fresh standing demonstration in each individual proceeding in which intervention is sought. *See PPL Bell Bend, LLC* (Bell Bend Nuclear Power Plant), CLI-10-7, 71 NRC 133, 138 (2010) (citing *Crow Butte Resources, Inc.* (In Situ Leach Facility, Crawford, Nebraska), CLI-09-9, 69 NRC 331, 343 (2009); *Texas Utilities Electric Co.* (Comanche Peak Steam Electric Station, Unit 2), CLI-93-4, 37 NRC 156, 162-63 (1993)).

Q Also of possible relevance, given intervenors' reply filing is their only pleading in which they address their standing, are recent cases that have recognized that a petitioner's standing showing can be corrected or supplemented to cure deficiencies by means of its reply pleading. *See Bell Bend*, CLI-10-7, 71 NRC at 139-40; *South Carolina Electric & Gas Co.* (Virgil C. Summer Nuclear Station, Units 2 and 3), CLI-10-1, 71 NRC 1, 7 (2010).

R To interpose a new contention in the previously terminated contested portion of a COL proceeding requires the submission of a "fresh intervention petition" that fulfills the applicable standards that govern such filings, presumably including an appropriate standing demonstration. *U.S. Army Installation*

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

Command (Schofield Barracks, Oahu, Hawaii, and Pohakuloa Training Area, Island of Hawaii, Hawaii), CLI-10-20, 72 NRC 185, 195 & n.56 (2010).

S As a general rule, it is not sufficient to seek to establish standing in a proceeding by merely cross-referencing the showing made in another proceeding, rather than making a new presentation or, at the very least, providing a submission that updates the factual information that was provided previously. *See Bell Bend*, CLI-10-7, 71 NRC at 138. “[B]ecause a petitioner’s circumstances may change from one proceeding to the next,” it is important that the presiding officer have up-to-date information regarding any standing claims. *Id.*

T Assuming a potential intervenor wishes to rely upon standing-related information already in the record of a proceeding, the central issue is whether that information is materially the same as when it was originally submitted. Thus, if the factual showing that the residence of an individual was within 50 miles of a facility was previously relied upon to establish standing, the certification necessary by a potential intervenor would be that there has not been a material change in that factual situation in the interim.

U Once the record of a proceeding is closed, new information may not be considered in the proceeding unless the reopening standards under 10 C.F.R. § 2.326(a) are met. *See Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Unit 3), CLI-09-5, 69 NRC 115, 120-21, 124-25 (2005) (affirming licensing board ruling that petitioners seeking to introduce new contentions after the board had denied their initial petition to intervene needed to address the reopening standards). Section 2.326 states that for a motion to reopen to be granted: “(1) The motion must be timely. However, an exceptionally grave issue may be considered in the discretion of the presiding officer even if untimely presented; (2) The motion must address a significant safety or environmental issue; and (3) The motion must demonstrate that a materially different result would be or would have been likely had the newly proffered evidence been considered initially.” 10 C.F.R. § 2.326(a)(1)-(3); *see also Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Plant), LBP-10-19, 72 NRC 529, 545-50 (2010) (discussing and analyzing reopening standards).

V Relative to the reopening standards, a licensing board should consider both the timing and the significance of the issue raised in a motion to reopen such that a timely motion may be denied if it raises issues that “are not of ‘major significance to plant safety,’” while a nontimely motion may be granted if it raises an issue of sufficient gravity. *See Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), ALAB-138, 6 AEC 520, 523 (1973) (quoting *Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station, ALAB-124, 6 AEC 358, 365 (1973))). In that regard, an untimely motion to reopen must demonstrate that the issue raised “is not merely ‘significant’ but ‘exceptionally grave.’” *Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), ALAB-886, 27 NRC 74, 78 (1988), *cited with approval in Hydro Resources, Inc.* (P.O. Box 15910, Rio Rancho, NM 87174), CLI-00-12, 52 NRC 1, 5 (2000).

W A motion to reopen must be accompanied by affidavits that “set forth the factual and/or technical bases for the movant’s claim that the criteria of paragraph (a) of this section have been satisfied,” including addressing each of the reopening criteria “separately” with “a specific explanation of why it has been met.” 10 C.F.R. § 2.326(b). Additionally, if the motion to reopen “relates to a contention not previously in controversy among the parties,” the movant must meet the nontimely filing requirements of 10 C.F.R. § 2.309(c). *Id.* § 2.326(d). The Commission has stated that when a petitioner seeks to introduce a new contention after the record has been closed, it should “address the reopening standards contemporaneously with a late-filed intervention petition, which must satisfy the standards for both contention admissibility and late filing.” *Millstone*, CLI-09-5, 69 NRC at 124.

X The Commission has also held that “the standard for admitting a contention after the record is closed is higher than for an ordinary late-filed contention,” i.e., to justify reopening the record to admit a new contention “the moving papers must be strong enough, in the light of any opposing filings, to avoid summary disposition,” and the new information “must be significant and plausible enough to require reasonable minds to inquire further.” *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-05-12, 61 NRC 345, 350 (2005) (internal quotations omitted).

Y In an instance in which the contested portion of a proceeding was terminated following an unchallenged merits determination in favor of the applicant regarding the proceeding’s sole admitted contention, the licensing board’s focus must be on the requirements applicable to reopening a closed record set out in 10 C.F.R. § 2.326.

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- Z The first factor under section 2.326(a) is whether the reopening motion is timely. The question of the “timeliness” of an intervention submission is a matter that has import relative to a number of the different admission standards that are implicated by that filing, including paragraphs (c)(1) and (f)(2) of section 2.309. This “timeliness” question, in turn, depends on two different considerations, i.e., what/when was the “trigger” that provided the footing for the new contention and was the motion seeking record reopening/contention admission filed timely after that “trigger” event.
- AA Although the first licensing board issued the summary disposition ruling that resolved all contested matters before that board after the new contention “trigger” event, any motion to admit a new contention could have been filed before the Commission or lodged with the board with the reasonable expectation that it would be appropriately referred.
- BB There is a strict procedural requirement that a reopening pleading must be accompanied by an affidavit that “separately” addresses each of the paragraph (a) provisions of section 2.326 and provides “a specific explanation of why it has been met.” 10 C.F.R. § 2.326(b). As is the case with unexplained material submitted in support of a contention, *see Fansteel, Inc.* (Muskogee, Oklahoma Site), CLI-03-13, 58 NRC 195, 204-05 (2003); *Powertech (USA), Inc.* (Dewey-Burdock In Situ Uranium Recovery Facility), LBP-10-16, 72 NRC 361, 398 (2010), the licensing board declines an offer to hunt in the intervention petition for information regarding section 2.326(a) criteria that the agency’s procedural rules require be explicitly identified and fully explained.
- CC As the Commission recently has noted, in an instance in which a contested proceeding has been terminated following the resolution of all submitted contentions, an individual, group, or governmental entity that wishes to interpose an additional issue in the case for litigation must submit a new intervention petition in which it addresses, among other things, the standards in section 2.309(c)(1) that govern nontimely intervention petitions. *See Schofield Barracks*, CLI-10-20, 72 NRC at 195; *see also* 10 C.F.R. § 2.326(d).
- DD Although the standard governing nontimely intervention petitions lists eight items that are to be addressed, given the licensing board standing ruling that essentially addresses factors (ii)-(iv) such that they would weigh in favor of intervention, the board need consider only factors (i), (v)-(viii), which are as follows: “(i) Good cause, if any, for the failure to file on time; . . . (v) The availability of other means whereby the requestor’s/petitioner’s interest will be protected; (vi) The extent to which the requestor’s/petitioner’s interests will be represented by other parties; (vii) The extent to which the requestor’s/petitioner’s participation will broaden the issues or delay the proceeding; and (viii) The extent to which the requestor’s/petitioner’s participation may reasonably be expected to assist in developing a sound record.” 10 C.F.R. § 2.309(c)(1)(i), (v)-(viii).
- EE Relative to the requisite weighing and balancing of these factors, agency case law establishes that factor (i) is of paramount importance, such that failure to meet this factor enhances considerably the burden of showing that the other factors justify admission of the nontimely petition. *See Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), ALAB-743, 18 NRC 387, 397 (1983). Moreover, among the remaining four elements, factors (vii) and (viii) generally have been considered to have the most significance in the balancing process in instances in which there are no other parties or ongoing related proceedings. *See id.* at 399, 402.
- FF Regarding the section 2.309(c)(1) factors, intervenors’ failure to provide any specific discussion of most of these items or the weight they should be given in the balance that is required under this provision is a potentially fatal omission. *See Texas Utilities Electric Co.* (Comanche Peak Steam Electric Station, Units 1 and 2), CLI-93-11, 37 NRC 251, 255 (1993).
- GG Once the deadline for filing an initial intervention petition has passed, a party wishing to submit new (or amended) contentions on matters not associated with issuance of the Staff’s draft or final environmental impact statement (EIS) must satisfy the requirements of 10 C.F.R. § 2.309(f)(2) by showing that: “(i) The information upon which the amended or new contention is based was not previously available; (ii) The information upon which the amended or new contention is based is materially different than information previously available; and (iii) The amended or new contention has been submitted in a timely fashion based on the availability of the subsequent information.”
- HH In light of section 2.309(f)(2) requirements that any new contention be based on material information that was not previously available, the timeliness determination required under this provision and the section 2.326(a) reopening standard can be closely equated. *See Vermont Yankee*, LBP-10-19, 72 NRC at 545.

DIGESTS

ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- II Section 2.309(f)(1) of the Commission's rules of practice specifies the requirements for admitting contentions. Specifically, a contention must provide (1) a specific statement of the legal or factual issue sought to be raised; (2) a brief explanation of the basis of the contention; (3) a concise statement of the alleged facts or expert opinions, including references to specific sources and documents, that support the petitioner's position and upon which the petitioner intends to rely at hearing; (4) a demonstration that the issue raised in the contention is within the scope of the proceeding; (5) a showing that the contention is material to the findings the NRC must make to support the action that is involved in the proceeding; and (6) sufficient information demonstrating that a genuine dispute exists in regard to a material issue of law or fact, including references to specific portions of the application that the petitioner disputes, or in the case when the application is alleged to be deficient, the identification of such deficiencies and supporting reasons for this belief. *See* 10 C.F.R. § 2.309(f)(1)(i)-(vi). Failure to comply with any of these requirements is grounds for dismissing a contention. *See Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 325 (1999) (citing *Arizona Public Service Co.* (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), CLI-91-12, 34 NRC 149, 155-56 (1991)).
- JJ In addition, of particular relevance is the precept that a contention that attacks a Commission rule, or which seeks to litigate a matter that is, or clearly is about to become, the subject of a rulemaking, is inadmissible. *See* 10 C.F.R. § 2.335(a); *Potomac Electric Power Co.* (Douglas Point Nuclear Generating Station, Units 1 and 2), ALAB-218, 8 AEC 79, 85, 89 (1974). This includes contentions that advocate stricter requirements than agency rules impose or that otherwise seek to litigate a generic determination established by a Commission rulemaking. The same is true relative to a contention that challenges applicable statutory requirements or the basic structure of the agency's regulatory process. *See, e.g., Philadelphia Electric Co.* (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20, *aff'd in part on other grounds*, CLI-74-32, 8 AEC 217 (1974). By the same token, a contention that simply states the petitioner's views about what regulatory policy should be does not present a litigable issue. *See id.* at 20-21 & n.33.
- KK Generally, an additional authorities filing would be a submission that is the functional equivalent of a letter supplementing authorities, such as is permitted under Federal Rule of Appellate Procedure 28(j). A filing falls short that does not cite to any legal "authorities." *See Black's Law Dictionary* 153 (9th ed. 2009) ("authority" defined as "[a] legal writing taken as definitive or decisive; esp., a judicial or administrative decision cited as a precedent," or "[a] source, such as a statute, case, or treatise, cited in support of a legal argument"). Authorities may be binding, adverse, or merely persuasive, but all authorities must possess some legal and precedential/persuasive value.
- LL It is well established that a licensing proceeding is not the proper forum for challenging a standard reactor plant design. Rather, issues concerning a standard design, reviewed as part of a design certification application, are resolved in the design certification rulemaking and not in a site-specific COLA proceeding. *See* 10 C.F.R. § 52.63(a)(5) ("[I]n making the findings required for issuance of a [COL] . . . the Commission shall treat as resolved those matters resolved in connection with the issuance or renewal of a design certification rule."); *Progress Energy Carolinas, Inc.* (Shearon Harris Nuclear Power Plant, Units 2 and 3), CLI-08-15, 68 NRC 1, 4 (2008); *see also* 10 C.F.R. § 2.335(a); *Tennessee Valley Authority* (Bellefonte Nuclear Power Plant, Units 3 and 4), LBP-08-16, 68 NRC 361, 397 (2008).
- MM A petitioner wishing to raise an issue suited for a design certification rulemaking may pursue either seeking to amend the final design certification rule pursuant to section 52.63(a)(1) or commenting on a proposed design certification rule during the public comment period pursuant to section 52.51(a).
- NN Intervenors are precluded from challenging ASME inspection requirements in this proceeding because NRC regulations directly incorporate ASME inspection requirements by reference. *See* 10 C.F.R. § 2.335(a); *Peach Bottom*, ALAB-216, 8 AEC at 20; Tr. at 64. NRC regulations dictate that a COL application include, inter alia, a description of the programs, and their implementation, necessary to ensure that the systems and components meet the requirements of the ASME Boiler and Pressure Vessel Code in accordance with 10 C.F.R. § 50.55a. *See* 10 C.F.R. § 52.79(a)(11).
- LBP-10-22 U.S. DEPARTMENT OF ENERGY (High-Level Waste Repository), Docket No. 63-001-HLW (ASLBP No. 09-892-HLW-CAB04); CONSTRUCTION AUTHORIZATION; December 14, 2010; MEMORANDUM AND ORDER (Deciding Phase I Legal Issues and Denying Rule Waiver Petitions)
- A In this 10 C.F.R. Part 63 proceeding regarding the application of the Department of Energy (DOE) to construct a national high-level nuclear waste repository at Yucca Mountain, Nevada, the Board rules on ten Phase I legal issues and denies two rule waiver petitions filed by the State of Nevada (Nevada).

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- B Section 20.1101(b), requires licensees (including Part 63 licensees) to use, to the extent practical, procedures and engineering controls based upon sound radiation protection principles to achieve occupational doses and doses to members of the public that are as low as is reasonably achievable (ALARA). 10 C.F.R. § 20.1101(b).
- C In the language and context of the 10 C.F.R. § 20.1101 upon which NEI relies, we find support for the view that DOE need not weigh ALARA considerations outside the geologic repository operations area for which it is responsible.
- D The Commission said that NRC “regulations set a minimum standard for safety, not a maximum.” *Department of Energy* (High-Level Waste Repository), CLI-09-14, 69 NRC 580, 599 (2009). The Commission’s decision dictates our ruling here. DOE need not demonstrate that it meets applicable standards without “unnecessary expenditures.”
- E An analysis based upon the historical geologic record is not required by the regulations, nor is it necessarily sufficient. The plain language of 10 C.F.R. § 63.305 does not say anything about analyzing future climate based upon the historical record. It says “DOE must vary factors related to the geology, hydrology, and climate based upon cautious, but reasonable assumptions of the changes in these factors that could affect the Yucca Mountain disposal system during the period of geologic stability.” 10 C.F.R. § 63.305(c).
- F The Commission proposed adoption of a version of 10 C.F.R. Part 63 that included a provision (in proposed section 63.115(a)(3)) stating “[c]limate evolution shall be consistent with the geologic record of natural climate change in the region surrounding the Yucca Mountain site.” Proposed Rule: “Disposal of High-Level Radioactive Wastes in a Proposed Geologic Repository at Yucca Mountain, Nevada,” 64 Fed. Reg. 8640, 8677 (Feb. 22, 1999). The proposal was deleted from the final Part 63, with the explanation that “[r]equirements related to characteristics of the reference biosphere and critical group [in section 63.115] have been deleted from this section in light of the definitions and concepts necessary to estimate dose to the reasonably maximally exposed individual, now specified in subpart L [which included 10 C.F.R. § 63.305].” 66 Fed. Reg. at 55,778. Thus, the Commission considered whether it should require that projections of climate change be based upon the geologic record and ultimately decided not to do so, preferring instead the more general requirement in 10 C.F.R. § 63.305 that climate projections be based on “cautious, but reasonable assumption.”
- G Pursuant to section 63.342(c)(2), DOE must assess the effects of climate change during the 990,000-year period regardless of whether it necessarily must assess climate change during the initial 10,000-year period under the criteria set forth in sections 63.342(a) and (b).
- H DOE may elect to use the prescribed method specified in section 63.342(c)(2) to analyze the effects of climate change during the post-10,000-year period, regardless of whether it is required to analyze the effects of climate change during the initial 10,000-year period.
- I Pursuant to 10 C.F.R. § 63.114, only FEPs that produce significant changes in releases or doses within the first 10,000 years after disposal must be included in performance assessments. 10 C.F.R. § 63.114(a)(5). Section 63.342(a), in turn, requires analysis of only those FEPs that cannot be excluded on the basis of low probability of occurrence and whose exclusion would result in a significant change in the results of the performance assessment in the first 10,000-year period.
- J Section 63.342(c) does not require the post-10,000-year performance assessment to include the effects of erosion if it is assumed there is no showing that erosion causes increases in radiological exposures or releases within the first 10,000 years.
- K By its terms, the applicable NRC regulation requires merely that the License Application be “as complete as possible in light of the information that is reasonably available at the time of docketing.” 10 C.F.R. § 63.21(a). The only reference in the regulations to “final design” implies that a final design is not required. *Id.* § 63.21(c)(18). Rather, the regulations state that, in the License Application, “[s]pecial attention must be given to those items that may significantly influence the final design.” *Id.* It seems doubtful that the Commission would direct DOE to specify items that “may significantly influence the final design” of the repository if the License Application were to provide a final design.
- L Although coverage of a potential event by DOE’s quality assurance does not operate as a matter of law to exclude consideration of a feature, event, or process (FEP), the effects of the quality assurance program can be taken into account in determining the probability and consequences of the FEP.
- M No requirement for a quantitative evaluation of an individual barrier’s capabilities appears in the relevant statutory language. Section 121(b)(1)(B) of the Nuclear Waste Policy Act states merely that the

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- NRC's licensing regulations must "provide for the use of a system of multiple barriers in the design of a repository." 42 U.S.C. § 10141(b)(1)(B).
- N Because there is no requirement to demonstrate quantitatively the independent contribution of the drip shields, DOE need not perform a barrier neutralization analysis to ascertain each individual barrier's contribution to the repository's multiple barrier system.
- O Section 63.21(c)(7) requires that the License Application include a "description of plans for retrieval and alternate storage of the radioactive wastes, should retrieval be necessary." The most natural reading of this requirement is that the License Application must set forth a general "description" of plans that will be developed in greater detail "should retrieval be necessary."
- P Before authorizing construction of the proposed repository, the Commission must determine, pursuant to 10 C.F.R. § 63.31(a)(2), "[t]hat there is reasonable expectation that the materials can be disposed of without unreasonable risk to the health and safety of the public." Thereafter, pursuant to 10 C.F.R. § 63.41(a)(2), before issuing a license to receive and possess such materials at the repository, the Commission must find that construction of "[a]ny underground storage space required for initial operation" has been "substantially complete[d]."
- Q Under 10 C.F.R. §§ 63.113, 63.114, and Part 63 Subpart G, the performance margins analysis cannot be used to validate or provide confidence in the total systems performance assessment if its data and models are not qualified under DOE's quality assurance program.
- R The Commission has set forth a four-part test, under which a petitioner must demonstrate that: (1) the rule's strict application "would not serve the purpose for which [it] was adopted"; (2) the petitioner has alleged "special circumstances" that were "not considered, either explicitly or by necessary implication, in the rulemaking proceeding leading to the rule sought to be waived"; (3) those circumstances are "unique" to the facility, rather than "common to a large class of facilities"; and (4) a waiver of the regulation is necessary to reach a "significant safety problem." *Dominion Nuclear Connecticut Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CL-05-24, 62 NRC 551, 559-60 (2005).
- LBP-10-23 PROGRESS ENERGY FLORIDA, INC. (Levy County Nuclear Power Plant, Units 1 and 2), Docket Nos. 52-029-COL, 52-030-COL (ASLBP No. 09-879-04-COL-BD01); COMBINED LICENSE; December 22, 2010; MEMORANDUM AND ORDER (Granting Motion to Compel Disclosure of Groundwater Modeling Information)
- A In this decision, the Board grants the Intervenor's motion to compel disclosure of certain groundwater modeling information associated with PEF's application to construct and operate two nuclear power reactors in Levy County, Florida.
- B Under 10 C.F.R. § 2.336, each party to a proceeding must automatically disclose and provide all documents and data compilations in their possession, custody, or control that are relevant to the admitted contentions, without waiting for a party to file a discovery request.
- C Under 10 C.F.R. § 2.336(a), each party to a proceeding may either provide the other parties with an actual copy of the relevant document or data compilation, or describe it and provide it if the other party requests it.
- D The scope of the mandatory disclosure obligations under 10 C.F.R. § 2.336 is wide-reaching.
- E Analysis of a motion to compel the mandatory disclosure of information under 10 C.F.R. § 2.336(a) is contingent on six issues: (1) is the information, such as a computer model, a "document" or "data compilation" within the meaning of the regulation; (2) is it "relevant" to the contention; (3) is it in the "possession, custody, or control" of the party receiving the disclosure request; (4) is it "publicly available" such that no further mandatory disclosure is needed; (5) would the mandatory disclosure of the information be "unduly burdensome and costly," and (6) if so, should the holder of the information be excused from the duty to produce them?
- F The term "document" as used in 10 C.F.R. § 2.336, is not limited to paper documents and it refers to information stored on any medium or form, including electronically stored information or ESI.
- G The term "document" as used in 10 C.F.R. § 2.336 includes computer models and associated electronic inputs, outputs, data, and software.
- H When determining relevance of documents for discovery purposes in NRC proceedings, boards may look to the Federal Rules of Evidence (FRE) for useful guidance. Fed. R. Evid. 401 states that "'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."

DIGESTS

ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- I The relevance standard of 10 C.F.R. § 2.336 is more flexible than the relevance standard of Fed. R. Evid. 401. When the Commission endorsed the use of the FRE as guidance for the boards, it did so with the express proviso that boards must apply the Part 2 rules with *greater flexibility* than the FRE. In addition, 10 C.F.R. § 2.336 is a *discovery* regulation, and the rules are clear that the scope of discovery is broader than the scope of admissible *evidence*. Finally, the Commission has affirmed that the mandatory disclosures in Subpart L proceedings encompass a “wide range of information.”
- J Although the phrase “possession, custody, or control” appears in the NRC regulations in three instances (10 C.F.R. §§ 2.336(a)(2)(i), 2.704(a)(2), and 2.707(a)(1)), as far as we are aware, no NRC decision has ever provided guidance as to what constitutes “control.”
- K We look to the Federal Rules of Civil Procedure for guidance on construing the term “control” as it applies to our ruling on the instant motion under 10 C.F.R. § 2.336(a)(2)(i). This is because the NRC’s regulation is based on Fed. R. Civ. P. 26(a)(1)(A)(ii). In addition, Fed. R. Civ. P. 34(a)(1), which also uses the term “control,” is essentially the same as NRC’s “production of documents” regulation, 10 C.F.R. § 2.707(a)(1). The case law construing these federal rules is useful guidance in interpreting the NRC regulations.
- L The phrase “possession, custody, or control” as found in the FRCP and 10 C.F.R. § 2.336(a) is in the disjunctive. Only one of the enumerated requirements needs to be met. Neither possession nor custody of a document is required.
- M Neither legal ownership nor title is required in order for a party to have “possession, custody, or control” of a document under the FRCP or 10 C.F.R. § 2.336(a).
- N Term “control” is broadly construed. Documents are deemed to be within the control of a party if the party has the right to obtain the documents on demand. In addition, a document is deemed to be within a party’s control if it is held by the party’s attorney, expert, insurance company, accountant, or agent.
- O The concept of control extends to situations in which the party has the practical ability to obtain materials in the possession of another, even if the party does not have the legal right to compel the other person or entity to produce the requested materials. Practical control by a party over the person in possession of the document is sufficient to require that the party produce the document.
- P The documents (computer models) prepared by CH2M Hill as a part of its expert consulting work for PEF on the Levy Nuclear Project are within PEF’s “control” for purposes of 10 C.F.R. § 2.336(a)(2)(i) and must be disclosed, even though the documents were not contract deliverables, PEF may have no formal legal “right” to force CH2M Hill to provide them, and PEF must compensate CH2M Hill for providing these documents. This is because the documents were prepared by PEF’s expert and PEF has the practical ability to obtain them.
- Q PEF’s “control” of these computer models, i.e., its practical ability to access and obtain them, is illustrated by the fact that PEF acknowledged that, if the NRC Staff requested these documents, PEF could obtain and provide them.
- R PEF’s “control” of these computer models, i.e., its practical ability to access and obtain them, is illustrated by the fact that they were prepared under quality control measures associated with this nuclear project and the fact that PEF has the contractual right to audit and review this information.
- S To rule that disclosure under 10 C.F.R. § 2.336(a)(2)(i) is limited to formal contractual deliverables would ignore practical reality. Such a reading of 10 C.F.R. § 2.336(a)(2)(i) would encourage applicants to draft consulting contracts to “insulate” themselves from the obligation to disclose critical computer modeling information. This is information that applicants routinely provide to the NRC Staff, if requested during the license application process.
- T Rather than focusing on the contractual formalities, we adopt the FRCP approach and focus on the practical realities. An applicant has “control” of a document under 10 C.F.R. § 2.336 if the applicant has the practical ability to obtain it, albeit for a cost or fee, from the expert consulting firm that generated the document while performing work for the applicant.
- U Under the mandatory disclosure regulation, 10 C.F.R. § 2.336(a)(2)(iii), a party is excused from producing a document if the document is publicly available and if the party specifies where the document may be found.
- V In the context of PEF’s application to construct and operate two large nuclear power reactors at a total cost in excess of \$14 billion dollars, and an NRC licensing process costing millions of dollars (disregarding any adjudicatory costs), PEF’s request to be excused from disclosing, as is required by 10 C.F.R. § 2.336(a), the key groundwater models involved in this application on the ground that such

DIGESTS

ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

disclosure would entail the excessive and undue cost of \$30,000 is rejected. This is not an undue cost. This cost pales in comparison to the other costs involved in this project, including the cost PEF would incur in preparing and bringing the CH2M Hill environmental expert to the evidentiary hearing.

W PEF's claim that the computer models should be excused from the mandatory disclosure requirements of 10 C.F.R. § 2.336(a) because they entail proprietary information is rejected. Under the protective order that the Board has issued in this proceeding, the use of any proprietary information (e.g., trade secrets or confidential commercial or financial information) that is produced under 10 C.F.R. § 2.336 is strictly limited to this proceeding, and such information must be promptly returned at the close of this proceeding. We reject PEF's suggestion that it cannot produce the requested information because it is "proprietary," either to PEF, CH2M Hill, or to the company that provides software to CH2M Hill.

LBP-10-24 CALVERT CLIFFS 3 NUCLEAR PROJECT, LLC, and UNISTAR NUCLEAR OPERATING SERVICES, LLC (Calvert Cliffs Nuclear Power Plant, Unit 3), Docket No. 52-016-COL (ASLBP No. 09-874-02-COL-BD01); COMBINED LICENSE; December 28, 2010; ORDER (Ruling on Intervenors' Proposed New Contention 10)

A The use of the disjunctive phrase "data or conclusions" means it is sufficient that either data or conclusions in the Draft Environmental Impact Statement ("DEIS") differ significantly from those in the Environmental Report ("ER"); both need not do so. A contention may therefore challenge a DEIS even though its ultimate conclusion on a particular issue (e.g., the need for power) is the same as that in the ER, as long as the DEIS relies on significantly different data than the ER to support the determination. The reverse is also true: a significantly different conclusion in the DEIS may be challenged even though it is based on the same information that was cited in the ER.

B The regulations do not define or specify an exact number of days within which a new or amended contention must be filed in order to be considered "timely." Accordingly, unless a deadline has been specified in the scheduling order for the proceeding, the determination of timeliness is subject to a reasonableness standard that depends on the facts and circumstances of each situation.

C The Commission affirmed that "good cause" is the most significant of the late-filing factors set out in 10 C.F.R. § 2.309(c). If good cause is not shown, the board may still permit the late filing, but the petitioner must make a strong showing on the other factors.

D The regulations do not define the phrase "differ significantly." In the absence of a statutory definition, courts normally define a term by its ordinary meaning. The ordinary meaning of "significant" is "having meaning," "full of import," "indicative," "having or likely to have influence or effect," "deserving to be considered."

E When a new contention is filed challenging "new data or conclusions" in the NRC's environmental documents, the timeliness of the new contention is determined based on whether it was filed promptly after the NRC's National Environmental Policy Act ("NEPA") document became publicly available, not whether it was filed promptly after the information on which the intervenor bases its challenge became publicly available. The intervenor must show that (1) the new data or conclusions in the NRC Staff NEPA document differ significantly from those in the ER, and (2) the new contention was submitted promptly after the NRC Staff NEPA document was issued to the public. If these requirements are met, the new contention is timely even if it is based on information that predates the NRC Staff NEPA document. This contrasts with the alternative basis for filing a new contention in section 2.309(f)(2)(i)-(iii), which requires that a new or amended contention based on material new information be filed "in a timely fashion based on the availability of the subsequent information." Under this alternative, timeliness is determined based on the timing of the availability of the information on which the contention is based, not the timing of the NRC Staff NEPA document. The two tests are distinct, and therefore if the requirements of the first test are met we may not impose additional requirements derived from the second test.

F The Intervenors' failure to expressly address the late-filing criteria does not necessarily preclude the Board from doing so. Licensing boards and the Commission have considered the late-filing criteria even in cases where the factors were not fully addressed by the petitioners and/or the NRC Staff or were not addressed at all.

G Intervenors have good cause for filing Contention 10 in response to the DEIS because the NRC Staff NEPA document contains data or conclusions that differ significantly from those in the ER. By defining significantly different information in the DEIS as a permissible basis for filing a new contention, the Commission has in effect concluded that such new information is good cause for filing a new contention.

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- H The assessment of need for power has historically been equated with the benefits of the proposed action for the cost-benefit balance consideration. If the need for power is less than the DEIS projects, then the benefits of the project might also be less, which might in turn alter the balance between the project's benefits and its environmental costs. Thus, the accuracy and reliability of the agency's need for power determination, as reflected in the DEIS, is material to the licensing decision.
- I Even if the NRC Staff finds that a State's evaluation satisfies the criteria of the Environmental Standard Review Plan ("ESRP") § 8.1, this does not relieve the NRC of its obligation under NEPA to consider more recent data showing that conditions have changed materially, as Intervenor's claim is true here. The NRC Staff's obligation to consider significant new information in preparing NEPA documents follows from the agency's NEPA regulations. Thus, if significant new information becomes available, the NRC Staff must explain how it took the new information into account in determining whether the State requires additional generating capacity. Chapter 8 of the DEIS fails to acknowledge the recent downturn in the demand for electrical power alleged by Intervenor, much less explain whether or how it affected the NRC's assessment of the need for power.
- J A short-term reduction in demand is not sufficient to necessitate an accounting in the DEIS for that changed demand. The longstanding position of the Commission is that inherent in any forecast of future electric power demands is a substantial margin of uncertainty. Thus, fluctuations in demand that may occur over a period of several years, such as changes brought about by an economic recession, are not a legally sufficient ground for challenging the need for power analysis under the Commission's interpretation of NEPA requirements.
- K The Council on Environmental Quality ("CEQ"), numerous courts, and parties to this proceeding, including the NRC Staff, acknowledge that the alternatives analysis is the "heart of the environmental impact statement." "The existence of reasonable but unexamined alternatives renders an EIS inadequate." The adequacy of the DEIS's evaluation of alternatives is therefore a material issue in the licensing proceeding.
- L The primary reason the DEIS did not consider either wind or solar power as a stand-alone alternative to Unit 3 is that neither of those sources was deemed capable of serving the purpose and need of the project, generating 1600 MW(e) of baseload power. Because Intervenor do not contest that basic conclusion, Contention 10B does not present a genuine dispute with the DEIS. Even if Intervenor are correct that the DEIS's analysis of wind and solar power is flawed, they have provided no basis to overturn the NRC Staff's conclusion that neither source of power could, standing alone, provide a reasonable alternative to Calvert Cliffs Unit 3.
- M The NRC may consistently with NEPA define baseload power generation as the purpose of and need for a project.
- N Intervenor have satisfied our contention admissibility requirements by identifying information to support their contention that the DEIS contains an inaccurate or incomplete comparison of the proposed action and the combined alternative. If Intervenor's contention is upheld on the merits, they will have shown that the DEIS violates NEPA even if they have not shown precisely how the DEIS should be revised or what ultimate conclusion it should reach. Federal courts have held that inaccurate, incomplete, or misleading information in an EIS concerning the comparison of alternatives is itself sufficient to render the EIS unlawful and to compel its revision.
- O We agree with the NRC Staff that, as a general proposition, "[a]n agency's consideration of alternatives is sufficient if it considers an appropriate range of alternatives, even if it does not consider every available alternative." In this instance, however, Intervenor cannot be accused of demanding that the NRC Staff analyze "every conceivable alternative." On the contrary, the combined alternative is the only alternative to the proposed action that the NRC Staff determined was a viable source of baseload power and that included renewable energy sources. A thorough and accurate analysis of the combined alternative is therefore particularly important to the agency's compliance with NEPA, because it represents the only opportunity the decisionmakers and the public will have to compare the proposed action to an alternative that includes renewable sources such as wind and solar power and is acknowledged to be capable of fulfilling the purpose and need of the project.
- P Under section 2.309(f)(2), an intervenor may file a new or amended contention "if there are data or conclusions in the NRC draft or final environmental impact statement . . . or any supplement relating thereto, that differ significantly from the data or conclusions in the applicant's documents." In this proceeding, the overnight capital cost estimate of \$4500 to \$6000/kW that appears in the DEIS also appears in Applicants'

DIGESTS

ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

Response to Request for Additional Information (“RAI”) No. 124, which clearly qualifies as part of “the applicant’s documents” under section 2.309(f)(2). Thus, because the same overnight capital cost estimate — \$4500 to \$6000/kW — appears in both the DEIS and Applicants’ documents, it cannot be said that the overnight capital cost estimates differ significantly between the DEIS and Applicants’ documents.

DIGESTS
ISSUANCES OF DIRECTORS' DECISIONS

DD-06-1 CAROLINA POWER AND LIGHT COMPANY (Shearon Harris Nuclear Power Station, Unit 1; H.B. Robinson Plant, Unit 2), Docket Nos. 50-400, 50-261; CONSTELLATION ENERGY GROUP (R.E. Ginna Nuclear Power Plant), Docket No. 50-244; DUKE ENERGY CORPORATION (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), Docket Nos. 50-369, 50-370, 50-413, 50-414; ENTERGY NUCLEAR OPERATIONS, INC. (James A. FitzPatrick Nuclear Power Plant; Indian Point, Units 2 and 3; Vermont Yankee Nuclear Power Station; Waterford Steam Electric Station, Unit 3; Arkansas Nuclear One, Units 1 and 2), Docket Nos. 50-333, 50-247, 50-286, 50-271, 50-382, 50-313, 50-368; REQUEST FOR ACTION; January 9, 2006; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206

A The Petitioners requested that the U.S. Nuclear Regulatory Commission (NRC) engage emergency enforcement actions to modify and/or suspend operating licenses for the listed plants with regard to potential violations of NRC regulations for fire protection. Specifically, the petition requested the following actions: (1) Collect information through generic communications with nuclear industry to determine the extent of condition of the inoperable fire barriers, including the requirement that the licensees conduct a full inventory of the type of Hemyc/MT to include the amount in linear and square footage, its specific applications, and the identification of safe shutdown systems, which are currently unprotected by the noncompliance and an assessment of the safety significance of each application; (2) the communication should require, at minimum, that the above-named sites provide justification for operation in noncompliance with all applicable fire protection regulations; and (3) with the determination that any and/or all of the above-mentioned sites are operating in an unanalyzed condition and/or that assurance of public health and safety is degraded, promptly order a suspension of the license or a power reduction of the affected reactors until such time as it can be demonstrated that the licensees are operating in conformance with all other applicable fire protection regulations.

B The final Director's Decision on this petition was issued on January 9, 2006. It addresses the Petitioners' requested actions as follows: With regard to requests 1 and 2, the NRC Staff has granted the Petitioners' request through the generic communication process. Specifically, the NRC Staff is planning to issue a Generic Letter (GL) to all licensees asking them to provide detailed information about the use of Hemyc/MT in their nuclear power plants, and their programmatic controls that ensure that other fire barrier types will be assessed for potential degradation and adverse effects. With respect to request 3, the NRC Staff is planning to review the responses from all affected plants in detail and will take appropriate actions to resolve the issues with the use of Hemyc/MT material commensurate with the safety significance of the protected systems. The comment period for the proposed GL expired on September 23, 2005. The GL will be issued after the NRC's internal review process is completed.

DD-06-2 ENTERGY NUCLEAR VERMONT YANKEE, LLC, and ENTERGY NUCLEAR OPERATIONS, INC. (Vermont Yankee Nuclear Power Station), Docket No. 50-271 (License No. DPR-28); REQUEST FOR ACTION; March 4, 2006; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206

A The Petitioner requested that the U.S. Nuclear Regulatory Commission (NRC) issue an emergency order for a temporary closure or derating of the Vermont Yankee Nuclear Power Station (VY) as a result of flooding and storm damage to the city of Keene, the town of Hinsdale, and other portions of New Hampshire that are part of existing evacuation routes for VY, during local flooding that occurred on October 8 and 9, 2005.

B The final Director's Decision on this petition was issued on March 4, 2006. The final DD addresses the requested actions as follows: The NRC Staff, in consultation with the Federal Emergency Management Agency, confirmed that during the flooding on October 8 and 9, 2005, near VY, the State of New

DIGESTS
ISSUANCES OF DIRECTORS' DECISIONS

Hampshire had established and coordinated potential alternate evacuation routes in the unlikely event of an emergency at VY and that shutting down or derating the station was not warranted. Therefore, Petitioner's request of October 11, 2005, to shut down or derate VY was denied. In addition, the NRC Staff found that the safe operation of VY was not threatened by the flooding and that the local emergency response organizations could implement protective actions if necessary, to protect public health and safety, in accordance with their emergency procedures, regardless of local severe weather conditions or other natural disasters coincident with an emergency at VY.

- C Accordingly, NRC denied the Petitioner's requests as stated above.
- DD-06-3 OPERATING AND DECOMMISSIONING POWER REACTORS and OPERATING AND DE-COMMISSIONING RESEARCH AND TEST REACTORS; REQUEST FOR ACTION; November 2, 2006; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206
- A The Petitioners requested that the U.S. Nuclear Regulatory Commission (NRC) issue Demands for Information (DFIs) to research, test, and power reactors to obtain responses to specific questions regarding leaks or potential leaks of radioactively contaminated water into the ground. As the basis for the request, the Petitioners cited several examples of contamination at NRC-licensed facilities and cited NRC regulations requiring licensees to have controls limiting the release of radioactive materials and limiting the radiation dose individuals receive from the operation of NRC-licensed facilities.
- B The final Director's Decision (DD) on this petition was issued on November 2, 2006. The final DD addresses the requested actions as follows: The portion of the Petition related to power reactors is considered granted in part, because power reactor licensees submitted a substantial amount of the requested information in response to an industry questionnaire. The portion of the Petition related to research and test reactors was denied, because existing NRC design and regulatory programs ensure that there is a minimal risk for a significant release of contaminated liquid effluents.
- DD-07-1 STP NUCLEAR OPERATING COMPANY (South Texas Project, Units 1 and 2), Docket Nos. 50-498, 50-499 (License Nos. NPF-76, NPF-80); REQUEST FOR ACTION; February 24, 2007; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206
- A The Petitioner requested that the Nuclear Regulatory Commission (NRC) issue demands for information (DFIs) to STP Nuclear Operating Company (STPNOC), Licensee for the South Texas Project (STP) Electric Generating Station, Units 1 and 2, to provide NRC the results of assessments of the safety-conscious work environment (SCWE) at STP conducted since January 1, 2004; summaries of action plans and results of actions to remedy the problems revealed by the assessments, including documents mentioned at an August 2005 meeting convened to discuss the STP SCWE; summaries of action plans and results of efforts to remedy problems revealed by such assessments in 2001 and 2003; and all correspondence between the NRC, STPNOC, and Wackenhut Corporation concerning the 2001, 2003, and 2005 comprehensive cultural assessments.
- B The Petitioner requested that NRC issue DFIs to obtain information in order to be better informed and to better assess the effectiveness of steps taken by STPNOC regarding Wackenhut Corporation and other entities who, according to the Petitioner, have had persistent problems. The Petitioner requested that NRC require the licensee to docket the information subject to DFIs.
- C The final Director's Decision (DD) was issued on February 24, 2007. The final DD addresses the Petitioner's requested actions as follows. Since the NRC already has reviewed and has ready access to all of the information requested by the Petitioner, and since issuance of the requested DFIs to STPNOC would not result in an order or other action, the requested DFIs are not warranted. Additionally, since the requested material was not required by a previous NRC order (Confirmatory Order Modifying License (Effective Immediately) of June 9, 1998) addressing the concerns with Wackenhut, which required STPNOC to conduct the actions for which the Petitioner requested that the NRC issue DFIs, and since the material was not submitted to the NRC, and is maintained at the Licensee's facility and readily accessible to the NRC Staff, docketing the requested information is unwarranted.
- D Accordingly, the NRC denied the Petitioner's requests to issue DFIs to STPNOC, and to require STPNOC to docket the documents for which DFIs were requested.
- DD-07-2 NUCLEAR MANAGEMENT COMPANY, LLC (Palisades Nuclear Plant), Docket Nos. 50-255, 72-7 (License No. DPR-20); REQUEST FOR ACTION; March 20, 2007; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206
- A On April 4, 2006, the Petitioners requested that the U.S. Nuclear Regulatory Commission (NRC) take enforcement action against the Licensee for the Palisades Nuclear Plant, Nuclear Management Company,

DIGESTS
ISSUANCES OF DIRECTORS' DECISIONS

- LLC (NMC), by condemning and stopping the use of the two independent spent fuel storage installation (ISFSI) concrete pads holding dry spent fuel storage casks on the plant site. The Petitioners stated that the concrete cask storage pads do not conform with NRC regulations for earthquake stability, and therefore pose a hazard in case of an earthquake.
- B** The final Director's Decision on this petition was issued on March 20, 2007. The first two issues the petitioners raised, concerning the stability of the older ISFSI pad (constructed in 1992) and the potential for amplification of earthquakes on the newer pad, (constructed in 2003), were not accepted for review under 10 C.F.R. § 2.206, because the NRC Staff had already evaluated and resolved those issues. As discussed in the final Director's Decision, the sole issue NRC accepted for review concerned the adequacy of the Licensee's slope stability analysis of the newer ISFSI pad. The Licensee documented its revised slope stability analysis for the newer pad in October 2006. The NRC Staff reviewed the revised analysis and determined that the Licensee has performed written evaluations that establish that the newer cask storage pad at the Palisades ISFSI has been designed to adequately support the static and dynamic loads of the stored casks, considering potential effects of earthquakes, in compliance with applicable regulatory requirements.
- C** Therefore, the Staff found that the Petitioners' concerns have been adequately addressed, and the requested action, to condemn and stop the use of the two ISFSI concrete pads holding dry spent fuel storage casks at the Palisades site, was denied.
- DD-07-3** CAROLINA POWER & LIGHT COMPANY (Shearon Harris Nuclear Power Plant, Unit 1), Docket No. 50-400 (License No. NPF-63); REQUEST FOR ACTION; June 13, 2007; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206
- A** The Petitioners requested that the U.S. Nuclear Regulatory Commission (NRC) take an immediate enforcement action in the form of an order revoking the operating license for the Shearon Harris Nuclear Power Plant (SHNPP) Unit 1, or impose maximum fines for each violation for each day the plant has been in violation of fire protection regulations; participate in open and public proceedings with the petitioners, Carolina Power & Light (CP&L, the licensee), and other external stakeholders in the vicinity of the SHNPP during deliberations on the petition; and resolve all violations of federal regulations before accepting a license renewal application from Carolina Power & Light for the SHNPP.
- B** The final Director's Decision (DD) on this petition was issued on June 13, 2007. The NRC denied the Petitioners' request for an order that would revoke the SHNPP operating license or impose maximum fines for each violation for each day the plant has been in violation of fire protection regulations. The bases for this Decision are due to the fact that the Licensee has several levels of defense-in-depth in fire protection and has in place compensatory measures in accordance with NRC expectations to address noncompliances. Additionally, the Licensee is actively identifying and completing corrective actions, including plant modifications and reanalysis efforts associated with its transition to the 10 C.F.R. § 50.48(c) licensing basis. The NRC appropriately exercised its enforcement discretion under the NRC's "Interim Enforcement Policy Regarding Enforcement Discretion for Certain Fire Protection Issues (10 CFR 50.48(c))." The NRC follows existing regulatory processes, policies, and programs (e.g., the Reactor Oversight Process) to verify that the Licensee is properly implementing its fire protection program at SHNPP in accordance with the regulations.
- C** The NRC denied the Petitioners' request to conduct public meetings in the vicinity of SHNPP. As part of the 10 C.F.R. § 2.206 petition process, a public meeting may be held to give an opportunity to petitioners to provide additional information to the PRB. The Petitioners and the NRC Staff conducted one such public meeting on November 13, 2006, at NRC Headquarters. The Staff determined that an additional public meeting was not necessary.
- D** The NRC Staff denied the Petitioners' request to not accept the Licensee's application for license renewal at SHNPP. License renewal applications are licensing actions and are not considered under 10 C.F.R. § 2.206. If the Petitioners meet hearing request and intervention criteria, they have an opportunity in the licensing proceedings pursuant to 10 C.F.R. § 2.309 to raise issues and concerns relevant to license renewal at SHNPP.
- DD-08-1** ENTERGY NUCLEAR VERMONT YANKEE, LLC, and ENTERGY NUCLEAR OPERATIONS, INC. (Vermont Yankee Nuclear Power Station), Docket No. 50-271 (License No. DPR-28); REQUEST FOR ACTION; April 28, 2008; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206
- A** The New England Coalition (NEC or the Petitioner) requested that Nuclear Regulatory Commission (NRC) promptly restore reasonable assurance of adequate protection of public health and safety that is now

DIGESTS
ISSUANCES OF DIRECTORS' DECISIONS

degraded by the failure of the Licensee and its employees to report adverse conditions leading to a reduction in plant safety margins at the Vermont Yankee Nuclear Power Station (Vermont Yankee), or otherwise order a derate or shutdown of Vermont Yankee until it can be determined to what extent Vermont Yankee is being operated in an unanalyzed condition. Specifically, the petition requested the following actions: (1) NRC completion of a Diagnostic Evaluation Team examination or Independent Safety Assessment of Vermont Yankee to determine the extent of condition of nonconformances, reportable items, hazards to safety, and the root causes thereof; (2) NRC completion of a safety culture assessment to determine why worker safety concerns were not previously reported and why assessments of safety culture under the Reactor Oversight Process failed to capture the fact or reasons that safety concerns have gone unreported; (3) derate Vermont Yankee to 50% of licensed thermal power with a mandatory hold at 50% until a thorough and detailed structural and performance analysis of the cooling towers, including the alternate cooling system, has been completed by the Licensee; reviewed and approved by NRC; and until the above steps (1) and (2) have been completed; and (4) NRC investigation and determination of whether or not similar nonconforming conditions and causes exist at other Entergy-run nuclear power plants.

B The Petition Review Board (PRB) reviewed the petition and decided to reject requests (1), (2), and (4) for review under the section 2.206 process and accept a portion of request (3) related to the cooling tower cell collapse.

C The final Director's Decision (DD) was issued on April 28, 2008. The final DD stated that the Office of Nuclear Reactor Regulation has decided to deny the Petitioner's request to derate Vermont Yankee, but has granted the petition related to the request for the NRC Staff's review of Entergy's evaluation and analysis of the partial cooling tower collapse and associated causes. The NRC Staff's evaluation of the concerns considered results of the inspection of the Licensee's cooling tower inspection program and processes, and the investigations associated with Entergy's Root Cause Analysis of the collapse. Based on the NRC Staff's evaluation and inspections, and Entergy's completed and planned corrective actions, the Staff concluded that the Petitioner's concerns have been adequately addressed and resolved.

DD-08-2 ENTERGY NUCLEAR OPERATIONS, INC. (Indian Point, Units 2 and 3), Docket Nos. 50-247, 50-286 (License Nos. DPR-26, DPR-64); REQUEST FOR ACTION; August 14, 2008; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206

A The Petitioner requested that, pursuant to 10 C.F.R. § 2.206, the NRC immediately suspend the Indian Point licenses until the issues described in the petition are remedied to full compliance with all local, state, and federal laws. The issues identified included: (1) radiological contamination through groundwater leakage from the Indian Point Unit 2 spent fuel pool (SFP), (2) the Licensee's failure to implement a new emergency notification siren system as required by NRC orders, and (3) over seventy safety, security, and enforcement issues identified over the past 6 years of plant operations.

B The Petitioner also requested rulemaking concerning 10 C.F.R. Part 54, "Requirements for Renewal of Operating Licenses for Nuclear Power Plants," and requested that the NRC not consider any new license renewal applications until the NRC revises its regulations. The Petitioner asserted that the current regulations in 10 C.F.R. Part 54, are prejudiced and biased, presume that license renewal is a foregone conclusion for all licensees, usurp stakeholder rights protected under the First Amendment of the Constitution, and abridge citizens' rights to due process and equal protection. The Petitioner also requested that the NRC refrain from taking any actions relative to the license renewal of Indian Point until the NRC amends 10 C.F.R. Part 54 as requested.

C By letter dated October 29, 2007, the NRC denied the petition for rulemaking because it did not provide any new information that was not previously considered by the NRC. The denial was published in the *Federal Register* on November 8, 2007 (72 Fed. Reg. 63,141).

D The NRC accepted, for review pursuant to 10 C.F.R. § 2.206, the Petitioner's concerns regarding the underground leakage of contaminated water at the Indian Point facility and the failure to implement the new emergency notification siren system in a timely manner. The NRC either denied the remaining issues or found that they did not meet the criteria for acceptance in the 10 C.F.R. § 2.206 process. The NRC consolidated the concern regarding the failure to implement the siren system in a timely manner with a similar issue raised in a separate letter from the Petitioner dated September 28, 2007. This Director's Decision (DD) addresses the issue of underground leakage of contaminated water at the Indian Point facility.

E The final DD was issued on August 14, 2008. The final DD addresses the Petitioner's requested actions as follows. The NRC reviewed Entergy's efforts to determine the cause and source of the

DIGESTS
ISSUANCES OF DIRECTORS' DECISIONS

groundwater contamination conditions, assess the radiological impact on public health and safety and the environment, effect appropriate mitigation and remediation, and implement long-term monitoring to ensure continuing assessment of the condition, including the expected natural attenuation of remaining residual activity. The NRC has found Entergy's response to identified conditions to be reasonable and technically sound. The NRC has reviewed in detail the existence of onsite groundwater contamination, as well as the circumstances surrounding the causes of leakage and previous opportunities for identification and intervention. The NRC's inspection determined that public health and safety have not been, nor are likely to be, adversely affected, and the dose consequence to the public attributable to current onsite conditions associated with groundwater contamination is negligible with respect to conservatively established NRC regulatory limits. The inspection determined that Entergy conformed to all NRC regulatory requirements that were pertinent in this circumstance and applicable to assessing the cause and effect of the groundwater conditions relative to public health and safety and protection of the environment.

- F Accordingly, the NRC denied the Petitioner's request to suspend the operating licenses of the Indian Point Nuclear Generating Units No. 2 and 3.
- DD-09-1 ENTERGY NUCLEAR OPERATIONS, INC. (Indian Point, Units 2 and 3), Docket Nos. 50-247, 50-286 (License Nos. DPR-26, DPR-64); REQUEST FOR ACTION; May 29, 2009; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206
- A The Energy Policy Act of 2005 required that the Indian Point Nuclear Generating Units 2 and 3 (Indian Point) provide a backup electrical power supply for the emergency notification (i.e., siren) system. Entergy Nuclear Operations, Inc., the Indian Point Licensee, failed to meet multiple deadlines imposed by the Nuclear Regulatory Commission to fully implement the new siren system with a backup electrical power supply. Mr. Sherwood Martinelli, the Petitioner, submitted multiple letters pursuant to Title 10 of the *Code of Federal Regulations*, section 2.206 requesting that the Indian Point facility be immediately shut down and daily civil penalties be imposed until the new siren system is fully approved by all applicable government agencies and operational.
- B The NRC reviewed Entergy's efforts to design and implement a siren system with a backup power supply as required by the Energy Policy Act of 2005. The existing siren system remained operational while Entergy proceeded to place the new siren system into service. The existing system will remain available to be restored to service, if required, until the Federal Emergency Management Agency, FEMA, determines it can be dismantled.
- C On May 29, 2009, the Office of Nuclear Reactor Regulation issued the final Director's Decision which denied the Petitioner's request to suspend the operating licenses of the Indian Point Nuclear Generating Units 2 and 3 and the Petitioner's request to impose daily civil penalties for the untimely implementation of the new siren system. The NRC concluded that public health and safety had not been measurably affected by the untimely implementation of the new siren system. The \$780,000 in civil penalties already imposed and Entergy's subsequent actions to implement the siren system and comply with the NRC's Orders make further enforcement actions unnecessary.
- D In addition, the Petitioner's request to place Indian Point Units 2 and 3 in cold shutdown, and to suspend the licenses of Indian Point Units 2 and 3 until the Licensee comes into full compliance with the design basis threat, the current licensing basis, and all NRC rules, because of corrosion in siren components, is also denied. Entergy's corrective actions have adequately resolved the matter, and no further action is needed.
- DD-09-2 INDIANA MICHIGAN POWER COMPANY (Donald C. Cook Nuclear Plant, Unit 1), Docket No. 50-315 (License No. DPR-58); REQUEST FOR ACTION; September 4, 2009; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206
- A On December 16, 2008, the Union of Concerned Scientists (UCS) requested pursuant to 10 C.F.R. § 2.206 that the NRC issue a Demand for Information requiring the I&M (the Licensee) to docket the following four pieces of information at least 30 days before restarting the Donald C. Cook Nuclear Plant, Unit 1 (CNP-1) reactor from its current outage: (1) the vibration levels experienced in the control room, turbine building, and other structures during the event of September 20, 2008; (2) the vibration levels assumed in these locations during the safe-shutdown earthquake (SSE); (3) in locations where the vibration levels during the September 2008 event exceeded the vibration levels assumed for the SSE, the extent of piping, pipe supports, and other items replaced or repaired as a result of potential stress damage and the bases for not replacing other structures, systems, and components exposed to loading greater than the SSE; and (4) in locations where the vibration levels during the September 2008 event did not exceed the

DIGESTS
ISSUANCES OF DIRECTORS' DECISIONS

vibration levels assumed for the SSE, the extent of measures taken to protect against spurious equipment operation and the bases for concluding that the as-left configuration will not pose a public health hazard in event of an SSE.

B The Petitioner stated that the September 20, 2008, main turbine generator failure event caused significant vibration levels that resulted in the spurious operation of standby equipment and may have contributed to a breach that seriously impaired the fire protection system. The Petitioner requested the information, in part, to ensure that the Licensee applied the proper lessons learned from the event to future operation of the CNP-1 reactor. The petition further stated that without this information, the NRC cannot be assured that the public is adequately protected from the significant adverse safety implications resulting from an SSE at CNP-1 that causes the spurious actuation of equipment.

C On January 21, 2009, the NRC accepted the petition for review pursuant to 10 C.F.R. § 2.206.

D In a letter dated May 12, 2009, the Licensee addressed the four parts of the Petitioner's request for information. The Licensee concluded that the condition of structures, systems, and components will not pose a hazard to public health and safety in the event of an SSE following return to service of CNP-1.

E The final Director's Decision (DD) was issued on September 4, 2009. The final DD addresses the Petitioner's requested actions as follows. The NRC technical staff reviewed the details in the Licensee's response and other docketed information (e.g., Licensee Event Report 315/2008-006-01 and NRC Special Inspection Team Report 05000315/2008009; 05000316/2008009) associated with the event. The Staff concluded that public health and safety were not affected by the event, nor would they be affected by a similar event in the future. The Staff also found the Licensee's event response and corrective actions to be reasonable and technically sound.

F Accordingly, the NRC denied the Petitioner's request to issue a Demand for Information from the Licensee prior to the restart of CNP-1.

DD-10-1 FLORIDA POWER & LIGHT COMPANY (Turkey Point Nuclear Generating Plant, Units 3 and 4), Docket Nos. 50-250, 50-251 (License Nos. DPR-31, DPR-41); REQUEST FOR ACTION; July 9, 2010; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206

A The Petition requested that the NRC issue a "Notice of Violation and Imposition of Civil Penalty" in the amount of \$1,000,000 and issue a confirmatory order modifying Florida Power & Light Co. (FPL) License Nos. DPR-31 and DPR-41. During a teleconference July 10, 2009, the Petitioner amended the original petition by asking the NRC, instead of issuing a civil penalty to FPL, to require FPL to create a monetary fund to enhance FPL's employee concerns program by generating cash rewards to employees who raise safety concerns; and raised a concern regarding an employee retention bonus agreement used by FPL, which you claim contains language that violates 10 C.F.R. § 50.7(f). Finally, the Petitioner filed a separate petition pursuant to 10 C.F.R. § 2.206 to NRC Chairman Gregory B. Jaczko on January 5, 2010. In this petition, it was requested that the NRC issue a confirmatory order requiring FPL to immediately place the Turkey Point and St. Lucie facilities in cold shutdown until such time as the NRC can make a full assessment of the work environments at those facilities and determine whether employees at those facilities are free, and feel free, to raise nuclear safety concerns to FPL management or directly to the NRC without fear of retaliation. The NRC combined Petitioner's second petition with the original petition and amendment.

B The final Director's Decision was issued on July 9, 2010. The Petitioner raised issues related to weaknesses in the ECP as a means of getting issues entered into the CAP and "chilling effects" that exist at Turkey Point and are spreading to St. Lucie where employees are dissuaded from freely raising nuclear safety concerns to the NRC or within FPL for fear of retaliation by FPL management. The NRC held a public meeting on October 20, 2009 (ADAMS Accession No. ML093090274), at the Region II Office in Atlanta, GA, to discuss FPL's processes for addressing employee concerns and planned, fleet-wide corrective actions for addressing FPL-identified weaknesses. The Licensee indicated that it planned to implement eighty-six corrective actions to address the weaknesses. Problem Identification and Resolution inspection reports 05000335/2010006 and 05000389/2010006 for St. Lucie dated April 19, 2010 focused on these concerns.

C The NRC has performed Problem Identification and Resolution inspections at Turkey Point and St. Lucie that cover the time frames indicated by the Petitioner. The inspections concluded that the CAP processes and procedures were effective and thresholds for identifying issues were appropriately low. Furthermore, the NRC is aware of the actions that the Licensee is taking to address the FPL-identified weaknesses, and the NRC will continue to assess the effectiveness of these actions during the next Problem

DIGESTS
ISSUANCES OF DIRECTORS' DECISIONS

Identification and Resolution inspection. The NRC determined that FPL had made progress in improving all areas addressed by the improvement plan. The NRC also determined that employees felt free to raise concerns without fear of retaliation. As stated in Problem Identification and Resolution inspection reports 05000335/2010006 and 05000389/2010006 for St. Lucie dated April 19, 2010, the NRC concluded that based on discussions and interviews with plant employees from various departments, individuals remained aware of the processes for raising concerns, were not reluctant to raise safety concerns to management or the NRC, had initiated CAP items, and participated in the safety culture surveys. Therefore, the NRC concluded that public health and safety have not been affected by Licensee-identified weaknesses in the ECP. The NRC has also reviewed FPL's retention bonus agreement and has concluded that it does not violate 10 C.F.R. § 50.7(f).

- D Accordingly, NRC denied the Petitioner's requests as stated above.
- DD-10-2 NORTHERN STATES POWER COMPANY (Prairie Island Nuclear Generating Plant, Units 1 and 2), Docket Nos. 50-282, 50-306 (License Nos. DPR-42, DPR-60); REQUEST FOR ACTION; July 20, 2010; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206
- DD-10-3 IDAHO STATE UNIVERSITY (Idaho State University AGN-201), Docket No. 50-284 (License No. R-110), REQUEST FOR ACTION; July 30, 2010; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206
- A The Petitioner, Dr. Crawford, stated that during his tenure as the Reactor Supervisor at the Idaho State University research reactor from December 19, 1991, until March 12, 1993, he witnessed regulatory, criminal, and ethical violations associated with the operation of the NRC-licensed facility. Furthermore, Dr. Crawford contended that the NRC was grossly negligent in concealing violations in the Notice of Violation (NOV) (Inspection Report 50-284/93-01) (ADAMS Accession No. ML092600304) and that Idaho State University continues to operate its reactor in violation of regulatory requirements. The Petitioner provided a detailed historical chronology of events with regard to observed activity and alleged acts of misconduct involving Staff who worked during the said period of Dr. Crawford's tenure.
- B On September 15, 2009, the NRC Petition Review Board (PRB) convened to discuss the petition under consideration and determine whether it met the criteria for further review under the 10 C.F.R. § 2.206 process. The PRB comprised NRC technical and enforcement staff and legal counsel, and it was chaired by an NRC senior-level manager. The PRB determined that the petition under consideration met the criteria established in NRC Management Directive 8.11, "Review Process for 10 C.F.R. § 2.206 Petitions," and was accepted in part into the 10 C.F.R. § 2.206 process. Issues that were not accepted into the 2.206 petition process did not satisfy the criteria as specified in NRC Management Directive (MD) 8.11, "Review Process for 10 C.F.R. 2.206 Petitions."
- C During the week of February 23-24, 2010, a nonroutine inspection (Idaho State University–NRC Non-Routine Inspection Report No. 50-284/2010-201, ADAMS Accession No. ML100321367) was conducted at the Idaho State University research reactor to review logs, records, and observe the performance of licensed activities, pertinent to the issues accepted for Dr. Crawford's 2.206 Petition. Copies of Inspection Report No. 50-284/2010-201 were provided to reactor facility staff at the Idaho State University and to the Petitioner. Additionally, the observations made during the inspection supplemented the bases for the Final Director's Decision.
- D The Final Director's Decision (ADAMS Accession No. ML101160483) was issued on July 30, 2010. The Petitioner raised potential safety concerns that occurred during his tenure as Supervisor of the Idaho State University Research Reactor. The Petitioner requested that the NRC take enforcement action against the Licensee for continuing to operate in violation of their regulatory requirements.
- E The NRC technical staff reviewed the results from the inspection team and other docketed information associated with the past and present operation at the Licensee's facility. The NRC Staff concluded that reactor operation at Idaho State University maintains awareness and implements practices that were consistent with public health and safety. Based on the inspection and review, there were no current violations and no other violations that occurred in the past that were not appropriately addressed.
- F Accordingly, NRC denied the Petitioner's request for enforcement action against Idaho State University's research reactor.

LEGAL CITATIONS INDEX
CASES

- A. Michael's Piano, Inc. v. Federal Trade Commission*, 18 F.3d 138, 147 (2d Cir. 1994)
deliberative process protects several strong interests, including an agency's interest in preserving the integrity of its consultative functions and the public's interest in good government; LBP-06-25, 64 NRC 391 (2006)
- Abbott Laboratories v. Gardner*, 387 U.S. 136, 148-49 (1967)
the basic rationale of the ripeness doctrine is to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies, and also to protect agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties; LBP-09-1, 69 NRC 38 n.114 (2009)
- Abbott Laboratories v. Gardner*, 387 U.S. 136, 149 (1967)
in determining ripeness, boards are to consider both the fitness of the issue for judicial decision and the hardship to the parties of withholding court consideration; LBP-08-24, 68 NRC 721 (2008)
it is appropriate to assess both the fitness of an issue for judicial decision and the hardship to the parties of withholding court consideration; LBP-09-1, 69 NRC 39 n.114 (2009)
- Abbs v. Sullivan*, 963 F.2d 918, 924 (7th Cir. 1992)
a winner cannot appeal a judgment; CLI-10-17, 72 NRC 44 n.240 (2010)
- Abouzeck v. Reagan*, 785 F.2d 1043, 1053 (D.C. Cir. 1986), *aff'd*, [484 U.S. 1] (1987)
although administrative history and other available guidance may be consulted for background information and the resolution of ambiguities in a regulation's language, its interpretation may not conflict with the plain meaning of the wording used in that regulation; LBP-09-15, 70 NRC 214 (2009)
- Abraham v. Hodges*, 255 F. Supp. 2d 539, 552 n.9 (D.S.C. 2002)
Congress abolished the Atomic Energy Commission, assigning the defunct agency's regulatory authority to the new NRC and its promotional authority to the new Energy Research and Development Administration; CLI-09-14, 69 NRC 607 (2009)
- Addamax Corp. v. Open Software Foundation, Inc.*, 148 F.R.D. 462, 467-68 (D. Mass. 1993)
the concept of control extends to situations in which the party has the practical ability to obtain materials in the possession of another, even if the party cannot compel the other person or entity to produce the requested materials; LBP-12-23, 72 NRC 708 n.23 (2010)
- Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 160 (1970)
where the evidentiary matter in support of a summary disposition motion does not establish the absence of a genuine issue, summary judgment must be denied even if no opposing evidentiary matter is presented; LBP-08-7, 67 NRC 372 (2008)
- Advanced Medical Systems, Inc.* (One Factory Row, Geneva, Ohio 44041), CLI-93-22, 38 NRC 98, 102 (1993)
a licensing board ruling on a summary disposition motion must view the record in the light most favorable to the party opposing such a motion and deny the motion if the moving party fails to meet its burden, even in the face of an inadequate response; LBP-07-12, 66 NRC 125 (2007); LBP-07-13, 66 NRC 131 (2007)
an opponent of summary disposition does not have to show that it would prevail on the issues, but rather must demonstrate that there is a genuine factual issue to be tried; LBP-07-12, 66 NRC 125-26 (2007); LBP-07-13, 66 NRC 131 (2007)

LEGAL CITATIONS INDEX

CASES

- any doubt as to the existence of a genuine issue of material fact is resolved against the moving party; CLI-06-5, 63 NRC 121 (2006); LBP-10-20, 72 NRC 579 (2010)
- because the burden is on the proponent of summary disposition, the board must examine the record in the light most favorable to the nonmoving party and give the nonmoving party the benefit of all favorable inferences that can be drawn from the evidence; CLI-06-5, 63 NRC 122 (2006); LBP-10-20, 72 NRC 579 (2010)
- if a summary disposition proponent meets its burden, an opponent must set forth specific facts showing that there is a genuine issue, and may not rely on mere allegations or denials; CLI-06-5, 63 NRC 122 (2006); LBP-07-12, 66 NRC 125 (2007); LBP-07-13, 66 NRC 131 (2007)
- NRC standards governing summary disposition are based on those the federal courts apply to motions for summary judgment under Rule 56 of the Federal Rules of Civil Procedure; CLI-10-11, 71 NRC 297 (2010)
- summary disposition movant bears the burden of demonstrating that there is no genuine issue as to any material fact; CLI-06-5, 63 NRC 121 (2006); LBP-07-12, 66 NRC 125 (2007); LBP-10-20, 72 NRC 579 (2010)
- the Commission applies the same standard for summary disposition that the federal courts apply under Rule 56 of the Federal Rules of Civil Procedure when ruling on motions for summary judgment; CLI-06-5, 63 NRC 121 (2006); LBP-07-12, 66 NRC 125 (2007); LBP-10-20, 72 NRC 579 (2010)
- Advanced Medical Systems, Inc.* (One Factory Row, Geneva, Ohio 44041), CLI-93-22, 38 NRC 98, 102-03 (1993)
- a party opposing summary disposition must counter each adequately supported material fact with its own statement of material facts in dispute and supporting materials, or the movant's facts will be deemed admitted; LBP-06-9, 63 NRC 307 (2006)
- a summary disposition movant bears the initial burden of making the requisite showing that there is no genuine issue as to any material fact, which it attempts to do by means of a required statement of material facts not at issue and any supporting materials (including affidavits, discovery responses, and documents) that accompany its dispositive motion; LBP-06-9, 63 NRC 307 (2006)
- any fact not controverted will be deemed admitted; LBP-07-12, 66 NRC 126 (2007)
- summary disposition may be entered with respect to any matter (or all of the matters) in a proceeding if the motion, along with any appropriate supporting material, shows that there is no genuine issue as to any material fact and that the moving party is entitled to a decision as a matter of law; LBP-06-9, 63 NRC 307 (2006)
- Advanced Medical Systems, Inc.* (One Factory Row, Geneva, Ohio 44041), CLI-93-22, 38 NRC 98, 103 (1993)
- if a summary disposition movant satisfies its initial burden and supports its motion by affidavit, the opposing party must either proffer rebutting evidence or submit an affidavit explaining why it is impractical to do so; LBP-07-12, 66 NRC 126 n.61 (2007); LBP-07-13, 66 NRC 131 (2007)
- if the presiding officer determines from affidavits filed by the opposing party that the opposing party cannot present by affidavit the facts essential to justify its opposition, the presiding officer may order a continuance to permit such affidavits to be obtained, or may take other appropriate action; LBP-07-12, 66 NRC 126 n.61 (2007); LBP-07-13, 66 NRC 131 (2007)
- Advanced Medical Systems, Inc.* (One Factory Row, Geneva, Ohio 44041), CLI-93-8, 37 NRC 181, 185 (1993)
- although the Commission is not strictly bound by mootness doctrine, the agency's adjudicatory tribunals have generally adhered to the principle; LBP-09-15, 70 NRC 209 (2009)
- the mootness doctrine derives from the Constitution's limitation of federal courts' jurisdiction to cases or controversies; LBP-09-15, 70 NRC 209 (2009)
- Advanced Medical Systems, Inc.* (One Factory Row, Geneva, Ohio 44041), CLI-93-22, 38 NRC 98, 102 (1993)
- in NRC adjudicatory proceedings, summary disposition motions are the functional equivalent of summary judgment motions; LBP-08-7, 67 NRC 371 (2008)
- Advanced Medical Systems, Inc.* (One Factory Row, Geneva, Ohio 44041), CLI-94-6, 39 NRC 285, 297 (1994), *aff'd Advanced Medical Systems, Inc. v. NRC*, 61 F.3d 903 (6th Cir. 1995)
- appellant bears the responsibility of clearly identifying the errors in the decision below and ensuring that its brief contains sufficient information and cogent argument to alert the other parties and the

LEGAL CITATIONS INDEX

CASES

- Commission to the precise nature of and support for the appellant's claims; CLI-06-10, 63 NRC 478 (2006)
- Advanced Medical Systems, Inc.* (One Factory Row, Geneva, Ohio 44041), CLI-94-6, 39 NRC 285, 302 & n.22 (1994)
- "reasonable assurance" requires that a case be proved by the "preponderance of the evidence" standard common to NRC proceedings, which has been interpreted as requiring only that the record underlying a finding makes it slightly more likely than not; LBP-08-22, 68 NRC 646 (2008)
- Advanced Medical Systems, Inc.* (One Factory Row, Geneva, Ohio 44041), CLI-94-6, 39 NRC 285, 306-07 (1994), *aff'd sub nom. Advanced Medical Systems, Inc. v. NRC*, 61 F.3d 903 (Table) (6th Cir. 1995) (per curiam)
- something more than suspicions or bald assertions are necessary as the basis for any purported material factual disputes; LBP-06-9, 63 NRC 308-09 n.8 (2006)
- Aeschliman v. NRC*, 547 F.2d 622, 626 (D.C. Cir. 1977)
- impact of proposed energy conservation alternatives regarding demand for energy must be susceptible to a reasonable degree of proof; LBP-10-10, 71 NRC 603 n.2 (2010)
- Aharon Ben-Haim*, CLI-99-14, 49 NRC 361, 364 (1999)
- on appeal, the Commission is loath to address complaints concerning a board's skepticism of expert witness's testimony, given that the Commission lacks the board's ability to observe the demeanor of the parties' expert witnesses in general and petitioner's witness in particular; CLI-10-17, 72 NRC 46-47 (2010)
- unreviewed licensing board decisions carry no precedential weight; CLI-08-19, 68 NRC 263 (2008); CLI-10-23, 72 NRC 222 (2010)
- Aharon Ben-Haim*, CLI-99-14, 49 NRC 361, 364 & n.2 (1999)
- licensing board findings of fact that turn on witness credibility receive the Commission's highest deference on appeal; CLI-10-23, 72 NRC 225 n.64 (2010)
- Air Courier Conference v. American Postal Workers Union*, 498 U.S. 517 (1991)
- standing was not granted where litigant tried to rely on very narrow statutory provisions to challenge the much broader aspects of a statute that had no meaningful relationship to the litigant's situation; LBP-09-6, 69 NRC 433 (2009)
- Airport Neighbors Alliance v. United States*, 90 F.3d 426, 432 (10th Cir. 1996)
- reasonable alternatives discussed in an environmental impact statement do not include alternatives that are impractical, that present unique problems, or that cause extraordinary costs; LBP-09-16, 70 NRC 298 (2009); LBP-09-7, 69 NRC 633 (2009)
- Akiak Native Community v. U.S. Postal Service*, 213 F.3d 1140, 1148 (9th Cir. 2000)
- it is not enough to consider only the proposed action and the no-action alternative in an environmental assessment; CLI-10-18, 72 NRC 84 (2010)
- Alabama Power Co.* (Joseph M. Farley Nuclear Plant, Units 1 and 2), ALAB-182, 7 AEC 210 (1974)
- the doctrine of collateral estoppel should be applied in appropriate circumstances in NRC proceedings; LBP-08-15, 68 NRC 310 (2008)
- Alabama Power Co.* (Joseph M. Farley Nuclear Plant, Units 1 and 2), ALAB-646, 13 NRC 1027, 1054 n.70 (1981)
- joint ventures are common within the nuclear industry and thus merit consideration in the alternatives analysis; LBP-07-9, 65 NRC 634 (2007)
- Alabama Power Co.* (Joseph M. Farley Nuclear Plant, Units 1 and 2), CLI-81-27, 14 NRC 795, 797 (1981)
- four factors should be considered in ruling on any request for stay; LBP-07-11, 66 NRC 98 (2007)
- when evaluating a motion for a stay the Commission places the greatest weight on irreparable injury to the moving party unless a stay is granted; CLI-10-8, 71 NRC 151 (2010)
- Alabama v. Shalala*, 124 F. Supp. 2d 1250, 1263-64 (M.D. Ala. 2000)
- when an adjudicating agency retroactively applies a new legal standard that significantly alters the rules of the game, the agency is obliged to give litigants proper notice and a meaningful opportunity to adjust; CLI-10-23, 72 NRC 224 (2010)
- Alaska Center for the Environment v. U.S. Forest Service*, 189 F.3d 851, 859 (9th Cir. 1999)
- an explanation of the applicability of a categorical exclusion is required where special circumstances necessitating an environmental review have been alleged; LBP-06-4, 63 NRC 108-09 n.36 (2006)

LEGAL CITATIONS INDEX

CASES

- Alaska Department of Transportation and Public Facilities*, CLI-04-26, 60 NRC 399, 404 (2004)
boards are not to consider whether enforcement orders need strengthening; LBP-07-16, 66 NRC 306 (2007)
the scope of a proceeding on a confirmatory order is exceedingly limited; LBP-08-14, 68 NRC 286 (2008)
to the extent that petitioner's request for release of information seeks to enhance the enforcement measures already outlined by the Staff in the confirmatory order, this is also outside the scope of the proceeding; LBP-07-16, 66 NRC 293, 303, 311, 326 n.339 (2007)
- Alaska Department of Transportation and Public Facilities*, CLI-04-26, 60 NRC 399, 404-11, *reconsidered* denied, CLI-04-38, 60 NRC 652 (2004), *petition for review docketed sub nom. Farmer v. NRC*, No. 05-70718 (9th Cir. Feb. 11, 2005)
enforcement orders typically limit adjudication to whether the facts as stated in the order are true, and whether the proposed sanction is supported by those facts; CLI-06-16, 63 NRC 720 (2006)
- Alaska Department of Transportation and Public Facilities*, CLI-04-26, 60 NRC 399, 405 (2004)
if petitioner requests a remedy that is beyond the scope of the hearing, then the hearing request must be denied because redressability is an element of standing; LBP-07-16, 66 NRC 285 (2007); LBP-08-14, 68 NRC 287, 289 (2008)
petitioners may not seek to enhance the measures outlined in an enforcement order; LBP-08-14, 68 NRC 291 (2008)
the Commission limits the scope of a hearing on an enforcement order to the issue of whether the order should be sustained; LBP-07-16, 66 NRC 300, 305, 316-17, 324, 326 n.339 (2007)
the issue of standing in an enforcement proceeding and whether a request for hearing raises allegations that are within the scope of the proceeding are closely related; LBP-07-16, 66 NRC 293, 296, 299, 301, 305, 308, 310, 316, 323 (2007); LBP-08-14, 68 NRC 290 (2008)
- Alaska Department of Transportation and Public Facilities*, CLI-04-26, 60 NRC 399, 406 (2004)
an individual or organization requesting a hearing on an enforcement order must show that petitioner would be adversely affected by the enforcement order as it exists, rather than being adversely affected by the existing order as it might be compared to a hypothetical order that the petitioner asserts would be an improvement; LBP-08-14, 68 NRC 287, 290 (2008)
an individual simply is not adversely affected by a confirmatory order that improves the safety situation over what it was in the absence of the order; LBP-07-16, 66 NRC 302 (2007)
boards are not to consider whether enforcement orders need strengthening; LBP-07-16, 66 NRC 293 (2007)
in a case involving an enforcement order, the relevant points of comparison are the individual's positions with and without the Staff's order, not whether the individual's position would be improved by some hypothetical substitute order; LBP-07-16, 66 NRC 302, 317 (2007)
in addition to the distance of the individual from the facility, a link between the confirmatory order and the alleged harm to the individual is necessary to establish standing; LBP-07-16, 66 NRC 294, 311, 324 (2007)
petitioner is required to show that his or her request is within the scope of the proceeding by demonstrating that he or she will be adversely affected by the actual terms of the enforcement order as they exist, rather than as a consequence of the order lacking certain provisions the petitioner claims are necessary; LBP-07-16, 66 NRC 285, 293-94, 306, 310, 311, 316, 317-18, 323, 324 (2007)
- Alaska Department of Transportation and Public Facilities*, CLI-04-26, 60 NRC 399, 406 n.28 (2004)
it is unlikely that petitioners will often obtain hearings on confirmatory enforcement orders because such orders presumably enhance rather than diminish public safety; LBP-07-16, 66 NRC 285 (2007); LBP-08-14, 68 NRC 287 (2008); LBP-09-20, 70 NRC 578 n.67 (2009)
- Alaska Department of Transportation and Public Facilities*, CLI-04-26, 60 NRC 399, 407 (2004)
NRC's adjudicatory process is not an appropriate forum for petitioners to second-guess enforcement decisions on resource allocation, policy priorities, or the likelihood of success at hearings; LBP-08-14, 68 NRC 292 (2008)
- Alaska Department of Transportation and Public Facilities*, CLI-04-26, 60 NRC 399, 408-09 (2004)
claims by a nonlicensee to the effect that the root causes or facts underpinning a confirmatory order are inaccurate are not valid in a proceeding concerning a confirmatory order; LBP-08-14, 68 NRC 292 (2008)

LEGAL CITATIONS INDEX

CASES

- Alaska v. Andrus*, 580 F.2d 465, 474 (D.C. Cir. 1978), *vacated in part as moot sub nom. Western Oil & Gas Association v. Alaska*, 439 U.S. 922 (1978)
the alternatives analysis is the heart of the environmental impact statement; LBP-10-24, 72 NRC 756 (2010)
- Aldens, Inc. v. Miller*, 610 F.2d 538, 541 (8th Cir. 1979)
the “law of the case” doctrine is a flexible concept with exceptions; CLI-06-11, 63 NRC 488 (2006)
- Alfred J. Morabito* (Senior Operator License for Beaver Valley Power Station, Unit 1), CLI-88-4, 28 NRC 5, 6 (1988)
unlike many cases in which a contention becomes moot, this is not an instance where an analysis of the merits would be an empty exercise; LBP-09-15, 70 NRC 212 (2009)
where an applicant proposed that a senior reactor operator license be both issued and cancelled retroactively, the Commission declined to engage in such an empty exercise; LBP-09-14, 70 NRC 196 (2009)
- All Power Reactor Licensees and Research Reactor Licensees Who Transport Spent Nuclear Fuel*, CLI-05-6, 61 NRC 37 (2005)
issuance of a post-9/11 security order does not amount to unlawfully promulgated regulations; CLI-10-3, 71 NRC 54 n.24 (2010)
- All Power Reactor Licensees and Research Reactor Licensees Who Transport Spent Nuclear Fuel*, CLI-05-6, 61 NRC 37, 41 (2005)
an order modifying a license, such as a Staff order, falls well within the Administrative Procedure Act’s definition of adjudication, and as such, the Staff order does not trigger the notice-and-comment procedures applicable to rulemakings; CLI-10-3, 71 NRC 54 (2010)
- Allen v. United States*, 816 F.2d 1417 (10th Cir. 1987), *cert. denied*, 484 U.S. 1004 (1988)
although the Army has the burden to protect the public from depleted uranium, that issue is not relevant to an inquiry on standing; LBP-10-4, 71 NRC 239 n.34 (2010)
- Allen v. Wright*, 468 U.S. 737, 751 (1984)
to establish standing, petitioner must show that he or she has personally suffered or will personally suffer a distinct and palpable harm that constitutes injury in fact, the injury can fairly be traced to the challenged action, and the injury is likely to be redressed by a favorable decision; LBP-08-15, 68 NRC 302 (2008); LBP-09-4, 69 NRC 177 (2009)
- Allentown Mack Sales & Service, Inc. v. National Labor Relations Board*, 522 U.S. 359, 374 (1998)
if a board does not explain how it has arrived at its findings of fact, it would fail to comply with its responsibilities under the Administrative Procedure Act to issue a reasoned decision; CLI-10-23, 72 NRC 224 n.58 (2010)
- Allied-General Nuclear Services* (Barnwell Nuclear Fuel Plant), LBP-74-41, 7 AEC 1015, 1020 & n.11 (1974)
even “truly exceptional” expenses would not meet the irreparable impact standard governing a petition for interlocutory review; CLI-09-6, 69 NRC 134 (2009)
- Allied-General Nuclear Services* (Barnwell Nuclear Fuel Plant Separations Facility), ALAB-296, 2 NRC 671, 680 (1975)
the adjudicatory record, the board decision, and any Commission appellate decisions become, in effect, part of the final environmental impact statement; CLI-08-26, 68 NRC 527 n.87 (2008)
- Allied-General Nuclear Services* (Barnwell Nuclear Fuel Plant Separations Facility), ALAB-296, 2 NRC 671, 684 (1975)
expenses of any kind do not constitute irreparable injury; CLI-09-6, 69 NRC 135 n.25 (2009)
- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-06-24, 64 NRC 111 (2006)
challenges to board rulings on late-filed contentions normally fall under the rules for interlocutory review; CLI-09-18, 70 NRC 862 (2009)
- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-06-24, 64 NRC 111, 118 (2006)
conditions for admission of a contention are strict by design; LBP-09-26, 70 NRC 952 (2009); LBP-10-6, 71 NRC 358 (2010)

LEGAL CITATIONS INDEX

CASES

- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-06-24, 64 NRC 111, 118-19 (2006)
contention admissibility standards call for a clear statement as to the basis for the contention and the submission of supporting information and references to specific documents and sources that establish the validity of the contention; CLI-10-1, 71 NRC 8 (2010)
- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-06-24, 64 NRC 111, 119 (2006)
appeals of rejected contentions are permitted only when a petitioner claims that the board wrongly rejected all contentions; CLI-07-2, 65 NRC 11 (2007)
if the Commission's supervisory authority constituted grounds for a party's own request for appellate review, there would be no limit to the kinds of arguments parties could legitimately present on appeal, and particularly on interlocutory appeal, a result at odds with the Commission's oft-expressed intent to limit the availability of such appeals; CLI-07-1, 65 NRC 7 (2007)
longstanding Commission policy generally disfavors interlocutory review; CLI-09-6, 69 NRC 137 n.38 (2009)
mere notice pleading is insufficient for contention admission; LBP-08-24, 68 NRC 730 (2008); LBP-10-6, 71 NRC 359 (2010)
- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-06-24, 64 NRC 111, 119 & n.44 (2006)
petitions for interlocutory review are granted only under extraordinary circumstances; CLI-09-6, 69 NRC 133 (2009)
- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-06-24, 64 NRC 111, 121 (2006)
the Commission defers to board rulings on threshold issues of standing and contention admissibility in the absence of clear error or abuse of discretion; CLI-07-20, 65 NRC 503 n.20 (2007); CLI-07-25, 66 NRC 104 (2007); CLI-08-17, 68 NRC 234 (2008); CLI-09-5, 69 NRC 119 (2009); CLI-09-7, 69 NRC 260 (2009); CLI-09-8, 69 NRC 324 (2009); CLI-09-9, 69 NRC 336 (2009); CLI-09-12, 69 NRC 543-44 (2009); CLI-09-14, 69 NRC 584, 610 (2009); CLI-09-16, 70 NRC 35 (2009); CLI-09-20, 70 NRC 914 (2009); CLI-09-22, 70 NRC 933 (2009); CLI-10-1, 71 NRC 5 (2010); CLI-10-2, 71 NRC 29 (2010); CLI-10-7, 71 NRC 138 (2010); CLI-10-9, 71 NRC 253 (2010)
- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-06-24, 64 NRC 111, 125-26 (2006)
once a petition to intervene and request for hearing have been granted and contentions are admitted for hearing, appeals of board rulings on new or amended contentions are treated under section 2.341(f)(2), regardless of the subject matter of those contentions; CLI-10-16, 71 NRC 490 (2010)
the Commission disfavors review of interlocutory board orders, which would result in unnecessary piecemeal interference with ongoing licensing board proceedings; CLI-08-2, 67 NRC 34 n.10 (2008)
- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-07-8, 65 NRC 124 (2007), *aff'd sub nom., New Jersey Department of Environmental Protection v. NRC*, 561 F.3d 132 (3d Cir. 2009)
NEPA does not require the NRC to consider the environmental consequences of hypothetical terrorist attacks at NRC-licensed facilities; CLI-07-9, 65 NRC 140-41 (2007); CLI-07-10, 65 NRC 145 (2007); CLI-07-11, 65 NRC 149 n.4 (2007); LBP-09-17, 70 NRC 371, 381-82 (2009)
the potential impacts of terrorism fall outside the scope of a license renewal proceeding; CLI-07-9, 65 NRC 140-41 (2007)
- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-07-8, 65 NRC 124, 126 (2007)
NEPA demands no terrorism inquiry; LBP-10-10, 71 NRC 549 n.63 (2010)
the Commission has declined to require the agency to consider terrorist threats outside the Ninth Circuit as part of the NEPA review process; CLI-08-1, 67 NRC 5 (2008); LBP-09-10, 70 NRC 116 (2009); LBP-09-17, 70 NRC 343 (2009)
- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-07-8, 65 NRC 124, 128-29 (2007), *aff'd sub nom., New Jersey Department of Environmental Protection v. NRC*, 561 F.3d 132 (3d Cir. 2009)
environmental effects of aircraft impacts from terrorist attacks are outside the scope of the NRC's NEPA review; CLI-10-9, 71 NRC 257 n.71 (2010)
NRC is not obligated to adhere, in all of its proceedings, to the first court of appeals decision to address a controversial question; LBP-08-13, 68 NRC 142 (2008); LBP-09-2, 69 NRC 104 n.69 (2009); LBP-09-17, 70 NRC 382 (2009)

LEGAL CITATIONS INDEX

CASES

terrorism is unrelated to the general category of aging issues that license renewal proceedings are meant to address; LBP-08-13, 68 NRC 163, 186 (2008)

the Commission follows the *Mothers for Peace* decision only in those cases arising in the geographical area where it is binding, but continues to adhere to prior precedent in all other cases; LBP-07-14, 66 NRC 185 (2007)

the Commission upheld a licensing board decision rejecting a contention challenging an applicant's failure to consider an aircraft attack scenario in its environmental report's SAMA analysis; LBP-07-11, 66 NRC 83 (2007)

AmerGen Energy Co., LLC (Oyster Creek Nuclear Generating Station), CLI-07-8, 65 NRC 124, 128-29 & n.14 (2007)

the Commission is not obliged to adhere, in all of its proceedings, to the first court of appeals decision to address a controversial question, and is not prevented from relitigating the issue in future cases; LBP-07-14, 66 NRC 185 (2007)

AmerGen Energy Co., LLC (Oyster Creek Nuclear Generating Station), CLI-07-8, 65 NRC 124, 128-31 (2007)

NEPA does not require applicants or licensees to consider terrorist attacks as part of their environmental reviews outside the Ninth Circuit; LBP-09-26, 70 NRC 980, 981 (2009)

AmerGen Energy Co., LLC (Oyster Creek Nuclear Generating Station), CLI-07-8, 65 NRC 124, 128-32 (2007)

even if NEPA required an assessment of the environmental effects of a hypothetical terrorist attack on a nuclear facility, NRC has already made this assessment in the generic environmental Impact statement and a site-specific supplemental environmental impact statement; LBP-10-15, 72 NRC 319 (2010)

AmerGen Energy Co., LLC (Oyster Creek Nuclear Generating Station), CLI-07-8, 65 NRC 124, 128-34 (2007), *aff'd*, *New Jersey Department of Environmental Protection v. NRC*, 561 F.3d 132 (3d Cir. 2009)

a NEPA analysis is not the vehicle for exploring questions about the potential for a terrorist attack upon a proposed nuclear facility; CLI-10-1, 71 NRC 13 (2010); LBP-07-3, 65 NRC 269 (2007); LBP-08-21, 68 NRC 567-68 n.12 (2008); LBP-09-2, 69 NRC 103 (2009)

licensing boards are required to apply the Commission's directive that outside the Ninth Circuit, NEPA does not require the evaluation of the impact of terrorist attacks by aircraft or other means; LBP-09-18, 70 NRC 413 (2009)

AmerGen Energy Co., LLC (Oyster Creek Nuclear Generating Station), CLI-07-8, 65 NRC 124, 129 (2007)

a reasonably close causal relationship must exist between a federal agency action and any environmental consequences of that action in order to trigger a NEPA review; LBP-08-6, 67 NRC 332 (2008)

as a general matter, NEPA imposes no legal duty on the NRC to consider intentional malevolent acts in conjunction with commercial power reactor license renewal applications; CLI-07-9, 65 NRC 142 (2007); CLI-10-14, 71 NRC 476 (2010); LBP-07-11, 66 NRC 84 (2007)

NEPA does not require the NRC to consider the environmental consequences of hypothetical terrorist attacks on NRC-licensed facilities; CLI-09-15, 70 NRC 5 (2009); LBP-07-14, 66 NRC 194 (2007); LBP-08-6, 67 NRC 331, 332, 333 (2008); LBP-08-13, 68 NRC 143 (2008)

NRC is not obliged to adhere, in all of its proceedings, to the first court of appeals decision to address a controversial question; CLI-10-1, 71 NRC 14 n.67 (2010)

prior NRC precedent is consistent with Supreme Court NEPA doctrine, which requires a reasonably close causal relationship between federal agency action and environmental consequences before NEPA is triggered, a relationship similar to that of proximate cause in tort law; LBP-07-14, 66 NRC 186 (2007)

terrorism contentions are, by their very nature, directly related to security and are therefore, under NRC license renewal rules, unrelated to the detrimental effects of aging and thus are beyond the scope of, not material to, and inadmissible in, a license renewal proceeding; LBP-08-13, 68 NRC 142 (2008)

the environmental effect caused by third-party miscreants is simply too far removed from the natural or expected consequences of agency action to require a study under NEPA; CLI-07-10, 65 NRC 146-47 (2007); CLI-10-1, 71 NRC 13 (2010); LBP-07-11, 66 NRC 84, 87 (2007)

LEGAL CITATIONS INDEX

CASES

- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-07-8, 65 NRC 124, 129-30 (2007)
NEPA does not require the NRC to consider the environmental consequences of hypothetical terrorist attacks on NRC-licensed facilities; CLI-07-9, 65 NRC 141 (2007)
prior NRC precedent is consistent with Supreme Court NEPA doctrine, which requires a reasonably close causal relationship between federal agency action and environmental consequences before NEPA is triggered, a relationship similar to that of proximate cause in tort law; LBP-07-14, 66 NRC 186 (2007)
terrorism contentions are, by their very nature, directly related to security and are therefore, under NRC's license renewal rules, unrelated to the detrimental effects of aging, and, consequently, are beyond the scope of, not material to, and inadmissible in a license renewal proceeding; CLI-07-9, 65 NRC 141 (2007)
- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-07-8, 65 NRC 124, 130 (2007)
a relicensing decision is not related to any change in the risk of terrorist attack, and the terrorism issue is therefore not material; LBP-08-13, 68 NRC 163, 186 (2008)
NRC licensing decisions are not the proximate cause of any environmental effects related to terrorist attacks on licensed facilities; LBP-07-14, 66 NRC 186, 195 (2007)
the risk of terrorism at a nuclear facility is determined by factors external to the NRC licensing process; LBP-07-14, 66 NRC 186 (2007)
- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-07-8, 65 NRC 124, 130 n.25 (2007), *aff'g* LBP-06-7, 63 NRC 188 (2006)
a license renewal application does not involve new construction, and so there is no change to the physical plant and thus no creation of a new terrorist target; LBP-07-11, 66 NRC 84 (2007)
- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-07-8, 65 NRC 124, 130-34 (2007)
addressing the possibility of terrorist attack is best handled outside the context of licensing proceedings; LBP-07-14, 66 NRC 186 (2007)
- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-07-8, 65 NRC 124, 131 (2007)
in developing its generic environmental impact statement, NRC performed a discretionary analysis of terrorist acts in connection with license renewal, and concluded that the core damage and radiological release from such acts would be no worse than the damage and release to be expected from internally initiated events; CLI-10-14, 71 NRC 476 (2010)
the environmental report for licensing a power reactor already contains an analysis of the impacts of a beyond-design-basis severe accident, which might envelop any impacts asserted to arise from a terrorism incident; LBP-07-3, 65 NRC 269 n.19 (2007)
- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-07-8, 65 NRC 124, 131 (2007), *aff'g* LBP-06-7, 63 NRC 188 (2006)
there is no basis for admitting a NEPA-terrorism contention in a license renewal proceeding because the GEIS has already performed a discretionary analysis of terrorist acts in connection with license renewal and concluded that the core damage and radiological release from such acts would be no worse than the damage and release to be expected from internally initiated events; LBP-07-11, 66 NRC 84 (2007)
- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-07-8, 65 NRC 124, 132-33 & n.38 (2007), *aff'd*, *New Jersey Department of Environmental Protection v. NRC*, 561 F.3d 132 (3d Cir. 2009)
arguments or new facts raised for the first time on appeal are not considered unless their proponent can demonstrate that the information was previously unavailable; CLI-10-3, 71 NRC 51 n.7 (2010)
- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-07-8, 65 NRC 124, 133 (2007)
attacks on NRC regulations are prohibited unless the NRC grants a waiver of the prohibition; CLI-07-16, 65 NRC 383 (2007)
- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-08-13, 67 NRC 396, 399 (2008)
the Commission expects its adjudicatory boards to enforce reopening requirements rigorously; LBP-08-12, 68 NRC 28 (2008)

LEGAL CITATIONS INDEX

CASES

- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-08-13, 67 NRC 396, 400 (2008)
a license renewal may be set aside or appropriately conditioned even after it has been issued, upon subsequent administrative or judicial review; CLI-10-8, 71 NRC 153 n.56 (2010); LBP-08-12, 68 NRC 28 (2008)
a showing of a threat of immediate and irreparable harm that will result absent a stay is required for grant of the stay; CLI-10-8, 71 NRC 151 (2010)
failure to satisfy the first two stay factors renders it unnecessary to make determinations on the two remaining factors, harm to other parties and where the public interest lies; CLI-10-8, 71 NRC 163 (2010)
stay petitioner must show that success on the merits is a virtual certainty to warrant issuance of the stay; CLI-10-8, 71 NRC 154 (2010)
the possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation, weighs heavily against a claim of irreparable harm; CLI-10-8, 71 NRC 153 n.56 (2010)
- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-08-23, 68 NRC 461, 468 (2008)
a license renewal applicant's use of an aging management program identified in the Generic Aging Lessons Learned Report constitutes reasonable assurance that it will manage the targeted aging effect during the renewal period; CLI-10-17, 72 NRC 19 n.85, 36, 37 (2010); LBP-08-26, 68 NRC 948 (2008); LBP-10-15, 72 NRC 328 (2010)
the elements to be addressed when an applicant's aging management plan differs from regulatory guidance are discussed; LBP-08-26, 68 NRC 948 (2008)
the fact that the Commission has stated that use of an aging management plan identified in NUREG-1801 constitutes reasonable assurance does not mean that an AMP that consists solely of a bald statement that it is "comparable to," "based on," or "consistent with" NUREG-1801 provides such reasonable assurance or "demonstrates" that aging will be adequately managed; LBP-08-25, 68 NRC 871 (2008)
- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-08-23, 68 NRC 461, 476-77, 481-82, 486 (2008)
the manner in which the Staff conducts its review is outside the scope of a proceeding; LBP-10-17, 72 NRC 512 (2010)
- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-08-28, 68 NRC 658, 663 (2008)
cumulative use factor is a means of quantifying the fatigue that a particular metal component experiences during plant operation; CLI-10-17, 72 NRC 5 n.9 (2010)
for any material, there is a characteristic number of stress cycles that it can withstand at a particular applied stress level before fatigue failure occurs; CLI-10-17, 72 NRC 14 (2010)
the feedwater, reactor recirculation, and core spray nozzles on a BWR nuclear power reactor are part of the reactor coolant pressure boundary, and must be designed, fabricated, erected, and tested to the highest quality standards practical and must meet the Class I requirements of ASME BPV Code Section III; LBP-08-25, 68 NRC 801 (2008)
- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-08-28, 68 NRC 658, 663-66 (2008)
a synopsis of the concepts of metal fatigue, CUF, CUFen, relevant regulations and Staff guidance, and the simplified Green's function methodology is provided; LBP-08-25, 68 NRC 800 n.50 (2008)
- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-08-28, 68 NRC 658, 664 n.24 (2008)
some license renewal applicants have sought to satisfy more than one of the three subsections of 10 C.F.R. 54.21(c)(1)(i)-(iii); CLI-10-17, 72 NRC 18 n.79 (2010)
- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-08-28, 68 NRC 658, 665 (2008)
the standard review plan presents one acceptable methodology for calculating the environmentally adjusted cumulative usage factor; CLI-10-17, 72 NRC 20 (2010)
- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-08-28, 68 NRC 658, 675 (2008)
the Commission is generally disinclined to upset fact-driven licensing board determinations; CLI-10-17, 72 NRC 30 (2010)

LEGAL CITATIONS INDEX

CASES

- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-08-28, 68 NRC 658, 676 & n.73 (2008) 3 discovery is not permitted before a petition to intervene has been granted; CLI-10-24, 72 NRC 463 n.70 (2010)
- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-09-7, 69 NRC 235, 259 (2009) as an exercise of its inherent supervisory authority over adjudicatory proceedings, the Commission directs the board to provide the Commission with a status report outlining the board's timetable for resolving all pending matters; CLI-10-18, 72 NRC 96 (2010) as for conclusions of law, the Commission will reverse a licensing board's legal rulings if they are a departure from or contrary to established law; CLI-10-5, 71 NRC 99 (2010) legal questions are reviewed de novo and will be reversed if a licensing board's legal rulings are a departure from or contrary to established law; CLI-10-18, 72 NRC 73 (2010) on appeal, the Commission defers to a board's factual findings, correcting only clearly erroneous findings where the Commission has strong reason to believe that a board has overlooked or misunderstood important evidence; CLI-10-5, 71 NRC 99 (2010); CLI-10-18, 72 NRC 73 (2010) the licensing board's principal role in the adjudicatory process is to carefully review all of the evidence, including testimony and exhibits, and to resolve any factual disputes; CLI-10-5, 71 NRC 98 (2010); CLI-10-18, 72 NRC 72 (2010) the standard of clear error for overturning a board's factual findings is quite high; CLI-10-5, 71 NRC 99 (2010); CLI-10-18, 72 NRC 73 (2010) weighing of evidence and testimony is inherent in, and at the very heart of, adjudicatory fact-finding and is an area where the Commission has traditionally deferred to licensing boards; CLI-10-23, 72 NRC 241 (2010)
- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-09-7, 69 NRC 235, 260 (2009) although a board may view petitioner's supporting information in a light favorable to the petitioner, petitioner (not the board) is required to supply all of the required elements for a valid intervention petition; CLI-10-20, 72 NRC 192 n.39 (2010); LBP-09-10, 70 NRC 72 (2009); LBP-10-15, 72 NRC 278 (2010); LBP-10-16, 72 NRC 394 (2010) in the absence of clear error or abuse of discretion, boards are afforded deference on threshold issues such as contention admissibility; CLI-09-14, 69 NRC 610 (2009) requirements for filing both new and nontimely contentions are stringent; LBP-09-27, 70 NRC 998 (2009)
- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-09-7, 69 NRC 235, 261 (2009) good cause for the failure to file on time is the most important of the late-filing factors; LBP-09-26, 70 NRC 949 (2009); LBP-10-11, 71 NRC 639 (2010)
- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-09-7, 69 NRC 235, 263 (2009) like the Atomic Energy Act's standard of adequate protection, the reasonable assurance determination need not be reduced to a mechanical verbal formula or set of objective standards, but may be given content through case-by-case applications of the Commission's technical judgment, in light of all relevant information; CLI-10-14, 71 NRC 465 (2010) reasonable assurance is based on sound technical judgment of the particulars of a case and on compliance with NRC regulations; LBP-09-6, 69 NRC 422 n.272 (2009)
- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-09-7, 69 NRC 235, 271-72 (2009) contention admissibility and timeliness rules require a high level of discipline and preparation by petitioners, who must examine the publicly available material and set forth their claims and the support for their claims at the outset; CLI-10-27, 72 NRC 496 (2010) NRC's expanding adjudicatory docket makes it critically important that parties comply with NRC pleading requirements and that the board enforce those requirements; CLI-10-27, 72 NRC 496 (2010) there simply would be no end to NRC licensing proceedings if petitioners could disregard timeliness requirements and add new contentions at their convenience during the course of a proceeding based on information that could have formed the basis for a timely contention at the outset of the proceeding; CLI-10-27, 72 NRC 496 (2010)

LEGAL CITATIONS INDEX

CASES

- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-09-7, 69 NRC 235, 272-74 (2009)
new contention is untimely if information on which it is based has been available since submission of applicant's environmental report; LBP-10-13, 71 NRC 694 (2010)
- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-09-7, 69 NRC 235, 275 (2009)
a board may appropriately view petitioners support for its contention in a light that is favorable to the petitioner; LBP-10-6, 71 NRC 361 (2010)
although a board may appropriately view petitioners' support for its contention in a light that is favorable to the petitioner, the petitioner must provide some support for his or her contention, in the form of either facts or expert testimony; LBP-09-26, 70 NRC 955 (2009)
- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), LBP-06-7, 63 NRC 188 (2006)
the purpose of NRC adjudicatory hearings is to consider claims of deficiencies in a license application, and such contentions are commonplace at the outset of NRC adjudications; CLI-08-15, 68 NRC 3 (2008); CLI-08-20, 68 NRC 274 (2008)
- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), LBP-06-7, 63 NRC 188, 199-201 (2006), *aff'd*, CLI-07-8, 65 NRC 124 (2007)
terrorist attacks are outside the scope of NEPA; LBP-10-15, 72 NRC 319 (2010)
- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), LBP-06-7, 63 NRC 188, 211, 217 (2006)
examples of admitted contentions that satisfy the requirement to provide a specific statement of the issue of law or fact to be raised or controverted are provided; LBP-08-5, 67 NRC 235 n.79 (2008)
- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), LBP-06-7, 63 NRC 188, 211-12 (2006)
buried structures, systems, and components that convey or contain radioactively contaminated water or other fluids are systems, structures, and components within the scope of license renewal proceedings; LBP-08-13, 68 NRC 80 (2008)
- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), LBP-06-11, 63 NRC 391, 395-96 & n.3 (2006)
when new contentions are based on breaking developments or information, they are to be treated as new or amended, not as nontimely; LBP-07-14, 66 NRC 210 n.95 (2007); LBP-08-27, 68 NRC 955 (2008)
- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), LBP-06-11, 63 NRC 391, 396 n.3 (2006)
if a contention satisfies the timeliness requirement of 10 C.F.R. 2.309(f)(2)(iii), then, by definition, it is not subject to 10 C.F.R. 2.309(c), which specifically applies to nontimely filings; LBP-09-27, 70 NRC 998-99 (2009)
intervenor with contentions rooted in new material information need not make the same showing as intervenors who have simply delayed filing their contentions until after expiration of the regulatory deadline; LBP-10-9, 71 NRC 505 n.46 (2010)
- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), LBP-06-16, 63 NRC 737, 742 (2006)
boards commonly reformulate, or expressly limit contentions, to focus them to the precise matters that are supported; LBP-08-9, 67 NRC 430 (2008)
there is a difference between contentions that allege that a license application suffers from an improper omission and contentions that raise a specific substantive challenge to how particular information or issues have been discussed in a license application; LBP-08-12, 68 NRC 21 n.14 (2008)
- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), LBP-06-16, 63 NRC 737, 742 & n.7 (2006)
contentions may be divided into a challenge to the application's adequacy based on the validity of the information that is in the application, a challenge to the application's adequacy based on its alleged omission of relevant information, or some combination of these two challenges; LBP-08-2, 67 NRC 64 (2008); LBP-08-3, 67 NRC 95 (2008)

LEGAL CITATIONS INDEX

CASES

- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), LBP-06-16, 63 NRC 737, 744-45 (2006)
the first step in assessing the admissibility of a new contention is to determine if it is timely under 10 C.F.R. 2.309(f)(2)(iii) or nontimely under section 2.309(c); LBP-07-15, 66 NRC 266 (2007); LBP-09-10, 70 NRC 138 (2009)
- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), LBP-06-16, 63 NRC 737, 744-45 & n.12 (2006)
a new or amended contention that is found to be timely in accord with section 2.309(f)(2) need not be assessed under the section 2.309(c) factors, which are considered to apply only to otherwise nontimely submissions; LBP-10-1, 71 NRC 187 (2010); LBP-10-14, 72 NRC 108 (2010)
- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), LBP-06-22, 64 NRC 229, 230-31 (2006)
in a second contention on drywell corrosion, admitted in part after the first contention on the subject was ruled moot based on actions taken by that applicant to address a deficiency alleged in that contention, petitioners provide a relatively detailed argument; LBP-06-23, 64 NRC 323 n.309 (2006)
- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), LBP-06-22, 64 NRC 229, 235 (2006)
quality assurance, physical protection (security), and radiation protection requirements are not subject to physical aging processes that may cause noncompliance with those aspects of the current licensing basis that can be impacted by the detrimental effects of aging; LBP-08-22, 68 NRC 601-02 n.50 (2008)
the portion of the current licensing basis that can be impacted by the detrimental effects of aging is limited to the design-basis aspects of the CLB; LBP-08-22, 68 NRC 601-02 n.50 (2008)
- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), LBP-06-22, 64 NRC 229, 236 n.10 (2006)
boards have discretion to reframe contentions for purposes of clarity, succinctness, and a more efficient proceeding; LBP-08-12, 68 NRC 30 n.1 (2008)
- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), LBP-06-22, 64 NRC 229, 237, 240-44 (2006)
licensing boards may reformulate contentions to eliminate extraneous issues or to consolidate issues for a more efficient proceeding; CLI-09-12, 69 NRC 552 (2009); CLI-10-2, 71 NRC 33 (2010); LBP-10-16, 72 NRC 403 (2010)
- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), LBP-06-22, 64 NRC 229, 244 (2006)
at the admissibility stage, petitioner does not have to prove its contentions and boards do not adjudicate disputed facts; LBP-09-6, 69 NRC 401 (2009)
- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), LBP-06-22, 64 NRC 229, 253 (2006)
challenges to applicant's corrective action and quality assurance programs are outside the scope of license renewal; LBP-10-15, 72 NRC 327 (2010)
- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), LBP-07-17, 66 NRC 327, 340 (2007)
applicant has the burden of proving that it has met the reasonable assurance standard by a preponderance of the evidence; LBP-08-25, 68 NRC 788 (2008)
reasonable assurance does not denote a specific statistical parameter, but the standard is a flexible one that does not require focus on extreme values or precise quantification of parameters to a high degree of confidence; LBP-08-22, 68 NRC 645 (2008)
the *sine qua non* of adequate protection to public health and safety is compliance with all applicable safety rules and regulations; LBP-08-25, 68 NRC 787 (2008)
whether the reasonable assurance standard is satisfied is based on sound technical judgment applied on a case-by-case basis; LBP-09-6, 69 NRC 421-22 n.272 (2009)

LEGAL CITATIONS INDEX

CASES

- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), LBP-07-17, 66 NRC 327, 340, 371 (2007)
“reasonable assurance” requires that a case be proved by the “preponderance of the evidence” standard common to NRC proceedings, which has been interpreted as requiring only that the record underlying a finding makes it slightly more likely than not; LBP-08-22, 68 NRC 646 (2008)
- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), LBP-08-12, 68 NRC 5, 21 (2008)
as with all contentions of omission, if applicant supplies the missing information or performs the omitted analysis, the contention is moot; LBP-10-14, 72 NRC 109 n.31 (2010)
- AmerGen Energy Co., LLC* (Three Mile Island Nuclear Station, Unit 1), CLI-05-25, 62 NRC 572, 574 (2005)
because applicant did not propose to change either operating or possession authority, there is no direct license transfer; CLI-08-19, 68 NRC 255 n.3 (2008)
- AmerGen Energy Co., LLC* (Three Mile Island Nuclear Station, Unit 1), CLI-05-25, 62 NRC 572, 574-75 (2005)
proximity standing rests on the presumption that an accident associated with the nuclear facility could adversely affect the health and safety of people working, living, or regularly engaging in activities offsite but within a certain distance of that facility; CLI-08-19, 68 NRC 268 n.65 (2008)
- AmerGen Energy Co., LLC* (Three Mile Island Nuclear Station, Unit 1), CLI-05-25, 62 NRC 572, 574-76 (2005)
in an indirect license transfer case involving no change in operating or possession authority, petitioners living and working within 12 miles of the plant did not qualify for proximity-based standing; CLI-08-19, 68 NRC 269 n.68 (2008)
there is no obvious potential for offsite consequences from an ISFSI transfer sufficient to justify applying a presumption of standing based on proximity; CLI-07-19, 65 NRC 426 (2007)
- AmerGen Energy Co., LLC* (Three Mile Island Nuclear Station, Unit 1), CLI-05-25, 62 NRC 572, 576 (2005)
proximity-based standing in license transfer proceedings has been denied to petitioners within 12 miles; CLI-07-21, 65 NRC 523 (2007)
- American Manufacturers Mutual Insurance Co. v. American Broadcasting — Paramount Theaters, Inc.*, 388 F.2d 272, 280 (2d Cir. 1967)
an opponent of summary disposition does not have to show that it would prevail on the issues, but rather must demonstrate that there is a genuine factual issue to be tried; LBP-07-12, 66 NRC 126 (2007); LBP-07-13, 66 NRC 131 (2007)
- American Rivers v. Federal Energy Regulatory Commission*, 201 F.3d 1186, 1195 n.15 (9th Cir. 2000)
a NEPA analysis relating to aquatic impacts must, as a practical matter, have a baseline from which to operate; LBP-07-3, 65 NRC 256 (2007)
- Amoco Production Co. v. Village of Gambell*, 480 U.S. 531, 542 (1987)
the bases for injunctive relief are irreparable injury and inadequacy of legal remedies, and in each case, a court must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief; CLI-06-27, 64 NRC 401 n.9 (2006)
- Amoco Production Co. v. Village of Gambell*, 480 U.S. 531, 545 (1987)
where, in weighing the balance of harms, injury to the environment is not at all probable, an injunction is not appropriate; CLI-06-27, 64 NRC 402 n.9 (2006)
- Anderson v. Bessemer City*, 470 U.S. 564, 573-76 (1985)
although the Commission has discretion to review all underlying factual issues de novo, it generally steps in only to correct clearly erroneous findings; CLI-06-22, 64 NRC 40 (2006)
on appeal, the Commission defers to a board’s factual findings, correcting only clearly erroneous findings, i.e., findings not even plausible in light of the record viewed in its entirety; CLI-06-15, 63 NRC 697 (2006); CLI-10-5, 71 NRC 99 (2010); CLI-10-18, 72 NRC 73 (2010)
to show clear error, appellant must demonstrate that the board’s findings are not even plausible in light of the record viewed in its entirety; CLI-10-23, 72 NRC 225 (2010)
- Anderson v. Evans*, 314 F.3d 1006, 1018 (9th Cir. 2002)
in determining whether there is no significant impact, the government does not need to show that there is no risk of injury, but only that the risk is not significant; CLI-08-1, 67 NRC 29 (2008)

LEGAL CITATIONS INDEX

CASES

- Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986)
it is not sufficient for there to be merely the existence of some alleged factual dispute between the parties, but rather that there be no genuine issue of material fact; CLI-10-11, 71 NRC 297 (2010)
- Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)
facts are material if they will affect the outcome of a proceeding under the governing law; LBP-07-12, 66 NRC 125 (2007)
only disputes over facts that might affect the outcome of a proceeding would preclude summary disposition, factual disputes that are unnecessary not being counted; CLI-10-11, 71 NRC 297 (2010)
when petitioner has allegedly failed to dispute facts that might affect the outcome of the suit under the governing law, its remaining irrelevant or unnecessary claims should not be counted in ruling on applicant's motion for summary disposition; LBP-07-12, 66 NRC 118 (2007); LBP-07-13, 66 NRC 140 (2007)
- Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986)
if evidence is not significantly probative, summary judgment may be granted; LBP-07-13, 66 NRC 140 n.8 (2007)
the judge's function in ruling on summary disposition motions is not to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for hearing; CLI-10-11, 71 NRC 297-98 (2010)
- Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249-50 (1986)
if the evidence in favor of the nonmoving party is merely colorable or not significantly probative, summary disposition may be granted; CLI-10-11, 71 NRC 297 (2010)
- Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249-52 (1986)
at issue in summary disposition is not whether evidence unmistakably favors one side or the other, but whether there is sufficient evidence favoring the nonmoving party for a reasonable trier of fact to find in favor of that party; CLI-10-11, 71 NRC 297 (2010)
- Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986)
a judge must grant summary disposition if, under the governing law, there can be but one reasonable conclusion as to the verdict; LBP-07-13, 66 NRC 140 n.8 (2007)
the correct inquiry in deciding summary disposition motions is whether there are material factual issues that can be properly resolved only by a finder of fact because they may reasonably be resolved in favor of either party; CLI-10-11, 71 NRC 297 (2010)
- Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250-51 (1986)
if reasonable minds could differ as to the import of the evidence, summary disposition is not appropriate; CLI-10-11, 71 NRC 298 (2010)
- Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986)
in ruling on summary disposition motions, a judge must ask himself whether a fair-minded jury could return a verdict for the nonmovant on the evidence presented; LBP-07-13, 66 NRC 140 n.8 (2007)
- Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 253 (1986)
if there is no evidence upon which a reasonable mind might fairly conclude for the nonmovant, a summary disposition motion must be granted; LBP-07-13, 66 NRC 140 n.8 (2007)
- Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 254 (1986)
there is no genuine issue if the evidence presented in the opposing affidavits is of insufficient caliber or quantity to allow a rational finder of fact to find for opponent of summary disposition; LBP-07-13, 66 NRC 141 n.9 (2007)
- Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986)
caution should be exercised in granting summary disposition, which may be denied if there is reason to believe that the better course would be to proceed to a full hearing; CLI-10-11, 71 NRC 298 (2010)
in deciding a summary disposition motion the tribunal must examine the evidence in the light most favorable to the nonmoving party; LBP-08-7, 67 NRC 372 (2008)
in ruling on a motion for summary disposition, a licensing board or presiding officer should not conduct a trial on affidavits; CLI-10-11, 71 NRC 297 (2010)
in ruling on summary disposition motions, the evidence of the nonmovant is to be believed, and all justifiable inferences are to be drawn in his favor; CLI-10-11, 71 NRC 298 (2010)

LEGAL CITATIONS INDEX

CASES

- summary judgment is not appropriate if it would require a judge to engage in the making of credibility determinations, the weighing of the evidence, or the drawing of legitimate inferences from the facts; LBP-07-12, 66 NRC 126 (2007)
- Anderson v. Marion County Sheriff's Department*, 220 F.R.D. 555, 563-64 (S.D. Ind. 2004)
a ten-point test for evaluating the law enforcement privilege under FOIA has been used; LBP-06-25, 64 NRC 385 (2006)
- Andrew Siemaszko*, CLI-06-12, 63 NRC 495, 500 (2006)
a request to hold an enforcement proceeding in abeyance for an indeterminate length of time is extraordinary and is rarely granted; LBP-06-13, 63 NRC 536 n.32, 566 n.135 (2006)
five factors are weighed to determine whether there is good cause to delay a proceeding regarding an immediately effective license suspension order; LBP-06-13, 63 NRC 535 n.28 (2006)
the question whether to hold an NRC enforcement proceeding in abeyance pending a related criminal prosecution is generally suitable for interlocutory Commission review because the abeyance issue cannot await the end of the proceeding; CLI-06-19, 64 NRC 11 (2006)
- Andrew Siemaszko*, CLI-06-12, 63 NRC 495, 500, 502-04 (2006)
whether continuation of an NRC enforcement adjudication could at least arguably jeopardize a related criminal proceeding is a key factor in any abeyance ruling in an NRC enforcement proceeding; CLI-06-19, 64 NRC 12 (2006)
- Andrew Siemaszko*, CLI-06-12, 63 NRC 495, 500, 504-05 (2006)
harm from a delay of the enforcement proceeding is a key issue in any abeyance ruling; CLI-06-19, 64 NRC 12 (2006)
- Andrew Siemaszko*, CLI-06-12, 63 NRC 495, 501 & n.14 (2006)
the Commission usually defers to boards' fact-based decisions; CLI-06-19, 64 NRC 11 (2006)
- Andrew Siemaszko*, CLI-06-12, 63 NRC 495, 502 (2006)
DOJ must provide factual justification for delaying the NRC adjudicatory process; CLI-06-19, 64 NRC 13 (2006)
Staff's mere assertion that it wishes to protect DOJ's pending criminal prosecution does not, without more, justify holding NRC's parallel administrative proceeding in abeyance; LBP-06-13, 63 NRC 538 n.44, 562 (2006)
the Commission is generally inclined to accommodate an abeyance request from the Department of Justice as long as it provides at least some showing of potential detrimental effect on its parallel criminal case; CLI-07-6, 65 NRC 115 (2007)
- Andrew Siemaszko*, CLI-06-12, 63 NRC 495, 503 (2006)
the weight to be given the Staff's reason for seeking an abeyance turns on the quality of the factual record; CLI-06-19, 64 NRC 12 (2006); CLI-07-6, 65 NRC 116 (2007); LBP-06-13, 63 NRC 541, 566 (2006)
- Andrew Siemaszko*, CLI-06-12, 63 NRC 495, 504 (2006)
in ruling on an abeyance request from the Department of Justice, the Commission does not lightly second-guess DOJ's views on whether, and how, premature disclosure might affect its criminal prosecutions; CLI-06-19, 64 NRC 13 (2006); CLI-07-6, 65 NRC 115-16 (2007); LBP-06-13, 63 NRC 556, 566 (2006)
NRC is loath to permit a criminal defendant to use its procedures to do an end run around rules prescribed by the Supreme Court and implicitly approved by Congress; CLI-07-6, 65 NRC 116 n.14 (2007)
prejudice to the enforcement target's ability to litigate the enforcement proceeding and prejudice to his employment interests must be considered in ruling on an abeyance request; CLI-06-19, 64 NRC 13 n.27 (2006)
- Andrew Siemaszko*, CLI-06-12, 63 NRC 495, 504-05 (2006)
where the individual who was the subject of a suspension order that was not immediately effective had already left the industry, there was no establishment of harm to his property interests; LBP-06-13, 63 NRC 543 (2006)
- Andrew Siemaszko*, CLI-06-12, 64 NRC 495 (2006)
there were no factors that would interfere with the criminal prosecution if discovery in the civil enforcement matter went forward; LBP-09-24, 70 NRC 804-05 n.17 (2009)

LEGAL CITATIONS INDEX

CASES

- Andrew Siemaszko*, CLI-06-16, 63 NRC 708, 715-24 (2006)
the hurdles that an entity seeking discretionary intervention must overcome are discussed; LBP-09-6, 69 NRC 438 n.386 (2009)
- Andrew Siemaszko*, CLI-06-16, 63 NRC 708, 718-19 (2006)
on appeal, the Commission is loath to address complaints concerning a board's skepticism of expert witness testimony, given that the Commission lacks the Board's ability to observe the demeanor of the parties' expert witnesses in general and petitioner's witness in particular; CLI-10-17, 72 NRC 46-47 (2010)
- Andrew Siemaszko*, CLI-06-16, 63 NRC 708, 719-24 (2006)
discretionary intervention is denied where petitioner had not demonstrated how its tangible interests would be affected by the proceeding, was essentially seeking only to support the subject of the enforcement action, and had provided what was deemed insufficient information about the contribution its experts could be expected to make; LBP-09-6, 69 NRC 438 (2009)
- Andrew Siemaszko*, CLI-06-16, 63 NRC 708, 720 (2006)
a board's efforts at contention reformulation did not achieve the goal of clarity, succinctness, and a more efficient proceeding; CLI-09-12, 69 NRC 553 (2009)
boards have discretion to reframe a contention for purposes of clarity, succinctness, and a more efficient proceeding; LBP-06-22, 64 NRC 236 n.10 (2006); LBP-08-12, 68 NRC 30 n.1 (2008)
- Andrew Siemaszko*, CLI-06-16, 63 NRC 708, 720-21 (2006)
boards may reframe admissible contentions for purposes of clarity, succinctness, and a more efficient proceeding, but must not add material not raised by the petitioners to make an otherwise inadmissible contention admissible; CLI-09-12, 69 NRC 553 (2009); CLI-10-14, 71 NRC 464 n.80 (2010); LBP-08-11, 67 NRC 482 (2008)
- Andrew Siemaszko*, CLI-06-16, 63 NRC 708, 722, 724 (2006)
petitioners may protect their interests by participating as appropriate, as *amici curiae*; CLI-10-12, 71 NRC 327 n.50 (2010)
- Andrew Siemaszko*, CLI-06-16, 63 NRC 708, 725-26 (2006)
discretionary intervention is denied because the petitioner filed no contentions of its own, although the contention requirement might be viewed as ordinarily inapplicable to enforcement proceedings; LBP-09-6, 69 NRC 438 (2009)
- Andrus v. Sierra Club*, 442 U.S. 347, 350 (1979)
an agency's preparation and public dissemination of the environmental impact statement serves to fulfill NEPA's twin aims because the detailed statement it requires is the outward sign that environmental values and consequences have been considered during the planning stage of agency actions; LBP-06-19, 64 NRC 62 (2006)
- Andrus v. Sierra Club*, 442 U.S. 347, 356-58 (1979)
Council on Environmental Quality regulations receive substantial deference from federal courts in interpreting the requirements of NEPA; LBP-10-16, 72 NRC 418 n.275 (2010)
- Animal Defense Council v. Hodel*, 840 F.2d 1432, 1439 (9th Cir. 1988)
where the information in the initial environmental impact statement is so incomplete or misleading that the decisionmaker and the public cannot make an informed comparison of the alternatives, revision of an EIS may be necessary to provide a reasonable, good-faith, and objective presentation of the subjects required by NEPA; LBP-10-24, 72 NRC 762, 763 (2010)
- APWU v. Potter*, 343 F.3d 619, 626 (2d Cir. 2003)
a text should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant, and so that one section will not destroy another unless the provision is the result of obvious mistake or error; LBP-09-16, 70 NRC 264 n.118 (2009)
- ARCO Pipeline Co. v. S/S Trade Star*, 81 F.R.D. 416, 417 (E.D. Pa. 1978)
in response to claims of attorney-client and attorney work product privilege, the identity of an expert retained by a party is discoverable; LBP-06-10, 63 NRC 335 n.68 (2006)
- Arizona Copper Co. v. Gillespie*, 230 U.S. 46, 52 (1913)
farmer 25 miles downstream could sue to enjoin mining company from depositing slimes, slickens, and tailings into stream used for irrigation; CLI-09-12, 69 NRC 546 n.43 (2009)

LEGAL CITATIONS INDEX

CASES

- regarding rivers generally and the question of how far contamination of various sorts may be carried in them, plaintiffs have been found to have a right to apply for preventive relief where copper mining tailings were carried 25 miles to plaintiff's farm; LBP-08-6, 67 NRC 286 (2008)
- Arizona Public Service Co.* (Palo Verde Nuclear Generating Station, Units 1 and 2), LBP-82-117B, 16 NRC 2024, 2032 (1982)
- the addition of a condition on a license to operate would constitute a materially different result warranting reopening; LBP-08-12, 68 NRC 40 n.12 (2008)
- Arizona Public Service Co.* (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), CLI-91-12, 34 NRC 149 (1991)
- a licensing board may not make factual inferences on a petitioner's behalf, or supply information that is lacking; LBP-06-10, 63 NRC 340 (2006); LBP-06-23, 64 NRC 355 (2005)
- Arizona Public Service Co.* (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), CLI-91-12, 34 NRC 149, 155 (1991)
- a board appropriately reviews the materials cited in support of a contention, while making no pronouncements on whether the information contained in the application or the claims made in the petition are valid; CLI-10-9, 71 NRC 261 (2010)
- a board may appropriately view petitioners' support for its contention in a light that is favorable to the petitioner; LBP-08-13, 68 NRC 63 (2008); LBP-08-16, 68 NRC 384 (2008); LBP-08-26, 68 NRC 917 (2008)
- a board may appropriately view petitioner's supporting information in a light favorable to the petitioner, but failure to provide such information regarding a proffered contention requires that the contention be rejected; LBP-07-3, 65 NRC 253 (2007); LBP-07-10, 66 NRC 23 (2007); LBP-07-16, 66 NRC 287 (2007); LBP-10-6, 71 NRC 361 (2010); LBP-10-7, 71 NRC 420 (2010)
- a board must not redraft an inadmissible contention to cure deficiencies and thereby render it admissible; CLI-06-16, 63 NRC 721 n.38 (2006)
- a board's authority to recast contentions is circumscribed in that it may not, on its own initiative, provide basic, threshold information required for contention admissibility; LBP-08-11, 67 NRC 482 (2008)
- all of the contention admissibility requirements of 10 C.F.R. 2.309(f)(1) must be met for a contention to be admissible; LBP-08-18, 68 NRC 541 (2008); LBP-08-19, 68 NRC 546-47 (2008); LBP-08-20, 68 NRC 551 (2008)
- although a board may appropriately view petitioner's support for its contention in a light that is favorable to the petitioner, the petitioner must provide some support for his or her contention, in the form of either facts or expert testimony; LBP-07-16, 66 NRC 288 (2007); LBP-09-17, 70 NRC 328 (2009); LBP-09-26, 70 NRC 955 (2009)
- although a board may view a petitioner's supporting information in a light favorable to the petitioner, it cannot do so by ignoring the contention admissibility rules, which require the petitioner (not the board) to supply all of the required elements for a valid intervention petition; CLI-09-7, 69 NRC 260, 275 (2009)
- although NRC may reasonably accommodate pro se petitioners who are not technically perfect in their pleadings, such parties must still meet the basic requirements of the contention admissibility rules, and if these are not met, boards may not "fill in" any missing support, but, rather, are legally required to deny the contention; LBP-07-4, 65 NRC 340 n.286 (2007)
- as with a summary disposition motion, a board may appropriately view petitioners' support for its contention in a light that is favorable to the petitioner; LBP-08-9, 67 NRC 432 (2008)
- failure to comply with any of the contention pleading requirements is grounds for dismissal of a contention; LBP-08-9, 67 NRC 430, 432 (2008); LBP-08-15, 68 NRC 312 (2008); LBP-08-26, 68 NRC 915 (2008)
- failure to present factual information and expert opinions to support a contention adequately requires that the contention be rejected; LBP-06-20, 64 NRC 150 (2006); LBP-06-23, 64 NRC 356 (2005); LBP-08-13, 68 NRC 63 (2008); LBP-08-16, 68 NRC 384 (2008); LBP-08-26, 68 NRC 917 (2008); LBP-09-3, 69 NRC 153 (2009); LBP-09-26, 70 NRC 954 (2009)
- for a contention to be admissible it must satisfy, without exception, each of the criteria set out in 10 C.F.R. 2.309(f)(1)(i)-(vi); LBP-10-6, 71 NRC 358-59 (2010)

LEGAL CITATIONS INDEX

CASES

if a question arises over the scope of an admitted contention, the board or Commission will refer back to the bases set forth in support of the contention; CLI-10-15, 71 NRC 482 (2010)

if petitioner fails to provide the requisite support for its contentions, the board may not make assumptions of fact that favor the petitioner or supply information that is lacking; LBP-07-3, 65 NRC 253 (2007); LBP-08-16, 68 NRC 385 (2008); LBP-08-17, 68 NRC 441 (2008)

if petitioner fails to provide the requisite support for its contentions, the board may not make assumptions of fact that favor the petitioner or supply information that is lacking; LBP-09-3, 69 NRC 153 (2009); CLI-09-12, 69 NRC 553 (2009); LBP-09-18, 70 NRC 404 (2009); LBP-10-7, 71 NRC 420 (2010); LBP-07-10, 66 NRC 23 (2007)

it is not up to licensing boards to search through pleadings or other materials to uncover arguments and support never advanced by the petitioners themselves, and boards may not simply infer unarticulated bases of contentions; CLI-06-10, 63 NRC 457 (2006)

support for a contention may be viewed in a light that is favorable to the petitioner and inferences that can be drawn from evidence may be construed in favor of the petitioner; LBP-06-20, 64 NRC 150 (2006); LBP-06-23, 64 NRC 356 (2005)

the initial burden of showing whether a contention meets admissibility standards lies with the petitioner; CLI-09-8, 69 NRC 325 (2009)

Arizona Public Service Co. (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), CLI-91-12, 34 NRC 149, 155-56 (1991)

a board may not make assumptions of fact that favor an intervention petitioner or supply information that is lacking in its petition; CLI-09-7, 69 NRC 260 n.132 (2009); LBP-06-7, 63 NRC 232 (2006)

although a board is free to view intervenors' support for its contention in the light most favorable to intervenors, the board may not ignore the contention admissibility requirements of 10 C.F.R. 2.309(f)(1); CLI-09-3, 69 NRC 73 (2009); CLI-09-8, 69 NRC 324 (2009)

contention admissibility standards call for a clear statement as to the basis for the contention and the submission of supporting information and references to specific documents and sources that establish the validity of the contention; CLI-10-1, 71 NRC 8 (2010)

contentions that do not satisfy the requirements of 10 C.F.R. 2.309(f)(1) must be rejected; CLI-09-8, 69 NRC 324 (2009); LBP-06-10, 63 NRC 336 (2006); LBP-06-23, 64 NRC 272, 351 (2006); LBP-07-3, 65 NRC 252 (2007); LBP-07-4, 65 NRC 303 (2007); LBP-07-10, 66 NRC 22 (2007); LBP-07-16, 66 NRC 286 (2007); LBP-08-6, 67 NRC 290 (2008); LBP-08-13, 68 NRC 61 (2008); LBP-08-16, 68 NRC 383 (2008); LBP-08-24, 68 NRC 716 (2008); LBP-09-3, 69 NRC 152 (2009); LBP-09-17, 70 NRC 324 (2009); LBP-09-21, 70 NRC 592 (2009); LBP-09-26, 70 NRC 952 (2009); LBP-10-7, 71 NRC 419 (2010); LBP-10-21, 72 NRC 651 (2010)

failure of a petitioner, even one found to have standing to proceed, to submit an admissible contention will result in dismissal of its petition and request for hearing; LBP-06-23, 64 NRC 351 (2005)

failure to provide adequate support for a contention requires that the contention be rejected; LBP-10-6, 71 NRC 360 (2010)

full compliance with the Commission's Rules of Practice is a condition precedent to the grant of a request for hearing on a materials license amendment; LBP-07-5, 65 NRC 344 (2007)

if petitioner neglects to provide the requisite support for its contentions, the board should not make assumptions of fact that favor the petitioner or supply information that is lacking; LBP-10-6, 71 NRC 361 (2010)

information in support of a contention must include references to the specific portions of the application (including the applicant's environmental report and safety report) that the petitioner disputes and the supporting reasons for each dispute; LBP-07-11, 66 NRC 56 (2007)

intervenors must provide a clear statement of the basis for their contentions and must submit of supporting information and references to specific documents and sources that establish the validity of the contentions; CLI-06-9, 63 NRC 437 (2006); CLI-06-24, 64 NRC 119 (2006); CLI-09-8, 69 NRC 323 (2009)

petitioner is obliged to present the factual and expert support for its contention; LBP-10-6, 71 NRC 360 (2010)

LEGAL CITATIONS INDEX

CASES

- Arizona Public Service Co.* (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), CLI-91-12, 34 NRC 149, 156 (1991)
contentions must directly controvert a position taken by the applicant in the application and explain why the application is deficient; LBP-07-4, 65 NRC 306 (2007); LBP-07-11, 66 NRC 58 (2007); LBP-08-6, 67 NRC 292 (2008); LBP-09-17, 70 NRC 327 (2009)
if a petitioner does not believe the Safety Analysis Report and the Environmental Report address a relevant issue, the petitioner is to explain why the application is deficient; LBP-06-10, 63 NRC 341 (2006); LBP-06-23, 64 NRC 358 (2005)
- Arizona Public Service Co.* (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), LBP-82-117A, 16 NRC 1964, 1990-91 (1982)
a licensing board has no jurisdiction to consider any treaty-related or water-rights questions in an NRC adjudicatory proceeding; LBP-08-6, 67 NRC 269 n.107 (2008)
- Arizona Public Service Co.* (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), LBP-82-117A, 16 NRC 1964, 1991 (1982)
licensing boards should not entertain collateral attacks upon the actions of other federal agencies on a matter over which the Commission has no jurisdiction; LBP-06-15, 63 NRC 630 (2006)
- Arizona Public Service Co.* (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), LBP-91-19, 33 NRC 397, 401 (1991)
petitioners are usually permitted to amend petitions containing curable defects and pro se petitioners are held to a less rigorous standard; LBP-09-18, 70 NRC 396-97 (2009)
- Arizona Public Service Co.* (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), LBP-91-19, 33 NRC 397, 410, *aff'd in part and rev'd in part on other grounds*, CLI-91-12, 34 NRC 149 (1991)
contentions that advocate stricter requirements than agency rules impose or that otherwise seek to litigate a generic determination established by a Commission rulemaking are inadmissible; LBP-07-3, 65 NRC 253 (2007); LBP-07-10, 66 NRC 22-23 (2007); LBP-08-16, 68 NRC 383 (2008); LBP-09-3, 69 NRC 153 (2009); LBP-10-7, 71 NRC 420 (2010); LBP-10-21, 72 NRC 651 (2010)
- Arizona Public Service Co.* (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), LBP-91-19, 33 NRC 397, 411-12 (1991), *appeal denied on other grounds*, CLI-91-12, 34 NRC 149 (1991)
a contention must allege facts sufficient to establish that it falls directly within the scope of a proceeding; LBP-06-10, 63 NRC 338 (2006)
- Arizona Public Service Co.* (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), LBP-91-19, 33 NRC 397, 412 (1991), *appeal denied on other grounds*, CLI-91-12, 34 NRC 149 (1991)
a contention must allege facts sufficient to establish that it falls directly within the scope of a proceeding; LBP-06-23, 64 NRC 353 (2005); LBP-07-4, 65 NRC 304 (2007); LBP-07-11, 66 NRC 57 (2007)
by referencing the license renewal application's aging management plan regarding buried pipes and tanks, petitioner has supported its contention sufficiently to establish that it falls directly within the scope of the proceeding; LBP-06-23, 64 NRC 310 (2006)
- Armed Forces Radiobiology Research Institute* (Cobalt-60 Storage Facility), ALAB-682, 16 NRC 150, 153-54 (1982)
close proximity to a facility has always been deemed to be enough, standing alone, to establish the requisite interest to confer standing; LBP-06-7, 63 NRC 196 (2006)
- Armed Forces Radiobiology Research Institute* (Cobalt-60 Storage Facility), ALAB-682, 16 NRC 150, 155 (1982)
although further analysis may show that there is no way for the radioactive materials and byproducts from ISL mining operations to cause harm to persons living nearby, a board cannot decide, when making a standing determination, that there is no reasonable possibility that such harm could occur; LBP-08-6, 67 NRC 280 (2008)
it is enough that petitioner has demonstrated a realistic threat of sustaining a direct injury as a result of contaminated groundwater flowing from the site at issue to his property to establish standing; LBP-08-24, 68 NRC 709 (2008)
- Armstrong v. Board of School Directors of City of Milwaukee*, 616 F.2d 305 (7th Cir. 1980)
when evaluating whether a settlement in an enforcement proceeding is in the public interest, four factors are considered; LBP-06-18, 63 NRC 837 (2006)

LEGAL CITATIONS INDEX

CASES

- Armstrong v. Executive Office of the President*, 97 F.3d 575, 582 (D.C. Cir. 1996)
privileges protecting privacy interests are not absolute; LBP-06-25, 64 NRC 376 (2006)
the privacy interest at stake may vary depending on the context in which it is asserted; LBP-06-25, 64 NRC 385 (2006)
- Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)
the right to a hearing is an empty promise unless there is an opportunity to be heard at a meaningful time and in a meaningful manner; LBP-08-11, 67 NRC 497 (2008)
- Arthur Andersen LLP v. United States*, 544 U.S. 696, 705 (2005)
concerning criminal guilt, the words “knowledge” and “knowingly” are normally associated with awareness, understanding, or consciousness; CLI-10-23, 72 NRC 223 (2010)
- Ashley Creek Phosphate Co. v. Norton*, 420 F.3d 934,943-44 (9th Cir. 2005), *cert. denied*, 548 U.S. 903 (2006)
the National Environmental Policy Act does not encompass concerns that are not tethered to the physical environment; CLI-08-16, 68 NRC 228 (2008)
- Ashworth v. Albers Medical, Inc.*, 229 F.R.D. 527 (S.D.W.V. 2005)
sometimes the pendency of a criminal prosecution necessitates delaying a parallel civil or administrative proceeding; LBP-06-13, 63 NRC 537 (2006)
- Assiniboine & Sioux Tribe of the Fort Peck Indian Reservation v. Board of Oil & Gas Conservation*, 792 F.2d 782, 794-96 (9th Cir. 1986)
a trust duty in the NRC as a federal permitting agency arises out of 1851 and 1868 treaties with Indian tribes; LBP-08-6, 67 NRC 267 (2008)
- Associated General Contractors of North Dakota v. Otter Tail Power Co.*, 611 F.2d 684, 688-90 (8th Cir. 1079)
criteria for representational standing are applied to a trade association; CLI-08-19, 68 NRC 265 n.48 (2008)
- Associated General Contractors of North Dakota v. Otter Tail Power Co.*, 611 F.2d 684, 690-91 (1979)
when an organization takes formal corporate action to initiate litigation not only germane but integral to its purpose, that action can constitute the requisite, if implicit, proof of authorization for intervention; LBP-09-6, 69 NRC 435 (2009)
- Association of Public Agency Customers v. Bonneville Power Administration*, 126 F.3d 1158, 1188 (9th Cir. 1997)
the “no-action” alternative is most simply viewed as maintaining the status quo; CLI-06-10, 63 NRC 468 (2006)
- AT&T Corp. v. Federal Communications Commission*, 349 F.3d 692, 699 (D.C. Cir 2003)
ripeness for judicial review is determined on the basis of the fitness of the issue for judicial decision and the hardship to the parties of withholding court consideration; LBP-08-24, 68 NRC 721 (2008); LBP-09-6, 69 NRC 397 (2009)
- Atlantic Research Corp.* (Alexandria, Virginia), ALAB-594, 11 NRC 841, 849 (1980)
licensing boards review NRC Staff’s enforcement order de novo; LBP-09-24, 70 NRC 706 (2009)
- Atlas Corp.* (Moab, Utah Facility), LBP-97-9, 45 NRC 414, 426 (1997)
petitioner failed to specify any radiological contacts with enough concreteness to establish some impact on him that is sufficient to provide him with standing; LBP-10-11, 71 NRC 634 n.97 (2010)
- Atlas Corp.* (Moab, Utah Facility), LBP-97-9, 45 NRC 414, 426-27, *aff’d*, CLI-97-8, 46 NRC 21 (1997)
descriptions of activities as being “near,” in “close proximity,” or “in the vicinity” of the facility in question are insufficient to establish standing; CLI-07-18, 65 NRC 410 n.27 (2007)
- Aushman v. Bank of America Corp.*, 212 F. Supp. 2d 435, 442-43 (D. Md. 2002)
the purpose and scope of the duty of candor that is placed on lawyers is described; LBP-06-10, 63 NRC 371 n.10 (2006)
- Automobile Workers v. Brock*, 477 U.S. 274, 282 (1986)
a three-pronged test for associational standing is applied to unions; CLI-08-19, 68 NRC 264 (2008)
the same standing criteria are applied to unions as to public interest groups, trade associations, and similar groups; CLI-08-19, 68 NRC 265 n.48 (2008)

LEGAL CITATIONS INDEX

CASES

- Availability of Funds for Payment of Intervenor Attorney Fees — Nuclear Regulatory Commission*, 62 Comp. Gen. 692, 695 (1983)
the terms of section 502 of the Energy and Water Development Appropriations Act of 1982 unambiguously prohibit the use of appropriated funds for payments of any kind to intervenors; LBP-09-1, 69 NRC 44 n.136 (2009)
- B.F. Goodrich Co. v. U.S. Filter Corp.*, 245 F.3d 587, 593 n.3 (6th Cir. 2001)
a procedure that amounts to a trial of the action and technically is not a disposition by summary judgment is appropriate only if it is clear that there is nothing else to be offered by the parties and there is no prejudice in proceeding in this fashion; LBP-07-12, 66 NRC 127 n.71 (2007)
- Babcock & Wilcox Co.* (Apollo, Pennsylvania Fuel Fabrication Facility), LBP-92-35, 36 NRC 355, 358 n.9 (1992)
one does not acquire standing as a consequence of being a member of a legislative tribunal; LBP-07-5, 65 NRC 351 (2007)
- Babcock & Wilcox Co.* (Apollo, Pennsylvania Fuel Fabrication Facility), LBP-93-4, 37 NRC 72, 81, *appeal dismissed*, CLI-93-9, 37 NRC 190 (1993)
every petitioner bears the burden of demonstrating standing in order to participate in hearings before a licensing board; LBP-07-10, 66 NRC 15-16 (2007); LBP-09-18, 70 NRC 400 (2009)
- Babcock & Wilcox Co.* (Apollo, Pennsylvania Fuel Fabrication Facility), LBP-93-4, 37 NRC 72, 82-83 (1993)
in proceedings where petitioner's factual assertions in support of standing are challenged, untenable, conjectural, or conclusory, a board may be required to weigh the information and exercise judgment to determine if a standing element has been satisfied; LBP-10-4, 71 NRC 230 n.14 (2010)
- Babcock & Wilcox Co.* (Apollo, Pennsylvania Fuel Fabrication Facility), LBP-93-4, 37 NRC 72, 83 (1993)
the common thread in decisions applying the 50-mile presumption of standing is a recognition of the potential effects at significant distances from the facility of the accidental release of fissionable materials; LBP-09-4, 69 NRC 182 (2009)
the nontrivial increased risk of living within 50 miles of a proposed reactor constitutes injury-in-fact, is traceable to the challenged action, and is likely to be redressed by a favorable decision that either denies a license or mandates compliance with legal requirements that protect the interests of the petitioners; CLI-09-20, 70 NRC 917 (2009)
- Babcock & Wilcox Co.* (Apollo, Pennsylvania Fuel Fabrication Facility), LBP-93-4, 37 NRC 72, 84 (1993)
petitioner who relies on proximity to the facility without also demonstrating a causal link between the distance he resides from the facility and injury to his legitimate interests fails to establish standing in an enforcement proceeding; LBP-07-16, 66 NRC 304 (2007)
- Bailey v. United States*, 516 U.S. 137, 145 (1995)
in interpreting regulations, not only the bare meaning of the word but also its placement and purpose in the statutory scheme are considered; LBP-09-15, 70 NRC 216 n.56 (2009)
- Baker v. Carr*, 369 U.S. 186, 204 (1962)
whether petitioners have alleged such a personal stake in the outcome of a controversy as to assure that concrete adverseness that sharpens the presentation of issues upon which a tribunal so largely depends for illumination of difficult questions is the question that determines standing; LBP-08-6, 67 NRC 270 (2008)
- Baltimore Gas & Electric Co. v. Natural Resources Defense Council, Inc.*, 462 U.S. 87 (1983)
reliance on generic environmental impact statement tiering comports with the National Environmental Policy Act; LBP-06-20, 64 NRC 159 (2006)
- Baltimore Gas & Electric Co. v. Natural Resources Defense Council, Inc.*, 462 U.S. 87, 90-91 (1983)
the function of Table S-3 is described; LBP-09-4, 69 NRC 223 (2009)
- Baltimore Gas & Electric Co. v. Natural Resources Defense Council, Inc.*, 462 U.S. 87, 91 n.5 (1983)
the tabulated impacts in Table S-3 include the acres of land committed to fuel cycle activities, the amount of water discharged by such activities, fossil fuel consumption, and chemical and radiological effluents (measured in curies), all normalized to the annual fuel requirement for a model 1000-megawatt light-water reactor; LBP-09-4, 69 NRC 223 (2009)

LEGAL CITATIONS INDEX

CASES

- Baltimore Gas & Electric Co. v. Natural Resources Defense Council, Inc.*, 462 U.S. 87, 97 (1983)
NEPA does not require agencies to elevate environmental concerns over other appropriate considerations, requiring rather only that the agency take a hard look at the environmental consequences before taking a major action; LBP-06-19, 64 NRC 63 (2006)
NEPA ensures that an agency considers every significant aspect of the environmental impact of a proposed action and informs the public that it has, in fact, considered environmental concerns in its decisionmaking process; LBP-06-19, 64 NRC 62 (2006); LBP-08-7, 67 NRC 365 n.1 (2008)
publication of an environmental impact statement gives the public the assurance that the agency has indeed considered environmental concerns in its decisionmaking process and provides a springboard for public comment; LBP-06-23, 64 NRC 298 n.169 (2006); LBP-10-24, 72 NRC 763 (2010)
to take the NEPA-required “hard look” at all significant consequences of a project, the consequences of the entire project must be examined at one time; CLI-06-11, 63 NRC 493 (2006)
- Baltimore Gas & Electric Co. v. Natural Resources Defense Council, Inc.*, 462 U.S. 87, 99 n.12 (1983)
although the Commission is not bound by Council on Environmental Quality regulations that it has not expressly adopted, it gives them substantial deference; LBP-06-19, 64 NRC 63 n.3 (2006)
the Supreme Court has expressly left open the issue of whether Council on Environmental Quality regulations are binding on the NRC; LBP-10-16, 72 NRC 418 n.275 (2010)
- Baltimore Gas & Electric Co. v. Natural Resources Defense Council, Inc.*, 462 U.S. 87, 101 (1983)
generic analysis is clearly an appropriate method of meeting the agency’s statutory obligations under NEPA; CLI-07-3, 65 NRC 17 (2007)
the Commission should, as appropriate, plug any generic rulemaking determination into agency adjudicatory proceedings; LBP-08-16, 68 NRC 424 n.21 (2008)
- Baltimore Gas & Electric Co.* (Calvert Cliffs Nuclear Power Plant), 4 AEC 243, 244 (1969)
intervenor may not use a licensing proceeding to rewrite Commission regulations; LBP-06-1, 63 NRC 59-60 (2006)
- Baltimore Gas & Electric Co.* (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), CLI-98-14, 48 NRC 39, *passim*, *motion to vacate denied*, CLI-98-15, 48 NRC 45, 51 (1998), *aff’d sub nom. National Whistleblower Center v. NRC*, 208 F.3d 256 (D.C. Cir. 2000), *cert. denied*, 531 U.S. 1070 (2001)
the Commission has used *sua sponte* review as a vehicle to provide guidance to a licensing board; CLI-07-1, 65 NRC 5 (2007)
- Baltimore Gas & Electric Co.* (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), CLI-98-14, 48 NRC 39, 41, *motion to vacate denied*, CLI-98-15, 48 NRC 45 (1998)
applicant argues that petitioners have not asserted that an alleged noncompliance with fire protection regulations described in a 2.206 petition (and rejected by the acting director) constitutes a genuine dispute of fact in regard to whether a license should be renewed; LBP-07-11, 66 NRC 71 (2007)
it is petitioner’s responsibility to provide the necessary information to satisfy the basis requirement for the admission of its contentions and demonstrate that a genuine dispute exists within the scope of the proceeding; LBP-10-6, 71 NRC 362 (2010)
the provisions of Parts 51 and 54 relating to the scope of license renewal proceedings are discussed; LBP-06-10, 63 NRC 343 (2006); LBP-07-11, 66 NRC 59 (2007)
the scope of license renewal proceedings is quite limited under Commission rules and case law; LBP-08-22, 68 NRC 598 (2008)
the scope of license renewal proceedings, which generally concern requests to renew 40-year operating licenses for additional 20-year terms, is discussed; LBP-06-23, 64 NRC 274 (2006)
the scope of safety and environmental issues relevant to license renewal are discussed; LBP-07-4, 65 NRC 306-07 (2007)
- Baltimore Gas & Electric Co.* (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), CLI-98-15, 48 NRC 45, 52 (1998), *aff’d sub nom. National Whistleblower Center v. NRC*, 208 F.3d 256 (D.C. Cir. 2000), *cert. denied*, 531 U.S. 1070 (2001)
the Commission has used *sua sponte* review as a vehicle to set a specific timetable; CLI-07-1, 65 NRC 4 (2007)
- Baltimore Gas & Electric Co.* (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), CLI-98-15, 48 NRC 45, 53 (1998)
the Commission has plenary supervisory authority to interpret and customize its process for individual cases; CLI-08-11, 67 NRC 383 n.24 (2008)

LEGAL CITATIONS INDEX

CASES

- Baltimore Gas & Electric Co.* (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), CLI-98-25, 48 NRC 325, 342 (1998)
in the interest of efficient case management and prompt resolution of adjudications, the Commission has generally enforced the 10-day deadline for appeals strictly, excusing it only in unavoidable and extreme circumstances; CLI-10-26, 72 NRC 476 (2010)
- Baltimore Gas & Electric Co.* (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), CLI-98-25, 48 NRC 325, 343 n.3 (1998)
unreviewed board rulings carry no precedential weight; CLI-09-14, 69 NRC 583 n.13 (2009); CLI-10-29, 72 NRC 563 n.36 (2010); CLI-10-30, 72 NRC 569 (2010)
- Baltimore Gas & Electric Co.* (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), CLI-98-25, 48 NRC 325, 347 (1998)
petitioner's failure to show that its newly presented contentions satisfy section 2.309(c) provides an independent and sufficient basis for not admitting its belated contentions; LBP-06-11, 63 NRC 396 n.3 (2006)
prior to 2004, in addition to meeting the substantive admissibility criteria found in 10 C.F.R. 2.714(b)(2), the issue statement was based on the environmental impact statement or environmental assessment information that differed significantly from the data or conclusions in the applicant's environmental report; LBP-10-1, 71 NRC 186 (2010)
- Baltimore Gas & Electric Co.* (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), CLI-98-25, 48 NRC 325, 347-48 (1998)
failure to address the pleading requirements for late-filed contentions is reason enough to reject proposed new contentions; CLI-09-5, 69 NRC 126 (2009)
- Baltimore Gas & Electric Co.* (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), CLI-98-25, 48 NRC 325, 349-50 (1998)
members of the public with a cognizable interest in the particular license renewal application may obtain an independent adjudicatory review of their challenges to the application; CLI-08-23, 68 NRC 468 (2008)
NRC has not, and will not, litigate claims about the adequacy of Staff's safety review in licensing adjudications; CLI-08-23, 68 NRC 477 n.64 (2008)
petitioner may not simply wait for the Staff to identify missing information and then ground a new contention on that request; CLI-09-12, 69 NRC 550 (2009)
petitioners must do more than rest on the mere existence of requests for additional information as a basis for their contention; LBP-08-6, 67 NRC 261 (2008)
- Baltimore Gas & Electric Co.* (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), CLI-98-25, 48 NRC 325, 350 (1998)
in adjudicatory proceedings it is the license application, not the NRC Staff review, that is at issue; CLI-08-15, 68 NRC 3 n.2 (2008)
in some cases, petitioner may base a new contention on a request for additional information if the RAI or its response raises new information; CLI-09-12, 69 NRC 550 n.66 (2009)
NRC Staff is required to consider and resolve all safety questions regardless of whether any hearing takes place; LBP-08-12, 68 NRC 28 (2008)
NRC Staff's mere interest in an issue, its solicitation of public input on an issue, or its proposed revision to a generic guidance document will not, standing alone and lacking an articulated plant-specific safety concern, suffice as a contention's cornerstone; LBP-06-11, 63 NRC 399 (2006)
- Baltimore Gas & Electric Co.* (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), CLI-98-25, 48 NRC 325, 351 (1998)
discovery is not permitted for the purpose of developing a motion to reopen the record or to assist a petitioner in the framing of contentions; CLI-08-28, 68 NRC 676 n.73 (2008); LBP-08-12, 68 NRC 27 n.23 (2008)
- Baltimore Gas & Electric Co.* (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), LBP-98-26, 48 NRC 232, 242 (1998)
the fact that there are a number of requests for addition information outstanding does not give rise to an evidentiary hearing; LBP-08-9, 67 NRC 444 (2008)
the focus of a case is on the adequacy of the application as it has been accepted and docketed for licensing review; LBP-08-13, 68 NRC 71 n.88 (2008)

LEGAL CITATIONS INDEX

CASES

- the manner in which NRC Staff conducts its sufficiency review and whether its decision to accept an application for review was correct are not matters within the purview of an adjudicatory proceeding; LBP-08-9, 67 NRC 444 (2008)
- Banks v. District of Columbia*, 377 F. Supp. 2d 85, 89 (D.D.C. 2005)
although wholly conclusory statements for which no supporting evidence is offered need not be taken as true for summary judgment purposes, a court may not make credibility determinations or weigh the evidence at the summary judgment stage; LBP-07-12, 66 NRC 127 (2007); LBP-07-13, 66 NRC 131 (2007)
- Barker v. Wingo*, 407 U.S. 514 (1972)
a four-factor test is applied to determine whether a delay violates the Sixth Amendment right to a speedy trial; LBP-06-13, 63 NRC 535 n.29 (2006)
- Barker v. Wingo*, 407 U.S. 514, 521 (1972)
deprivation of the right to speedy trial does not per se prejudice the accused's ability to defend himself; LBP-06-13, 63 NRC 542 n.64 (2006)
- Barker v. Wingo*, 407 U.S. 514, 530 (1972)
in deciding whether to delay a proceeding, an adjudicator can do little more than identify some of the factors that courts should assess in determining whether a particular defendant has been deprived of his right; LBP-06-13, 63 NRC 535 n.29 (2006)
- Barker v. Wingo*, 407 U.S. 514, 532 (1972)
timely assertion of the right to a hearing is a relevant factor because failure to assert the right will make it difficult for the party opposing the delay to prove that he was denied a speedy trial; LBP-06-13, 63 NRC 543 (2006)
- Barry v. Barchi*, 443 U.S. 55, 64 (1979)
a property interest in an employment-related license is sufficient to invoke the procedural protections of the Due Process Clause, the vindication of which certainly invokes a public interest; LBP-06-25, 64 NRC 385 n.70 (2006)
- Bartley v. Isuzu Motors, Ltd.*, 151 F.R.D. 659, 660-61 (D. Colo. 1993)
computer modeling and all of the inputs, outputs, and software associated with it are within the scope of discovery; LBP-12-23, 72 NRC 704 n.15 (2010)
- Baur v. Veneman*, 352 F.3d 625, 634 (2d Cir. 2003)
federal courts of appeal have failed to reach a consensus on the question whether a risk of future injury must exceed a numerical threshold; LBP-09-4, 69 NRC 184 (2009)
- Baxter v. Palmigiano*, 425 U.S. 308, 318 (1976)
the Fifth Amendment does not prevent the trier of fact from making an adverse inference where the privilege is claimed by a party to a civil cause; LBP-06-13, 63 NRC 538 n.45 (2006)
- Bell v. Burson*, 402 U.S. 535, 539 (1971)
a property interest in an employment-related license is sufficient to invoke the procedural protections of the Due Process Clause, the vindication of which certainly invokes a public interest; LBP-06-25, 64 NRC 385 n.70 (2006)
- Bellotti v. NRC*, 725 F.2d 1380 (D.C. Cir. 1983)
a challenge to an enforcement order in which petitioner contends that the order needs strengthening is prohibited; LBP-06-12, 63 NRC 422 (2006)
enforcement orders typically limit adjudication to whether the facts as stated in the order are true, and whether the proposed sanction is supported by those facts; CLI-06-16, 63 NRC 720 (2006)
the scope of an enforcement adjudication is limited to the question of whether the order should be sustained; CLI-10-3, 71 NRC 53 (2010)
- Bellotti v. NRC*, 725 F.2d 1380, 1381 (D.C. Cir. 1983)
the Commission, rather than petitioner, holds the authority to define the scope of a proceeding; LBP-09-20, 70 NRC 575 (2009)
where the notice of hearing limits the scope to whether the order should be sustained, petitioner's sole remedy is rescission of the order; LBP-09-20, 70 NRC 575 (2009)
with respect to orders modifying a license, petitioner must always request a remedy that falls within the scope of the proceeding, as articulated in the notice of hearing; LBP-09-20, 70 NRC 575 (2009)

LEGAL CITATIONS INDEX

CASES

- Bellotti v. NRC*, 725 F.2d 1380, 1381-82 (D.C. Cir. 1983)
the scope of an enforcement adjudication is limited to the question of whether the order should be sustained; CLI-10-3, 71 NRC 54 (2010)
- Bellotti v. NRC*, 725 F.2d 1380, 1382 n.2 (D.C. Cir. 1983)
intervention petitioners who think an order modifying a license should not be sustained, but might want further corrective measures, are precluded from intervention; LBP-09-20, 70 NRC 575 (2009)
- Bellotti v. NRC*, 725 F.2d 1380, 1383 (D.C. Cir. 1983)
petitioners may raise their concerns with the Commission at any time by filing a petition under 10 C.F.R. 2.206; CLI-10-3, 71 NRC 54 (2010)
the Commission's power to define the scope of a proceeding will lead to the denial of intervention when the Commission amends a license to require additional or better safety measures; LBP-09-20, 70 NRC 578 n.67 (2009)
- Benevolence International Foundation v. Ashcroft*, 200 F. Supp. 2d 935 (N.D. Ill. 2002)
sometimes the pendency of a criminal prosecution necessitates delaying a parallel civil or administrative proceeding; LBP-06-13, 63 NRC 537 (2006)
- Bering Strait Citizens for Responsible Resource Development v. U.S. Army Corps of Engineers*, 524 F.3d 938, 953 (9th Cir. 2008)
an agency, when preparing an environmental assessment, must provide the public with sufficient environmental information, considered in the totality of circumstances, to permit members of the public to weigh in with their views and thus inform the agency decisionmaking process; CLI-10-18, 72 NRC 71, 93 (2010)
- Bicycle Trails Council of Marin v. Babbitt*, 82 F.3d 1445, 1466-67 (9th Cir. 1996)
the National Environmental Policy Act does not encompass concerns that are not tethered to the physical environment; CLI-08-16, 68 NRC 228 (2008)
- Black v. Sheraton Corp. of America*, 564 F.2d 531, 547 (D.C. Cir. 1977)
even limited disclosure in a courtroom could harm the frankness of debate, which explains the lack of precedent for allowing deliberative process documents to be released under a protective order, or for even considering such a measure; LBP-06-25, 64 NRC 391 n.107 (2006)
- Blackwell v. Cole Taylor Bank*, 152 F.3d 666, 673 (7th Cir. 1998)
silence about facts constitutes a waiver of the specific factual contentions made by the opposing party in a brief filed earlier; LBP-06-7, 63 NRC 200 n.7 (2006)
- Blue Mountains Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1213 (9th Cir. 1998)
under the National Environmental Policy Act, general statements about possible effects and some risk do not constitute a hard look absent a justification regarding why more definitive information could not be provided; CLI-10-18, 72 NRC 74 (2010)
- Blue Mountains Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1214 (9th Cir. 1998)
to take the NEPA-required "hard look" at all significant consequences of a project, the consequences of the entire project must be examined at one time and cannot be looked at piecemeal; CLI-06-11, 63 NRC 493 (2006)
- Board of County Supervisors v. Scottish & York Insurance Services*, 763 F.2d 176, 179 (4th Cir. 1985)
issues not decided by special verdict are difficult to decipher for collateral estoppel purposes because of the uncertainty whether the precise issue was actually determined in the prior criminal case; CLI-10-23, 72 NRC 253 n.218 (2010)
- Board of License Commissioners v. Pastore*, 469 U.S. 238, 240 ((1985)
counsel have a broader, more general duty of candor and good faith, which is related to the duty to update a tribunal about any development that may conceivably affect the outcome of litigation; LBP-06-10, 63 NRC 370 (2006)
counsel have a continuing duty to update a tribunal of any development that may conceivably affect the outcome of litigation; LBP-06-10, 63 NRC 333 (2006)
- Board of Natural Resources v. Brown*, 992 F.2d 937, 942 (9th Cir. 1993)
if one party's standing has been established, the standing of allied parties is not to be questioned; LBP-10-7, 71 NRC 414 (2010)
- Bob Marshall Alliance v. Hodel*, 852 F.2d 1223, 1228-29 (9th Cir. 1988)
even when a proposed action does not require preparation of an environmental impact statement, the consideration of alternatives remains critical to the goals of NEPA; CLI-10-18, 72 NRC 75 (2010)

LEGAL CITATIONS INDEX

CASES

- Bonds v. Snapper Power Equipment Co.*, 935 F.2d 985, 988 (8th Cir. 1991)
the civil law concept of “assumption of risk” requires not merely general knowledge of a risk but also that the risk assumed be specifically known, understood, and appreciated; CLI-10-23, 72 NRC 223 (2010)
- Bonneville Power Administration v. Federal Energy Regulatory Commission*, 422 F.3d 908, 916 (9th Cir. 2005)
in statutory construction, the specific prevails over the general; CLI-08-26, 68 NRC 523 (2008)
- Boston Edison Co.* (Pilgrim Nuclear Generating Station, Unit 2), ALAB-479, 7 NRC 774, 779 (1978)
there is no basis for providing an EIS description to such a level of detail that it can be duplicated by members of the public, so as to permit an individual to run applicable computer codes or make other detailed computations; LBP-06-9, 63 NRC 302, 310 n.10 (2006)
- Boston Edison Co.* (Pilgrim Nuclear Generating Station, Unit 2), ALAB-479, 7 NRC 774, 792-94 (1978)
NRC hearings on safety issues concern the adequacy of the license application, not the NRC Staff’s work, but NRC hearings on NEPA issues focus entirely on the adequacy of the Staff’s work; CLI-07-17, 65 NRC 395 (2007)
- Boston Edison Co.* (Pilgrim Nuclear Power Station), ALAB-816, 22 NRC 461, 466 (1985)
even if all parties are inclined to waive the tardiness, the board nevertheless is duty-bound to deny a petition on its own initiative unless it is persuaded that, on balance, the lateness factors point in the opposite direction; LBP-10-17, 72 NRC 508 n.21 (2010)
- Boston Edison Co.* (Pilgrim Nuclear Power Station), ALAB-816, 22 NRC 461, 468 n.28 (1985)
because appellant submitted no offer of proof, its case could be so weak that the denial of a right to reply by the licensing board would have been harmless error; CLI-10-23, 72 NRC 246 (2010)
parties taking appeals on purely procedural points are expected to explain precisely what injury to them was occasioned by the asserted error; CLI-10-23, 72 NRC 245 n.175 (2010)
- Boston Edison Co.* (Pilgrim Nuclear Power Station), CLI-82-16, 16 NRC 44, 45-46 (1982), *aff’d*, *Bellotti v. NRC*, 725 F.2d 1380 (D.C. Cir. 1983)
the scope of any hearing on a confirmatory order is expressly limited to the issue of whether the order should be sustained; LBP-08-14, 68 NRC 286 (2008)
the scope of the hearing on an enforcement matter is limited to the issue of whether the confirmatory order should be sustained; LBP-07-16, 66 NRC 283 (2007)
- Bourjaily v. United States*, 483 U.S. 171, 179-80 (1987)
individual pieces of evidence, insufficient in themselves to prove a point, may in cumulation prove it; LBP-09-24, 70 NRC 849 (2009)
- Bowen v. Massachusetts*, 487 U.S. 879, 896-98 (1988)
Congress can be presumed to be aware of one specific agency rule only when that rule has been expressly discussed in the legislative history; LBP-10-11, 71 NRC 625 n.52 (2010)
- Bowles v. Seminole Rock and Sand Co.*, 325 U.S. 410, 414 (1945)
an agency’s interpretation of its own regulation is controlling provided it is not plainly erroneous or inconsistent with the regulation; CLI-10-13, 71 NRC 389 n.10 (2010)
- Bowman Transportation, Inc. v. Arkansas-Best Freight System, Inc.*, 419 U.S. 281, 285-86 (1974)
if NRC Staff finds any severe accident mitigation alternative conferring a substantial benefit compared to its cost of implementation, it must make such SAMA a license condition for the renewed operating license; LBP-10-13, 71 NRC 689 n.77 (2010)
- Brock v. Nellis*, 809 F.2d 753, 755 (11th Cir. 1987)
establishing a party’s actual knowledge requires showing more than that a party had a suspicion that something was awry; LBP-09-24, 70 NRC 708 n.46 (2009)
- Brotherhood of Locomotive Firemen and Enginemen v. Northern Pacific Railway Co.*, 274 F.2d 641, 646-47 (8th Cir. 1960)
where possible, a regulation should be construed in a manner that avoids internal inconsistencies; LBP-06-1, 63 NRC 57 (2006)
- Brown & Williamson Tobacco Corp. v. Federal Trade Commission*, 710 F.2d 1165 (6th Cir. 1983)
the First Amendment requires a presumption of openness in civil proceedings; LBP-10-2, 71 NRC 208 n.58 (2010)

LEGAL CITATIONS INDEX

CASES

- Brown v. Navajo Regional Director*, 41 IBIA 314, 2005 I.D. LEXIS 99, at 11 (Bureau of Indian Affairs, Dep't of Interior, Oct. 26, 2005)
federal agencies, especially when acting through the adjudicatory process,) and state courts have recognized that similar policy considerations counsel against proceeding with an adjudication if there is no possibility of awarding the petitioner meaningful relief; LBP-09-14, 70 NRC 196 n.15 (2009)
- Brownell v. Roadway Package System, Inc.*, 185 F.R.D. 19, 25 (N.D.N.Y. 1999)
if a company claims that the internal investigation establishes that it has met its obligation, then the company has waived the attorney-client privilege associated with the internal investigation; CLI-08-6, 67 NRC 184 (2008)
if a defendant invokes the investigation as an affirmative defense, it cannot withhold the statements on which the investigation was based; CLI-08-6, 67 NRC 184 (2008)
- Bullcreek v. NRC*, 359 F.3d 536 (D.C. Cir. 2004)
agency decisions on rulemaking petitions are judicially reviewable; CLI-07-13, 65 NRC 214 n.13 (2007)
- Bullcreek v. NRC*, 359 F.3d 536, 542 (D.C. Cir. 2004)
Congress can be presumed to be aware of one specific agency rule only when that rule has been expressly discussed in the legislative history; LBP-10-11, 71 NRC 625 n.52 (2010)
- Burbank Anti-Noise Group v. Goldschmidt*, 622 F.2d 115, 116-17 (9th Cir. 1980), *cert. denied*, 450 U.S. 965 (1981)
an EIS is not required when the proposed federal action will effect no change in the status quo; LBP-07-4, 65 NRC 330 n.246 (2007)
- Burlington Truck Lines v. United States*, 371 U.S. 156, 168 (1962)
if NRC Staff finds any severe accident mitigation alternative conferring a substantial benefit compared to its cost of implementation, it must make such SAMA a license condition for the renewed operating license; LBP-10-13, 71 NRC 689 n.77 (2010)
- Burns v. United States*, 501 U.S. 129, 136 (1991)
an inference drawn from congressional silence cannot be credited when it is contrary to all other textual and contextual evidence of congressional intent; LBP-10-11, 71 NRC 623 (2010)
- Burton v. Mottolese*, 835 A.2d 998, 1032 (Conn. 2003)
the basis for and purpose of the duty of trial judges to deter and correct misconduct of attorneys with respect to their obligations as officers of the court lies in the need to safeguard the administration of justice and to protect the public from the misconduct or unfitness of those who are members of the legal profession; LBP-06-10, 63 NRC 369 (2006)
- Business and Professional People for the Public Interest v. AEC*, 502 F.2d 424, 426-29 (D.C. Cir. 1974)
NRC's requirement that a petitioner identify specific contentions and the particular bases for the contentions is not inconsistent with section 189a of the Atomic Energy Act, which provides that a hearing shall be granted upon the request of any person whose interest may be affected by the proceeding; LBP-06-20, 64 NRC 205 (2006)
- Business and Professional People for the Public Interest v. AEC*, 502 F.2d 424, 428 (D.C. Cir. 1974)
section 189a of the Atomic Energy Act does not confer the automatic right of intervention upon anyone; CLI-08-28, 68 NRC 678 n.80 (2008); LBP-08-18, 68 NRC 536 (2008)
the contention pleading requirements of 10 C.F.R. 2.309(f) are meant to focus litigation on concrete issues and result in a clearer and more focused record for decision; LBP-06-4, 63 NRC 108 (2006); LBP-07-16, 66 NRC 285 (2007); LBP-08-9, 67 NRC 429 (2008); LBP-08-13, 68 NRC 61 (2008); LBP-08-15, 68 NRC 312 n.77 (2008); LBP-08-26, 68 NRC 915 (2008); LBP-09-26, 70 NRC 952 (2009)
- Butchers' Union Co. v. Crescent City Co.*, 111 U.S. 746, 762 (1884)
the right to follow any of the common occupations of life is an inalienable right that was formulated as such under the phrase "pursuit of happiness" in the Declaration of Independence and it is a large ingredient in the civil liberty of the citizen; LBP-06-13, 63 NRC 547 n.89 (2006); LBP-09-24, 70 NRC 806 n.20 (2009)
- C3, Inc. v. United States*, 4 Cl. Ct. 790 (1984)
sometimes the pendency of a criminal prosecution does not necessitate delaying a parallel civil or administrative proceeding; LBP-06-13, 63 NRC 538 n.42 (2006)

LEGAL CITATIONS INDEX

CASES

- California First Amendment Coalition v. Woodford*, 299 F.3d 868 (9th Cir. 2002)
the First Amendment requires a presumption of openness in civil proceedings; LBP-10-2, 71 NRC 208 n.58 (2010)
- California Trout v. Schaefer*, 58 F.3d 469, 474 (9th Cir. 1995)
concurrent but independent jurisdiction of two federal agencies is addressed; LBP-09-6, 69 NRC 405 (2009)
- California v. Block*, 690 F.2d 753, 761 (9th Cir. 1982)
because there is no current proposal for a deep disposal site, it is reasonable to defer more detailed analysis until a concrete proposal crystallizes actual site data, allowing for a comprehensive, site-specific evaluation of probable impacts; CLI-06-15, 63 NRC 706 (2006)
- California v. Block*, 690 F.2d 753, 767 (9th Cir. 1982)
an agency is not obligated to consider unreasonable alternatives, including those whose effect cannot be reasonably ascertained, and whose implementation is deemed remote and speculative; LBP-07-9, 65 NRC 607 (2007)
- California v. Federal Energy Regulatory Commission*, 329 F.3d 700, 707 (9th Cir. 2003)
publication in the *Federal Register* is legally sufficient notice to all interested or affected persons regardless of actual knowledge or hardship resulting from ignorance, except those who are legally entitled to personal notice; LBP-09-20, 70 NRC 570 (2009)
- California Valley Miwok Tribe v. United States*, 515 F.3d 1262, 1264 (D.C. Cir. 2008)
federal recognition by the Bureau of Indian Affairs is a formal political act confirming a tribe's existence as a distinct political society and institutionalizing the government-to-government relationship between the tribe and the federal government; LBP-09-13, 70 NRC 185 n.30 (2009)
- Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-09-20, 70 NRC 911, 915 (2009)
a proximity presumption applies when an individual or organization, or an individual authorizing an organization to represent his or her interests as the organization seeks to establish its representational standing, resides within 50 miles of the proposed facility or has frequent contacts with the area affected by the proposed facility; LBP-10-7, 71 NRC 410-11 (2010)
in proceedings involving the possible construction or operation of a nuclear power reactor, including proceedings regarding the extension of a construction permit, proximity to the proposed facility has been considered sufficient to establish standing; LBP-10-7, 71 NRC 410 (2010)
- Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-09-20, 70 NRC 911, 915-16 (2009)
in proceedings involving the possible construction or operation of a nuclear power reactor, proximity to the proposed facility has been considered sufficient to establish standing; LBP-10-1, 71 NRC 176 (2010)
the proximity presumption applies when petitioners live within 50 miles of the proposed facility or when they have frequent contacts with the area affected by the proposed facility; LBP-10-1, 71 NRC 176 (2010)
the Commission recognizes a 50-mile proximity presumption to establish standing in proceedings concerning nuclear power reactor construction and operating licenses; LBP-09-28, 70 NRC 1024 (2009)
- Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-09-20, 70 NRC 911, 915-17 (2009)
in proceedings involving nuclear power reactors, petitioner is presumed to have standing to intervene without the need to specifically plead injury, causation, and redressability if petitioner lives within 50 miles of the proposed facility; LBP-10-15, 72 NRC 276 (2010)
- Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-09-20, 70 NRC 911, 917 (2009)
there is no conflict between the basic requirements for standing, as applied in the federal courts, and the NRC's proximity presumption; CLI-09-22, 70 NRC 933 (2009)
- Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-09-20, 70 NRC 911, 923 (2009)
the licensing board did not commit reversible error by admitting a contention based on low-level radioactive waste storage duration because the NRC Staff itself had issued a Request for Additional

LEGAL CITATIONS INDEX

CASES

- Information on this very issue and thus this conflicted with Staff's argument that the issue is immaterial to the findings that must be made on the application; LBP-09-27, 70 NRC 1015 n.123 (2009)
- Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-09-20, 70 NRC 911, 923-24 (2009)
- a well-pleaded environmental contention concerning the effects of long-term onsite management of low-level radioactive waste is admissible; CLI-10-2, 71 NRC 4 (2010)
- applicants argument that proposed contentions are necessarily inadmissible because they are virtually identical to those rejected by the Commission after sua sponte review is not persuasive; CLI-10-2, 71 NRC 44 n.85 (2010)
- Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), LBP-09-4, 69 NRC 170, 181-86 (2009)
- under the proximity presumption, petitioner in an operating license proceeding who lives within 50 miles of a nuclear power reactor is presumed to have standing without the need specifically to plead injury, causation, and redressability; LBP-09-26, 70 NRC 947 (2009)
- Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), LBP-09-4, 69 NRC 170, 183 (2009)
- a board is not at liberty to abandon the Commission's 50-mile proximity presumption; LBP-09-16, 70 NRC 242 (2009)
- NRC's proximity presumption does not disregard contemporaneous judicial concepts of standing, but rather the Commission applied its expertise to determine that persons living within a 50-mile radius of a nuclear reactor face a realistic threat of harm if a release of radioactive material were to occur from the facility; LBP-09-16, 70 NRC 242 (2009)
- the nontrivial increased risk to persons living within a 50-mile radius of a nuclear reactor constitutes injury-in-fact, is traceable to the challenged action, and is likely to be redressed by a favorable decision that either denies a license or mandates compliance with legal requirements that protect the interests of the petitioners; LBP-09-16, 70 NRC 242 (2009)
- Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), LBP-09-4, 69 NRC 170, 187 (2009)
- favorable rulings on petitioners' NEPA contentions would ensure that procedures are observed that require adequate analysis of potential impacts to their members' health and safety and to the environment where the members reside; LBP-09-16, 70 NRC 243 (2009)
- Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), LBP-09-4, 69 NRC 170, 194-95 (2009)
- the requirement under 10 C.F.R. 2.309(f)(1)(v) that contentions be supported by alleged facts or expert opinion generally is fulfilled when the sponsor of an otherwise acceptable contention provides a brief recitation of the factors underlying the contention or references to documents and text that provide such reasons; LBP-10-14, 72 NRC 129 (2010)
- Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), LBP-09-4, 69 NRC 170, 199 (2009)
- a board can only decide whether or not a current funding proposal fulfills NRC requirements; LBP-09-18, 70 NRC 422 (2009)
- it is beyond the authority of a board to say which method applicant must use to fulfill the decommissioning funding assurance requirement; LBP-09-18, 70 NRC 422 (2009)
- Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), LBP-09-4, 69 NRC 170, 200 (2009)
- it is beyond licensing board authority to require applicant to choose a particular method of decommissioning funding; LBP-09-15, 70 NRC 207 (2009)
- Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), LBP-09-4, 69 NRC 170, 202 (2009)
- although applicant's description of existing water quality conditions did not separately evaluate the contributions of specific sources, it nonetheless formed an environmental baseline against which to measure the cumulative impact of the proposed new reactor; LBP-09-16, 70 NRC 247 (2009)

LEGAL CITATIONS INDEX

CASES

- Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), LBP-09-4, 69 NRC 170, 203-05 (2009)
the environmental baseline reflects the effects of all currently existing pollution sources in the relevant watershed, including contributions of all nuclear power plants, and petitioners failed to provide information indicating that this aggregate analysis was insufficient under NEPA; LBP-09-16, 70 NRC 248 (2009)
- Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), LBP-09-4, 69 NRC 170, 208 (2009)
the NEPA requirement to consider alternatives to a proposed action is governed by the rule of reason applicable to all NEPA-required alternatives analyses and does not extend to events that are remote and speculative; LBP-09-26, 70 NRC 970 (2009)
- Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), LBP-09-4, 69 NRC 170, 209 (2009)
one in a million per year is the threshold above which accident scenarios should be evaluated for NEPA consideration; LBP-10-10, 71 NRC 556 (2010)
- Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), LBP-09-4, 69 NRC 170, 217-18 (2009)
a decision may be referred to the Commission if it raises significant and novel legal or policy issues, and resolution of the issues would materially advance the orderly disposition of the proceeding; LBP-09-18, 70 NRC 407 (2009)
an attack on the Commission's proximity presumption is rejected; LBP-09-18, 70 NRC 397 (2009)
contentions challenging the Waste Confidence Rule are inadmissible; LBP-09-17, 70 NRC 337 (2009)
contentions on the environmental impacts of spent fuel storage are inadmissible; LBP-09-18, 70 NRC 406 (2009)
- Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), LBP-09-4, 69 NRC 170, 220-21 (2009)
boards have authority to narrow low-level radioactive waste contentions; LBP-09-16, 70 NRC 253 (2009)
greater-than-Class-C waste is the responsibility of the federal government and is not affected by the partial closure of the Barnwell facility; CLI-10-2, 71 NRC 48 n.110 (2010)
- Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), LBP-09-4, 69 NRC 170, 220-31 (2009)
contentions that concern greater-than-Class-C waste, seek to require a change to the decommissioning cost estimate, or constitute a challenge to Table S-3 of 10 C.F.R. 51.51 are inadmissible; LBP-09-16, 70 NRC 253 (2009)
- Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), LBP-09-4, 69 NRC 170, 221 (2009)
only the management of Class B and Class C wastes is properly the subject of a contention in a combined license proceeding; LBP-09-16, 70 NRC 254 (2009)
Part 61 does not apply to onsite facilities where the licensee intends to store its own low-level radioactive waste; LBP-09-10, 70 NRC 121 n.57 (2009)
- Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), LBP-09-4, 69 NRC 170, 222 (2009)
although boards are not required to narrow contentions to make them acceptable, they may do so; LBP-09-25, 70 NRC 875 n.37 (2009)
arguments premised on the prediction that someday a nuclear plant site will become a permanent storage or disposal facility for low-level radioactive waste are too speculative and therefore not material to the findings the NRC must make to support the action that is involved in the present proceeding; LBP-09-16, 70 NRC 255 (2009)
- Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), LBP-09-4, 69 NRC 170, 224-25 (2009)
an application's lack of consideration of any alternative to offsite disposal of low-level radioactive waste is a material issue for litigation; LBP-09-18, 70 NRC 424 (2009)

LEGAL CITATIONS INDEX

CASES

- Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), LBP-09-4, 69 NRC 170, 226-27 (2009)
low-level radioactive waste disposal contentions have been admitted when that issue was not sufficiently discussed in the applications and there was no mention of the closure of the Barnwell facility; LBP-09-18, 70 NRC 410-11 (2009)
- Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), LBP-09-15, 70 NRC 198, 214-19 (2009)
at the time the combined license application is submitted, applicant must specify the method for decommissioning funding assurance that it proposes to use and must show that the method satisfies the applicable financial test; LBP-09-18, 70 NRC 422 (2009)
- Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), LBP-09-15, 70 NRC 198, 218-19 (2009)
at the time the combined license application is submitted, it must identify the method of decommissioning funding assurance that the applicant proposes to use and to show that the method complies with any applicable financial test; LBP-09-18, 70 NRC 418 n.215 (2009)
- Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), LBP-09-15, 70 NRC 198, 223 n.83 (2009)
the role of a licensing board is to decide whether an applicant has supplied the requisite information to the NRC, and whether the petitioners have identified any defect in that information; LBP-09-18, 70 NRC 419 (2009)
- Calvert Cliffs' Coordinating Committee, Inc. v. AEC*, 449 F.2d 1109 (D.C. Cir. 1971)
NRC must apply no lesser standard to its environmental review than it does to its safety review; LBP-06-28, 64 NRC 491 n.104 (2006)
- Calvert Cliffs' Coordinating Committee, Inc. v. AEC*, 449 F.2d 1109, 1112 (D.C. Cir. 1971)
the greatest importance of NEPA may be that it requires the Commission and other agencies to consider environmental issues just as they consider other matters within their mandate; LBP-06-28, 64 NRC 484 n.73 (2006)
- Calvert Cliffs' Coordinating Committee, Inc. v. AEC*, 449 F.2d 1109, 1118 (D.C. Cir. 1971)
in uncontested hearings, the board need not necessarily go over the same ground covered in the detailed environmental impact statement, but it must at least examine the statement carefully to determine whether the review by NRC staff has been adequate and it must independently consider the final balance among conflicting factors that is struck in the Staff's recommendation; LBP-06-17, 63 NRC 825 (2006); LBP-06-28, 64 NRC 484 n.73 (2006)
in uncontested hearings, the board shall determine whether the application and the record of the proceeding contain sufficient information, and the review of the application by NRC staff has been adequate, to support affirmative findings on various non-environmental factors; LBP-06-17, 63 NRC 825 (2006)
NEPA requires licensing boards to independently review NRC Staff environmental analyses and independently consider the final balance among conflicting factors, regardless of whether NEPA issues are raised by an intervenor; LBP-07-9, 65 NRC 558, 615, 616 (2007)
- Calvert Cliffs' Coordinating Committee, Inc. v. AEC*, 449 F.2d 1109, 1123 (D.C. Cir. 1971)
abdicated water quality effects entirely to other agencies' certifications subverts the special purpose of NEPA; LBP-09-16, 70 NRC 278 (2009)
NRC is required to evaluate and balance both the claimed benefits and the environmental costs of a proposed new reactor; LBP-09-16, 70 NRC 301 (2009)
- Campbell v. Eastland*, 307 F.2d 478, 487 (5th Cir. 1962), *cert. denied*, 375 U.S. 95 (1963)
a judge should be sensitive to the difference in the rules of discovery in civil and criminal cases and that separate policies and objectives support these different rules; LBP-06-13, 63 NRC 539 n.48 (2006)
a litigant should not be allowed to make use of the liberal discovery procedures applicable to a civil suit as a dodge to avoid the restrictions on criminal discovery and thereby obtain documents he would not otherwise be entitled to for use in his criminal suit; CLI-06-12, 63 NRC 503 n.27 (2006)
the statement that "administrative policy gives priority to the public interest in law enforcement" has occasionally been cited for the proposition that a stay of the civil proceeding is always appropriate when there is a parallel criminal proceeding; LBP-06-13, 63 NRC 539 n.50 (2006)

LEGAL CITATIONS INDEX

CASES

- Campbell v. Eastland*, 307 F.2d 478, 487 n.12 (5th Cir. 1962)
there are general factors, traditional justifications, for limitations on criminal discovery, and those include manufacture of evidence; LBP-06-13, 63 NRC 552 n.102 (2006)
- Cappaert v. United States*, 426 U.S. 128, 139 (1976)
when the federal government reserves land, by implication it reserves water rights sufficient to accomplish the purposes of the reservation; LBP-08-24, 68 NRC 743 n.291 (2008)
- Career Education, Inc. v. Department of Education*, 6 F.3d 817, 820 (D.C. Cir. 1993)
the Commission acts as adjudicator and in that light considers the reinstatement of a construction permit afresh, without regard for its earlier views; CLI-10-6, 71 NRC 120 (2010)
- Carolina Power & Light Co.* (H.B. Robinson, Unit 2), ALAB-569, 10 NRC 557, 558 (1979)
although the licensing board conducted an in-depth examination of the plant's thermal discharge and tentatively concluded that the intervenor was right, it delayed issuing its partial initial decision addressing the merits of the intervenor's contention until the EPA had issued its own decision in a parallel case; CLI-07-16, 65 NRC 388 (2007)
- Carolina Power & Light Co.* (H.B. Robinson, Unit 2), ALAB-569, 10 NRC 557, 559 (1979)
even if a licensing board disagrees with EPA on the thermal impact issue, it is nevertheless required by law to consider the EPA's decision as binding; CLI-07-16, 65 NRC 388 (2007)
- Carolina Power & Light Co.* (H.B. Robinson, Unit 2), ALAB-569, 10 NRC 557, 561 (1979)
Congress, in enacting the Clean Water Act, removed the broad responsibility of multiple federal agencies for water quality standards and placed that responsibility solely in the hands of the EPA; CLI-07-16, 65 NRC 388 (2007)
NRC may not undercut EPA by undertaking its own analyses and reaching its own conclusions on water quality issues already decided by EPA; CLI-07-16, 65 NRC 388 (2007)
- Carolina Power & Light Co.* (H.B. Robinson, Unit 2), ALAB-569, 10 NRC 557, 561 n.14 (1979)
NRC abstinence from setting water quality standards is fully consistent with congressional general intent that the Clean Water Act is to be implemented in a way that will avoid needless duplication and unnecessary delays at all levels of government; CLI-07-16, 65 NRC 389 (2007)
- Carolina Power & Light Co.* (H.B. Robinson, Unit 2), ALAB-569, 10 NRC 557, 561-62 (1979)
when water quality decisions have been made by a state pursuant to the Clean Water Act and these decisions are raised in NRC licensing proceedings, the NRC is bound to take EPA's considered decisions at face value; LBP-09-25, 70 NRC 885 (2009)
- Carolina Power & Light Co.* (H.B. Robinson, Unit 2), ALAB-569, 10 NRC 557, 562 (1979)
boards must take state permit determinations at face value and are prohibited from undertaking any independent analysis of the permit's limits; LBP-08-13, 68 NRC 157 (2008)
NRC is required to take EPA's considered decisions at face value; CLI-07-16, 65 NRC 388 (2007)
where a state has assessed the aquatic impacts in approving a plant's cooling system, NRC must take the state's evaluation at face value and may not undercut the state's judgment by undertaking an independent analysis or establishing its own standards; LBP-06-20, 64 NRC 217 (2006)
- Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant), ALAB-837, 23 NRC 525, 546-48 (1986)
deferral of review of board denial of rule waiver petition did not cause irreparable injury; CLI-10-29, 72 NRC 562 (2010)
- Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant), ALAB-837, 23 NRC 525, 547 (1986)
for intervenors to demonstrate that the purpose of the regulation excluding consideration of alternatives and the need for power from the OL phase would not be served, they must make a prima facie showing that the proposed facility is not needed to meet increased energy demand and that it need not be used to displace an equivalent amount of older, less economical capacity; LBP-10-12, 71 NRC 670 (2010)
the OL-stage need-for-power rule is based in part on the fact that at the time the OL application is submitted the vast majority of the environmental disruption would have already occurred and an electric utility would use the new nuclear plant to meet increased energy demand or replace older, less economical generation capacity; LBP-10-12, 71 NRC 670 (2010)
- Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant), ALAB-837, 23 NRC 525, 548 (1986)
to make its prima facie showing, a petition for waiver of the regulation excluding consideration of alternatives and the need for power from the OL phase must establish that all of the applicant's

LEGAL CITATIONS INDEX

CASES

- fossil fuel baseload generation that is less efficient than the facility under consideration has been accounted for; LBP-10-12, 71 NRC 670 (2010)
- Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant), ALAB-843, 24 NRC 200, 204 (1986) arguments that an intervenor fails to adequately develop are treated as waived; LBP-06-19, 64 NRC 76 n.21 (2006)
- Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant), ALAB-852, 24 NRC 532, 544-45 (1986)
- applicant's failure to comply with a guidance document does not demonstrate failure to comply with the relevant regulations; LBP-07-14, 66 NRC 197 (2007)
- NUREGs and regulatory guides serve as guidance, do not prescribe requirements, are not substitutes for regulations, and are not binding authority; LBP-07-6, 65 NRC 440 n.31 (2007)
- Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant), CLI-00-11, 51 NRC 297, 299 (2000) the Commission itself may exercise its discretion to review a licensing board's interlocutory order if the Commission wants to address a novel or important issue; CLI-09-6, 69 NRC 138 (2009)
- the Commission's decision to review a licensing board's interlocutory order stems from its inherent supervisory authority over adjudications and in no way implies that parties have a right to seek interlocutory review on that same ground; CLI-09-6, 69 NRC 138 (2009)
- the Commission's supervisory authority does not constitute grounds for a party's own request for appellate review; CLI-07-1, 65 NRC 6 n.23 (2007)
- Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant), CLI-01-11, 53 NRC 370, 383-86 (2001) NRC's Subpart K process is described; CLI-08-1, 67 NRC 25 (2008)
- Subpart K implements the totally new procedure established under the Nuclear Waste Policy Act for adjudicating spent fuel storage controversies expeditiously; CLI-08-26, 68 NRC 514 (2008)
- the presiding officer is allowed to resolve factual and legal disputes in spent fuel storage controversies, including disagreements between experts, on the basis of a brief discovery period and written submissions and oral argument without a full trial-type evidentiary hearing; CLI-08-26, 68 NRC 514 (2008)
- under Subpart K and the Nuclear Waste Policy Act, the Commission resorts to full evidentiary hearings on spent fuel storage controversies only when necessary for accuracy; CLI-08-26, 68 NRC 514 (2008)
- Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant), CLI-01-11, 53 NRC 370, 384 (2001) summary disposition may be a useful device to eliminate the need for the time and cost of a hearing if the truth on a contested issue is clear and there is no genuine issue on any material fact; LBP-07-12, 66 NRC 127 (2007)
- Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant), CLI-01-11, 53 NRC 370, 386 & n.6 (2001), *petition for review denied, Orange County v. NRC*, 47 Fed. App'x 1, 2002 WL 31098379 (D.C. Cir. 2002)
- licensing board findings of fact that turn on witness credibility receive the Commission's highest deference on appeal; CLI-10-23, 72 NRC 225 n.64 (2010)
- Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant), CLI-01-7, 53 NRC 113, 117-18 (2001) only the Commission on its own initiative may review Staff's final no significant hazards consideration determination; LBP-08-20, 68 NRC 551 n.4 (2008)
- Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant), CLI-01-7, 53 NRC 113, 118 (2001) the Commission has inherent discretionary supervisory authority over the NRC Staff to stay the Staff's issuance of a power uprate amendment; CLI-06-8, 63 NRC 237 (2006)
- Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant), CLI-01-11, 53 NRC 370, 393 (2001) an attempt to circumvent page-limit rules by incorporating documents by reference could be grounds for sanctions; CLI-10-9, 71 NRC 278 n.205 (2010)
- Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant), LBP-99-25, 50 NRC 25 (1999) the proximity presumption was accorded to an interested county whose border was 17 miles from a facility that wanted to increase its spent fuel storage capacity; LBP-07-14, 66 NRC 183 (2007)
- Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant), LBP-99-25, 50 NRC 25, 29-31 (1999) as a foundation for establishing standing, licensing board precedents support the application of a similar proximity radius in cases involving large amounts of spent nuclear fuel; LBP-07-14, 66 NRC 187 (2007)

LEGAL CITATIONS INDEX

CASES

- Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant), LBP-99-25, 50 NRC 25, 31 (1999)
petitioners are not required to demonstrate their asserted injury with certainty at the contention admission stage, or to provide extensive technical studies in support of their standing argument; LBP-07-14, 66 NRC 188 (2007); LBP-08-24, 68 NRC 708 (2008); LBP-10-16, 72 NRC 388 (2010)
- Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant), LBP-00-19, 52 NRC 85 (2000), *aff'd*, CLI-01-11, 53 NRC 370 (2001)
risks and effects of high-density racking of spent fuel in pools have been studied and debated since 1979 and have been the subject of substantial litigation; LBP-06-20, 64 NRC 160 (2006)
- Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant), LBP-01-9, 53 NRC 239, 250 (2001)
although the Federal Rules of Evidence are not mandated for NRC adjudicatory proceedings, the Commission has endorsed the use of the FRE as guidance for the boards with the express proviso that boards must apply the Part 2 rules with greater flexibility than the FRE; LBP-12-23, 72 NRC 705 (2010)
- Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant, Unit 1), LBP-07-11, 66 NRC 41, 52 (2007)
an individual may satisfy standing requirements by demonstrating that his or her residence or activities are within the geographical area that might be affected by an accidental release of fission products, and in proceedings involving nuclear power plants this area has been defined as being within a 50-mile radius of such a plant; LBP-09-4, 69 NRC 178 (2009)
for organizations to demonstrate standing to intervene, they must allege that the challenged action will cause a cognizable injury to the organization's interests or to the interests of its members; LBP-08-13, 68 NRC 60 (2008)
the proximity presumption has been found to arise in a license renewal proceeding if the petitioner lives within a specific distance from the power reactor; LBP-08-26, 68 NRC 911 (2008)
when seeking to intervene as the representative for its members, an organization must identify a member by name and address, show how that member would be affected by the licensing action, and demonstrate that the member has authorized the organization to request a hearing on his or her behalf; LBP-08-13, 68 NRC 60 (2008)
if an organization seeks to intervene as a representative of its members, it must identify at least one member by name and address, show that member would have standing in his or her own right, and demonstrate that the member has authorized the organization to intervene on his or her behalf; LBP-09-26, 70 NRC 947 (2009)
to demonstrate standing, an organization seeking to intervene in a proceeding must allege that the challenged action will cause a cognizable injury to the organization's interests or to the interests of its members; LBP-09-26, 70 NRC 947 (2009)
under the proximity presumption, petitioner is presumed to have standing to intervene without the need to specifically plead injury, causation, and redressability if petitioner lives within 50 miles of the proposed facility; LBP-09-18, 70 NRC 395 (2009)
- Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant, Unit 1), LBP-07-11, 66 NRC 41, 57-58 (2007)
petitioner may not challenge applicable statutory requirements as part of an administrative adjudication; CLI-09-14, 69 NRC 605 (2009)
- Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant, Units 1 and 2), LBP-82-119A, 16 NRC 2069, 2073 (1982)
the special circumstances necessary to obtain waiver of a rule must be set forth with particularity and supported by an affidavit or other proof; LBP-10-9, 71 NRC 525 n.147 (2010)
- Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant, Units 1 and 2), LBP-83-27A, 17 NRC 971, 978-79 (1983)
in response to claims of attorney-client and attorney work product privilege, the identity of an expert retained by a party is discoverable; LBP-06-10, 63 NRC 335 n.68 (2006)
- Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant, Units 1, 2, 3, and 4), CLI-79-5, 9 NRC 607, 609 (1979)
inherent in any forecast of future electric power demands is a substantial margin of uncertainty; LBP-10-24, 72 NRC 748, 749 (2010)

LEGAL CITATIONS INDEX

CASES

- Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant, Units 1, 2, 3, and 4), CLI-79-5, 9 NRC 607, 609-10 (1979)
a possible 1-year slip in construction schedule is clearly within the margin of uncertainty and, therefore, in the context of relitigating an issue, is unlikely to affect the need for power; LBP-10-6, 71 NRC 382 n.96 (2010)
long-range forecasts for future electric power demands are especially uncertain in that they are affected by trends in usage, increasing rates, demographic changes, industrial growth or decline, and the general state of the economy, among others; LBP-10-24, 72 NRC 776 (2010)
NRC's longstanding approach to electric power demand forecasting has emphasized historical, conservative planning to ensure electricity generating capacity will be available to meet reasonably expected needs; LBP-08-16, 68 NRC 406 (2008)
- Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant, Units 1, 2, 3, and 4), CLI-80-12, 11 NRC 514, 516 (1980)
licensing boards are not to second-guess how the Staff performs its functions; CLI-08-23, 68 NRC 473-74 (2008); LBP-07-11, 66 NRC 77 n.154 (2007); LBP-10-17, 72 NRC 513 (2010)
- Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant, Units 1, 2, 3, and 4), CLI-80-12, 11 NRC 514, 516-17 (1980)
absent delegated authority, our licensing boards lack authority to direct the Staff's nonadjudicatory actions; CLI-09-2, 69 NRC 63 (2009)
as an exercise of the Commission's inherent supervisory authority over adjudicatory proceedings, the Commission directs the board to provide the Commission with a status report outlining the board's timetable for resolving all pending matters; CLI-10-18, 72 NRC 96 (2010)
the Commission has inherent supervisory authority over licensing proceedings; CLI-09-7, 69 NRC 284 (2009)
- Carstens v. NRC*, 742 F.2d 1546, 1558-59 (D.C. Cir. 1984)
NRC was reasonable in not providing a quantifiable definition for the key regulatory phrase "conservative manner," given that relevant judgment calls did not lend themselves to rigid statistical definitions; CLI-10-14, 71 NRC 466 n.89 (2010)
- CBS Corp.* (Waltz Mill Facility), CLI-07-15, 65 NRC 221, 235 (2007)
until a court of competent jurisdiction determines that a regional compact cannot exclude foreign waste from a facility, the compact itself indicates to the Commission that it chooses not to exercise such authority, or some other basis upon which to address the disposal question arises, it would be inefficient to devote further adjudicatory and NRC Staff resources to an import/export license proceeding; CLI-08-24, 68 NRC 495 (2008)
- Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986)
the proponent of summary disposition bears the initial burden of informing the tribunal of the basis for its motion and identifying those portions of the record that demonstrate the absence of a genuine issue of material fact; LBP-08-7, 67 NRC 371 (2008)
- Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986)
the opponent of summary disposition cannot rest on the mere allegations or denials of a pleading, but must go beyond the pleadings and by the party's own affidavits, or by the depositions, answers to interrogatories, and admissions on file, designate specific facts showing that there is a genuine issue for trial; LBP-08-7, 67 NRC 372 (2008)
- Center for Biological Diversity v. National Highway Traffic Safety Administration*, 538 F.3d 1172, 1213 (9th Cir. 2008)
an agency may be excused from complying with NEPA where it has no discretion to prevent, or to refuse to take, the action involved; LBP-09-6, 69 NRC 405 (2009)
- Center for Biological Diversity v. National Highway Traffic Safety Administration*, 538 F.3d 1172, 1217-18 (9th Cir. 2008)
the agency must give full and meaningful consideration to all reasonable alternatives under NEPA; CLI-10-18, 72 NRC 75 (2010)

LEGAL CITATIONS INDEX

CASES

- Center for National Security Studies v. U.S. Department of Justice*, 331 F.3d 918, 928 (D.C. Cir. 2003), *cert. denied*, 540 U.S. 1104 (D.C. Cir. 2003)
in reviewing the validity of a withholding under any FOIA exemption, deference must be accorded to the executive in its area of expertise so long as the government's declarations raise legitimate concerns that disclosure would impair national security; LBP-08-7, 67 NRC 376 (2008)
- Central Delta Water Agency v. United States*, 306 F.3d 938, 947-48 (9th Cir. 2002)
federal courts of appeal have failed to reach a consensus on the question whether a risk of future injury must exceed a numerical threshold; LBP-09-4, 69 NRC 184 (2009)
- CFC Logistics, Inc.* (Cobalt-60 Irradiator), LBP-03-20, 58 NRC 311, 319 (2003)
presumption of standing based on geographical proximity may be applied in nuclear materials licensing cases only when the activity at issue involves a significant source of radioactivity producing an obvious potential for offsite consequences; LBP-08-6, 67 NRC 272 (2008)
- CFC Logistics, Inc.* (Cobalt-60 Irradiator), LBP-03-20, 58 NRC 311, 323-33 (2003)
determinations of admissibility of "areas of concern" based upon a standard of "germaneness" is no longer applicable in NRC proceedings; LBP-06-12, 63 NRC 406 (2006)
- CFC Logistics, Inc.* (Cobalt-60 Irradiator), LBP-03-20, 58 NRC 311, 327 (2003)
the regulations in Part 36 set the standards that must be applied to an application, but they do not embody a determination that the facility meets those standards; LBP-06-12, 63 NRC 406 (2006)
- CFC Logistics*, LBP-05-1, 61 NRC 45, 50 n.8 (2005)
the hearing process is a vehicle to permit the public to seek resolution of their concerns about the health, safety, and environmental impacts of a proposed licensing action, and that process operates most fairly and effectively when those who seek to use it have the benefit of accurate information regarding the agency's licensing review system and its possible outcomes; LBP-10-2, 71 NRC 208 (2010)
- Chapman v. United States*, 500 U.S. 453, 462 (1991)
to interpret terms not expressly defined in a regulation or statute, the board may look to the ordinary meaning of the term; LBP-08-15, 68 NRC 305 (2008)
- Cheney v. U.S. District Court for District of Columbia*, 542 U.S. 367, 384 (2004)
courts often engage in fact-specific balancing to determine the applicability, strength, and persuasiveness of qualified privileges, examining the nature of the proceeding; LBP-06-25, 64 NRC 377 (2006)
- Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-43 (1984)
if the intent of Congress is clear, the court as well as the agency must give effect to the unambiguously expressed intent of Congress; LBP-10-11, 71 NRC 626 (2010)
- Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 844 (1984)
courts generally accord considerable weight to an agency's construction of the statutes it administers; CLI-10-13, 71 NRC 389 n.9 (2010)
- Chevron U.S.A. v. United States*, 80 Fed. Cl. 340, 356 (2008)
to overcome deliberative process privilege, petitioners must show that their need for the information outweighs potential harm to the agency from that disclosure; CLI-08-23, 68 NRC 483 n.103 (2008)
- Chicago Tribune Co. v. Bridgestone/Firestone, Inc.*, 263 F.3d 1304 (11th Cir. 2001)
the First Amendment requires a presumption of openness in civil proceedings; LBP-10-2, 71 NRC 208 n.58 (2010)
- Christensen v. Harris County*, 529 U.S. 576, 587 (2000)
NRC does not owe deference to DOE where DOE's interpretation of NRC's own responsibilities is reflected in nothing more formal than a motion before the board and not, for example, in a formal agency adjudication or notice-and-comment rulemaking; LBP-10-11, 71 NRC 626 (2010)
- Church of Scientology v. Cazares*, 638 F.2d 1272, 1276-80 (5th Cir. 1981)
criteria for representational standing are applied to a church; CLI-08-19, 68 NRC 265 n.48 (2008)
- Cincinnati Gas and Electric Co.* (William H. Zimmer Nuclear Power Station, Unit 1), LBP-83-58, 18 NRC 640, 663 (1983)
good cause to excuse the late-filing of a contention is the most important factor; CLI-08-1, 67 NRC 6 (2008); CLI-08-8, 67 NRC 197 n.26 (2008)

LEGAL CITATIONS INDEX

CASES

- Cincinnati Gas and Electric Co.* (Wm. H. Zimmer Nuclear Power Station), ALAB-595, 11 NRC 860, 863 (1980)
the appeal board declined to entertain appeals by license applicants challenging partial board rulings; CLI-09-18, 70 NRC 861 n.10 (2009)
- Cities of Statesville v. AEC*, 441 F.2d 962, 976-77 (D.C. Cir. 1969)
NRC has broad discretion to provide hearings or permit interventions in cases where these avenues of public participation would not be available as a matter of right; CLI-06-16, 63 NRC 715 (2006)
- Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190 (D.C. Cir. 1991)
a reviewing agency should take into account the applicant's goals for the project; LBP-09-2, 69 NRC 109 n.86 (2009)
- Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 195 (D.C. Cir.), *cert. denied*, 502 U.S. 994 (1991)
a reviewing agency determines whether an alternative is appropriate by looking at the objectives (i.e., purpose and need) of a project sponsor; LBP-09-2, 69 NRC 108 n.84 (2009)
in the context of alternatives analyses, agencies need only discuss those alternatives that are reasonable and will bring about the ends of the proposed action; CLI-06-10, 63 NRC 469 (2006); LBP-10-6, 71 NRC 363 (2010)
in the context of appropriately defining terms and reconciling concepts such as "reasonable," "feasible," and "reasonably available," a problem for agencies is that even the term "alternatives" is not self-defining; LBP-10-10, 71 NRC 584 (2010)
NRC need only consider a range of alternatives in its environmental impact statement that are technologically feasible and economically practicable alternatives for producing baseload power; LBP-10-10, 71 NRC 581 (2010)
when the purpose of a project is to accomplish one thing, it makes no sense to consider the alternative ways by which another thing might be achieved; CLI-06-10, 63 NRC 469 (2006); LBP-06-19, 64 NRC 87 (2006)
- Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 196 (D.C. Cir.), *cert. denied*, 502 U.S. 994 (1991)
acceptance of applicant's undue narrowing of site options in order to predetermine the outcome of the alternative site review would render the NEPA alternative analysis a foreordained formality; CLI-07-27, 66 NRC 227 (2007)
an agency may not define the objectives of its action in terms so unreasonably narrow that only one alternative from among the environmentally benign ones in the agency's power would accomplish the goals of the agency's action, and the EIS would become a foreordained formality; LBP-07-9, 65 NRC 608 n.96, 637, 638 (2007)
the goal of the applicant was very narrow, i.e., to launch a new cargo hub thereby helping to fuel the local economy, and thus the NEPA alternative sites analysis did not need to include nonlocal sites; LBP-07-9, 65 NRC 636 (2007)
when reviewing a license application filed by a private applicant, NRC should take into account the needs and goals of the parties involved in the application; CLI-06-10, 63 NRC 468 (2006)
- Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 197 (D.C. Cir. 1991)
if issuing a license involves oversight of a private project rather than a federally sponsored project, the agency is entitled to give the applicant's preferences substantial weight when considering project design alternatives; LBP-06-8, 63 NRC 259 (2006); LBP-10-14, 72 NRC 110 (2010)
when a federal agency acts, not as a proprietor, but to approve a project being sponsored by a local government or private applicant, the federal agency is necessarily more limited; CLI-06-10, 63 NRC 468 (2006)
- Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 197 n.6 (D.C. Cir. 1991)
federal agencies are not required under the National Environmental Policy Act to canvas business choices, having neither the expertise nor the proper incentive structure to do so; LBP-09-2, 69 NRC 111 (2009)
- Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 199 (D.C. Cir.), *cert. denied*, 502 U.S. 994 (1991)
a project's goal is to be determined by the applicant, not the agency; LBP-07-9, 65 NRC 607 (2007)
an agency cannot redefine the applicant's goals, and the EIS alternatives analysis should be based around the applicant's goals, including its economic goals; LBP-09-17, 70 NRC 379 (2009)

LEGAL CITATIONS INDEX

CASES

- an agency cannot redefine the goals of a proposal but instead must evaluate alternative ways of achieving its goals, shaped by the application at issue and by the function that the agency plays in the decisional process; LBP-09-2, 69 NRC 109 n.86 (2009); LBP-10-6, 71 NRC 363 n.37 (2010)
- applicant may not define the objectives of its action in terms so unreasonably narrow that only one alternative would accomplish the applicant's goals, because this would make the agency's EIS alternatives analysis a foreordained formality; LBP-09-10, 70 NRC 128 (2009); LBP-09-17, 70 NRC 379 (2009)
- goals of the project's sponsor are given substantial weight in determining whether an alternative is reasonable, and an agency cannot redefine the applicant's goals; LBP-09-10, 70 NRC 127 (2009); LBP-09-17, 70 NRC 379 (2009)
- in considering alternatives under NEPA, an agency must take into account the needs and goals of the parties involved in the application; LBP-10-10, 71 NRC 598 n.345 (2010)
- project goals are to be determined by the applicant, not the agency; CLI-10-18, 72 NRC 78-79 (2010)
- Citizens Association for Sound Energy v. NRC*, 821 F.2d 725, 730 (D.C. Cir. 1987)
- administrative regularity in the regulatory process is assumed, and review of the operating license application takes place independently of that associated with plant construction; CLI-10-29, 72 NRC 562 (2010)
- Citizens Association for Sound Energy v. NRC*, 821 F.2d 725, 731 (D.C. Cir. 1987)
- NRC's broad discretion under the Atomic Energy Act was confirmed where the Commissions decided to extend an already-expired construction permit; CLI-10-6, 71 NRC 122 (2010)
- Citizens Awareness Network, Inc. v. NRC*, 59 F.3d 284 (1st Cir. 1995)
- a change to agency policy providing substantive guidance on its regulations requires compliance with the notice-and-comment requirements of the Atomic Energy Act; CLI-10-6, 71 NRC 133 (2010)
- Citizens Awareness Network, Inc. v. NRC*, 391 F.3d 338 (1st Cir. 2004)
- NRC's new contention admission procedures comply with the relevant provisions of the Administrative Procedure Act and the Commission has furnished an adequate explanation for the changes; LBP-07-4, 65 NRC 303 n.96 (2007)
- Citizens Awareness Network, Inc. v. NRC*, 391 F.3d 338, 343 (1st Cir. 2004)
- NRC's procedures for filing contentions comply with the relevant provisions of the Administrative Procedure Act and the Commission has furnished an adequate explanation for its changes; LBP-06-23, 64 NRC 273 n.45.; LBP-06-23, 64 NRC 352 n.6 (2006)
- Citizens Awareness Network, Inc. v. NRC*, 391 F.3d 338, 343, 351 (1st Cir. 2004)
- cross-examination is available under Subpart L whenever it is required for a full and fair adjudication of the facts; LBP-07-4, 65 NRC 303 n.96 (2007)
- Citizens Awareness Network, Inc. v. NRC*, 391 F.3d 338, 343, 351, 355 (1st Cir. 2004)
- the new contention admission procedures comply with the relevant provisions of the federal Administrative Procedure Act and the Commission has furnished an adequate explanation for the changes; LBP-07-11, 66 NRC 56 (2007); LBP-08-6, 67 NRC 291 n.255 (2008)
- Citizens Awareness Network, Inc. v. NRC*, 391 F.3d 338, 344-45, 350 (1st Cir. 2004)
- in a Subpart L proceeding, mandatory disclosure is the only form of discovery allowed, and all other forms are expressly prohibited; LBP-12-23, 72 NRC 702 (2010)
- Citizens Awareness Network, Inc. v. NRC*, 391 F.3d 338, 349, 360-61 (1st Cir. 2004)
- section 51.53(c)(3)(iv) creates an exception to section 51.53(c)(3)(i) in the context of the requirements for ERs and EISs but not with regard to the scope of issues permitted to be raised in contentions in a license renewal adjudication context, absent a waiver; LBP-06-23, 64 NRC 299 n.170 (2006)
- Citizens Awareness Network, Inc. v. NRC*, 391 F.3d 338, 350 (1st Cir. 2004)
- NRC's mandatory disclosure rules for Subpart L proceedings provide meaningful access to information from adverse parties in the form of a system of mandatory disclosure; CLI-09-12, 69 NRC 573 (2009)
- Citizens Awareness Network, Inc. v. NRC*, 391 F.3d 338, 351 (1st Cir. 2004)
- a party is entitled to conduct such cross-examination as may be required for a full and true disclosure of the facts; LBP-09-10, 70 NRC 145 (2009); LBP-09-22, 70 NRC 656 n.34 (2009); LBP-10-15, 72 NRC 343-44 (2010)
- cross-examination is available whenever it is required for a full and fair adjudication of the facts; LBP-06-20, 64 NRC 203 (2006)

LEGAL CITATIONS INDEX

CASES

- cross-examination rules in Subpart L have been upheld and found to meet the requirements of the Administrative Procedure Act; CLI-09-12, 69 NRC 572 (2009)
- the opportunity for cross-examination under 10 C.F.R. 2.1204(b)(3) of Subpart L is equivalent to the opportunity for cross-examination under the Administrative Procedure Act, 5 U.S.C. § 556(d); LBP-06-23, 64 NRC 349 n.477 (2006); LBP-08-6, 67 NRC 343 n.581 (2008)
- Citizens Awareness Network, Inc. v. NRC*, 391 F.3d 338, 351, 352, 355 (1st Cir. 2004)
- under Subpart L, mandatory disclosures replace traditional discovery, and witness questioning is conducted by the presiding officer rather than through cross-examination by the parties' representatives, which complies with requirements of the Administrative Procedure Act; CLI-09-7, 69 NRC 278 (2009)
- Citizens Awareness Network, Inc. v. NRC*, 391 F.3d 338, 354 (1st Cir. 2004)
- it is not arbitrary and capricious for the Commission to leave the determination of whether cross-examination will further the truth-seeking process in a particular proceeding to the discretion of the individual hearing officer, provided cross-examination is allowed in appropriate instances; CLI-09-7, 69 NRC 278 (2009)
- Citizens Bank of Maryland v. Strumpf*, 516 U.S. 16, 20 (1995)
- the language of a regulation should not be construed to destroy itself; LBP-07-6, 65 NRC 464 (2007)
- Citizens Committee to Save Our Canyons v. U.S. Forest Service*, 297 F.3d 1012, 1030 (10th Cir. 2002)
- agencies are not allowed to define objectives of a project so narrowly as to preclude a reasonable consideration of alternatives; CLI-10-18, 72 NRC 79 (2010)
- Citizens for a Better Henderson v. Hodel*, 768 F.2d 1051, 1057 (9th Cir. 1985)
- an agency's environmental review must consider not every possible alternative, but every reasonable alternative; LBP-10-6, 71 NRC 380 n.87 (2010); LBP-10-10, 71 NRC 604 n.3 (2010)
- Citizens for Safe Power v. NRC*, 524 F.2d 1291, 1297 (1975)
- absolute or perfect assurances are not required by the Atomic Energy Act, and neither present technology nor public policy admit of such a standard; LBP-08-22, 68 NRC 647 (2008)
- Citizens for Safe Power v. NRC*, 524 F.2d 1291, 1301 & n.15 (1975)
- neither the Atomic Energy Act nor the regulations require totally risk-free siting; LBP-08-22, 68 NRC 647 (2008)
- City of Angoon v. Hodel*, 803 F.2d 1016, 1021 (9th Cir. 1986)
- as long as the applicant has not set forth an unreasonably narrow objective of its project, NRC adheres to the principle that when the purpose is to accomplish one thing, it makes no sense to consider alternative ways by which another thing might be accomplished; LBP-09-2, 69 NRC 108 n.84 (2009)
- City of Angoon v. Hodel*, 803 F.2d 1016, 1021 (9th Cir. 1986), *cert. denied*, 484 U.S. 870 (1987)
- when the purpose of a proposed action is to accomplish one thing, it makes no sense to consider the alternative ways by which another thing might be achieved; LBP-06-19, 64 NRC 86-87 (2006)
- City of Bridgeton v. Federal Aviation Administration*, 212 F.3d 448, 458 (8th Cir. 2000)
- a rule of reason governs the agency's duty to identify and consider all reasonable alternatives under NEPA; LBP-09-10, 70 NRC 127 (2009); LBP-09-17, 70 NRC 379 (2009)
- federal courts now review the range of alternatives in an environmental impact statement under the rule of reason; LBP-09-21, 70 NRC 626 n.271 (2009)
- the environmental impact statement need not consider an infinite range of alternatives, only reasonable or feasible ones; LBP-07-9, 65 NRC 607 (2007)
- City of Carmel-by-the-Sea v. U.S. Department of Transportation*, 123 F.3d 1142, 1155 (9th Cir. 1997)
- applicant should not be allowed to purposely narrow the scope of its review of alternative sites so as to predetermine the outcome of the agency's environmental review; CLI-07-27, 66 NRC 226 (2007)
- the hard look required by NEPA is subject to a rule of reason, such that it is not necessary to look at every conceivable alternative to the proposed licensing action, but only those that are feasible and reasonably related to the scope and goals of the proposed action; LBP-08-13, 68 NRC 92, 95 (2008); LBP-10-10, 71 NRC 581 (2010)
- the stated goal of a project necessarily dictates the range of reasonable alternatives and an agency cannot define its objectives in unreasonably narrow terms; LBP-07-9, 65 NRC 608 n.96, 637 (2007)

LEGAL CITATIONS INDEX

CASES

- City of Chicago v. Environmental Defense Fund*, 511 U.S. 328, 337 (1994)
it is presumed that Congress knows how to draft an exemption when it wants to; LBP-09-15, 70 NRC 218 n.61 (2009)
- City of Cleveland v. Cleveland Electric Illuminating Co.*, 538 F. Supp. 1257, 1267 (N.D. Ohio 1980)
where expert reports are predicated upon complex data, calculations, and computer simulations that are neither discernible nor deducible from the written reports themselves, disclosure thereof is essential to the effective and efficient examination of the experts at trial; LBP-12-23, 72 NRC 704 n.15 (2010)
- City of Detroit v. Grinnell*, 495 F.2d 448 (2d Cir. 1974)
when evaluating whether a settlement in an enforcement proceeding is in the public interest, four factors are considered; LBP-06-18, 63 NRC 837 (2006)
- City of Grapevine v. U.S. Department of Transportation*, 17 F.3d 1502, 1506 (D.C. Cir.), *cert. denied*, 513 U.S. 1043 (1994)
NRC need only consider a range of alternatives in its environmental impact statement that are technologically feasible and economically practicable for producing baseload power; LBP-10-10, 71 NRC 581 (2010)
the agency's alternative analysis should be based around the applicant's goals, including the applicant's economic goals; LBP-07-9, 65 NRC 608 (2007)
when reviewing a license application filed by a private applicant, NRC may appropriately accord substantial weight to the preferences of the applicant and/or sponsor in the siting and design of the project; CLI-06-10, 63 NRC 468 (2006); LBP-06-8, 63 NRC 259 (2006)
- City of New York v. U.S. Department of Transportation*, 715 F.2d 732, 742 (2d Cir. 1983)
which alternatives are considered reasonable is determined by a project's goals; LBP-07-9, 65 NRC 607 (2007)
- City of New York v. U.S. Department of Transportation*, 715 F.2d 732, 743 (2d Cir. 1983)
an agency will not be permitted to narrow the objective of its action artificially and thereby circumvent the requirement that relevant alternatives be considered; LBP-07-9, 65 NRC 608 n.96, 637 (2007)
applicant should not be allowed to purposely narrow the scope of its review of alternative sites so as to predetermine the outcome of the agency's environmental review; CLI-07-27, 66 NRC 226 (2007)
goals of a project's sponsor are given substantial weight in determining whether a NEPA alternative is reasonable; LBP-09-10, 70 NRC 127 (2009); LBP-09-17, 70 NRC 379 (2009)
- City of Olmsted Falls v. Federal Aviation Administration*, 292 F.3d 261, 274 (D.C. Cir. 2002)
to reopen a record, new information must paint a seriously different picture of the environmental landscape; CLI-06-3, 63 NRC 28 (2005)
- City of Shoreacres v. Waterworth*, 420 F.3d 440, 450 (5th Cir. 2005)
the NEPA alternatives analysis is the heart of the environmental impact statement; LBP-07-9, 65 NRC 603, 631 (2007); LBP-09-10, 70 NRC 126 (2009); LBP-09-17, 70 NRC 378 (2009)
- City of Tenakee Springs v. Clough*, 915 F.2d 1308, 1312 (9th Cir. 1990)
to take the NEPA-required "hard look" at all significant consequences of a project, the consequences of the entire project must be examined at one time and cannot be looked at piecemeal; CLI-06-11, 63 NRC 493 (2006)
- Clarkco Landfill Co. v. Clark City Solid Waste Management District*, 20 F. Supp. 2d 1185, 1191 (S.D. Ohio 1998)
mere experience or background in a relevant technical field does not imply knowledge of the specific disputed facts in a case; CLI-10-22, 72 NRC 206 (2010)
- Clements v. Airport Authority of Washoe County*, 69 F.3d 321, 329-30 (9th Cir. 1995)
a party's failure to advance a collateral estoppel argument does not perforce trigger the waiver principle, thus precluding a tribunal from applying collateral estoppel; LBP-09-24, 70 NRC 822 (2009)
a tribunal retains discretion to overlook waiver in the collateral estoppel context, and its exercise of discretion should be based on a balancing of the relevant public and private interests; LBP-09-24, 70 NRC 822 (2009)

LEGAL CITATIONS INDEX

CASES

- Clements v. Airport Authority of Washoe County*, 69 F.3d 321, 330 (9th Cir. 1995)
the collateral estoppel doctrine promotes the compelling public interest in preserving the acceptability of judicial dispute resolution against the corrosive disrespect that would follow if the same matter were twice litigated to inconsistent results; LBP-09-24, 70 NRC 809-10, 813 n.5, 822 (2009)
- Cleveland Board of Education v. Loudermill*, 470 U.S. 532, 542 (1985)
prior to issuance of the immediately effective enforcement order the accused should be afforded some form of predeprivation hearing; LBP-09-24, 70 NRC 801 n.11, 852 n.45 (2009)
- Cleveland Board of Education v. Loudermill*, 470 U.S. 532, 543 (1985)
when the NRC Staff can, consistent with its duty to protect public health and safety, accord some form of predeprivation hearing, such a course of action is advisable in light of the important private interest in retaining employment and the fact that such a proceeding provides some opportunity for the employee to present his side of the case; LBP-09-24, 70 NRC 801 n.11, 852 n.45 (2009)
- Cleveland Board of Education v. Loudermill*, 470 U.S. 532, 543 n.8 (1985)
providing predeprivation notice and informal hearing permits the employee to give his version of the events and provides a meaningful hedge against erroneous action; LBP-09-24, 70 NRC 801 n.11, 852 n.45 (2009)
- Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Unit 1)*, CLI-93-21, 38 NRC 87, 92 (1993)
in determining whether an individual or organization should be granted party status in a proceeding based on standing "as of right," the agency applies contemporaneous judicial standing concepts; LBP-08-26, 68 NRC 911 (2008)
intervention petitioners must establish a concrete and particularized injury that is fairly traceable to the challenged action, is likely to be redressed by a favorable decision, and is arguably within the zone of interests protected by the governing statute; CLI-09-20, 70 NRC 915 (2009); LBP-06-4, 63 NRC 103 (2006); LBP-07-5, 65 NRC 345 (2007); LBP-07-14, 66 NRC 182 (2007); LBP-08-24, 68 NRC 701 (2008); LBP-09-13, 70 NRC 176 (2009); LBP-09-16, 70 NRC 240 (2009); LBP-10-16, 72 NRC 380 (2010)
when assessing whether an individual or organization has set forth a sufficient interest, the Commission has applied contemporaneous judicial concepts of standing; CLI-09-20, 70 NRC 915 (2009); LBP-09-16, 70 NRC 240 (2009)
where a facility will not be located within an Indian tribes boundaries, the tribe must meet the standing requirements imposed by 10 C.F.R. 2.309(d)(1); LBP-10-16, 72 NRC 390-91 (2010)
- Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Unit 1)*, CLI-93-21, 38 NRC 87, 95 (1993)
in proceedings for construction permits and operating licenses for nuclear power plants, a proximity presumption is recognized in favor of standing for persons who have frequent contacts within a 50-mile radius of the plant; CLI-10-7, 71 NRC 138 (2010); LBP-09-4, 69 NRC 177 (2009)
- Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Unit 1)*, LBP-92-4, 35 NRC 114, 125-26 (1992), *rev'd on other grounds*, CLI-93-21, 38 NRC 87 (1993)
a board in one proceeding is not constrained to follow the rulings of another board absent explicit affirmation by the Commission; LBP-08-24, 68 NRC 703 (2008)
it is better practice for petitioners to present a fully developed argument for standing in each proceeding in which they seek to intervene, especially given that a board in one proceeding is not bound to follow the ruling of another board absent explicit affirmation by the Commission; LBP-07-10, 66 NRC 19 n.9 (2007); LBP-07-14, 66 NRC 189 n.57 (2007)
- Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2)*, ALAB-298, 2 NRC 730, 736-37 (1975)
key safety issues must be resolved in the hearing, not post-hearing by the Staff and applicant; LBP-08-25, 68 NRC 829 (2008)
- Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2)*, ALAB-443, 6 NRC 741, 754 (1977)
no defense to an insufficient showing for summary disposition is required; LBP-08-7, 67 NRC 372 (2008)
where the nonmoving party declines to oppose a motion for summary disposition, the moving party is not perforce entitled to a favorable judgment, but has the burden to show that he is entitled to judgment under established principles; LBP-08-7, 67 NRC 372 (2008)

LEGAL CITATIONS INDEX

CASES

- Cleveland Electric Illuminating Co.* (Perry Nuclear Power Plant, Units 1 and 2), ALAB-675, 15 NRC 1105, 1114 (1982)
added delay and expense occasioned by the admission of a contention, even if erroneous, do not alone warrant interlocutory review; CLI-09-6, 69 NRC 133, 135 (2009)
- Cleveland Electric Illuminating Co.* (Perry Nuclear Power Plant, Units 1 and 2), ALAB-706, 16 NRC 1754, 1758 n.7 (1982)
expenses of any kind do not constitute irreparable injury; CLI-09-6, 69 NRC 135 n.25 (2009)
- Cleveland Electric Illuminating Co.* (Perry Nuclear Power Plant, Units 1 and 2), ALAB-805, 21 NRC 596, 600 & n.16 (1985)
even “truly exceptional” expenses would not meet the irreparable impact standard governing a petition for interlocutory review; CLI-09-6, 69 NRC 134 (2009)
- Cleveland Electric Illuminating Co.* (Perry Nuclear Power Plant, Units 1 and 2), ALAB-841, 24 NRC 64, 99 (1986)
NRC has traditionally read the language “authorized by law” to be the functional equivalent of “not prohibited by law; LBP-07-6, 65 NRC 464 (2007)
- Cleveland Electric Illuminating Co.* (Perry Nuclear Power Plant, Units 1 and 2), CLI-86-7, 23 NRC 233, 235-36 (1986), *aff’d sub nom. Ohio v. NRC*, 814 F.2d 258 (6th Cir. 1987)
the burden of satisfying the reopening requirements is on the movant; CLI-08-28, 68 NRC 675 (2008)
- Cleveland Electric Illuminating Co.* (Perry Nuclear Power Plant, Units 1 and 2), LBP-81-24, 14 NRC 175, 179 (1981)
all six discretionary intervention factors, regardless of the result on the critical first factor, typically are examined; CLI-06-16, 63 NRC 722 n.47 (2006)
- Cleveland Electric Illuminating Co.* (Perry Nuclear Power Plant, Units 1, 2, and 3), LBP-92-4, 35 NRC 114, 125-26 (1992)
merely because a petitioner might have had standing in an earlier proceeding does not automatically grant standing in subsequent proceedings; LBP-09-18, 70 NRC 402 (2009)
- Clinton v. City of New York*, 524 U.S. 417, 431 n.19 (1998)
if one party’s standing has been established, the standing of allied parties is not to be questioned; LBP-10-7, 71 NRC 414 (2010)
- Clyde A. Wilson International Investigations, Inc. v. Travelers Insurance Co.*, 959 F. Supp. 756, 763 (S.D. Tex. 1997)
one who signs a contract is presumed to know its contents; LBP-09-24, 70 NRC 708 n.47 (2009)
- Coalition on Sensible Transportation v. Dole*, 642 F. Supp. 573 (D.D.C. 1986), *aff’d*, 826 F.2d 60 (D.C. Cir. 1987)
NEPA is not violated as long as the agency takes a hard look at alternatives and explains its reasons for rejecting them; LBP-10-10, 71 NRC 584-85 n.288 (2010)
- Cohen v. Brown University*, 101 F.3d 155, 167-68 (1st Cir. 1996), *cert. denied*, 520 U.S. 1186 (1997)
legal determinations made on appeal in a case are controlling precedent, becoming the “law of the case,” for all later decisions in the same case; CLI-06-11, 63 NRC 488 (2006)
- Cohen v. Brown University*, 101 F.3d 155, 168 (1st Cir. 1996), *cert. denied*, 520 U.S. 1186 (1997)
a prior decision should be followed unless it is clearly erroneous and its enforcement would work a manifest injustice, intervening controlling authority makes reconsideration appropriate, or substantially different evidence was adduced at a subsequent trial; CLI-06-11, 63 NRC 489 (2006)
- the “law of the case” doctrine is a flexible concept with exceptions; CLI-06-11, 63 NRC 488 (2006)
- Cohen v. Rice*, 800 F. Supp. 999, 1003 n.2 (D. Me. 1992)
a test for representational standing is applied to unions; CLI-08-19, 68 NRC 264 (2008)
- Colorado Environmental Coalition v. Dombeck*, 185 F.3d 1162, 1172 (10th Cir. 1999)
the test of compliance with NEPA and 40 C.F.R. 1502.22 is whether the analysis constitutes a reasonable, good-faith presentation of the best information available under the circumstances; LBP-10-15, 72 NRC 286 (2010)
- Comanche Nation v. United States*, 2008 WL 4426621 (Sept. 23, 2008) (slip op. at 4)
in initiating the section 106 process, the agency is required to make a reasonable and good-faith effort to identify Indian tribes who may attach religious and cultural significance to historic properties that may be affected by the proposed undertaking and invite them to participate as consulting parties in the section 106 process; LBP-08-24, 68 NRC 722 n.166 (2008)

LEGAL CITATIONS INDEX

CASES

- Combustion Engineering, Inc.* (Hematite Fuel Fabrication Facility), LBP-89-23, 30 NRC 140, 145 (1989)
one does not acquire standing as a consequence of being a member of a legislative tribunal;
LBP-07-5, 65 NRC 351 (2007)
- Comeau v. Rupp*, 810 F. Supp. 1127, 1166 (D. Kan. 1992)
control comprehends the right, authority, or ability to obtain the documents; LBP-12-23, 72 NRC 708
n.23 (2010)
- Commissioner of Internal Revenue v. Sunnen*, 333 U.S. 591, 597 (1948)
the collateral estoppel doctrine is grounded on considerations of economy of judicial time and the
public policy favoring the establishment of certainty in legal relations; LBP-09-24, 70 NRC 809, 813
n.5 (2009)
- Commonwealth Edison Co.* (Braidwood Nuclear Power Station, Units 1 and 2), CLI-86-8, 23 NRC 241, 244
(1986)
decisions on nontimely filings require a balancing of the eight factors set forth in 10 C.F.R.
2.309(c)(1), the first of which, good cause for failure to file on time, is the most important;
CLI-09-7, 69 NRC 262 (2009)
good cause for the failure to file on time is the most important of the late-filing factors; CLI-08-1, 67
NRC 6 (2008); CLI-08-8, 67 NRC 197 n.26 (2008); LBP-07-14, 66 NRC 191 n.64 (2007);
LBP-09-26, 70 NRC 949 (2009)
if good cause is not shown for late-filing of a contention under the pre-2004 rules, petitioner must
make a compelling showing on the four remaining factors; CLI-08-1, 67 NRC 6 (2008); CLI-08-8,
67 NRC 197-98 (2008); LBP-10-1, 71 NRC 181 (2010)
- Commonwealth Edison Co.* (Braidwood Nuclear Power Station, Units 1 and 2), CLI-86-8, 23 NRC 241,
244-45 (1986)
factors (v) and (vi) of 10 C.F.R. 2.309(c) generally are given less weight than factors (vii) and (viii);
LBP-10-1, 71 NRC 181 (2010)
- Commonwealth Edison Co.* (Braidwood Nuclear Power Station, Units 1 and 2), CLI-86-8, 23 NRC 241, 245
(1986)
in an analysis of the five factors for contention admissibility under the pre-2004 rules, factors three
and five are to be given more weight than factors two and four; CLI-08-1, 67 NRC 6 (2008);
CLI-08-8, 67 NRC 198 (2008)
- Commonwealth Edison Co.* (Braidwood Nuclear Power Station, Units 1 and 2), CLI-86-8, 23 NRC 241,
250-51 (1986)
the board is obliged to evaluate the timeliness of a proposed contention even if no party raises the
issue; LBP-10-17, 72 NRC 508 (2010)
- Commonwealth Edison Co.* (Braidwood Nuclear Power Station, Units 1 and 2), LBP-85-11, 21 NRC 609,
615 (1985)
nothing precludes an individual from seeking to intervene both on his/her own behalf and as a
representative of others; CLI-07-19, 65 NRC 427 n.17 (2007)
- Commonwealth Edison Co.* (Braidwood Nuclear Power Station, Units 1 and 2), LBP-85-11, 21 NRC 609,
632-33 (1985)
compliance with quality assurance requirements is an important factor in the licensing decision;
LBP-10-9, 71 NRC 508, 512 (2010)
- Commonwealth Edison Co.* (Braidwood Nuclear Power Station, Units 1 and 2), LBP-85-20, 21 NRC 1732,
1741 (1985)
consideration of the merits of a contention at the admissibility stage is improper; LBP-07-3, 65 NRC
264 n.8 (2007)
- Commonwealth Edison Co.* (Byron Nuclear Power Station, Units 1 and 2), ALAB-793, 20 NRC 1591,
1614-16 (1984)
deferral of review of board denial of rule waiver petition did not cause irreparable injury; CLI-10-29,
72 NRC 562 (2010)
petitioner has the burden of demonstrating that there is warrant for waiver of a rule prohibiting
consideration of the need for power and energy alternatives at the operating license stage;
LBP-10-12, 71 NRC 662, 670 (2010)

LEGAL CITATIONS INDEX

CASES

- Commonwealth Edison Co.* (Byron Nuclear Power Station, Units 1 and 2), LBP-84-2, 19 NRC 36, 210 (1984), *rev'd on other grounds*, ALAB-793, 20 NRC 1591, 1627 (1984)
key safety issues must be resolved in the hearing, not post-hearing by the Staff and applicant; LBP-08-25, 68 NRC 829 (2008)
- Commonwealth Edison Co.* (Carroll County Site), ALAB-601, 12 NRC 18, 24 (1980)
contentions are not cognizable unless they are material to matters that fall within the scope of the proceeding for which the licensing board has been delegated jurisdiction as set forth in the Commission's notice of opportunity for hearing and order referring the proceeding to the board; LBP-06-10, 63 NRC 338 (2006); LBP-06-23, 64 NRC 354 (2005); LBP-07-4, 65 NRC 304 (2007); LBP-07-11, 66 NRC 57 (2007)
- Commonwealth Edison Co.* (Dresden Nuclear Power Station, Unit 1), CLI-81-25, 14 NRC 616, 623 (1981)
each intervening participant that wishes to be a party to a proceeding must establish its own standing; LBP-10-7, 71 NRC 414 (2010)
it is not sufficient to rely on the standing of one petitioner because Commission practice requires each party to separately establish standing; CLI-07-18, 65 NRC 412 (2007)
- Commonwealth Edison Co.* (Dresden Nuclear Power Station, Unit 1), LBP-82-52, 16 NRC 183, 194 (1982)
a petitioner should not be entitled to discretionary intervention without an issue of its own worthy of exploration in an adjudication; CLI-06-16, 63 NRC 719-20 n.32 (2006)
- Commonwealth Edison Co.* (LaSalle County Nuclear Power Station, Units 1 and 2), CLI-73-8, 6 AEC 169, 170 (1973)
diligent, even aggressive, probing for weaknesses in a witness's or counsel's position may be necessary if presiding officers are to fulfill their duty to develop an adequate record that will contribute to informed decisionmaking; CLI-10-17, 72 NRC 47 (2010)
- Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 and 2), ALAB-116, 6 AEC 258, 258 (1973)
a licensing board referral of an order is unacceptable if it fails to satisfy the standards applicable to such referrals, including whether prompt appellate review is necessary to prevent detriment to the public interest or unusual delay or expense; CLI-09-6, 69 NRC 134 (2009)
- Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 and 2), ALAB-116, 6 AEC 258, 259 (1973)
interlocutory review of a licensing board decision may be warranted where that decision threatens to impose truly exceptional delay or expense; CLI-09-6, 69 NRC 134 (2009)
- Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 and 2), ALAB-185, 7 AEC 240, 241 n.3 (1974)
even "truly exceptional" expenses would not meet the irreparable impact standard governing a petition for interlocutory review; CLI-09-6, 69 NRC 134 (2009)
- Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 and 2), ALAB-196, 7 AEC 457, 469 (1974)
in licensing proceedings, protective orders provide an effective means for safeguarding proprietary information, where the party seeking discovery is not a competitor; CLI-10-24, 72 NRC 463 n.74 (2010)
withholding from public inspection shall not affect the right, if any, of persons properly and directly concerned to inspect a proprietary document; CLI-10-24, 72 NRC 463 n.74 (2010)
- Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 and 2), ALAB-222, 8 AEC 229, 235, *aff'd in part on other grounds*, CLI-74-35, 8 AEC 374 (1974)
Congress considers the Atomic Safety and Licensing Board to be a panel of experts; CLI-10-17, 72 NRC 49 (2010)
- Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 and 2), ALAB-222, 8 AEC 229, 236-37, *aff'd in part on other grounds*, CLI-74-35, 8 AEC 374 (1974)
diligent, even aggressive, probing for weaknesses in a witness's or counsel's position may be necessary if presiding officers are to fulfill their duty to develop an adequate record that will contribute to informed decisionmaking; CLI-10-17, 72 NRC 47 (2010)

LEGAL CITATIONS INDEX

CASES

- Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 and 2), ALAB-226, 8 AEC 381, 406 (1974)
licensing boards, though not obligated to reformulate contentions, are permitted to do so in certain circumstances; LBP-08-11, 67 NRC 482 (2008)
there is no duty placed upon a licensing board by the Administrative Procedure Act, or by the Atomic Energy Act and the regulations promulgated thereunder, to recast contentions offered by one of the litigants for the purpose of making those contentions acceptable; LBP-08-11, 67 NRC 482 n.57 (2008)
- Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 and 2), ALAB-616, 12 NRC 419, 421 (1980)
in a license renewal proceeding, licensee must demonstrate that it satisfies the "reasonable assurance" standard by a preponderance of the evidence; LBP-07-17, 66 NRC 340 (2007); LBP-08-22, 68 NRC 646 (2008); LBP-08-25, 68 NRC 788, 835, 856 (2008)
license renewal applicant must demonstrate that its aging management program for piping subject to flow accelerated corrosion is adequate; LBP-08-25, 68 NRC 856 (2008)
license renewal applicant must demonstrate that its steam dryer aging management plan is adequate; LBP-08-25, 68 NRC 835 (2008)
the "preponderance of the evidence" standard common to NRC proceedings has been interpreted as requiring only that the record underlying a finding makes it slightly more likely than not; LBP-08-22, 68 NRC 646 (2008)
to meet its evidentiary burden, applicant is not obliged to meet an absolute standard but to provide reasonable assurance that public health, safety, and environmental concerns were protected, and to demonstrate that assurance by a preponderance of the evidence; CLI-09-7, 69 NRC 263 (2009)
- Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 and 2), ALAB-616, 12 NRC 419, 426 (1980)
the scope of a proceeding generally is defined by the Commission's notice of opportunity for hearing; LBP-06-12, 63 NRC 420 (2006); LBP-09-25, 70 NRC 889 n.138 (2009)
- Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 and 2), ALAB-616, 12 NRC 419, 426-27 (1980)
contentions are not cognizable unless they are material to matters that fall within the scope of the proceeding for which the licensing board has been delegated jurisdiction as set forth in the Commission's notice of opportunity for hearing and order referring the proceeding to the Board; LBP-06-10, 63 NRC 338 (2006); LBP-06-23, 64 NRC 354 (2005); LBP-07-4, 65 NRC 304 (2007); LBP-07-11, 66 NRC 57 (2007)
- Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 and 2), CLI-99-4, 49 NRC 185, 188 (1999)
although Article III of the Constitution does not constrain the NRC hearing process, and NRC hearings therefore are not governed by judicially created standing doctrine, the Commission nonetheless has generally looked to judicial concepts of standing where appropriate to determine those interests affected within the meaning of section 189a of the AEA; LBP-09-1, 69 NRC 25 n.54 (2009)
- Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 and 2), CLI-99-4, 49 NRC 185, 188, 191 (1999)
the benefits of the proximity presumption are not limited to those who reside within the area in which the presumption applies, but can be extended to those who conduct everyday activities or visit within that area; LBP-07-10, 66 NRC 17 (2007)
- Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 and 2), CLI-99-4, 49 NRC 185, 188, 191-92 (1999)
in the absence of a showing that the proposed license amendment obviously entails an increased potential for offsite consequences, petitioners must base their standing upon more than residence or activities within a particular proximity of the plant by making a showing of a plausible chain of events that would result in offsite radiological consequences posing a distinct new harm or threat to the participant; LBP-07-10, 66 NRC 15 (2007)

LEGAL CITATIONS INDEX

CASES

- to establish standing in operating license amendment cases, petitioners must assert an injury-in-fact associated with the challenged license amendment, not simply a general objection to the facility; LBP-07-10, 66 NRC 15 (2007)
- Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 and 2), CLI-99-4, 49 NRC 185, 188-97 (1999), *petition for review denied sub nom. Dienenthal v. NRC*, 203 F.3d 52 (Table), 2000 WL 158835 (D.C. Cir. 2000)
- petitioners claiming standing have the burden of alleging in their pleadings how they may be harmed by a licensing action without any obvious radiological consequences; CLI-08-19, 68 NRC 261 (2008)
- Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 and 2), CLI-99-4, 49 NRC 185, 189 (1999), *petition for review denied, Dienenthal v. NRC*, 203 F.3d 52 (D.C. Cir. 2000)
- a materials license amendment proceeding is not an appropriate forum to throw open an opportunity to engage in a free-ranging inquiry into the character of the licensee; LBP-09-1, 69 NRC 49 (2009)
- mere assertions and speculation that applicant officials or personnel would encourage or condone violations of NRC regulations do not present any ongoing pattern of violations or disregard for regulations that might be expected to occur in the future; CLI-06-10, 63 NRC 465 (2006)
- there must be some direct and obvious relationship between a licensee character issue and the licensing action in dispute; CLI-06-22, 64 NRC 47 n.38 (2006)
- Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 and 2), CLI-99-4, 49 NRC 185, 191 (1999), *petition for review denied, Dienenthal v. NRC*, 203 F.3d 52 (D.C. Cir. 2000)
- a bare allegation that the member of an organization lives 50 miles from a passive structure presents no obvious potential of offsite radiological consequences for purpose of proximity-based standing; CLI-07-21, 65 NRC 522 (2007)
- petitioner cannot base its standing upon its distance from a nuclear facility unless the proposed action quite obviously entails an increased potential for offsite consequences; LBP-08-18, 68 NRC 541 (2008)
- petitioner must provide some plausible chain of causation or some scenario suggesting how license amendments would result in a distinct new harm or threat in order to establish standing; LBP-09-4, 69 NRC 178 n.20 (2009)
- proximity argument for standing is rejected in a proceeding for an amendment to reflect the plant's permanent shutdown status; LBP-08-18, 68 NRC 539 n.38 (2008)
- Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 and 2), CLI-99-4, 49 NRC 185, 192 (1999)
- in demonstrating that a proposed action involves a significant source of radioactivity producing an obvious potential for offsite consequences, petitioner cannot rely on conclusory allegations about potential radiological harm, but must show how these various harms might result from the proposed action; LBP-09-20, 70 NRC 577 (2009)
- petitioner must show a plausible chain of events that would result in offsite radiological consequences posing a distinct new harm or threat from a purely administrative license amendment; LBP-08-18, 68 NRC 537 (2008)
- standing was denied where petitioner failed to indicate how the alleged harms might result from the license amendments, particularly given not only the shutdown status of the facility, but also the continued applicability of the NRC's safety-oriented regulations governing defueled nuclear plants; LBP-10-11, 71 NRC 634 n.97 (2010)
- Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 and 2), CLI-99-4, 49 NRC 185, 194 (1999), *petition for review denied sub nom., Dienenthal v. NRC*, 203 F.3d 52 (D.C. Cir. 2000)
- absent extreme circumstances, the Commission will not consider on appeal either new arguments or new evidence supporting the contentions, which the board never had the opportunity to consider; CLI-06-10, 63 NRC 458 (2006)
- if a board misapprehends the intended meaning of a contention, the petitioner bears the responsibility for any misunderstanding; LBP-06-12, 63 NRC 408 (2006)
- it is not up to licensing boards to search through pleadings or other materials to uncover arguments and support never advanced by the petitioners themselves, and boards may not simply infer unarticulated bases of contentions; CLI-06-10, 63 NRC 457 (2006); CLI-10-15, 71 NRC 482 (2010); LBP-10-10, 71 NRC 567 n.179 (2010)

LEGAL CITATIONS INDEX

CASES

- not all organizations with governmental ties are entitled to participate in NRC proceedings as a local governmental body (county, municipality, or other subdivision); CLI-07-18, 65 NRC 413 (2007)
rewriting a contention on appeal is not permitted; CLI-06-24, 64 NRC 122 (2006)
the burden of setting forth a clear and coherent argument is on the petitioner; CLI-09-7, 69 NRC 277 n.230 (2009); LBP-06-12, 63 NRC 407 (2006)
- Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 and 2), CLI-00-5, 51 NRC 90, 98 (2000)
broad and conclusory statements by petitioners that they have direct information concerning the threat to health and safety posed by the license applicant are insufficient to establish standing; LBP-10-4, 71 NRC 238 (2010)
burden is on petitioner to allege a specific and plausible means by which contaminants from mining activities may adversely affect him or her; LBP-10-16, 72 NRC 384 (2010)
in proceedings where petitioner's factual assertions in support of standing are challenged, untenable, conjectural, or conclusory, a board need not uncritically accept such assertions; LBP-10-4, 71 NRC 230 n.14 (2010)
petitioner bears the burden to provide facts sufficient to establish standing; CLI-10-7, 71 NRC 139 (2010); LBP-10-4, 71 NRC 229 (2010)
- Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 and 2), LBP-98-24, 48 NRC 219, 222-23 (1998)
licensing boards have no jurisdiction to consider an intervention petition seeking to challenge Staff's final no significant hazards consideration determination; LBP-08-20, 68 NRC 551 n.4 (2008)
- Communities, Inc. v. Busey*, 956 F.2d 619, 626 (6th Cir. 1992)
NEPA requirements are tempered by a practical rule of reason; CLI-10-22, 72 NRC 208 (2010)
NEPA requires NRC to provide a reasonable mitigation alternatives analysis, containing reasonable estimates, including full disclosures of any known shortcomings in methodology, incomplete or unavailable information, and significant uncertainties; CLI-10-22, 72 NRC 209 (2010)
- Communities, Inc. v. Busey*, 956 F.2d 619, 627 (6th Cir. 1992)
NRC need only consider a range of alternatives in its environmental impact statement that are technologically feasible and economically practicable for producing baseload power; LBP-10-10, 71 NRC 581 (2010)
reasonable alternatives discussed in an environmental impact statement do not include alternatives that are impractical, that present unique problems, or that cause extraordinary costs; LBP-09-7, 69 NRC 633 (2009); LBP-09-16, 70 NRC 298 (2009)
- Community Association for Restoration of Environment v. DeRuyter Bros. Dairy*, 54 F. Supp. 2d 974 (E.D. Wash. 1999)
amicus briefs are normally allowed when the amicus has unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide; LBP-08-6, 67 NRC 267 (2008)
- Concerned Citizens Coalition v. Federal Highway Administration*, 330 F. Supp. 2d 787, 796 (W.D. La. 2004)
applicant and NRC Staff must conduct a rigorous and objective evaluation of all reasonable, nonspeculative alternatives in relation to the objectives of the proposed project; CLI-06-9, 63 NRC 448 (2006)
the NHPA requirement for consideration of alternatives comes into play only if the project will have an adverse effect on historic properties, and only after that determination is made; CLI-06-9, 63 NRC 449 (2006)
- Conley v. Gibson*, 355 U.S. 41, 47 (1957)
"notice pleading" is a broad standard requiring only a short and plain statement of the claim; LBP-08-26, 68 NRC 917 (2008); LBP-09-17, 70 NRC 328 (2009)
- Connecticut Bankers Association v. Board of Governors*, 627 F.2d 245, 251 (D.C. Cir. 1980)
a petitioner does not become entitled to an evidentiary hearing merely on request, or on a bald or conclusory allegation that a dispute exists, but must make a minimal showing that material facts are in dispute, thereby demonstrating that an inquiry in depth is appropriate; LBP-06-10, 63 NRC 342 (2006); LBP-06-20, 64 NRC 151 (2006); LBP-06-23, 64 NRC 359 (2005); LBP-08-6, 67 NRC 292 (2008); LBP-09-17, 70 NRC 329 (2009)

LEGAL CITATIONS INDEX

CASES

- all that intervenors and their experts need to provide at the contention admission stage is a reasoned presentation sufficient to warrant further inquiry; LBP-10-10, 71 NRC 580 (2010)
- although support for a contention may be weak and the contention may be technically imperfect, it may still raise a valid and significant issue with reasonably specific factual and legal allegations and be sufficient to support further inquiry; LBP-06-10, 63 NRC 381 (2006)
- Connecticut Yankee Atomic Power Co.* (Haddam Neck Plant), CLI-01-25, 54 NRC 368, 373 (2001)
- mere legal error is not enough to warrant interlocutory review because interlocutory errors are correctable on appeal from final board decisions; CLI-08-2, 67 NRC 35 (2008)
- Connecticut Yankee Atomic Power Co.* (Haddam Neck Plant), CLI-01-25, 54 NRC 368, 374 (2001)
- increased litigation burden of one contention, where other contentions are pending in a proceeding, does not have pervasive effect on the structure of the litigation; CLI-08-2, 67 NRC 35 n.12 (2008)
- mere increase in the burden of litigation does not constitute serious and irreparable harm; CLI-09-6, 69 NRC 136 n.29 (2009)
- Connecticut Yankee Atomic Power Co.* (Haddam Neck Plant), LBP-01-21, 54 NRC 33, *petition for review denied*, CLI-01-25, 54 NRC 368 (2001)
- the purpose of NRC adjudicatory hearings is to consider claims of deficiencies in a license application, and such contentions are commonplace at the outset of NRC adjudications; CLI-08-15, 68 NRC 3 (2008); CLI-08-20, 68 NRC 274 (2008)
- Connecticut Yankee Atomic Power Co.* (Haddam Neck Plant), LBP-01-21, 54 NRC 33, 47 (2001)
- the statement of considerations should be given special weight in interpreting the regulations; LBP-09-15, 70 NRC 221 (2009)
- Connecticut Yankee Atomic Power Co.* (Haddam Neck Plant), LBP-01-25, 54 NRC 177, 184 (2001)
- administrative history and other available guidance may be consulted for background information and the resolution of ambiguities in a regulation's language; CLI-06-11, 63 NRC 491 (2006)
- although administrative history and other available guidance may be consulted for background information and the resolution of ambiguities in a regulation's language, its interpretation may not conflict with the plain meaning of the wording used in that regulation; CLI-06-5, 63 NRC 154 (2006)
- interpretation of a regulation, like interpretation of a statute, begins with the language and structure of the provision itself; CLI-08-12, 67 NRC 391 (2008)
- Connecticut Yankee Atomic Power Co.* (Haddam Neck Plant), LBP-03-18, 58 NRC 262 (2003)
- the preponderance of the evidence standard applies in a license renewal proceeding; LBP-08-22, 68 NRC 646 (2008)
- Connecticut Yankee Atomic Power Co.* (Haddam Neck Plant), LBP-03-18, 58 NRC 262, 264 (2003)
- licensing boards have granted state agencies the right to participate in its proceedings as the state's representative; LBP-09-16, 70 NRC 291 (2009)
- state agencies may be allowed to participate as nonparty interested states; LBP-08-15, 68 NRC 304 n.44 (2008)
- Consolidated Edison Co. of New York* (Indian Point, Unit 2), ALAB-188, 7 AEC 323 (1974)
- traditionally, a crucial issue at the operating license stage was whether the facility had indeed been constructed in accordance with the permit; LBP-07-14, 66 NRC 203 (2007)
- Consolidated Edison Co. of New York* (Indian Point, Unit 2), CLI-74-23, 7 AEC 947, 950-52 (1974)
- the mechanism of post-hearing resolution must not be employed to obviate the basic findings prerequisite to an operating license; LBP-08-25, 68 NRC 824 (2008)
- Consolidated Edison Co. of New York* (Indian Point, Unit 2), CLI-74-23, 7 AEC 947, 951-52 (1974)
- the mechanism of post-hearing resolution must not be employed to obviate the basic findings prerequisite to an operating license, including a reasonable assurance that the facility can be operated without endangering the health and safety of the public; CLI-06-1, 63 NRC 4 (2006); LBP-08-25, 68 NRC 829 (2008)
- Consolidated Edison Co. of New York* (Indian Point, Unit 2), CLI-81-7, 13 NRC 448, 449-50 (1981)
- NRC obeyed its FWPCA duties by deciding to accept as dispositive EPA determinations concerning one aspect of the overall environmental impact; CLI-07-16, 65 NRC 388 (2007)
- Consolidated Edison Co. of New York* (Indian Point, Unit 2), CLI-82-15, 16 NRC 27, 31 (1982)
- only eight petitions for discretionary intervention have ever been granted during the 30 years NRC has applied the current six-factor test; CLI-06-16, 63 NRC 717 (2006)

LEGAL CITATIONS INDEX

CASES

- Consolidated Edison Co. of New York* (Indian Point, Unit 2), CLI-82-15, 16 NRC 27, 31 (1982), *adopting as its own ruling the one-sentence dictum from* LBP-82-25, 15 NRC 715, 736 n.10 (1982)
discretionary intervention is granted where petitioner's previous experience would provide valuable insight in developing a sound record; LBP-09-6, 69 NRC 438 n.386 (2009)
- Consolidated Edison Co. of New York* (Indian Point, Unit 2), CLI-82-15, 16 NRC 27, 37 (1982)
the Commission generally declines to interfere with a board's day-to-day case management decisions unless there has been an abuse of power; CLI-08-7, 67 NRC 192 (2008)
- Consolidated Edison Co. of New York* (Indian Point, Unit 2), CLI-85-6, 21 NRC 1043, 1084 (1985)
although the Federal Rules of Evidence are not mandated for NRC adjudicatory proceedings, the Commission has endorsed the use of the FRE as guidance for the boards with the express proviso that boards must apply the Part 2 rules with greater flexibility than the FRE; LBP-12-23, 72 NRC 705-06 (2010)
- Consolidated Edison Co. of New York* (Indian Point, Unit 2), LBP-82-25, 15 NRC 715, 734 (1982)
there are certain organizations for which member authorization for organizational standing might be presumed; LBP-09-6, 69 NRC 434 (2009)
- Consolidated Edison Co. of New York* (Indian Point, Unit 2), LBP-83-5, 17 NRC 134, 136 (1983)
although NRC may reasonably accommodate pro se petitioners who are not technically perfect in their pleadings, such parties must still meet the basic requirements of the contention admissibility rules, and if these are not met, boards may not "fill in" any missing support, but, rather, are legally required to deny the contention; LBP-07-4, 65 NRC 340 n.286 (2007)
- Consolidated Edison Co. of New York* (Indian Point, Unit 3), ALAB-281, 2 NRC 6, 7 n.2 (1975)
requests for extension of time to file exceptions are to be determined by the relevant appellate body; LBP-07-17, 66 NRC 370 (2007)
- Consolidated Edison Co. of New York* (Indian Point, Unit 3), CLI-75-14, 2 NRC 835, 839 n.8 (1975)
applicant has the burden of proving that it has met the reasonable assurance standard by a preponderance of the evidence; LBP-08-25, 68 NRC 788 (2008)
- Consolidated Edison Co. of New York* (Indian Point, Units 1 and 2), CLI-01-8, 53 NRC 225, 227 (2001)
petitioners sought access to an unredacted version of the license transfer application in order to obtain confidential financial information relevant to the expected costs of the plant's operation and maintenance that had been redacted; CLI-10-24, 72 NRC 466 (2010)
- Consolidated Edison Co. of New York* (Indian Point, Units 1 and 2), CLI-01-8, 53 NRC 225, 228, 230-31 (2001)
applicants are directed to provide petitioners with access to the unredacted version of the license transfer application pursuant to a confidentiality agreement; CLI-07-18, 65 NRC 415 n.53 (2007)
- Consolidated Edison Co. of New York* (Indian Point, Units 1 and 2), CLI-01-8, 53 NRC 225, 228, 231 (2001)
following release of sensitive information, petitioners must file revised contentions within 20 days; CLI-07-18, 65 NRC 416 (2007)
- Consolidated Edison Co. of New York* (Indian Point, Units 1 and 2), CLI-01-8, 53 NRC 225, 228-29 (2001)
licensing adjudication will not be held in abeyance pending completion of a related NRC enforcement action; CLI-10-17, 72 NRC 10 (2010)
- Consolidated Edison Co. of New York* (Indian Point, Units 1 and 2), CLI-01-8, 53 NRC 225, 229 (2001)
litigation inevitably results in the parties' loss of both time and money; CLI-06-18, 64 NRC 5 (2006); CLI-09-6, 69 NRC 136 n.29 (2009)
- Consolidated Edison Co. of New York* (Indian Point, Units 1 and 2), CLI-01-8, 53 NRC 225, 230 (2001)
petitioners asserted that they needed access to confidential commercial and financial information because without it they would be unable to submit sufficiently specific and supported contentions regarding the applicant's financial qualifications; CLI-10-24, 72 NRC 466 (2010)
- Consolidated Edison Co. of New York* (Indian Point, Units 1 and 2), CLI-01-8, 53 NRC 225, 230-31 (2001)
upon a showing of need, petitioners' request to obtain access to an unredacted application was granted; CLI-10-24, 72 NRC 466 (2010)
- Consolidated Edison Co. of New York* (Indian Point, Units 1 and 2), CLI-01-19, 54 NRC 109, 131-32 (2001)
two petitioners, each of whom has proffered an admissible contention of its own, are allowed to adopt the other's contentions; LBP-08-13, 68 NRC 65 (2008)

LEGAL CITATIONS INDEX

CASES

- Consolidated Edison Co. of New York* (Indian Point, Units 1 and 2), CLI-01-19, 54 NRC 109, 131-33 (2001)
if the primary sponsor of an issue later withdraws from the proceeding, the remaining sponsor must then demonstrate to the presiding officer its independent ability to litigate the issue; LBP-06-20, 64 NRC 207 (2006)
- Consolidated Edison Co. of New York* (Indian Point, Units 1 and 2), CLI-01-19, 54 NRC 109, 132-33 (2001)
incorporation by reference is not permitted where the effect would be to circumvent NRC-prescribed specificity requirements; LBP-08-24, 68 NRC 730 (2008)
the Commission addresses whether a petitioner may adopt another petitioner's contention without demonstrating that it has standing and submitting at least one admissible contention of its own; LBP-08-13, 68 NRC 65 (2008)
- Consolidated Edison Co. of New York* (Indian Point, Units 1 and 2), CLI-01-19, 54 NRC 109, 132-33 & nn.17-18 (2001)
the Commission disapproves of incorporation by reference in petitions for review, where it has the effect of bypassing the page limits set forth in NRC regulations; CLI-10-17, 72 NRC 45-46 n.247 (2010)
- Consolidated Edison Co. of New York* (Indian Point, Units 1 and 2), CLI-01-19, 54 NRC 109, 133 (2001)
petitioners in direct license transfer cases who qualified for proximity-based standing lived within a 5-1/2-mile radius of their plant; CLI-08-19, 68 NRC 269 (2008)
the Commission will not accept incorporation by reference of another petitioner's issues where the adopting petitioner has not independently met the requirements for admission as a party by demonstrating standing and submitting at least one admissible issue of its own; LBP-08-13, 68 NRC 65 (2008); LBP-10-11, 71 NRC 633 n.92 (2010)
- Consolidated Edison Co. of New York* (Indian Point, Units 1 and 2), CLI-01-19, 54 NRC 109, 142 (2001)
decommissioning rules are designed to minimize the administrative effort of licensees and the Commission and to provide reasonable assurance that funds will be available to carry out decommissioning in a manner that protects public health and safety; LBP-09-21, 70 NRC 630 (2009)
- Consolidated Edison Co. of New York* (Indian Point, Units 1 and 2), CLI-01-19, 54 NRC 109, 143 (2001)
NRC decommissioning funding regulations are intended to minimize the administrative effort and provide reasonable assurance that funds will be available to carry out decommissioning in a manner that protects public health and safety; LBP-09-4, 69 NRC 198 (2009)
- Consolidated Edison Co. of New York* (Indian Point, Units 1 and 2), CLI-01-19, 54 NRC 109, 143-44 (2001)
a board's analysis of decommissioning cost estimates should be tailored to the specifics of the proceeding; CLI-06-22, 64 NRC 42 (2006)
- Construction & General Laborers' Union No. 230 v. City of Hartford*, 153 F. Supp. 2d 156, 163 (D. Conn. 2001)
a test for representational standing is applied to unions; CLI-08-19, 68 NRC 264 (2008)
- Consumers Energy Co.* (Big Rock Point Independent Spent Fuel Storage Installation), CLI-07-19, 65 NRC 423, reconsideration denied, CLI-07-21, 65 NRC 519 (2007)
the principle regarding the representational standing of unions is also applicable to public interest groups, who also, in significant part, exist to represent the interests of their members; CLI-08-19, 68 NRC 264-65 (2008)
- Consumers Energy Co.* (Big Rock Point Independent Spent Fuel Storage Installation), CLI-07-19, 65 NRC 423, 426 (2007)
an independent spent fuel storage installation is essentially a passive structure rather than an operating facility, and therefore, there is less chance of widespread radioactive release; LBP-09-20, 70 NRC 577 (2009)
an individual petitioner may not request to intervene in his or her own right while simultaneously authorizing other petitioners to represent his or her interests in the proceeding; LBP-10-16, 72 NRC 390 (2010)
an individual's claim of residence within 50 miles of a plant might entitle him to a presumption of standing based on his proximity in a reactor construction permit or operating license proceeding; CLI-09-20, 70 NRC 916 n.16 (2009)

LEGAL CITATIONS INDEX

CASES

- in cases involving ISL uranium mining and other source materials licensing, petitioner must demonstrate injury, causation, and redressability because proximity to the proposed facility alone is not adequate to demonstrate standing; LBP-10-16, 72 NRC 384 (2010)
- in proceedings not involving power reactors, proximity alone is not sufficient to establish standing; LBP-08-6, 67 NRC 272 (2008)
- in proceedings other than for construction permits, operating licenses, or significant amendments thereto, the Commission decides on a case-by-case basis whether the proximity presumption should apply, taking into account any obvious potential for offsite radiological consequences, as well as the nature of the proposed action and the significance of the radioactive source; LBP-09-20, 70 NRC 575 (2009)
- presumption of standing based on geographical proximity may be applied in nuclear materials licensing cases only when the activity at issue involves a significant source of radioactivity producing an obvious potential for offsite consequences; LBP-08-6, 67 NRC 272 (2008)
- proximity alone is not sufficient to establish standing for a petitioner's proximity to a source materials activity; LBP-08-24, 68 NRC 704 (2008)
- the Commission declined to adopt a proximity presumption in an independent spent fuel storage installation license transfer proceeding, where petitioner had not demonstrated that the mere transfer of the ISFSI somehow increased his risk of radiological harm; LBP-09-20, 70 NRC 577-78 (2009)
- the Commission has accepted a proximity presumption granting standing to residents within 50 miles of a reactor, but has not accepted any such presumption in nonreactor cases; LBP-07-14, 66 NRC 178 (2007)
- Consumers Energy Co.* (Big Rock Point Independent Spent Fuel Storage Installation), CLI-07-19, 65 NRC 423, 426-27 (2007)
- with respect to a license transfer for an independent spent fuel storage installation, the proximity presumption was rejected for a petitioner living within 50 miles of the plant; LBP-07-14, 66 NRC 183 (2007)
- Consumers Energy Co.* (Big Rock Point Independent Spent Fuel Storage Installation), CLI-07-21, 65 NRC 519 (2007)
- petitioners seeking reconsideration of a Commission order must demonstrate that the Commission has committed clear error, must do so by raising new arguments, and must not previously have been able to make those arguments; CLI-07-22, 65 NRC 527 (2007)
- Consumers Energy Co.* (Big Rock Point Independent Spent Fuel Storage Installation), CLI-07-21, 65 NRC 519, 522 (2007)
- petitioners must seek leave to request reconsideration of a decision and set forth compelling circumstances that petitioners could not reasonably have anticipated and that would render the decision invalid; CLI-10-21, 72 NRC 201 n.15 (2010)
- Consumers Energy Co.* (Big Rock Point Independent Spent Fuel Storage Installation), CLI-07-21, 65 NRC 519, 522-23 (2007)
- the difference in potential risk between an independent spent fuel storage installation and an operating reactor justifies treating ISFSI and license transfer cases differently in terms of potential proximity presumption; LBP-07-10, 66 NRC 15, 18 (2007)
- Consumers Energy Co.* (Big Rock Point Independent Spent Fuel Storage Installation), CLI-07-21, 65 NRC 519, 523-24 (2007)
- standing is not presumed where contact has been limited to mere occasional trips to areas located close to reactors; LBP-10-1, 71 NRC 176 (2010)
- the benefits of the proximity presumption are not limited to those who reside within the area in which the presumption applies, but can be extended to those who conduct everyday activities or visits within that area; LBP-07-10, 66 NRC 17 (2007)
- the board must make its finding on standing based on the factual circumstances presented by the information before the board regarding petitioner's activities, which may include consideration of the proximity, timing, and duration of those activities; LBP-07-10, 66 NRC 19 (2007)
- to establish standing based on frequent contacts, petitioner must show that it frequently engages in substantial business and related activities in the vicinity of the facility, engages in normal, everyday activities in the vicinity, has regular and frequent contacts in an area near a licensed facility, or

LEGAL CITATIONS INDEX

CASES

- otherwise has visits of a length and nature showing an ongoing connection and presence; LBP-10-1, 71 NRC 176 (2010)
- Consumers Energy Co.* (Palisades Nuclear Plant), CLI-07-18, 65 NRC 399, 408-09, *reconsideration denied*, CLI-07-22, 65 NRC 525 (2007)
- an organization seeking to establish representational standing must show that at least one of its members may be affected by the proceeding; LBP-10-16, 72 NRC 389-90 (2010)
- to demonstrate standing, petitioner must identify an interest in the proceeding and specify the facts pertaining to that interest; CLI-08-19, 68 NRC 258 (2008)
- unlike federal court practice, the Commission does not accept mere notice pleading in support of an admissible contention; LBP-08-24, 68 NRC 730 (2008)
- Consumers Energy Co.* (Palisades Nuclear Plant), CLI-07-18, 65 NRC 399, 409 (2007)
- an organization must identify its authorizing member and show that the member has authorized the organization to represent him or her and request a hearing on his or her behalf; LBP-10-16, 72 NRC 390 (2010)
- for representational standing, a member must qualify for standing in his or her own right, the interests that the organization seeks to protect must be germane to its own purpose, and neither the petitioner's contentions nor the requested relief must require an individual member to participate in the proceeding; LBP-08-6, 67 NRC 272 (2008); LBP-09-6, 69 NRC 382 (2009); LBP-09-16, 70 NRC 240 (2009); LBP-09-18, 70 NRC 395, 399 (2009); LBP-09-20, 70 NRC 575 (2009); LBP-09-21, 70 NRC 591 (2009); LBP-09-28, 70 NRC 1024 (2009)
- interests that a representative organization seeks to protect must be germane to its own purpose, and neither the asserted claim nor the requested relief must require an individual member to participate in the organization's legal action; LBP-09-4, 69 NRC 178 (2009)
- organizational petitioner fails to identify any discrete institutional injury to itself, other than general environmental and policy interests of the sorts the federal courts and NRC repeatedly have found insufficient for organizational standing; CLI-10-3, 71 NRC 51 n.5 (2010)
- Consumers Energy Co.* (Palisades Nuclear Plant), CLI-07-18, 65 NRC 399, 409, *reconsideration denied*, CLI-07-22, 65 NRC 525 (2007)
- any organization seeking representational standing must show that at least one of its members may be affected by the Commission's approval of the transfer, must identify that member by name, and must demonstrate that the member has authorized the organization to represent him or her and to request a hearing on his or her behalf; CLI-08-19, 68 NRC 259 (2008)
- to establish representational standing, the member must qualify for standing in his or her own right, the interests that the organization seeks to protect must be germane to its own purpose, and neither petitioner's contentions nor the requested relief must require an individual member to participate in the proceeding; CLI-08-19, 68 NRC 259 (2008); LBP-08-17, 68 NRC 439 (2008); LBP-08-24, 68 NRC 702 (2008)
- Consumers Energy Co.* (Palisades Nuclear Plant), CLI-07-18, 65 NRC 399, 409, 411 (2007)
- for organizational standing, the organization must, in its own right, satisfy the same requirements of injury, causation, and redressability as an individual; LBP-09-28, 70 NRC 1024 (2009)
- organizations may demonstrate standing in either an organizational or a representational capacity; LBP-09-28, 70 NRC 1024 (2009)
- Consumers Energy Co.* (Palisades Nuclear Plant), CLI-07-18, 65 NRC 399, 409-10 (2007)
- an organization must submit written authorization from a member whose interests it purports to represent in order to have a concrete indication that the member wishes to have the organization represent his interests there; CLI-09-9, 69 NRC 343 (2009)
- representational standing will not be granted where petitioner has provided no supporting affidavits or other evidence that any member has authorized it to represent their interests in the proceeding; LBP-09-28, 70 NRC 1026 n.28 (2009)
- Consumers Energy Co.* (Palisades Nuclear Plant), CLI-07-18, 65 NRC 399, 409-10, *reconsideration denied*, CLI-07-22, 65 NRC 525, 527-28 (2007)
- the principle regarding the representational standing of unions is also applicable to public interest groups, who also, in significant part, exist to represent the interests of their members; CLI-08-19, 68 NRC 264 (2008)

LEGAL CITATIONS INDEX

CASES

- Consumers Energy Co.* (Palisades Nuclear Plant), CLI-07-18, 65 NRC 399, 409-11 (2007)
Commission precedents describing the requirements for establishing representational and organizational standing are longstanding; LBP-09-5, 69 NRC 311 n.6 (2009)
- Consumers Energy Co.* (Palisades Nuclear Plant), CLI-07-18, 65 NRC 399, 410 (2007)
in proceedings where petitioner's factual assertions in support of standing are challenged, untenable, conjectural, or conclusory, a board need not uncritically accept such assertions; LBP-10-4, 71 NRC 230 n.14 (2010)
when an organization takes formal corporate action to initiate litigation not only germane but integral to its purpose, that action can constitute the requisite, if implicit, proof of authorization for intervention; LBP-09-6, 69 NRC 435 (2009)
- Consumers Energy Co.* (Palisades Nuclear Plant), CLI-07-18, 65 NRC 399, 411 (2007)
because petitioner's pleadings fail to provide adequate information about the interests of the organization to which he belongs and how those interests would be adversely affected by the licensing proceeding, the board is precluded from granting organizational standing; LBP-10-4, 71 NRC 224 n.8 (2010)
- Consumers Energy Co.* (Palisades Nuclear Plant), CLI-07-18, 65 NRC 399, 411-12, *reconsideration denied*, CLI-07-22, 65 NRC 525 (2007)
petitioner must show some risk of discrete institutional injury to itself, other than the general environmental and policy interests of the sort repeatedly found insufficient for organizational standing; CLI-08-19, 68 NRC 270 (2008); LBP-09-20, 70 NRC 576 (2009)
- Consumers Energy Co.* (Palisades Nuclear Plant), CLI-07-18, 65 NRC 399, 412 n.37 (2007)
not all entities with governmental ties are entitled to participate in licensing proceedings as local governmental bodies; LBP-09-13, 70 NRC 186 (2009)
- Consumers Energy Co.* (Palisades Nuclear Plant), CLI-07-18, 65 NRC 399, 414 (2007)
a contention will be ruled inadmissible if petitioner has offered no tangible information, no experts, no substantive affidavits, but instead only bare assertions and speculation; LBP-09-26, 70 NRC 954 (2009); LBP-10-6, 71 NRC 360 (2010)
NRC pleading standards do not allow for mere notice pleading, or the filing of general, vague, or unsupported claims to be elaborated at some later time; CLI-09-5, 69 NRC 120 n.21 (2009)
- Consumers Energy Co.* (Palisades Nuclear Plant), CLI-07-18, 65 NRC 399, 416 (2007)
petitioners are precluded from using discovery as a device to uncover additional information supporting the admissibility of contentions; CLI-08-28, 68 NRC 676 n.73 (2008)
- Consumers Energy Co.* (Palisades Nuclear Plant), CLI-07-22, 65 NRC 525, 526, 529 (2007)
the role of "private attorney general" is not contemplated under section 189a of the Atomic Energy Act; CLI-08-19, 68 NRC 270 (2008)
- Consumers Energy Co.* (Palisades Nuclear Plant), CLI-07-22, 65 NRC 525, 527-28 (2007)
petitioner may not claim standing based on vague assertions, and when that fails, attempt to repair the defective pleading with fresh details offered for the first time in a petition for reconsideration; CLI-08-19, 68 NRC 261 (2008)
petitioner may not claim standing based on vague assertions, and when that fails, attempt to repair the defective pleading with fresh details offered for the first time in its reply; LBP-09-2, 69 NRC 94 nn.18, 20 (2009)
- Consumers Power Co.* (Midland Plant, Units 1 and 2), ALAB-123, 6 AEC 331, 334-35 (1973)
licensing boards are authorized to accept assertions of the applicant and Staff that have not been controverted by a party; LBP-06-7, 63 NRC 200 n.7 (2006)
- Consumers Power Co.* (Midland Plant, Units 1 and 2), ALAB-123, 6 AEC 331, 345 (1973)
once a party has introduced sufficient evidence to establish a prima facie case, the burden of proof then shifts to the applicant who must provide sufficient rebuttal to satisfy the board that it should reject the contention as a basis for denial of the permit or license; CLI-09-7, 69 NRC 269 (2009)
- Consumers Power Co.* (Midland Plant, Units 1 and 2), ALAB-123, 6 AEC 331, 355 (1973)
when an applicant receives a construction permit, it proceeds at its own risk, regardless of the amount of money that it may have expended during construction; LBP-10-7, 71 NRC 405-06 (2010)
- Consumers Power Co.* (Midland Plant, Units 1 and 2), ALAB-395, 5 NRC 772, 779 (1977)
expenses of any kind do not constitute irreparable injury; CLI-09-6, 69 NRC 135 n.25 (2009)

LEGAL CITATIONS INDEX

CASES

- Consumers Power Co.* (Midland Plant, Units 1 and 2), ALAB-452, 6 NRC 892, 902 (1977)
joint ventures are common within the nuclear industry and thus merit consideration in the alternatives analysis; LBP-07-9, 65 NRC 634 (2007)
- Consumers Power Co.* (Midland Plant, Units 1 and 2), ALAB-452, 6 NRC 892, 902-03 (1977)
the coordination services market is a market for the exchange of surplus electric power between utilities on a nonfirm basis and the joint and coordinated operation by utilities of their systems of generation and distribution, all with the purpose of achieving maximum efficiency and economies in their overall power supply operations; CLI-06-2, 63 NRC 16 n.27 (2006)
- Consumers Power Co.* (Midland Plant, Units 1 and 2), ALAB-452, 6 NRC 892, 973-74 & n.352 (1977)
“distribution” refers generally to the transport of electricity by local distribution companies to the end users of the electricity (e.g., homes, shops, office buildings, factories); CLI-06-2, 63 NRC 14 n.16 (2006)
“transmission services” is a concept central to the determination of standing in a license transfer proceeding; CLI-06-2, 63 NRC 14 n.16 (2006)
“transmission services” refers to the transport of electricity on the wholesale market to local distribution companies; CLI-06-2, 63 NRC 14 n.16 (2006)
- Consumers Power Co.* (Midland Plant, Units 1 and 2), ALAB-458, 7 NRC 155, 162 (1978)
if a board on remand were to rule in petitioners’ favor regarding the admissibility of one contention, then the board should also reconsider its prior ruling that related contentions were admissible; CLI-10-21, 72 NRC 199 (2010)
it is inappropriate for the agency to consider economic costs when no environmentally preferable alternative has been identified; CLI-10-1, 71 NRC 23 (2010)
the National Environmental Policy Act requires an applicant to present a cost-benefit analysis for nuclear power plants and facilities only where the applicant’s alternatives analysis indicates that there is an environmentally preferable alternative; LBP-08-21, 68 NRC 576 (2008)
- Consumers Power Co.* (Midland Plant, Units 1 and 2), ALAB-458, 7 NRC 155, 162-63 & nn.21-25 (1978)
if an alternative to the applicant’s proposal is environmentally preferable, then NRC must determine whether the environmental benefits conferred by that alternative are worthwhile enough to outweigh any additional cost needed to achieve them; CLI-10-1, 71 NRC 24 (2010)
- Consumers Power Co.* (Midland Plant, Units 1 and 2), ALAB-458, 7 NRC 155, 163 (1978)
costs for a project are relevant for the determination only if an environmentally preferable option is identified; LBP-09-2, 69 NRC 111 (2009)
- Consumers Power Co.* (Midland Plant, Units 1 and 2), ALAB-458, 7 NRC 155, 163 n.25 (1978)
it is inappropriate for the agency to consider economic costs when no environmentally preferable alternative has been identified; CLI-10-9, 71 NRC 263 (2010)
monetary considerations come into play only if an alternative to applicant’s proposal is environmentally preferable, and then boards must determine whether the environmental benefits conferred by that alternative are worthwhile enough to outweigh any additional cost needed to achieve them; LBP-10-10, 71 NRC 573 (2010)
- Consumers Power Co.* (Midland Plant, Units 1 and 2), ALAB-634, 13 NRC 96 (1981)
all levels of NRC adjudicators have consistently applied the deliberative process privilege; LBP-06-25, 64 NRC 381 (2006)
- Consumers Power Co.* (Midland Plant, Units 1 and 2), ALAB-684, 16 NRC 162, 165 n.3 (1982)
only in truly extraordinary and unanticipated circumstances are late filings to be accepted; LBP-10-21, 72 NRC 637 (2010)
- Consumers Power Co.* (Midland Plant, Units 1 and 2), ALAB-764, 19 NRC 633, 641 (1984)
a board concluded that the protective order it was imposing would eliminate the harm movant perceived to its interest and then weighed this factor against the others and denied a motion to quash; LBP-06-25, 64 NRC 388 (2006)
- Consumers Power Co.* (Midland Plant, Units 1 and 2), ALAB-764, 19 NRC 633, 642 (1984)
a licensing board rejected motions to quash in part because the board had, simultaneously with the issuance of the subpoenas, issued a strict protective order that limited the release of the information only to the parties, and only for use in that case; LBP-06-25, 64 NRC 388 (2006)

LEGAL CITATIONS INDEX

CASES

- main *Consumers Power Co.* (Midland Plant, Units 1 and 2), LBP-72-29, 5 AEC 142, 143 (1972) although the phrase “possession, custody, or control,” is used, no relevant interpretation or construction of the phrase, or of the term control, is provided; LBP-12-23, 72 NRC 706 (2010)
- Consumers Power Co.* (Midland Plant, Units 1 and 2), LBP-83-53, 18 NRC 282 (1983)
a licensing board rejected motions to continue to withhold documents in part because the board had, simultaneously with the issuance of the subpoenas, issued a strict protective order that limited the release of the information only to the parties, and only for use in that case; LBP-06-25, 64 NRC 388 (2006)
- Consumers Power Co.* (Midland Plant, Units 1 and 2), LBP-83-53, 18 NRC 282, 287-88 (1983)
licensing boards have continued to withhold documents or quash subpoenas once an applicable protective order has been issued or requested if the protective order may be breached; LBP-06-25, 64 NRC 388 n.85 (2006)
- Consumers Power Co.* (Midland Plant, Units 1 and 2), LBP-83-53, 18 NRC 282, 288 (1983)
to counter a board’s normal assumption that protective orders will not be breached, the withholding party must show evidence of the likelihood of a breach; LBP-06-25, 64 NRC 388 n.85 (2006)
- Consumers Power Co.* (Midland Plant, Units 1 and 2), LBP-83-64, 18 NRC 766, 769 (1983)
a licensing board rejected motions to continue to withhold documents in part because the board had, simultaneously with the issuance of the subpoenas, issued a strict protective order that limited the release of the information only to the parties, and only for use in that case; LBP-06-25, 64 NRC 388 (2006)
- Consumers Power Co.* (Palisades Nuclear Plant), ALAB-670, 15 NRC 493, 499-506, *vacated as moot*, CLI-82-18, 16 NRC 50 (1982)
only eight petitions for discretionary intervention have *ever* been granted during the 30 years NRC has applied the current six-factor test; CLI-06-16, 63 NRC 717 (2006)
- Consumers Power Co.* (Palisades Nuclear Plant), CLI-82-18, 16 NRC 50, 52 (1982)
the Commission has taken the unusual step of declaring that the grant of discretionary intervention carries no precedential weight; CLI-06-16, 63 NRC 717 (2006)
- Consumers Power Co.* (Palisades Nuclear Plant), LBP-81-26, 14 NRC 247, 253-55 (1981), *rev’d on other grounds*, ALAB-670, 15 NRC 493 (1982)
requirements for representational standing apply to labor unions; CLI-08-19, 68 NRC 263 (2008)
- Cooper Cameron Corp. v. U.S. Department of Labor*, 280 F.3d 539 (5th Cir. 2002)
challenges in FOIA cases routinely are resolved on the basis of summary judgment pleadings; LBP-08-7, 67 NRC 371 (2008)
- Coming Glass Works v. Brennan*, 417 U.S. 188, 202 (1974)
technical terms of art should be interpreted by reference to the trade or industry to which they apply; CLI-06-14, 63 NRC 519 (2006)
- Costle v. Pacific Legal Foundation*, 445 U.S. 198, 204 (1980)
petitioner must present sufficient information to show a genuine dispute and reasonably indicating that a further inquiry is appropriate; LBP-08-6, 67 NRC 292 (2008); LBP-09-17, 70 NRC 329 (2009)
- County of Suffolk v. Secretary of the Interior*, 562 F.2d 1368, 1372 (2d Cir. 1977)
agencies are permitted to defer certain issues in an environmental impact statement for a multistage project when detailed useful information on a given topic is not meaningfully possible to obtain, and the unavailable information is not essential to determination at the earlier stage; CLI-07-27, 66 NRC 235 (2007)
- Covington v. Jefferson County*, 358 F.3d 626, 638-41 (9th Cir. 2004)
to establish injury-in-fact, it is sufficient to allege that defendant’s actions caused reasonable concern of injury to the plaintiff; LBP-09-4, 69 NRC 185 n.44 (2009)
- Craig v. Harney*, 331 U.S. 367, 374 (1947)
a trial is a public event, and what transpires in the courtroom is public property; LBP-10-2, 71 NRC 206 n.54 (2010)
- Crow Butte Resources, Inc.* (In Situ Leach Facility, Crawford, Nebraska), CLI-09-9, 69 NRC 331, 336 (2009)
the Commission defers to a board’s rulings on standing and contention admissibility unless the appeal points to an error of law or abuse of discretion; CLI-09-14, 69 NRC 584 (2009); CLI-09-16, 70 NRC 35 (2009); CLI-09-22, 70 NRC 933 (2009); CLI-10-1, 71 NRC 5 (2010); CLI-10-2, 71 NRC

LEGAL CITATIONS INDEX

CASES

- 29 (2010); CLI-10-3, 71 NRC 52 (2010); CLI-10-7, 71 NRC 138 (2010); CLI-10-9, 71 NRC 253 (2010); CLI-10-21, 72 NRC 200 (2010)
- Crow Butte Resources, Inc.* (In Situ Leach Facility, Crawford, Nebraska), CLI-09-9, 69 NRC 331, 339 (2009)
- when denial of a license would alleviate a petitioner's asserted potential injury, any admissible contention with such a result can be prosecuted by a petitioner, regardless of whether that contention is directly related to that petitioner's articulated injury; LBP-09-16, 70 NRC 242 (2009)
- Crow Butte Resources, Inc.* (In Situ Leach Facility, Crawford, Nebraska), CLI-09-9, 69 NRC 331, 339-41 (2009)
- as long as either denial of a license or issuance of a decision mandating compliance with legal requirements would alleviate a petitioner's potential injury, then under longstanding NRC jurisprudence the petitioner may prosecute any admissible contention that could result in the denial or in the compliance decision; CLI-09-20, 70 NRC 918 n.28 (2009)
- Crow Butte Resources, Inc.* (In Situ Leach Facility, Crawford, Nebraska), CLI-09-9, 69 NRC 331, 340 (2009)
- a nexus between the injury and the relief is required rather than a nexus between the claimed injury and the contention; LBP-09-16, 70 NRC 242 (2009)
- Crow Butte Resources, Inc.* (In Situ Leach Facility, Crawford, Nebraska), CLI-09-9, 69 NRC 331, 343 (2009)
- affidavits authorizing organizational representation are to be filed with specific reference to the proceeding in which standing is sought and providing the petitioners the opportunity to cure such defects in their affidavits; CLI-10-7, 71 NRC 138 (2010); LBP-09-13, 70 NRC 182 n.26 (2009)
- petitioner has not met the pleading requirements because it has not demonstrated any link between the purported violations at an existing unit and any future noncompliance or resulting safety risk affecting proposed units; CLI-10-9, 71 NRC 272 (2010)
- petitioner must make a fresh standing demonstration in each individual proceeding in which intervention is sought; LBP-10-21, 72 NRC 640 (2010)
- Crow Butte Resources, Inc.* (In Situ Leach Facility, Crawford, Nebraska), CLI-09-9, 69 NRC 331, 345 (2009)
- a board's determination of standing does not depend on whether the cause of the injury flows directly from the challenged action, but whether the chain of causation is plausible; LBP-09-13, 70 NRC 177 (2009); LBP-10-16, 72 NRC 382 (2010)
- if none of the individuals in a materials licensing proceeding claims to live on or immediately adjacent to a proposed mining site, the board must determine whether petitioners have presented sufficient evidence to establish that a plausible pathway exists through which contaminants could migrate from the proposed mining site to the petitioners' water sources; LBP-10-16, 72 NRC 385 (2010)
- Crow Butte Resources, Inc.* (In Situ Leach Facility, Crawford, Nebraska), CLI-09-9, 69 NRC 331, 348-51 (2009)
- Indian tribe's contention regarding compliance with the National Historic Preservation Act consultation requirements was not ripe for litigation; LBP-10-16, 72 NRC 419, 420, 421 (2010)
- Crow Butte Resources, Inc.* (In Situ Leach Facility, Crawford, Nebraska), CLI-09-9, 69 NRC 331, 351 (2009)
- if, following publication of the Staff's environmental review document, petitioners continue to believe that the consultations were not performed as required, they may proffer such a contention pursuant to section 2.309(f)(2); CLI-09-12, 69 NRC 566 n.141 (2009); LBP-10-16, 72 NRC 422, 440 (2010)
- Crow Butte Resources, Inc.* (In Situ Leach Facility, Crawford, Nebraska), CLI-09-9, 69 NRC 331, 352 (2009)
- at the contention admission stage, the board simply has to find that each of the elements of contention admissibility is satisfied, and need not weigh the merits of petitioner's arguments; LBP-09-10, 70 NRC 86 n.28 (2009)
- petitioner must provide a concise statement of the alleged facts or expert opinion that support the contention, references to sources and documents on which the petitioner intends to rely, and sufficient information to show that a genuine dispute exists; LBP-09-10, 70 NRC 136 n.75 (2009)

LEGAL CITATIONS INDEX

CASES

- Crow Butte Resources, Inc.* (In Situ Leach Facility, Crawford, Nebraska), CLI-09-9, 69 NRC 331, 356 (2009)
contention is rejected as lacking support for the premise that ongoing mining operations will drain or contaminate wetlands, such that their economic benefits will be decreased; LBP-10-16, 72 NRC 400 (2010)
- Crow Butte Resources, Inc.* (In Situ Leach Facility, Crawford, Nebraska), CLI-09-9, 69 NRC 331, 362-64 (2009)
contention based on a recent study suggesting a link between low levels of arsenic in drinking water and diabetes is rejected; CLI-09-12, 69 NRC 561 n.112 (2009)
- Crow Butte Resources, Inc.* (In Situ Leach Facility, Crawford, Nebraska), CLI-09-9, 69 NRC 331, 363-64 (2009)
board admission of late-filed contention was reversed because petitioners failed to support their fundamental premise that applicant's licensed activities have exposed petitioners and others to a toxic substance; CLI-10-20, 72 NRC 194 n.49 (2010)
- Crow Butte Resources, Inc.* (In Situ Leach Facility, Crawford, Nebraska), CLI-09-9, 69 NRC 331, 365 (2009)
once a petition to intervene and request for hearing have been granted and contentions are admitted for hearing, appeals of board rulings on new or amended contentions are treated under section 2.341(f)(2), regardless of the subject matter of those contentions; CLI-10-16, 71 NRC 490 (2010)
rejection or admission of a contention, where petitioner has been admitted as a party and has other contentions pending, neither constitutes serious and irreparable impact nor affects the basic structure of the proceeding in a pervasive and unusual manner; CLI-10-16, 71 NRC 491 (2010)
- Crow Butte Resources, Inc.* (In Situ Leach Facility, Crawford, Nebraska), CLI-09-9, 69 NRC 331, 365 & n.178 (2009)
that interlocutory review will only be granted under extraordinary circumstances reflects the Commission's disfavor of piecemeal appeals during ongoing licensing board proceedings; CLI-10-16, 71 NRC 490 (2010)
- Crow Butte Resources, Inc.* (In Situ Leach Facility, Crawford, Nebraska), LBP-08-24, 68 NRC 691, 720 (2008)
if petitioner were to delay and submit contentions on National Environmental Policy Act topics addressed in the environmental report after issuance of the environmental impact statement, they would likely be characterized as late-filed contentions, subject to much more stringent admissibility standards; LBP-08-26, 68 NRC 932 (2008)
- Crow Butte Resources, Inc.* (In Situ Leach Facility, Crawford, Nebraska), LBP-08-24, 68 NRC 691, 720-21 (2008)
it is appropriate to assess both the fitness of the issue for judicial decision and the hardship to the parties of withholding court consideration; LBP-09-1, 69 NRC 38-39 n.114 (2009)
- Crow Butte Resources, Inc.* (In Situ Leach Facility, Crawford, Nebraska), LBP-08-24, 68 NRC 691, 730 (2008)
the board found the practice of incorporating by reference contrary to Commission case law and denied contentions on the basis on the dearth of information; LBP-10-16, 72 NRC 397 (2010)
- Crow Butte Resources, Inc.* (In Situ Leach Facility, Crawford, Nebraska), LBP-08-24, 68 NRC 691, 745 (2008)
the requirement of 10 C.F.R. 40.9(a) that applicant/licensee provide information that is accurate and complete in all material respects comes into play in enforcement proceedings, but this does not place the issue beyond consideration in a licensing proceeding; LBP-09-1, 69 NRC 32 n.83 (2009)
- Crow Butte Resources, Inc.* (In Situ Leach Facility, Crawford, Nebraska), LBP-08-24, 68 NRC 691, 760 (2008)
although a board in another materials license renewal proceeding allowed an Indian organization to participate in that proceeding as an interested Indian Tribe under 10 C.F.R. 2.315(c), that ruling is not binding on other boards; LBP-09-13, 70 NRC 187 n.33 (2009)
- Crow Butte Resources, Inc.* (In Situ Leach Facility, Crawford, Nebraska), LBP-08-24, 68 NRC 691, 760-61 (2008)
licensing boards may resolve purely legal issues by asking the parties for immediate briefing on the issue in question; LBP-09-4, 69 NRC 201 n.118 (2009)

LEGAL CITATIONS INDEX

CASES

- Crow Butte Resources, Inc.* (North Trend Expansion Project), CLI-09-12, 69 NRC 535 (2009)
licensing boards must exercise caution when reformulating contentions; CLI-10-14, 71 NRC 464 n.80 (2010)
- Crow Butte Resources, Inc.* (North Trend Expansion Project), CLI-09-12, 69 NRC 535, 543, 553 (2009)
if a question arises over the scope of an admitted contention, the board or Commission will refer back to the bases set forth in support of the contention; CLI-10-15, 71 NRC 482 (2010)
- Crow Butte Resources, Inc.* (North Trend Expansion Project), CLI-09-12, 69 NRC 535, 549 (2009)
the Commission upheld the licensing board's finding that the petitioner demonstrated good cause for its late filing; LBP-09-20, 70 NRC 572-73 (2009); LBP-10-24, 72 NRC 731 (2010)
- Crow Butte Resources, Inc.* (North Trend Expansion Project), CLI-09-12, 69 NRC 535, 549 n.61 (2009)
good cause is the most significant of the late-filing factors set out in 10 C.F.R. 2.309(c); LBP-09-20, 70 NRC 573 (2009); LBP-10-9, 71 NRC 506 (2010); LBP-10-24, 72 NRC 731, 769 (2010)
licensing boards and the Commission have considered the late-filing criteria even in cases where the factors were not fully addressed by petitioners and/or the NRC Staff or were not addressed at all; LBP-10-24, 72 NRC 743 (2010)
- Crow Butte Resources, Inc.* (North Trend Expansion Project), CLI-09-12, 69 NRC 535, 552 (2009)
boards have discretion to reformulate contentions to eliminate extraneous issues or to consolidate issues for a more efficient proceeding; CLI-10-2, 71 NRC 33 (2010); LBP-09-16, 70 NRC 256 (2009); LBP-10-9, 71 NRC 510 (2010); LBP-10-14, 72 NRC 127 n.171 (2010); LBP-10-16, 72 NRC 406 (2010)
the Commission found fault with the board's failure to identify clearly which of the diffuse and, in some cases, unsupported claims were admitted for hearing; CLI-10-2, 71 NRC 32 (2010)
- Crow Butte Resources, Inc.* (North Trend Expansion Project), CLI-09-12, 69 NRC 535, 552-53 (2009)
boards have legal authority to reformulate contentions; LBP-10-16, 72 NRC 403 (2010)
if petitioner neglects to provide the requisite support for its contentions, the board should not make assumptions of fact that favor the petitioner or supply information that is lacking; LBP-09-26, 70 NRC 954 (2009); LBP-10-6, 71 NRC 361 (2010)
licensing boards may reformulate contentions to eliminate extraneous issues or to consolidate issues for a more efficient proceeding, but should not add material not raised by a petitioner in order to render a contention admissible; CLI-10-14, 71 NRC 464 n.80 (2010)
- Crow Butte Resources, Inc.* (North Trend Expansion Project), CLI-09-12, 69 NRC 535, 552-54 (2009)
where the Commission found that the board did not provide clarity on the scope of admitted contentions, it exercised its authority to reformulate the contentions; CLI-10-18, 72 NRC 87 (2010)
- Crow Butte Resources, Inc.* (North Trend Expansion Project), CLI-09-12, 69 NRC 535, 553 (2009)
a board may not supply information that is missing or make assumptions of fact not provided by the petitioner; LBP-10-6, 71 NRC 380 (2010)
because the reach of a contention necessarily hinges upon its terms and its stated bases, the brief explanation helps define the scope of the contention; LBP-09-26, 70 NRC 953 (2009)
boards are authorized to hold prehearing conferences to simplify or clarify the issues for hearing, after which they may admit a revised contention, as long as the revised contention does not add material not raised by the intervenor to make it admissible; LBP-10-14, 72 NRC 127 n.171 (2010)
boards have reformulated contentions prepared and submitted by unrepresented petitioners; LBP-10-10, 71 NRC 591 n.312 (2010)
parties were left without a clear roadmap as to which elements of several broadly worded claims were, in fact, admissible; CLI-10-2, 71 NRC 33 (2010)
the scope of an admitted contention is defined by its bases; LBP-10-6, 71 NRC 366 n.49 (2010)
- Crow Butte Resources, Inc.* (North Trend Expansion Project), CLI-09-12, 69 NRC 535, 557 (2009)
any contention that fails to controvert the application may be dismissed; LBP-10-6, 71 NRC 361 (2010)
- Crow Butte Resources, Inc.* (North Trend Expansion Project), CLI-09-12, 69 NRC 535, 566 (2009)
petitioner is free to file a contention later on in the proceeding if, after Staff releases its environmental documents, petitioner believes that the Staff has failed to satisfy its obligations under NEPA and the National Historic Preservation Act; LBP-10-16, 72 NRC 440 (2010)

LEGAL CITATIONS INDEX

CASES

- Crow Butte Resources, Inc.* (North Trend Expansion Project), CLI-09-12, 69 NRC 535, 568 (2009)
a reply cannot expand the scope of the arguments set forth in the original hearing request; LBP-09-16, 70 NRC 254 (2009)
- Crow Butte Resources, Inc.* (North Trend Expansion Project), CLI-09-12, 69 NRC 535, 572 (2009)
mandatory disclosures, which apply to Subpart L proceedings, are wide-reaching; LBP-12-23, 72 NRC 701 (2010)
- Crow Butte Resources, Inc.* (North Trend Expansion Project), CLI-09-12, 69 NRC 535, 573 (2009)
a board abused its discretion in reformulating and admitting contentions; LBP-10-16, 72 NRC 397 (2010)
- Crow Butte Resources, Inc.* (North Trend Expansion Project), LBP-08-6, 67 NRC 241, 271, 276-89 (2008)
establishing standing for a contention involves a showing of a concrete and particularized injury that is fairly traceable to the challenged action and likely to be redressed by a favorable decision; LBP-09-1, 69 NRC 24 (2009)
- Crow Butte Resources, Inc.* (North Trend Expansion Project), LBP-08-6, 67 NRC 241, 278 (2008), *aff'd*, CLI-09-12, 69 NRC 535 (2009)
although petitioner's reply cannot be used to remedy a deficient petition, because opposing parties have no opportunity to respond, petitioner asks the board to apply a standard of "fundamental fairness," because petitioner filed its initial petition without the assistance of counsel; LBP-09-6, 69 NRC 426 (2009)
boards should afford greater latitude to a pleading submitted by a pro se petitioner; CLI-10-20, 72 NRC 189 (2010)
- Crow Butte Resources, Inc.* (North Trend Expansion Project), LBP-08-6, 67 NRC 241, 280 (2008)
petitioner is not required to go further at the threshold contention admission stage to establish injury in fact; LBP-10-16, 72 NRC 388 (2010)
- Crow Butte Resources, Inc.* (North Trend Expansion Project), LBP-08-6, 67 NRC 241, 294-323 (2008)
boards have reformulated contentions prepared and submitted by unrepresented petitioners; LBP-10-10, 71 NRC 591 n.312 (2010)
- Crow Butte Resources, Inc.* (North Trend Expansion Project), LBP-08-6, 67 NRC 241, 321 (2008)
on appeal, the Commission found fault with the board's failure to identify clearly which of the diffuse and, in some cases, unsupported claims were admitted for hearing; CLI-10-2, 71 NRC 32 (2010)
- Crow Butte Resources, Inc.* (North Trend Expansion Project), LBP-08-6, 67 NRC 241, 323 (2008), *rev'd in part on other grounds*, CLI-09-12, 69 NRC 535 (2009)
admissibility of contentions does not hinge on access to a draft guidance document, which is not a legal requirement; LBP-10-5, 71 NRC 343 (2010)
guidance documents are not binding legal authority; LBP-10-5, 71 NRC 346 (2010)
- Crow Creek Sioux Tribe v. Brownlee*, 331 F.3d 912, 916 (D.C. Cir. 2003)
a tribe does not have standing merely because it has statutory rights in burial remains and cultural artifacts, but rather, to establish standing, the Tribe must show some actual or imminent injury; LBP-08-24, 68 NRC 713 n.106 (2008); LBP-10-16, 72 NRC 392 n.112 (2010)
- Cumis Insurance Society, Inc. v. South-Coast Bank*, 610 F. Supp. 193, 196 (N.D. Ind. 1985)
the phrase "possession, custody, or control" is in the disjunctive, and only one of the enumerated requirements need be met; LBP-12-23, 72 NRC 707 (2010)
- Cunningham v. Sears, Roebuck & Co.*, 854 F.2d 914, 916 (6th Cir. 1988)
although counsel have duties to their clients, there is a degree of candor necessary for effective disposition of cases that counsel owes as an officer of the court; LBP-06-10, 63 NRC 370 (2006)
- Cuomo v. NRC*, 772 F.2d 972, 976 (D.C. Cir. 1985)
a party seeking a stay must show it faces imminent, irreparable harm that is both certain and great; CLI-06-8, 63 NRC 237 (2006)
- Curators of the University of Missouri* (TRUMP-S Project), CLI-95-1, 41 NRC 71, 98 (1995)
NUREGs and regulatory guides serve as guidance, do not prescribe requirements, are not substitutes for regulations, and are not binding authority; LBP-07-6, 65 NRC 440 n.31 (2007); LBP-08-25, 68 NRC 788 n.29 (2008); LBP-10-10, 71 NRC 584 (2010)
- Curators of the University of Missouri* (TRUMP-S Project), CLI-95-1, 41 NRC 71, 98, 100 (1995)
applicant's failure to comply with a guidance document does not demonstrate failure to comply with the relevant regulations; LBP-07-14, 66 NRC 197 (2007)

LEGAL CITATIONS INDEX

CASES

- Curators of the University of Missouri* (TRUMP-S Project), CLI-95-1, 41 NRC 71, 121 (1995)
it is the applicant, not the Staff, that has the burden of proof in litigation; CLI-08-23, 68 NRC 477, 486 (2008)
- Curators of the University of Missouri* (TRUMP-S Project), CLI-95-1, 41 NRC 71, 121 & n.67 (1995)
NRC hearings on safety issues concern the adequacy of the license application, not the NRC Staff's work, but NRC hearings on NEPA issues focus entirely on the adequacy of the NRC Staff's work; CLI-07-17, 65 NRC 395 (2007)
- Curators of the University of Missouri* (TRUMP-S Project), CLI-95-1, 41 NRC 71, 121-22 (1995)
a board's jurisdiction does not extend to overseeing or directing the NRC Staff in its license reviews; CLI-08-23, 68 NRC 473-74 (2008)
it would be unfair to deny a meritorious application because the Staff's review was found lacking; CLI-08-23, 68 NRC 482 (2008)
NRC has not, and will not, litigate claims about the adequacy of the Staff's safety review in licensing adjudications; CLI-08-23, 68 NRC 476 n.64 (2008); CLI-09-14, 69 NRC 602 (2009)
- Curators of the University of Missouri* (TRUMP-S Project), CLI-95-1, 41 NRC 71, 121-22, *aff'd on motion for reconsideration*, CLI-95-8, 41 NRC 386, 403 (1995)
the issue in a licensing proceeding is the adequacy of the application, not the adequacy of the Staff's safety review; CLI-08-3, 67 NRC 168 n.73 (2008)
- Curators of the University of Missouri* (TRUMP-S Project), CLI-95-1, 41 NRC 71, 149-50 (1995)
although NRC guidance documents are entitled to some weight, they do not have the force of a legally binding regulation and, like any guidance document, may be challenged in an adjudicatory proceeding; LBP-08-22, 68 NRC 614 (2008)
- Curators of the University of Missouri* (TRUMP-S Project), CLI-95-1, 41 NRC 71, 150 (1995)
NUREGs are guidance documents, with no binding effect, but are entitled to special weight, such that it is appropriate to consider in evaluating contentions; LBP-09-17, 70 NRC 368 (2009)
- Curators of the University of Missouri* (TRUMP-S Project), CLI-95-1, 41 NRC 71, 165 (1995)
intervenor are not entitled to litigate common defense and security considerations under 10 C.F.R. 40.32(d) unless the specific common defense and security risk asserted is reasonably related to, and would arise as a direct result of, the specific license amendments that the Commission is asked to approve; LBP-09-1, 69 NRC 37 (2009)
- Curators of the University of Missouri* (TRUMP-S Project), CLI-95-1, 41 NRC 71, 165-66 (1995)
intervenor's nuclear proliferation concern is premised upon future third-party activities that are unrelated to the specific activities authorized by license amendments and is not litigable because it is not a direct consequence of the proposed license amendments or the Commission's approval thereof; LBP-09-1, 69 NRC 37-38 (2009)
- Curators of the University of Missouri* (TRUMP-S Project), CLI-95-8, 41 NRC 386, 395 (1995)
license applications may be modified or improved during the NRC review process; LBP-10-17, 72 NRC 514 (2010)
the fact that a combined license application is subject to, or even expected to, change does not make it legally deficient because the NRC follows a dynamic licensing process; LBP-09-10, 70 NRC 77 (2009)
- Curators of the University of Missouri* (TRUMP-S Project), CLI-95-8, 41 NRC 386, 395-96 (1995)
the issue in adjudications is not the adequacy of the NRC Staff's review of the application but rather whether the license application raises health and safety concerns; LBP-08-13, 68 NRC 71 n.88 (2008)
the manner in which the NRC Staff conducts its sufficiency review and whether its decision to accept an application for review was correct are not matters within the purview of an adjudicatory proceeding; LBP-08-9, 67 NRC 444 (2008)
- Curators of the University of Missouri* (TRUMP-S Project), CLI-95-8, 41 NRC 386, 397 (1995)
regulatory guides and Staff review plans are worth noting, but they do not have the force of law and are not binding on the board's determination as to whether applicant's testing program satisfies the legal standards; LBP-06-23, 64 NRC 312 n.255 (2006); LBP-07-2, 65 NRC 173 (2007)
- Curators of the University of Missouri* (TRUMP-S Project), CLI-95-8, 41 NRC 386, 400 (1995)
the Commission has long declined to assume that licensees will refuse to meet their obligations under their licenses or NRC regulations; LBP-07-14, 66 NRC 209 n.94 (2007)

LEGAL CITATIONS INDEX

CASES

- Curators of the University of Missouri* (TRUMP-S Project), LBP-90-30, 32 NRC 95, 103 (1990)
intervenor may not act as private attorneys-general and raise issues that are of concern to them but do not affect them directly; CLI-07-18, 65 NRC 411 n.35 (2007)
- DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 340, 349 (2006)
standing on the part of plaintiffs is found at a bare minimum as municipal taxpayers under case law in which the peculiar relation of the corporate taxpayer to the corporation distinguishes such a case from the general bar on taxpayer suits; LBP-09-1, 69 NRC 23 (2009)
- DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 349, 354 (2006)
status as municipal taxpayers does not give plaintiffs standing to challenge the state franchise tax credit; LBP-09-1, 69 NRC 24 (2009)
- DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 352 (2006)
plaintiff must demonstrate standing for each claim he seeks to press and for each form of relief that is sought; LBP-09-1, 69 NRC 20-21, 24 (2009)
- DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 353 n.5 (2006)
once a litigant has standing to request invalidation of a particular agency action, it may do so by identifying all grounds on which the agency may have failed to comply with its statutory mandate; LBP-09-1, 69 NRC 24 n.52 (2009)
- Dallas v. Hall*, 562 F.2d 712, 718 (5th Cir. 2009)
rejection of even viable and reasonable alternatives, after an appropriate evaluation, is not arbitrary and capricious; LBP-10-10, 71 NRC 584-85 n.288 (2010)
- Daniels v. Alander*, 844 A.2d 182, 187-88 (Conn. 2004)
the duty of trial judges to deter and correct misconduct of attorneys with respect to their obligations as officers of the court is related to the need to support the authority of the tribunal and enable the proceeding to go forward with dignity; LBP-06-10, 63 NRC 369 (2006)
- Daniels v. Alander*, 844 A.2d 182, 188 (Conn. 2004)
the ethical rule that prohibits the making of false statements, as well as failing to correct such statements, is not limited to affirmative misstatements, but also applies to failures to correct misstatements made in a lawyer's presence by another lawyer; LBP-06-10, 63 NRC 371 (2006)
- Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 589-90 (1993)
for purposes of summary disposition, mere allegations, including speculative or bare conclusory statements by an expert, are insufficient; LBP-07-13, 66 NRC 144 (2007)
- Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 592 (1993)
the term, "reasonable assurance," is interpreted; LBP-08-22, 68 NRC 644 n.261 (2008)
- Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 592-93 (1993)
reliability of scientific evidence is verified by assessing whether the reasoning or methodology underlying the evidence is scientifically valid; LBP-08-24, 68 NRC 739 n.267 (2008)
- Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 597 (1993)
trial judges have the task of ensuring that an expert's testimony both rests on a reliable foundation and is relevant; LBP-08-22, 68 NRC 646 (2008)
- David B. Kuhl, II* (Denial of Senior Reactor Operator License), LBP-09-14, 69 NRC 193, 196 (2009)
unlike many cases in which a contention becomes moot, this is not an instance where an analysis of the merits would be an empty exercise; LBP-09-15, 70 NRC 212 (2009)
- David Geisen*, CLI-06-19, 64 NRC 9, 11 (2006)
the question whether to hold an NRC enforcement proceeding in abeyance pending a related criminal prosecution is generally suitable for interlocutory Commission review because, unlike most interlocutory questions, the abeyance issue cannot await the end of the proceeding (it becomes moot); CLI-10-29, 72 NRC 561 n.32 (2010)
- David Geisen*, CLI-09-23, 70 NRC 935, 936 (2009)
when evaluating a motion for a stay the Commission places the greatest weight on irreparable injury to the moving party unless a stay is granted; CLI-10-8, 71 NRC 151 (2010)
- David Geisen*, CLI-09-23, 70 NRC 935, 937 (2009)
stay petitioner must show that success on the merits is a virtual certainty to warrant issuance of a stay; CLI-10-8, 71 NRC 154 (2010)

LEGAL CITATIONS INDEX

CASES

- David Geisen*, LBP-06-13, 63 NRC 523, 543, 558 (2006)
a challenge to an order's immediate effectiveness could be brought on the basis of the long delay between investigation and action; LBP-06-26, 64 NRC 434 n.5 (2006)
- Davis v. Federal Election Commission*, 128 S. Ct. 2759, 2768-69 (2008)
a candidate who had standing to challenge one statutory provision of a law would not necessarily have standing to challenge a different provision of that same law; CLI-09-9, 69 NRC 340 (2009)
- Davis v. Federal Election Commission*, 128 S. Ct. 2759, 2769 (2008)
standing is not dispensed in gross, but rather plaintiff in federal court must demonstrate standing for each claim he seeks to press and for each form of relief that is sought; LBP-09-1, 69 NRC 19, 20, 21-22 (2009)
- Davis v. Latschar*, 202 F.3d 359, 369 (D.C. Cir. 2000)
an environmental impact statement must be supplemented only when changed circumstances cause effects that are significantly different from those already studied; LBP-06-19, 64 NRC 99 (2006)
- Deal v. United States*, 508 U.S. 129, 132 (1993)
it is a fundamental principle of statutory construction that the meaning of a word cannot be determined in isolation, but must be drawn from the context in which it is used; LBP-09-15, 70 NRC 217 n.57 (2009)
- Defenders of Wildlife v. Andrus*, 627 F.2d 1238, 1243-44 (D.C. Cir. 1980)
the National Environmental Policy Act applies to agencies of the federal government, not to private parties such as applicants for NRC licenses; LBP-09-10, 70 NRC 87 (2009)
- Defenders of Wildlife v. U.S. Environmental Protection Agency*, 420 F.3d 946, 963 (9th Cir. 2005),
overruled on other grounds sub nom. National Association of Home Builders v. Defenders of Wildlife, 127 S. Ct. 2518 (2007)
an agency may be excused from complying with the National Environmental Policy Act where it has no discretion to prevent, or to refuse to take, the action involved; LBP-09-6, 69 NRC 405 (2009)
- Degen v. United States*, 517 U.S. 820, 825-26 (1996)
although 10 C.F.R. 2.709 deals with special procedural norms for discovery against the Staff, there is no reason to believe, as to substantive content, that its repeated use of the relevance concept was not intended to embrace the universal understanding of that concept that shapes the scope and definition of discoverable evidence in both the federal courts and NRC adjudications; LBP-06-25, 64 NRC 390 n.102 (2006)
- Dellums v. NRC*, 863 F.2d 968, 971 (D.C. Cir. 1988)
in determining whether an individual or organization should be granted party status in a proceeding based on standing "as of right," the agency applies contemporaneous judicial standing concepts; LBP-08-26, 68 NRC 911 (2008)
intervention petitioner must be able to show how it would have personally suffered or will suffer a distinct and palpable harm that constitutes injury in fact; LBP-06-4, 63 NRC 103 (2006); LBP-07-14, 66 NRC 182 (2007); LBP-09-18, 70 NRC 400 (2009)
- Delong Equipment Co. v. Washington Mills Electro Minerals Corp.*, 990 F.2d 1186, 1196 (11th Cir.), *cert. denied*, 510 U.S. 1012 (1993)
legal determinations made on appeal in a case are controlling precedent, becoming the "law of the case," for all later decisions in the same case; CLI-06-11, 63 NRC 488 (2006)
- Demko v. United States*, 216 F.3d 1049, 1053 (Fed. Cir. 2000)
pursuant to the rule of the last antecedent, qualifying words, phrases, and clauses must be applied to the words or phrases immediately preceding them and are not to be construed as extending to and including others more remote; LBP-06-1, 63 NRC 56 n.11 (2006)
- Department of Interior v. Klamath Water Users*, 532 U.S. 1, 8-9 (2001)
deliberative process privilege rests on the obvious realization that officials will not communicate candidly among themselves if each remark is a potential item of discovery and front page news, and its object is to enhance the quality of agency decisions, by protecting open and frank discussion among those who make them within the government; LBP-06-25, 64 NRC 381 (2006)
- Department of Transportation v. Public Citizen*, 541 U.S. 752 (2004)
nothing in the Atomic Energy Act gives the agency authority to base licensing decisions on a project's potential to create or eliminate jobs; CLI-06-10, 63 NRC 467 (2006)

LEGAL CITATIONS INDEX

CASES

- Department of Transportation v. Public Citizen*, 541 U.S. 752, 754 (2004)
because applicant dismissed solar with storage as not a viable alternative, this alternative does not meet NEPA's rule of reason; LBP-10-10, 71 NRC 572 (2010)
because the Federal Motor Carrier Safety Administration has no ability to prevent cross-border operations, it lacks the power to act on whatever information might be contained in an EIS and could not act on whatever input the public could provide; CLI-07-16, 65 NRC 387 n.77 (2007)
- Department of Transportation v. Public Citizen*, 541 U.S. 752, 756-58 (2004)
no environmental impact statement is necessary if the environmental assessment concludes with a finding of no significant impact, which briefly presents the reasons why the proposed action will not significantly impact the environment; LBP-08-7, 67 NRC 365 n.1 (2008)
- Department of Transportation v. Public Citizen*, 541 U.S. 752, 757 (2004)
Council on Environmental Quality regulations receive substantial deference from federal courts in interpreting the requirements of NEPA; LBP-10-16, 72 NRC 418 n.275 (2010)
- Department of Transportation v. Public Citizen*, 541 U.S. 752, 765 (2004)
primary obligation to satisfy the requirements of NEPA rests on the agency; CLI-10-18, 72 NRC 82 (2010)
- Department of Transportation v. Public Citizen*, 541 U.S. 752, 767 (2004)
a reasonably close causal relationship between federal agency action and environmental consequences is necessary to trigger NEPA; CLI-07-8, 65 NRC 129, 130 (2007)
inherent in the National Environmental Policy Act and its implementing regulations is a rule of reason, which ensures that agencies determine whether and to what extent to prepare an environmental impact statement based on the usefulness of any potential new information to the decision-making process; LBP-09-4, 69 NRC 204 n.126 (2009)
it would be inconsistent with the National Environmental Policy Act's rule of reason to require that the cumulative impacts analysis individually analyze the effects of remote facilities absent a demonstration that such additional effort would lead to a different conclusion; LBP-09-4, 69 NRC 203-04 n.126 (2009)
prior NRC precedent is consistent with Supreme Court NEPA doctrine, which requires a reasonably close causal relationship between federal agency action and environmental consequences before NEPA is triggered, a relationship similar to that of proximate cause in tort law; CLI-07-8, 65 NRC 130 (2007); LBP-07-14, 66 NRC 186 (2007)
the claimed impact of a terrorist attack is too attenuated to find the proposed federal action of a license renewal to be the proximate cause of that impact; CLI-07-8, 65 NRC 129 (2007)
the proximate cause test is required for NRC licensing decisions; CLI-07-8, 65 NRC 130 (2007)
where the preparation of an environmental impact statement would serve no purpose in light of NEPA's regulatory scheme as a whole, no rule of reason worthy of that title would require an agency to prepare an EIS; CLI-07-27, 66 NRC 237 n.123 (2007)
- Department of Transportation v. Public Citizen*, 541 U.S. 752, 767-68 & n.2, 770 (2004)
the Commission seeks the parties' views on whether the NRC lacks authority to reject an irradiation license for nonradiological food safety reasons and therefore need not consider food safety under NEPA; CLI-08-4, 67 NRC 172 (2008)
- Department of Transportation v. Public Citizen*, 541 U.S. 752, 768-69 (2004)
applicant's comparison of the environmental impacts of nuclear and wind/CAES is inadequate to inform decision makers about the competing choices; LBP-10-10, 71 NRC 564 (2010)
- Department of Transportation v. Public Citizen*, 541 U.S. 752, 769 (2004)
controls that other countries may impose on mining and milling, and the impacts of such activities, are outside the scope of a combined license proceeding; LBP-09-17, 70 NRC 370 (2009)
- Department of Transportation v. Public Citizen*, 541 U.S. 752, 770 (2004)
an agency may be excused from complying with NEPA where it has no discretion to prevent, or to refuse to take, the action involved; LBP-09-6, 69 NRC 404 (2009)
when an agency has no ability to prevent a certain effect due to its limited statutory authority, it cannot be considered a legally relevant cause of the effect; LBP-07-4, 65 NRC 330 n.246 (2007)
- Desert Palace v. Costa*, 539 U.S. 90, 99-100 (2003)
plaintiff may prove his case by direct or circumstantial evidence; CLI-10-23, 72 NRC 242 n.157 (2010)

LEGAL CITATIONS INDEX

CASES

- Detroit Edison Co.* (Enrico Fermi Atomic Power Plant, Unit 2), ALAB-470, 7 NRC 473, 474-75 (1978)
economic impact of a proposed action on ratepayers is outside the scope of a NEPA analysis;
LBP-10-14, 72 NRC 126 (2010)
- Detroit Edison Co.* (Enrico Fermi Atomic Power Plant, Unit 2), ALAB-707, 16 NRC 1760, 1764-65 (1982)
information in the public domain for 6 months does not establish good cause for late filing; CLI-09-5,
69 NRC 126 (2009)
- Detroit Edison Co.* (Enrico Fermi Atomic Power Plant, Unit 2), LBP-78-37, 8 NRC 575, 584-85 (1978)
the special circumstances required to obtain waiver of a rule have been described as a prima facie
showing that application of a rule in a particular way would not serve the purposes for which the
rule was adopted; LBP-10-9, 71 NRC 525 (2010)
- Detroit Edison Co.* (Enrico Fermi Atomic Power Plant, Unit 2), LBP-79-1, 9 NRC 73, 87-88 (1979)
discretionary intervention is granted where petitioner's previous experience would provide valuable
insight in developing a sound record; LBP-09-6, 69 NRC 438 n.386 (2009)
only eight petitions for discretionary intervention have ever been granted during the 30 years NRC has
applied the current six-factor test; CLI-06-16, 63 NRC 717 (2006)
- Detroit Edison Co.* (Fermi Nuclear Power Plant, Unit 3), CLI-09-4, 69 NRC 80 (2009)
applicant may, at its own risk, submit a combined license application that does not reference a
certified design; CLI-10-1, 71 NRC 9 (2010)
- Detroit Edison Co.* (Fermi Nuclear Power Plant, Unit 3), CLI-09-4, 69 NRC 80, 84 (2009)
the Commission declines to suspend a proceeding pending outcome of the design certification process;
LBP-09-3, 69 NRC 157 n.9 (2009)
the standard for satisfying the likelihood-of-standing criterion in the context of filing a request for
SUNSI entails relatively minimal effort; LBP-09-5, 69 NRC 311 (2009)
- Detroit Edison Co.* (Fermi Nuclear Power Plant, Unit 3), CLI-09-4, 69 NRC 80, 84-85 (2009)
applicant for a construction permit or a combined license may, at its own risk, reference in its
application a design for which a design certification application has been docketed but not granted;
LBP-09-17, 70 NRC 334 (2009)
- Detroit Edison Co.* (Fermi Nuclear Power Plant, Unit 3), CLI-09-4, 69 NRC 80, 85 (2009)
challenges to the Commission regulations regarding the design certification process are inadmissible;
LBP-09-18, 70 NRC 414 (2009)
NRC regulations permit an applicant to reference a docketed, but not yet certified, design; CLI-10-9,
71 NRC 260 (2010)
- Detroit Edison Co.* (Fermi Nuclear Power Plant, Unit 3), LBP-09-16, 70 NRC 227, 249-52 (2009)
contentions that challenge a Commission rule or rulemaking are inadmissible; LBP-09-26, 70 NRC
979 (2009)
- Detroit Edison Co.* (Greenwood Energy Center, Units 2 and 3), ALAB-247, 8 AEC 936 (1974)
even if offsite construction does not appear to be part of the plan, it does not follow that offsite
consequences need not be considered; CLI-10-18, 72 NRC 91 (2010)
NRC's environmental analysis in connection with licensing nuclear facilities should extend to related
offsite construction projects such as transmission line routes extending 90 miles beyond the nuclear
facility; LBP-09-6, 69 NRC 404 (2009)
offsite health and safety impacts caused by onsite activities can support the admissibility of a
contention; LBP-09-6, 69 NRC 435 (2009)
- Detroit Edison Co.* (Greenwood Energy Center, Units 2 and 3), ALAB-472, 7 NRC 570 (1978)
the appeal board declined to entertain appeals by license applicants challenging partial board rulings;
CLI-09-18, 70 NRC 861 n.10 (2009)
- Detroit Free Press v. Ashcroft*, 303 F.3d 681, 702 (6th Cir. 2002)
as long as the administrative proceedings walk, talk, and squawk very much like an Article III judicial
proceeding, they should be open to the public; LBP-10-2, 71 NRC 208 n.59 (2010)
the First Amendment requires public access to deportation hearings despite government's strenuous
objections that open hearings would enable terrorists to obtain information useful to their malevolent
goals; LBP-10-2, 71 NRC 208 n.59 (2010)
- Detroit Free Press v. Ashcroft*, 303 F.3d 681, 703 (6th Cir. 2002)
to determine whether a tribunal should block public access to a judicial proceeding, a two-part
experience and logic test is applied; LBP-10-2, 71 NRC 207 n.61 (2010)

LEGAL CITATIONS INDEX

CASES

- Deukmejian v. NRC*, 751 F.2d 1287, 1321 (D.C. Cir. 1984)
petitioners successfully obtained reopening of the record to determine whether applicant's design verification program established the adequacy of the unit's design notwithstanding the QA violations; LBP-10-9, 71 NRC 520 (2010)
- Digital Equipment Corp. v. Currie Enterprises*, 142 F.R.D. 8, 14 (D. Mass. 1991)
conclusory allegations of potential abuse or simply the opportunity for the plaintiff to exploit civil discovery are generally unavailing to support a motion for stay; LBP-06-13, 63 NRC 541 n.56 (2006)
- Dirksen v. U.S. Department of Health and Human Services*, 803 F.2d 1456, 1459 (9th Cir.1986)
NRC records are protected from disclosure under FOIA Exemption 2 to the extent they contain internal analytic guidance, operating rules, or practices, the disclosure of which would aid terrorists or saboteurs seeking to circumvent security measures designed to protect nuclear materials; LBP-08-7, 67 NRC 375 n.11 (2008)
- District of Columbia v. Schramm*, 631 F.2d 854, 862 (D.C. Cir. 1980)
the National Environmental Policy Act applies to agencies of the federal government, not to private parties such as applicants for NRC licenses; LBP-09-10, 70 NRC 87 (2009)
- Diversified Industries, Inc. v. Meredith*, 572 F.2d 596 (8th Cir. 1977)
voluntary disclosure of internal investigative materials to a government agency waives the attorney-client and work-product privileges not only with respect to the particular agency, but also as to third parties; CLI-08-6, 67 NRC 183 n.1 (2008)
- Doe v. Santa Fe Independent School District*, 933 F. Supp. 647, 650 (S.D. Tex. 1996)
a First Amendment basis for public access to administrative proceedings is recognized; LBP-10-2, 71 NRC 208 n.59 (2010)
- Doe v. Southeastern Pennsylvania Transportation Authority*, 72 F.3d 1133, 1141 (3d Cir. 1995)
in determinations of personal privacy privilege, the potential harm must be measured within the context of the disclosure that actually occurred; LBP-06-25, 64 NRC 386 (2006)
- Doe v. United States Postal Service*, 317 F.3d 339, 343 (D.C. Cir. 2003)
the court draws no distinction between the probative value of direct and circumstantial evidence; CLI-10-23, 72 NRC 242 n.157 (2010)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Unit 2), CLI-03-14, 58 NRC 207, 213 (2003)
NRC's contention rule requires some reasonably specific factual or legal basis for a petitioner's allegations; CLI-06-10, 63 NRC 455 (2006)
NRC's strict contention admission rules are intended to adjudicate genuine, substantive safety and environmental issues placed in contention by qualified intervenors; CLI-06-10, 63 NRC 455 (2006)
rules on contention admissibility are strict by design; CLI-08-17, 68 NRC 233 (2008); LBP-09-4, 69 NRC 189 (2009); LBP-09-10, 70 NRC 72 (2009); LBP-09-16, 70 NRC 244 (2009); LBP-10-15, 72 NRC 278 (2010); LBP-10-16, 72 NRC 394 (2010)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Unit 2), CLI-03-14, 58 NRC 207, 215-16, *petition for reconsideration denied*, CLI-03-18, 58 NRC 433 (2003)
a threshold finding of standing does not render contentions admissible; CLI-06-9, 63 NRC 446 n.74 (2006)
although a petitioner may have a sufficient interest in a proceeding for standing, he or she may have no genuine material dispute to adjudicate, or no specific factual or legal support to bring an issue to hearing; CLI-06-9, 63 NRC 446 n.74 (2006)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Unit 2), CLI-03-14, 58 NRC 207, 216 (2003)
the threat of injury from radiation exposure is sufficient to satisfy the injury in fact requirement of traditional standing; LBP-06-4, 63 NRC 104 (2006)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Unit 2), CLI-03-14, 58 NRC 207, 217-18 (2003)
petitioner's argument that "any increase in dose, no matter the amount, and regardless of whether the change complies with NRC radiological dose requirements, is unacceptable," amounts to an attack on NRC dosage regulations; LBP-07-3, 65 NRC 266 n.12 (2007)

LEGAL CITATIONS INDEX

CASES

- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Unit 2), CLI-03-14, 58 NRC 207, 218 (2003)
with limited exceptions, no rule or regulation of the Commission is subject to attack in any adjudicatory proceeding; LBP-07-16, 66 NRC 289 (2007); LBP-08-9, 67 NRC 431 (2008); LBP-08-13, 68 NRC 64 (2008); LBP-08-26, 68 NRC 916 (2008); LBP-09-2, 69 NRC 97 n.37 (2009); LBP-09-8, 69 NRC 739 n.13 (2009); LBP-09-26, 70 NRC 956 (2009)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Unit 2), CLI-03-18, 58 NRC 433, 434 (2003)
petitions for reconsideration should not be used merely to reargue matters that the Commission already has considered but rejected; CLI-06-27, 64 NRC 401 n.6 (2006)
reconsideration petitions must establish an error in a Commission decision, based upon an elaboration or refinement of an argument already made, an overlooked controlling decision or principle of law, or a factual clarification; CLI-06-27, 64 NRC 401 n.6 (2006)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Unit 2), LBP-03-12, 58 NRC 75 (2003)
contentions are inadmissible where petitioner offers only bald assertions and provides little support for them; LBP-09-6, 69 NRC 415 n.234 (2009)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Unit 2), LBP-03-12, 58 NRC 75, 83, 93-94, *aff'd*, CLI-03-14, 58 NRC 207 (2003)
a contention that alleges that increases in radioactive releases create higher doses, but does not provide information or expert opinion to dispute the conclusion that the higher doses would still be under NRC regulatory limits or that the higher levels will cause harm, will not be admitted; LBP-07-3, 65 NRC 266 (2007); LBP-08-9, 67 NRC 446 (2008)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Unit 3), CLI-02-27, 56 NRC 367 (2002)
the National Environmental Policy Act imposes no legal duty on the NRC to consider intentional malevolent acts on a case-by-case basis in conjunction with commercial power reactor license renewal applications; LBP-06-7, 63 NRC 200 (2006); LBP-07-14, 66 NRC 195 (2007); LBP-08-13, 68 NRC 142-43 (2008)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Unit 3), CLI-02-27, 56 NRC 367, 370 n.10 (2002)
appellate briefs amicus curiae are welcome from parties in other Commission adjudications that have presented similar issues; CLI-10-17, 72 NRC 6 n.16 (2010)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Unit 3), CLI-02-27, 56 NRC 367, 371 (2002)
a NEPA analysis is not the vehicle for exploring questions about the potential for a terrorist attack upon a proposed nuclear facility; LBP-07-3, 65 NRC 269 (2007)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Unit 3), CLI-08-17, 68 NRC 231, 233 (2008)
rules on contention admissibility are strict by design; LBP-10-15, 72 NRC 278 (2010)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Unit 3), CLI-08-17, 68 NRC 231, 234 (2008)
petitioners may not skirt contention rules by initially filing unsupported contentions, and later recasting or modifying their contentions on appeal with new arguments never raised before the board; CLI-09-5, 69 NRC 123 (2009)
the Commission defers to a board's rulings on standing and contention admissibility in the absence of clear error or abuse of discretion; CLI-09-5, 69 NRC 119 (2009); CLI-09-8, 69 NRC 324 (2009); CLI-09-9, 69 NRC 336 (2009); CLI-09-14, 69 NRC 584 (2009); CLI-10-2, 71 NRC 29 (2010); CLI-10-7, 71 NRC 138 (2010)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Unit 3), CLI-08-17, 68 NRC 231, 237-38 (2008)
a new contention will necessarily fail if it attacks the quality of the Staff's review rather than identifying a deficiency in the application; CLI-09-5, 69 NRC 123 (2009)

LEGAL CITATIONS INDEX

CASES

- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Unit 3), CLI-08-17, 68 NRC 231, 239 n.38 (2008)
a no-reactor or no-action alternative that was not raised before the board is therefore improperly raised on appeal; CLI-10-9, 71 NRC 265 (2010)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Unit 3), CLI-08-17, 68 NRC 231, 240 (2008)
a claim of deficiency in construction of the concrete containment is insufficient because it was not linked to the application at issue in the proceeding; CLI-10-9, 71 NRC 254-55 n.52 (2010)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Unit 3), CLI-08-17, 68 NRC 231, 243 (2008)
a license amendment adjudication is not the forum to address Petitioners' concern about past radiological releases; CLI-09-12, 69 NRC 560 n.108 (2009)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Unit 3), CLI-09-5, 69 NRC 115, 119 (2009)
the Commission defers to a board's rulings on standing and contention admissibility in the absence of clear error or abuse of discretion; CLI-09-8, 69 NRC 324 (2009); CLI-09-9, 69 NRC 336 (2009)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Unit 3), CLI-09-5, 69 NRC 115, 120-21 (2009)
the Commission's referral of a motion to reopen to the ASLBP and subsequent establishment of the board gives the board jurisdiction over the motion; LBP-10-21, 72 NRC 642 n.11 (2010)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Unit 3), CLI-09-5, 69 NRC 115, 120-21, 124-25 (2009)
petitioners seeking to introduce new contentions after the board has denied their initial petition to intervene need to address the reopening standards; LBP-10-21, 72 NRC 642-43 (2010)
when the contested portion of a proceeding has been terminated following an unchallenged merits determination in favor of applicant regarding the proceeding's sole admitted contention, the board's focus must be on the requirements applicable to reopening a closed record set out in 10 C.F.R. 2.326; LBP-10-21, 72 NRC 644 (2010)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Unit 3), CLI-09-5, 69 NRC 115, 123 n.39 (2009)
contentions that inappropriately focus on Staff's review of the application rather than on the errors and omissions of the application itself are inadmissible; CLI-10-27, 72 NRC 493 (2010)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Unit 3), CLI-09-5, 69 NRC 115, 124 (2009)
extended power uprate proceeding that has been terminated may not be reopened; CLI-10-17, 72 NRC 10-11 n.37 (2010)
when petitioner seeks to introduce a new contention after the record has been closed, it should address the reopening standards contemporaneously with a late-filed intervention petition, which must satisfy the standards for both contention admissibility and late filing; LBP-10-21, 72 NRC 643 (2010)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Unit 3), CLI-09-5, 69 NRC 115, 126 (2009)
to show good cause for the late filing of a contention, petitioner must show that the information on which the new contention is based was not reasonably available to the public, not merely that the petitioner recently found out about it; CLI-10-27, 72 NRC 496 n.70 (2010); LBP-09-26, 70 NRC 988 (2009); LBP-10-11, 71 NRC 640 n.124 (2010)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Unit 3), LBP-08-9, 67 NRC 421, 431 (2008)
the scope of a proceeding is defined in the Commission's initial hearing notice and order referring the proceeding to the licensing board; LBP-09-26, 70 NRC 953 (2009)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Unit 3), LBP-08-9, 67 NRC 421, 448 n.154 (2008)
motion to strike is denied as moot; LBP-08-17, 68 NRC 457 (2008)

LEGAL CITATIONS INDEX

CASES

- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 NRC 349, 358 (2001), *petition for reconsideration denied*, CLI-02-1, 55 NRC 1 (2002)
- although the pleading requirements of 10 C.F.R. 2.309 are strict by design, a licensing board may permit potential intervenors to cure defects in petitions in order to obviate dismissal of an intervention petition because of inarticulate draftsmanship or procedural or pleading defects; LBP-08-6, 67 NRC 277 (2008)
- bald or conclusory allegations that a licensee's application is deficient, without more, are insufficient to support admission of a contention; LBP-06-22, 64 NRC 253 (2006)
- compared to notice pleading in the federal courts, NRC's contention requirements have correctly been called "strict by design," but they are not intended to require the impossible; LBP-09-6, 69 NRC 417 (2009)
- petitioner must read the pertinent portions of the license application, including the safety analysis report and the environmental report, state the applicant's position and the petitioner's opposing view, and explain why petitioner disagrees with the applicant; LBP-06-23, 64 NRC 357 (2005); LBP-06-10, 63 NRC 340 (2006); LBP-07-4, 65 NRC 306 (2007); LBP-07-11, 66 NRC 58 (2007); LBP-08-6, 67 NRC 292 (2008); LBP-09-17, 70 NRC 327 (2009)
- requirements for admissibility of contentions are strict by design and any contention that does not satisfy these requirements will be rejected; CLI-06-9, 63 NRC 437 (2006); CLI-06-24, 64 NRC 118 (2006); LBP-06-4, 63 NRC 108 (2006); LBP-06-7, 63 NRC 198 (2006); LBP-06-20, 64 NRC 147 (2006); LBP-06-22, 64 NRC 235 (2006); LBP-08-13, 68 NRC 61 (2008); LBP-08-14, 68 NRC 288 (2008); LBP-08-15, 68 NRC 312 (2008); LBP-08-18, 68 NRC 540 (2008); LBP-08-26, 68 NRC 915 (2008); LBP-10-6, 71 NRC 358 (2010)
- the contention rule is strict by design, having been toughened in 1989 because in prior years licensing boards had admitted and litigated numerous contentions that appeared to be based on little more than speculation; CLI-06-10, 63 NRC 455 (2006); LBP-06-10, 63 NRC 337 (2006); LBP-06-23, 64 NRC 272, 352 (2005); LBP-07-4, 65 NRC 303 (2007); LBP-07-5, 65 NRC 352 (2007); LBP-07-11, 66 NRC 56 (2007); LBP-07-16, 66 NRC 286 (2007); LBP-08-6, 67 NRC 290 (2008); LBP-08-9, 67 NRC 429 (2008); LBP-09-17, 70 NRC 325 (2009); LBP-09-26, 70 NRC 952 (2009); LBP-10-15, 72 NRC 278 (2010)
- threshold contention standards are imposed to avoid admission of contentions based on little more than speculation and intervenors who have negligible knowledge of nuclear power issues; CLI-08-17, 68 NRC 233 (2008)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 NRC 349, 358-59 (2001)
- rules on contention admissibility are strict by design; CLI-08-17, 68 NRC 233 (2008); LBP-09-4, 69 NRC 189 (2009); LBP-09-10, 70 NRC 72 (2009); LBP-09-16, 70 NRC 244 (2009); LBP-10-16, 72 NRC 394 (2010)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 NRC 349, 359 (2001)
- parties and licensing boards must be on notice of the issues being litigated, so that they may prepare for summary disposition or for hearing; CLI-10-15, 71 NRC 482 (2010)
- procedural rules on contentions are designed to ensure focused and fair proceedings; CLI-10-15, 71 NRC 482 (2010)
- the scope of a contention is limited to issues of law and fact pleaded with particularity in the intervention petition, including its stated bases, unless the contention is satisfactorily amended in accordance with NRC rules; CLI-10-15, 71 NRC 482 (2010)
- there must be an explanation of the basis for a contention; CLI-08-3, 67 NRC 168 (2008)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 NRC 349, 359-60 (2001)
- admissible contentions must explain, with specificity, particular safety or legal reasons requiring rejection of the contested application; LBP-06-10, 63 NRC 338 (2006); LBP-06-23, 64 NRC 353 (2005)
- intervention petitioners must point to specific portions of an application that are either deficient or do not comply with the Commission's regulations; LBP-07-11, 66 NRC 71 (2007)

LEGAL CITATIONS INDEX

CASES

- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 NRC 349, 364 (2001)
a contention may not attack a regulation unless the proponent requests a waiver from the Commission; CLI-07-3, 65 NRC 18 n.15 (2007)
NRC regulations establish what the agency has found to be adequately protective radiological dose limits, and petitioners may not use an adjudicatory proceeding to challenge this generic regulatory framework; CLI-08-17, 68 NRC 243 (2008)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 NRC 349, 365 (2001), *petition for reconsideration denied*, CLI-02-1, 55 NRC 1 (2002)
to provide the basis of an admissible contention, allegations of management improprieties or lack of integrity must relate directly to the currently proposed licensing action and not be based on allegations of improprieties of only historical interest; LBP-08-15, 68 NRC 327 (2008); LBP-08-24, 68 NRC 728 (2008)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 NRC 349, 365-66 (2001)
as long as petitioner alleges, with sufficient support, that applicant's bad character or lack of integrity has direct and obvious relevance to the licensing action at issue in the proceeding, a character-based contention is admissible; LBP-09-6, 69 NRC 466, 467, 473 (2009)
mere assertions and speculation that applicant officials or personnel would encourage or condone violations of NRC regulations do not present any ongoing pattern of violations or disregard for regulations that might be expected to occur in the future; CLI-06-10, 63 NRC 465 (2006)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 NRC 349, 365-67 (2001)
a relatively high threshold exists for the admission of contentions alleging that applicant or its management lack integrity or are guilty of improprieties such that the license being sought should not be granted; LBP-10-15, 72 NRC 337 (2010)
historical actions by an applicant are not relevant to its current fitness unless there is some direct and obvious relationship between the asserted character issues and the licensing action in dispute; CLI-09-14, 69 NRC 606 n.149 (2009); CLI-10-20, 72 NRC 194 n.48 (2010)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 NRC 349, 366 (2001), *petition for reconsideration denied*, CLI-02-1, 55 NRC 1 (2002)
license amendment proceedings are not a forum to address past violations or accidents that have no direct bearing on the proposed amendment; CLI-09-12, 69 NRC 560 (2009); LBP-08-9, 67 NRC 440 n.119 (2008)
strict limits are placed on contentions regarding character and integrity issues such that they must present an ongoing pattern that has a direct and obvious relationship to the licensing action at issue in order to be admitted; CLI-10-9, 71 NRC 255 (2010); LBP-09-6, 69 NRC 467 (2009)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 NRC 349, 366-67 (2001)
when character or integrity issues are raised, they are expected to be directly germane to the challenged licensing action; CLI-06-22, 64 NRC 47 n.38 (2006); CLI-10-9, 71 NRC 255 (2010)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-04-12, 59 NRC 237, 241-42 (2004)
in conducting its acceptance review of the high-level waste repository construction authorization application, Staff only determines whether the license application contains sufficient information for the NRC to begin its safety review; CLI-08-20, 68 NRC 274 (2008)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-04-36, 60 NRC 631 (2004)
although issues relating to fire protection at a plant cannot be addressed by petitioners in a license renewal proceeding, a possible license amendment application might also trigger another opportunity to petition to intervene, if appropriate and adequate contentions are timely and properly submitted under relevant requirements; LBP-07-11, 66 NRC 75 (2007)

LEGAL CITATIONS INDEX

CASES

- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-04-36, 60 NRC 631, 636 (2004)
failure to comply with any of the contention pleading requirements is grounds for rejecting a contention; LBP-09-10, 70 NRC 73 (2009); LBP-09-26, 70 NRC 952 (2009); LBP-10-15, 72 NRC 278 (2010); LBP-10-16, 72 NRC 395 (2010)
the Commission does not look with favor on amended or new contentions filed after the initial filing; CLI-07-20, 65 NRC 504 (2007)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-04-36, 60 NRC 631, 637 (2004)
contentions not related to the potential effects of aging are beyond the scope of a license renewal proceeding; LBP-07-11, 66 NRC 70 (2007)
the Commission defers to a board's rulings on admissibility of contentions unless the appeal points to an error of law or abuse of discretion; CLI-06-9, 63 NRC 439 n.32 (2006); CLI-06-24, 64 NRC 121 (2006); CLI-07-20, 65 NRC 503 n.20 (2007); CLI-07-25, 66 NRC 104 (2007)
the Commission will affirm decisions on the admissibility of contentions where the appellant points to no error of law or abuse of discretion; CLI-09-7, 69 NRC 260 (2009); CLI-09-20, 70 NRC 914 (2009)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-04-36, 60 NRC 631, 637-38 (2004)
a significant safety or environmental issue raised in a motion to reopen a license renewal proceeding must focus on the potential impacts of an additional 20 years of nuclear power plant operation, not on everyday operational issues; CLI-06-4, 63 NRC 37 (2006); CLI-10-27, 72 NRC 492 (2010)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-04-36, 60 NRC 631, 638 (2004)
license renewal review does not focus on aging-related issues that are effectively addressed and maintained by ongoing agency oversight, review, and enforcement; CLI-10-27, 72 NRC 492 (2010)
terrorist acts are outside the required purview of NEPA, and security-related issues related to such acts are simply not among the aging-related questions at stake in a license renewal proceeding; LBP-06-7, 63 NRC 201 n.8 (2006); LBP-06-20, 64 NRC 171, 173 (2006)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-04-36, 60 NRC 631, 639 (2004)
neither petitioners nor the board may rely on a potential future GAO Report, the content of which is unknown, in support of a contention; LBP-07-11, 66 NRC 70 (2007)
promises to provide factual material at a later date in support of a proffered contention do not support the contention's admissibility; LBP-07-11, 66 NRC 93 (2007)
the Commission has previously rejected claims that NRC regulations require discharge permits of their licensees; LBP-09-25, 70 NRC 885 (2009)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-04-36, 60 NRC 631, 640 (2004)
emergency planning issues already are the focus of ongoing regulatory processes and thus do not come within NRC safety review at the license renewal stage; LBP-07-11, 66 NRC 92 (2007)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-04-36, 60 NRC 631, 641 n.40 (2004)
the Commission disapproves of incorporation by reference in petitions for review, where it has the effect of bypassing the page limits set forth in NRC regulations; CLI-10-17, 72 NRC 45-46 n.247 (2010)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-04-36, 60 NRC 631, 644 n.56 (2004)
requirements for contention admissibility are described in 10 C.F.R. 2.309(f); CLI-09-5, 69 NRC 122 (2009)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-05-24, 62 NRC 551 (2005)
although issues relating to fire protection at a plant cannot be addressed by petitioners in a license renewal proceeding, a possible license amendment application might also trigger another opportunity

LEGAL CITATIONS INDEX

CASES

- to petition to intervene, if appropriate and adequate contentions are timely and properly submitted under relevant requirements; LBP-07-11, 66 NRC 75 (2007)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-05-24, 62 NRC 551, 558 (2005)
- good cause is the most significant of the late-filing factors of 10 C.F.R. 2.309(c)(1); LBP-10-9, 71 NRC 506 (2010)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-05-24, 62 NRC 551, 559-60 (2005)
- a party may petition for a waiver of application of a regulation on the sole ground that special circumstances exist such that the application of the regulation would not serve the purpose for which it was adopted; LBP-10-12, 71 NRC 661 (2010)
- the Commission has set forth a four-part test for grant of a rule waiver, and all four factors must be met; LBP-10-22, 72 NRC 688 (2010)
- the conditions for grant of an exemption from or waiver of a rule are described; LBP-10-15, 72 NRC 279, 297, 303 (2010)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-05-24, 62 NRC 551, 560 (2005)
- in the context of a NEPA analysis, the question of whether application of a regulation would serve the purposes for which the rule or regulation was adopted can be addressed by examining the continued viability of the environmental analysis on which the regulation is based; LBP-10-15, 72 NRC 301 (2010)
- petitioner has made a prima facie showing that the special circumstances that are the basis of the waiver request are unique to the facility rather than common to a large class of facilities; LBP-10-15, 72 NRC 304 (2010)
- rule waivers are not granted where the circumstances on which the waiver's proponent relies are common to a large class of applicants or facilities; CLI-09-3, 69 NRC 75 n.38 (2009)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-05-24, 62 NRC 551, 560-61 (2005)
- consideration of emergency planning is outside the scope of a license renewal proceeding because, by its very nature, it is neither germane to age-related degradation nor unique to the period covered by the license renewal application; LBP-06-20, 64 NRC 201 (2006); LBP-06-10, 63 NRC 367 (2006); LBP-07-4, 65 NRC 336 (2007); LBP-08-13, 68 NRC 148 n.642, 165, 201 (2008)
- it makes no sense to spend the parties' and board's valuable resources litigating allegations of current deficiencies in a proceeding that is directed to future-oriented issues of aging; LBP-07-11, 66 NRC 92 (2007)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-05-24, 62 NRC 551, 562-63 (2005)
- although emergency planning issues are not admissible in a license renewal proceeding, NRC regulations provide two other procedural mechanisms by which petitioners may pursue their concerns about the adequacy of the applicants' current emergency plan; LBP-07-11, 66 NRC 94 (2007)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-05-24, 62 NRC 551, 564 (2005)
- good cause for the failure to file on time is the most important of the late-filing factors; CLI-10-12, 71 NRC 323 (2010); LBP-06-14, 63 NRC 575 (2006); LBP-09-6, 69 NRC 477 (2009); LBP-09-26, 70 NRC 949 (2009)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-05-24, 62 NRC 551, 564-65 (2005)
- absent a showing of good cause, petitioner's showing on the remaining factors must be highly persuasive; CLI-10-12, 71 NRC 323 (2010)
- decisions on nontimely filings require a balancing of the eight factors set forth in 10 C.F.R. 2.309(c)(1), the first of which, good cause for failure to file on time, is the most important; CLI-09-7, 69 NRC 262 (2009)
- good cause for late filing was shown where petitioners lacked constructive or actual notice before the filing deadline, and they filed as soon as possible thereafter; LBP-09-20, 70 NRC 573 (2009)

LEGAL CITATIONS INDEX

CASES

- petitioner must show that the information on which its new contention is based was not reasonably available to the public previously and that it filed its intervention petition promptly after learning of such new information; LBP-10-11, 71 NRC 639 (2010)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-05-24, 62 NRC 551, 565 (2005)
- absent a showing of good cause, a nontimely petition will not be excused unless the petitioner makes a compelling showing on the remaining factors; CLI-10-12, 71 NRC 323 (2010); LBP-09-26, 70 NRC 949 (2009); LBP-10-11, 71 NRC 639 (2010)
- consideration of emergency plans in license renewal proceedings is precluded because they are already covered by ongoing regulatory review; LBP-08-13, 68 NRC 165 (2008)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-05-24, 62 NRC 551, 565 n.60 (2005)
- publication in the *Federal Register* is legally sufficient notice to all interested or affected persons regardless of actual knowledge or hardship resulting from ignorance, except those who are legally entitled to personal notice; LBP-09-20, 70 NRC 570 (2009)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-05-24, 62 NRC 551, 565-66 (2005)
- petitioners may protect their interests by filing a request for Commission action under 10 C.F.R. 2.206; CLI-10-12, 71 NRC 327 n.50 (2010)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-05-24, 62 NRC 551, 567 (2005)
- emergency planning issues are not within the scope of a license renewal proceeding as a safety issue; LBP-07-11, 66 NRC 94 (2007)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-05-24, 62 NRC 551, 570 (2005)
- licensing boards lack the authority to supervise the NRC Staff in the performance of its nonadjudicatory duties; CLI-07-16, 65 NRC 385 n.69 (2007)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-06-4, 63 NRC 32, 35-36 (2006)
- once a licensing board has concluded board action on a licensing case, jurisdiction to decide a motion to reopen regarding that proceeding passes to the Commission, which retains jurisdiction until the license in question has been issued; LBP-10-21, 72 NRC 642 n.11 (2010)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-06-4, 63 NRC 32, 37 (2006)
- contentions that deal with operational issues are not within the scope of license renewal; LBP-08-13, 68 NRC 216 (2008)
- the purpose of aging management programs is not to prevent the radioactive contamination of the soil or groundwater, which is an everyday operational issue, but to manage the aging effects of critical plant functions that prevent and mitigate design basis accidents or other functions of principal importance to plant safety; LBP-07-12, 66 NRC 117 (2007)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-06-4, 63 NRC 32, 37-38 (2006)
- to the extent that petitioners have any basis for claiming that there are current, ongoing excessive radiological releases from a facility, petitioners may seek NRC enforcement action under 10 C.F.R. 2.206; CLI-08-17, 68 NRC 245 n.77 (2008)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-06-4, 63 NRC 32, 38 (2006)
- sanctions have been imposed against a party seeking to file a written request for hearing only when that party has not followed established Commission procedures; LBP-08-18, 68 NRC 542 (2008); LBP-08-19, 68 NRC 547 (2008); LBP-08-20, 68 NRC 552 (2008)
- the Commission may reject an appeal summarily for violating NRC procedural regulations; CLI-08-17, 68 NRC 234 (2008)

LEGAL CITATIONS INDEX

CASES

- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-06-4, 63 NRC 32, 38-39 (2006)
consistent procedural noncompliance from an attorney resulted in direction to the Office of the Secretary to screen all filings bearing that counsel's signature, not to accept or docket them unless they meet all procedural requirements, and to reject summarily any nonconforming pleadings without referring them to the Atomic Safety and Licensing Board Panel or the Commission; CLI-08-29, 68 NRC 903 (2008)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), LBP-04-15, 60 NRC 81 (2004)
although issues relating to fire protection at a plant cannot be addressed by petitioners in a license renewal proceeding, a possible license amendment application might also trigger another opportunity to petition to intervene, if appropriate and adequate contentions are timely and properly submitted under relevant requirements; LBP-07-11, 66 NRC 75 (2007)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), LBP-04-15, 60 NRC 81, 89 (2004), *aff'd*, CLI-04-36, 60 NRC 631 (2004)
adequacy of the aging management program as it relates to underground pipes and tanks has health and safety significance and is material to whether the license renewal may be granted; LBP-06-23, 64 NRC 311 (2006)
an issue is material only if there is some link between the claimed error or omission regarding the proposed licensing action and the NRC's role in protecting public health and safety or the environment; LBP-06-20, 64 NRC 149 (2006); LBP-06-23, 64 NRC 354 (2005)
petitioner cannot include a reference as support without showing why the reference provides a basis to support its contention; LBP-10-10, 71 NRC 567 n.179 (2010)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), LBP-04-15, 60 NRC 81, 89 & n.26 (2004)
contentions ought to be interpreted in light of the required specificity, so that adjudicators and parties need not search out broader meanings than were clearly intended; LBP-10-16, 72 NRC 398 n.153 (2010)
petitioners are expected to clearly identify the matters on which they intend to rely with reference to a specific point; LBP-08-21, 68 NRC 570 n.14 (2008)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), LBP-04-15, 60 NRC 81, 89, 91, 94 (2004)
simply attaching materials or documents, without explaining their significance, is insufficient for contention admission; LBP-08-17, 68 NRC 441 (2008)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), LBP-04-15, 60 NRC 81, 90, *aff'd*, CLI-04-36, 60 NRC 631 (2004)
the Commission interprets the provisions of Parts 51 and 54 as they apply to license renewal proceedings; LBP-06-10, 63 NRC 343 (2006); LBP-07-11, 66 NRC 59 (2007)
the scope of license renewal proceedings is quite limited under Commission rules and case law; LBP-08-22, 68 NRC 598 (2008)
the scope of license renewal proceedings, which generally concern requests to renew 40-year operating licenses for additional 20-year terms, is discussed; LBP-06-23, 64 NRC 274 (2006); LBP-07-4, 65 NRC 307 (2007)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), LBP-04-15, 60 NRC 81, 92-93 (2004)
whether applicant has a valid NPDES permit is outside the scope of a power uprate proceeding; LBP-08-9, 67 NRC 447 n.151 (2008)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), LBP-04-15, 60 NRC 81, 93 n.55, *aff'd*, CLI-04-36, 60 NRC 631, 638-39 (2004)
NRC obeyed its FWPCA duties by deciding to accept as dispositive EPA determinations concerning one aspect of the overall environmental impact; CLI-07-16, 65 NRC 388 (2007)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), LBP-05-16, 62 NRC 56 (2005)
although issues relating to fire protection at a plant cannot be addressed by petitioners in a license renewal proceeding, a possible license amendment application might also trigger another opportunity

LEGAL CITATIONS INDEX

CASES

- to petition to intervene, if appropriate and adequate contentions are timely and properly submitted under relevant requirements; LBP-07-11, 66 NRC 75 (2007)
- Dominion Nuclear North Anna, LLC* (Early Site Permit for North Anna ESP Site), CLI-07-27, 66 NRC 215, 223 (2007)
- an environmental report must identify all reasonable alternatives; LBP-10-10, 71 NRC 604 n.3 (2010)
- Dominion Nuclear North Anna, LLC* (Early Site Permit for North Anna ESP Site), CLI-07-27, 66 NRC 215, 223-24 (2007)
- with regard to alternative sites for an early site permit, NRC Staff must evaluate both the methodology used by the applicant and the reasonableness of the potential sites identified by that method; LBP-09-19, 70 NRC 488 (2009)
- Dominion Nuclear North Anna, LLC* (Early Site Permit for North Anna ESP Site), CLI-07-27, 66 NRC 215, 228-29 (2007)
- a rule of reason applies to the assessment of the adequacy of a NEPA analysis; CLI-10-18, 72 NRC 74 (2010)
- Dominion Nuclear North Anna, LLC* (Early Site Permit for North Anna ESP Site), CLI-07-27, 66 NRC 215, 228-32 (2007)
- where the final environmental impact statement discussion of alternative sites was insufficient, the board independently reviewed the record on greenfield, competitors' brownfield, noncompetitors' brownfield, and applicant's other nuclear sites to conclude that the Staff's underlying alternative site review was adequate; LBP-09-19, 70 NRC 488 (2009)
- Dominion Nuclear North Anna, LLC* (Early Site Permit for North Anna ESP Site), CLI-07-27, 66 NRC 215, 231-32 (2007)
- brownfield sites owned by companies other than the applicant may reasonably be excluded as alternative sites; LBP-09-19, 70 NRC 496 n.18 (2009)
- Dominion Nuclear North Anna, LLC* (Early Site Permit for North Anna ESP Site), CLI-07-27, 66 NRC 215, 232 (2007)
- applicant's initial consideration of DOE's Portsmouth, Ohio, and SRS sites as alternative sites was reasonable as part of its alternative site analysis for an early site permit; LBP-09-19, 70 NRC 496 n.18 (2009)
- Dominion Nuclear North Anna, LLC* (Early Site Permit for North Anna ESP Site), CLI-07-27, 66 NRC 215, 232 n.94 (2007)
- noninclusion of DOE sites in alternative sites analysis that are far outside applicant's region of interest is reasonable; LBP-09-19, 70 NRC 496 n.18 (2009)
- Dominion Nuclear North Anna, LLC* (Early Site Permit for North Anna ESP Site), CLI-07-27, 66 NRC 215, 237 & n.126 (2007)
- in evaluating early site permit applications, where detailed design information is not available, the Commission may defer resolution of severe accident mitigation alternatives until the construction permit or combined license stage; LBP-09-19, 70 NRC 536 (2009)
- Dominion Nuclear North Anna, LLC* (Early Site Permit for North Anna ESP Site), CLI-07-27, 66 NRC 215, 259 (2007)
- in the environmental context, the contents of the final environmental impact statement bound the reach of both issue preclusion and Staff inquiry into new and significant information in a future combined operating license proceeding referencing an early site permit; LBP-08-15, 68 NRC 322 (2008)
- Dominion Nuclear North Anna, LLC* (Early Site Permit for North Anna ESP Site), LBP-04-18, 60 NRC 253, 265 (2004)
- although a licensing board does not decide the merits or resolve conflicting evidence at the contention admissibility stage, materials cited as the basis for a contention are subject to scrutiny by the board to determine whether they actually support the facts alleged; LBP-08-17, 68 NRC 453 (2008); LBP-10-24, 72 NRC 750 (2010)
- Dominion Nuclear North Anna, LLC* (Early Site Permit for North Anna ESP Site), LBP-04-18, 60 NRC 253, 268-69 (2004)
- challenges to NRC regulations are inadmissible; LBP-08-21, 68 NRC 587 (2008)
- challenges to the Waste Confidence Rule are prohibited by 10 C.F.R. 2.335; LBP-08-17, 68 NRC 456 (2008); LBP-09-4, 69 NRC 217 (2009); LBP-09-10, 70 NRC 114 (2009)

LEGAL CITATIONS INDEX

CASES

- contentions on the environmental impacts of spent fuel storage are inadmissible; LBP-09-18, 70 NRC 406 (2009)
- licensing boards may not admit a contention that directly or indirectly challenges 10 C.F.R. 51.51, Table S-3; LBP-09-10, 70 NRC 115 (2009)
- Dominion Nuclear North Anna, LLC* (Early Site Permit for North Anna ESP Site), LBP-04-18, 60 NRC 253, 268-70 (2004)
- the Waste Confidence Rule is applicable to all new reactor proceedings and contentions challenging the rule or seeking its reconsideration are inadmissible; LBP-08-16, 68 NRC 416 (2008); LBP-09-17, 70 NRC 337 (2009); LBP-09-18, 70 NRC 406 (2009)
- Dominion Nuclear North Anna, LLC* (Early Site Permit for North Anna ESP Site), LBP-04-18, 60 NRC 253, 270 (2004)
- absent a showing of special circumstances under 10 C.F.R. 2.335(b), challenges to regulations must be addressed through Commission rulemaking; LBP-09-4, 69 NRC 218 (2009); LBP-10-16, 72 NRC 438 (2010)
- Dominion Nuclear North Anna, LLC* (Early Site Permit for North Anna ESP Site), LBP-04-18, 60 NRC 253, 270-72 (2004)
- contentions that challenge the Waste Confidence Rule are inadmissible; LBP-08-23, 68 NRC 686 (2008)
- Dominion Nuclear North Anna, LLC* (Early Site Permit for North Anna ESP Site), LBP-04-18, 60 NRC 253, 271, 276 (2004)
- licensing boards may reformulate contentions to eliminate extraneous issues or to consolidate issues for a more efficient proceeding; CLI-09-12, 69 NRC 553 (2009); CLI-10-2, 71 NRC 33 (2010); LBP-10-16, 72 NRC 403 (2010)
- Dominion Nuclear North Anna, LLC* (Early Site Permit for North Anna ESP Site), LBP-04-18, 60 NRC 253, 276 (2004)
- examples of admitted contentions that satisfied the requirement to provide a specific statement of the issue of law or fact to be raised or controverted are provided; LBP-08-5, 67 NRC 235 n.79 (2008)
- Dominion Nuclear North Anna, LLC* (Early Site Permit for North Anna ESP Site), LBP-07-9, 65 NRC 539 (2007), *aff'd*, CLI-07-23, 66 NRC 35 (2007)
- adequacy of Staff review is questioned by the licensing board; CLI-08-23, 68 NRC 473 (2008)
- Dominion Nuclear North Anna, LLC* (Early Site Permit for North Anna ESP Site), LBP-07-9, 65 NRC 539, 550 (2007)
- an early site permit focuses on the suitability of a proposed site, and is defined as a Commission approval for a site or sites for one or more nuclear power facilities; LBP-08-15, 68 NRC 299-300 (2008)
- an early site permit is a partial construction permit, whose issuance does not authorize an applicant to construct nuclear power reactors; LBP-08-15, 68 NRC 299 (2008)
- Dominion Nuclear North Anna, LLC* (Early Site Permit for North Anna ESP Site), LBP-07-9, 65 NRC 539, 550-51 (2007)
- the holder of an early site permit may not actually commence construction of any reactors on the site without having applied for and received a separate construction permit or combined operating license; LBP-08-15, 68 NRC 307 (2008)
- Dominion Nuclear North Anna, LLC* (Early Site Permit for North Anna ESP Site), LBP-07-9, 65 NRC 539, 559-60, *permit issuance authorized*, CLI-07-27, 66 NRC 215 (2007)
- with respect to certain NEPA findings, boards in early site permit proceedings are to make independent environmental judgments, though they need not rethink or redo every aspect of the NRC Staff's environmental findings or undertake their own fact-finding activities; LBP-09-19, 70 NRC 456 (2009)
- Dominion Nuclear North Anna, LLC* (Early Site Permit for North Anna ESP Site), LBP-07-9, 65 NRC 539, 588, 642 *permit issuance authorized*, CLI-07-27, 66 NRC 215 (2007)
- noninclusion of DOE sites in alternative sites analysis that are far outside applicant's region of interest is reasonable; LBP-09-19, 70 NRC 496 n.18 (2009)

LEGAL CITATIONS INDEX

CASES

- Dominion Nuclear North Anna, LLC* (Early Site Permit for North Anna ESP Site), LBP-07-9, 65 NRC 539, 607 (2007)
the environmental impact statement need not consider an infinite range of alternatives, only reasonable or feasible ones; LBP-09-21, 70 NRC 626 n.271 (2009)
- Dominion Nuclear North Anna, LLC* (Early Site Permit for North Anna ESP Site), LBP-07-9, 65 NRC 539, 614 (2007)
the environmental report must discuss each of the five subelements covered by NEPA § 102(2)(C); LBP-09-16, 70 NRC 263 (2009)
- Dominion Nuclear North Anna, LLC* (Early Site Permit for North Anna ESP Site), LBP-07-9, 65 NRC 539, 629, *permit issuance authorized*, CLI-07-27, 66 NRC 215 (2007)
initial decisions are not effective until they are reviewed by the Commission; LBP-09-19, 70 NRC 460 (2009)
- Doyle v. Federal Bureau of Investigation*, 722 F.2d 554, 556 (9th Cir. 1983)
in camera review of redacted information or sealed declarations ought to occur only in the exceptional case after the government has submitted as detailed public affidavits as possible; LBP-08-7, 67 NRC 372 n.7 (2008)
- Dr. James E. Bauer* (Order Prohibiting Involvement in NRC-Licensed Activities), LBP-94-40, 40 NRC 323, 330 (1994), *petition for review denied on other grounds*, CLI-95-3, 41 NRC 245 (1995)
because enforcement cases are fact-specific and typically rely far more on witness testimony than do licensing adjudications, a long delay could result in the fading of witnesses' memories; CLI-06-12, 63 NRC 502 (2006)
- Druid Hills Civil Association v. Federal Highway Administration*, 772 F.2d 700, 709 (11th Cir. 1985)
omitting consideration of accident scenarios anticipated under 10 C.F.R. 50.150 and 50.54(hh) is contrary to the requirements of 42 U.S.C. § 2133(d); LBP-10-10, 71 NRC 542 (2010)
the Administrative Procedure Act directs review of agency action to determine if its decision is a product of consideration of relevant factors and whether a clear error of judgment has occurred; LBP-10-10, 71 NRC 548 n.53 (2010)
- Dubois v. United States Department of Agriculture*, 102 F.3d 1273, 1290 (1st Cir. 1996)
in following the rule of reason test, both the applicant and the agency consider all alternatives that are feasible and reasonably apparent at the time of drafting the environmental impact statement; LBP-07-9, 65 NRC 607, 611, 612 (2007)
- Dubois v. United States Department of Agriculture*, 102 F.3d 1273, 1292-93 (1st Cir. 1996), *cert. denied*, 521 U.S. 1119 (1997)
alternative mining sites considered in the final environmental impact statement that are subsets of applicant's proposed sites are well within the spectrum and range of alternatives discussed in the draft environmental impact statement; LBP-06-19, 64 NRC 100 (2006)
- Dudman Communications Corp. v. Department of the Air Force*, 815 F.2d 1565, 1569 (D.C. Cir.1987)
draft versions of histories have been protected in certain circumstances by deliberative process privilege; LBP-06-25, 64 NRC 382 n.55 (2006)
- Duke Cogema Stone & Webster* (Savannah River Mixed Oxide Fuel Fabrication Facility), CLI-01-13, 53 NRC 478, 480 (2001)
the Commission has used *sua sponte* review as a vehicle to customize its procedures for individual adjudications; CLI-07-1, 65 NRC 4 (2007)
- Duke Cogema Stone & Webster* (Savannah River Mixed Oxide Fuel Fabrication Facility), CLI-01-13, 53 NRC 478, 481 (2001)
if new environmental information arises at a later phase of proceedings, existing rules provide for the possibility of supplements to the EIS and for late-filed hearing contentions; LBP-07-14, 66 NRC 191 (2007)
- Duke Cogema Stone & Webster* (Savannah River Mixed Oxide Fuel Fabrication Facility), CLI-01-13, 53 NRC 478, 483 (2001)
corrective redrafting of a discretionary intervention petitioner's contention is tantamount to raising a new issue *sua sponte* without the required prior permission from the Commission; CLI-06-16, 63 NRC 721 (2006)

LEGAL CITATIONS INDEX

CASES

- Duke Cogema Stone & Webster* (Savannah River Mixed Oxide Fuel Fabrication Facility), CLI-01-13, 53 NRC 478, 484-86 (2001)
the Commission has used *sua sponte* review as a vehicle to set a specific timetable; CLI-07-1, 65 NRC 4 (2007)
- Duke Cogema Stone & Webster* (Savannah River Mixed Oxide Fuel Fabrication Facility), CLI-01-28, 54 NRC 393 (2001)
requests to suspend proceedings or hold them in abeyance in the exercise of the Commission's inherent supervisory powers over proceedings in the wake of the September 11 terrorist attacks pending the Commission's comprehensive review of anti-terrorist measures at licensed facilities were rejected; CLI-08-23, 68 NRC 485 (2008)
- Duke Cogema Stone & Webster* (Savannah River Mixed Oxide Fuel Fabrication Facility), CLI-01-28, 54 NRC 393, 399-401 (2001), *reconsideration denied*, CLI-02-2, 55 NRC 5 (2002)
the Commission generally declines to hold proceedings in abeyance pending the outcome of other Commission actions or adjudications; CLI-10-17, 72 NRC 10 n.36 (2010)
- Duke Cogema Stone & Webster* (Savannah River Mixed Oxide Fuel Fabrication Facility), CLI-01-28, 54 NRC 393, 400 (2001), *reconsideration denied*, CLI-02-2, 55 NRC 5 (2002)
there is no reason to postpone the MOX fuel proceeding which will require resolution of many issues having nothing to do with terrorism; CLI-10-17, 72 NRC 10 n.34 (2010)
- Duke Cogema Stone & Webster* (Savannah River Mixed Oxide Fuel Fabrication Facility), CLI-02-2, 55 NRC 5, 7 & n.3 (2002)
raising new arguments in a motion for reconsideration is prohibited; CLI-06-27, 64 NRC 402 (2006)
- Duke Cogema Stone & Webster* (Savannah River Mixed Oxide Fuel Fabrication Facility), CLI-02-7, 55 NRC 205, 213 (2002)
the Commission customarily does not entertain interlocutory appeals due in large part to its general unwillingness to engage in piecemeal interference in ongoing licensing board proceedings; CLI-07-1, 65 NRC 3 (2007)
- Duke Cogema Stone & Webster* (Savannah River Mixed Oxide Fuel Fabrication Facility), CLI-02-7, 55 NRC 205, 213-14 & n.15 (2002)
the Commission undertook interlocutory review of a petition that questioned the very structure of the two-step licensing process announced for a proposed mixed oxide fuel fabrication facility; CLI-08-2, 67 NRC 35 n.16 (2008)
- Duke Cogema Stone & Webster* (Savannah River Mixed Oxide Fuel Fabrication Facility), CLI-02-7, 55 NRC 205, 217 (2002)
NRC regulations contemplate approval of construction and approval for operation of a fuel fabrication facility; CLI-09-2, 69 NRC 59 (2009)
- Duke Cogema Stone & Webster* (Savannah River Mixed Oxide Fuel Fabrication Facility), CLI-02-7, 55 NRC 205, 220-21 (2002)
all environmental effects of both constructing and operating the mixed oxide fuel fabrication facility are encompassed in the first proceeding; LBP-07-14, 66 NRC 184 (2007)
- Duke Cogema Stone & Webster* (Savannah River Mixed Oxide Fuel Fabrication Facility), CLI-02-19, 56 NRC 143 (2002)
although Subpart I rules have been used in very few cases to disclose classified information in contested licensing proceedings, in those cases the information was necessary to evaluate challenges to the agency's compliance with security requirements of the Atomic Energy Act, not the National Environmental Policy Act; CLI-08-26, 68 NRC 523 (2008)
- Duke Cogema Stone & Webster* (Savannah River Mixed Oxide Fuel Fabrication Facility), CLI-02-24, 56 NRC 335 (2002)
the National Environmental Policy Act imposes no legal duty on the NRC to consider intentional malevolent acts on a case-by-case basis in conjunction with commercial power reactor license renewal applications; LBP-06-7, 63 NRC 200 (2006); LBP-07-14, 66 NRC 185 (2007); LBP-08-6, 67 NRC 333 (2008); LBP-08-13, 68 NRC 143 (2008)
- Duke Cogema Stone & Webster* (Savannah River Mixed Oxide Fuel Fabrication Facility), CLI-02-24, 56 NRC 335, 338 (2002)
there is no obligation under NEPA for the NRC to consider terrorism or malevolent acts in the MOX fuel fabrication facility licensing proceeding; LBP-07-14, 66 NRC 194 (2007)

LEGAL CITATIONS INDEX

CASES

- Duke Cogema Stone & Webster* (Savannah River Mixed Oxide Fuel Fabrication Facility), CLI-02-24, 56 NRC 335, 338-39 (2002)
a NEPA analysis is not the vehicle for exploring questions about the potential for a terrorist attack upon a proposed nuclear facility; LBP-07-3, 65 NRC 269 (2007)
- Duke Cogema Stone & Webster* (Savannah River Mixed Oxide Fuel Fabrication Facility), LBP-01-35, 54 NRC 403, 415 (2001), *rev'd on other grounds*, CLI-02-24, 56 NRC 335 (2002)
petitioner organizations have established standing based on their members' proximity to transportation routes, even where it was not possible to predict with accuracy which of its members were most likely to be harmed or the extent of the damage; LBP-09-6, 69 NRC 425 (2009)
- Duke Cogema Stone & Webster* (Savannah River Mixed Oxide Fuel Fabrication Facility), LBP-01-35, 54 NRC 403, 422 (2001)
although NRC may reasonably accommodate pro se petitioners who are not technically perfect in their pleadings, such parties must still meet the basic requirements of the contention admissibility rules, and if these are not met, boards may not fill in any missing support, but, rather, are legally required to deny the contention; LBP-07-4, 65 NRC 340 n.286 (2007); LBP-08-11, 67 NRC 482 (2008)
if petitioner neglects to provide the requisite support for its contentions, the board may not make assumptions of fact that favor the petitioner or supply information that is lacking; CLI-09-7, 69 NRC 260 n.132 (2009); LBP-06-7, 63 NRC 232 (2006); LBP-06-20, 64 NRC 150 (2006); LBP-06-23, 64 NRC 355 (2005); LBP-07-3, 65 NRC 253 (2007); LBP-08-9, 67 NRC 433 (2008); LBP-08-13, 68 NRC 63 (2008); LBP-08-16, 68 NRC 385 (2008); LBP-08-26, 68 NRC 918 (2008); LBP-09-3, 69 NRC 153 (2009); LBP-09-26, 70 NRC 954 (2009); LBP-10-6, 71 NRC 361, 380 (2010); LBP-10-7, 71 NRC 420 (2010)
petitioners are prohibited from challenging NRC regulations; LBP-08-14, 68 NRC 287 (2008)
- Duke Cogema Stone & Webster* (Savannah River Mixed Oxide Fuel Fabrication Facility), LBP-01-35, 54 NRC 403, 422 (2001), *rev'd in part on other grounds*, CLI-02-24, 56 NRC 335 (2002)
if a petitioner neglects to provide the requisite support for its contentions, the board should not make assumptions of fact that favor the petitioner, or supply information that is lacking; LBP-07-10, 66 NRC 23 (2007); LBP-07-16, 66 NRC 288 (2007)
- Duke Cogema Stone & Webster* (Savannah River Mixed Oxide Fuel Fabrication Facility), LBP-03-14, 58 NRC 104 (2003)
payments from the NRC to an intervenor's expert witness, which are required by 10 C.F.R. 2.740a(h), are not barred by section 502 of the Energy and Water Development Appropriations Act; LBP-09-1, 69 NRC 44 n.136 (2009)
- Duke Cogema Stone & Webster* (Savannah River Mixed Oxide Fuel Fabrication Facility), LBP-03-14, 58 NRC 104, 112 (2003)
assistance to all parties that obtain expert witnesses is required because the rule treats all parties the same; LBP-09-1, 69 NRC 44 n.136 (2009)
- Duke Cogema Stone & Webster* (Savannah River Mixed Oxide Fuel Fabrication Facility), LBP-03-21, 58 NRC 338, 342 (2003)
as with a summary disposition motion, a board may appropriately view petitioner's support for its contention in a light that is favorable to the petitioner; LBP-08-9, 67 NRC 432 (2008); LBP-08-26, 68 NRC 917 (2008)
- Duke Cogema Stone & Webster* (Savannah River Mixed Oxide Fuel Fabrication Facility), LBP-03-21, 58 NRC 338, 346-47 (2003)
a 30-day time frame for filing new contentions has been established; LBP-06-14, 63 NRC 574 (2006)
- Duke Cogema Stone & Webster* (Savannah River Mixed Oxide Fuel Fabrication Facility), LBP-04-9, 59 NRC 286, 292-93 (2004)
a dispositive motion seeking dismissal of contentions of omission as moot is appropriate when applicant provides the missing information and petitioner fails to amend its contention for further challenges; LBP-08-2, 67 NRC 64 (2008); LBP-08-3, 67 NRC 96 (2008)
contentions of omission charging that an application is missing certain design information must be amended to then challenge the quality of additional applicant information provided in a subsequent filing; LBP-08-2, 67 NRC 64 (2008); LBP-08-3, 67 NRC 95 (2008)

LEGAL CITATIONS INDEX

CASES

- Duke Cogema Stone & Webster* (Savannah River Mixed Oxide Fuel Fabrication Facility), LBP-05-4, 61 NRC 71, 78 (2005)
a request to file a reply to a summary disposition answer is granted; LBP-08-2, 67 NRC 67 (2008); LBP-08-3, 67 NRC 98 (2008)
- Duke Cogema Stone & Webster* (Savannah River Mixed Oxide Fuel Fabrication Facility), LBP-05-4, 61 NRC 71, 79 (2005)
if there is doubt as to whether the parties should be required to proceed further, a motion for summary disposition should be denied; LBP-07-12, 66 NRC 128 (2007)
- Duke Cogema Stone & Webster* (Savannah River Mixed Oxide Fuel Fabrication Facility), LBP-05-4, 61 NRC 71, 80 (2005)
for purposes of summary disposition, mere allegations, including speculative or bare conclusory statements by an expert, are insufficient; LBP-07-13, 66 NRC 144 (2007)
it is inappropriate at the summary disposition stage for a board to attempt to untangle the expert affidavits and decide which experts are more correct; CLI-08-2, 67 NRC 33 (2008); LBP-07-12, 66 NRC 127 (2007); LBP-07-13, 66 NRC 131 (2007)
- Duke Cogema Stone & Webster* (Savannah River Mixed Oxide Fuel Fabrication Facility), LBP-05-4, 61 NRC 71, 80-81 (2005)
summary disposition is not the vehicle for untangling expert disputes so long as the experts are competent and the information they provide is adequately stated and explained; LBP-08-2, 67 NRC 71 n.12 (2008); LBP-08-3, 67 NRC 101 n.9 (2008)
- Duke Cogema Stone & Webster* (Savannah River Mixed Oxide Fuel Fabrication Facility), LBP-05-4, 61 NRC 71, 81 (2005)
bare assertions and general denials are insufficient to defend against a properly supported motion for summary disposition; LBP-07-12, 66 NRC 127 (2007); LBP-07-13, 66 NRC 131 (2007)
- Duke Energy Carolinas, LLC* (William States Lee III Nuclear Station, Units 1 and 2), CLI-09-21, 70 NRC 927, 931 (2009)
guidance is provided on declining review of referred rulings; CLI-10-9, 71 NRC 266 n.130 (2010)
- Duke Energy Carolinas, LLC* (William States Lee III Nuclear Station, Units 1 and 2), LBP-08-17, 68 NRC 431 (2008)
challenges to the Waste Confidence Rule are prohibited; LBP-09-10, 70 NRC 114 (2009)
the Commission addresses a board's additional views when the board refers its decision to the Commission; CLI-10-9, 71 NRC 266 n.130 (2010)
- Duke Energy Carolinas, LLC* (William States Lee III Nuclear Station, Units 1 and 2), LBP-08-17, 68 NRC 431, 438 (2008)
the proximity presumption applies to combined license proceedings; LBP-09-16, 70 NRC 240 (2009)
- Duke Energy Carolinas, LLC* (William States Lee III Nuclear Station, Units 1 and 2), LBP-08-17, 68 NRC 431, 438-39 (2008)
an individual may satisfy standing requirements by demonstrating that his or her residence or activities are within the geographical area that might be affected by an accidental release of fission products, and in proceedings involving nuclear power plants this area has been defined as being within a 50-mile radius of such a plant; LBP-09-4, 69 NRC 178 (2009)
under the proximity presumption, petitioner is presumed to have standing to intervene without the need to specifically plead injury, causation, and redressability if petitioner lives within 50 miles of the proposed facility; LBP-09-18, 70 NRC 395 (2009)
- Duke Energy Carolinas, LLC* (William States Lee III Nuclear Station, Units 1 and 2), LBP-08-17, 68 NRC 431, 438-42 (2008)
relevant case law on contention admissibility is presented; LBP-08-21, 68 NRC 560 n.4 (2008)
- Duke Energy Carolinas, LLC* (William States Lee III Nuclear Station, Units 1 and 2), LBP-08-17, 68 NRC 431, 440-42 (2008)
a thorough discussion of relevant case law on the criteria for admission of contentions is presented; LBP-09-2, 69 NRC 95 (2009)
- Duke Energy Carolinas, LLC* (William States Lee III Nuclear Station, Units 1 and 2), LBP-08-17, 68 NRC 431, 442-43 (2008)
challenges to NRC regulations are inadmissible; LBP-08-21, 68 NRC 587 (2008)

LEGAL CITATIONS INDEX

CASES

- Duke Energy Carolinas, LLC* (William States Lee III Nuclear Station, Units 1 and 2), LBP-08-17, 68 NRC 431, 444-45 (2008)
contentions involving possible errors in Table S-3 have been referred to the Commission; LBP-09-21, 70 NRC 617 (2009)
- Duke Energy Carolinas, LLC* (William States Lee III Nuclear Station, Units 1 and 2), LBP-08-17, 68 NRC 431, 446 (2008)
petitioner is obligated to read the pertinent portions of the license application, state the applicant's position and the petitioner's opposing view, and explain why it disagrees with the applicant; LBP-09-25, 70 NRC 882 n.87 (2009)
- Duke Energy Carolinas, LLC* (William States Lee III Nuclear Station, Units 1 and 2), LBP-08-17, 68 NRC 431, 456-57 (2008)
contentions that challenge the Waste Confidence Rule are inadmissible; LBP-08-23, 68 NRC 689 (2008); LBP-09-17, 70 NRC 337 (2009)
in light of the plain language of the rule and its regulatory history, the Waste Confidence Rule applies to combined license proceedings; LBP-09-4, 69 NRC 218 (2009); LBP-09-18, 70 NRC 407 (2009)
- Duke Energy Carolinas, LLC* (William States Lee III Nuclear Station, Units 1 and 2), LBP-08-17, 68 NRC 431, 457 (2008)
licensing boards may not admit a contention that directly or indirectly challenges 10 C.F.R. 51.51, Table S-3; LBP-09-10, 70 NRC 114 (2009)
- Duke Energy Corp.* (Catawba Nuclear Station, Units 1 and 2), CLI-04-6, 59 NRC 62, 67, 73 (2004)
a board's determination on a request for access to sensitive unclassified nonsafeguards information is reviewed de novo; CLI-10-24, 72 NRC 461 (2010)
- Duke Energy Corp.* (Catawba Nuclear Station, Units 1 and 2), CLI-04-6, 59 NRC 62, 67, 74 (2004)
the Commission has used *sua sponte* review as a vehicle to address unappealed orders or to provide guidance to a licensing board; CLI-07-1, 65 NRC 4 (2007)
- Duke Energy Corp.* (Catawba Nuclear Station, Units 1 and 2), CLI-04-6, 59 NRC 62, 70 (2004)
the Commission's longstanding general policy disfavors interlocutory review; CLI-06-24, 64 NRC 119 (2006)
- Duke Energy Corp.* (Catawba Nuclear Station, Units 1 and 2), CLI-04-6, 59 NRC 62, 71 (2004)
review at the end of the case would be meaningless because the Commission cannot later, on appeal from a final board decision, rectify an erroneous disclosure order; CLI-10-29, 72 NRC 561 n.32 (2010)
to be "irreparable," the harm must be of a kind that cannot be reversed on appeal, as when the challenged order would reveal safeguards or privileged information to persons not authorized to review it; CLI-08-2, 67 NRC 36 n.20 (2008)
- Duke Energy Corp.* (Catawba Nuclear Station, Units 1 and 2), CLI-04-6, 59 NRC 62, 74 (2004)
NRC has not, and will not, litigate claims about the adequacy of the Staff's safety review in licensing adjudications; CLI-08-23, 68 NRC 476-77 n.64 (2008)
- Duke Energy Corp.* (Catawba Nuclear Station, Units 1 and 2), CLI-04-11, 59 NRC 203 (2004)
an appeal was dismissed as premature because the board decision that granted a hearing request constituted only a partial ruling on the intervention petition because it left unaddressed a group of proposed contentions; CLI-09-18, 70 NRC 861 (2009)
- Duke Energy Corp.* (Catawba Nuclear Station, Units 1 and 2), CLI-04-11, 59 NRC 203, 207 (2004)
to be appealable, a disputed order must dispose of the entire petition so that a successful appeal by a nonpetitioner will terminate the proceeding as to the appellee petitioner; CLI-09-18, 70 NRC 861 (2009)
- Duke Energy Corp.* (Catawba Nuclear Station, Units 1 and 2), CLI-04-11, 59 NRC 203, 208 (2004)
appeals of rejected contentions are permitted only where a petitioner claims that the board wrongly rejected all contentions; CLI-07-2, 65 NRC 11 (2007)
- Duke Energy Corp.* (Catawba Nuclear Station, Units 1 and 2), CLI-04-11, 59 NRC 203, 208 n.12 (2004)
the Commission often refers to the Statement of Considerations as an aid in interpreting its regulations; CLI-08-3, 67 NRC 163 n.46 (2008)

LEGAL CITATIONS INDEX

CASES

- Duke Energy Corp.* (Catawba Nuclear Station, Units 1 and 2), CLI-04-11, 59 NRC 203, 208, 209 & n.15 (2004)
with respect to an applicant's appeal under section 2.311(d)(1), applicant must contend that, after considering all pending contentions, the board has erroneously granted a hearing to the petitioner; CLI-09-18, 70 NRC 861-62 n.10 (2009)
- Duke Energy Corp.* (Catawba Nuclear Station, Units 1 and 2), CLI-04-19, 60 NRC 5 (2004)
petitioners or intervenors may request and, where appropriate, obtain under protective order or other measures information withheld from the general public for proprietary or security reasons; CLI-06-10, 63 NRC 460 (2006)
- Duke Energy Corp.* (Catawba Nuclear Station, Units 1 and 2), CLI-04-21, 60 NRC 21, 27 (2004)
although the Federal Rules of Evidence are not mandated for NRC adjudicatory proceedings, the Commission has endorsed the use of the FRE as guidance for licensing boards; LBP-12-23, 72 NRC 705 (2010)
licensing boards normally have considerable discretion in making evidentiary rulings; CLI-10-5, 71 NRC 99 (2010); CLI-10-18, 72 NRC 73 (2010)
the abuse of discretion standard properly applies to a board evidentiary ruling regarding expert qualification; CLI-10-24, 72 NRC 461 n.65 (2010)
the standard of review on appeal is abuse of discretion; CLI-10-5, 71 NRC 99 (2010); CLI-10-24, 72 NRC 461 (2010)
the Commission has inherent supervisory power over its adjudications and may direct the licensing boards' conduct of proceedings; CLI-06-20, 64 NRC 21 (2006)
- Duke Energy Corp.* (Catawba Nuclear Station, Units 1 and 2), CLI-04-21, 60 NRC 21, 27, 31 (2004)
a board's determination on a request for access to sensitive unclassified nonsafeguards information is reviewed de novo; CLI-10-24, 72 NRC 461 (2010)
- Duke Energy Corp.* (Catawba Nuclear Station, Units 1 and 2), CLI-04-21, 60 NRC 21, 27-28 & n.14 (2004)
boards review the education, experience, and qualifications of the individuals offering expert opinions on behalf of the litigants to determine whether these individuals qualify as experts; LBP-08-12, 68 NRC 17 n.10 (2008)
- Duke Energy Corp.* (Catawba Nuclear Station, Units 1 and 2), CLI-04-21, 60 NRC 21, 31 (2004)
for an issue involving access to safeguards information, the stated Commission practice is to review such issues closely; CLI-10-24, 72 NRC 461 n.65 (2010)
- Duke Energy Corp.* (Catawba Nuclear Station, Units 1 and 2), CLI-05-14, 61 NRC 359, 361 n.2 (2005)
Staff's significant hazards consideration determination is final, subject only to the Commission's discretion, on its own initiative, to review the determination; LBP-07-10, 66 NRC 32 n.22 (2007)
- Duke Energy Corp.* (Catawba Nuclear Station, Units 1 and 2), CLI-05-14, 61 NRC 359, 363-64 (2005)
if a board determines that a purely legal issue can be decided through regulatory interpretation or examination of NRC case law, it will rule on the contention; LBP-09-4, 69 NRC 201 (2009)
if a board determines that the regulations are ambiguous and that this is ultimately an NRC policy issue, it will refer the contention to the Commission; LBP-09-4, 69 NRC 201 (2009)
- Duke Energy Corp.* (Catawba Nuclear Station, Units 1 and 2), LBP-04-4, 59 NRC 129, 149-50 (2004)
there is no basis for providing an EIS description to such a level of detail that it can be duplicated by members of the public, so as to permit an individual to run applicable computer codes or make other detailed computations; LBP-06-9, 63 NRC 302, 310 n.10 (2006)
- Duke Energy Corp.* (Catawba Nuclear Station, Units 1 and 2), LBP-05-10, 61 NRC 241 (2005)
the preponderance-of-the-evidence standard applies in a license renewal proceeding; LBP-08-22, 68 NRC 646 (2008)
- Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2), CLI-03-17, 58 NRC 419, 428-29 (2003)
contention admissibility and timeliness requirements demand a level of discipline and preparedness on the part of petitioners, who must examine the publicly available material and set forth their claims and the support for their claims at the outset; LBP-06-11, 63 NRC 396 n.3 (2006)
- Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-01-20, 54 NRC 211, 212 (2001)
license renewal proceedings are limited to a review of the plant structures and components that will require an aging management review for the period of extended operation and the plant's systems, structures, and components that are subject to an evaluation of time-limited aging analyses;

LEGAL CITATIONS INDEX

CASES

- CLI-10-17, 72 NRC 16 (2010); LBP-06-7, 63 NRC 198, 222 (2006); LBP-06-22, 64 NRC 235, 241 (2006); LBP-07-17, 66 NRC 229 (2007); LBP-08-22, 68 NRC 599 (2008); LBP-08-25, 68 NRC 786 (2008)
- Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-01-20, 54 NRC 211, 214 (2001)
the evidentiary hearing should not commence until after completion of the final safety evaluation report and final environmental impact statement, unless the licensing board in its discretion finds that starting the hearing with respect to safety issues prior to the issuance of the FSAR will expedite the proceeding without adversely impacting the Staff's ability to complete its evaluations in a timely manner; CLI-07-17, 65 NRC 395 (2007)
- Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-01-27, 54 NRC 385, 389-91 (2001)
the Commission generally declines to hold proceedings in abeyance pending the outcome of other Commission actions or adjudications; CLI-10-17, 72 NRC 10 n.36 (2010)
- Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-14, 55 NRC 278, 290 (2002)
a draft supplemental environmental impact statement must address significant new circumstances or information relevant to a license renewal, including new and significant information relating to Category 1 issues; LBP-06-20, 64 NRC 149 (2006)
after considering public comments on the draft supplemental environmental impact statement, covering both plant-specific Category 2 issues and new and significant information on Category 1 issues, the Staff weighs the expected environmental impacts of license renewal and sets forth its conclusions in the final supplemental environmental impact statement; LBP-06-20, 64 NRC 149 (2006)
applicant must provide additional analysis of even a Category 1 issue if new and significant information has surfaced; LBP-06-20, 64 NRC 156 (2006); LBP-06-23, 64 NRC 294 (2006)
- Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-14, 55 NRC 278, 290-91 (2002)
the final supplemental environmental impact statement must consider new and significant information on Category 1 issues; LBP-06-20, 64 NRC 149, 156 (2006)
the final supplemental environmental impact statement also takes account of public comments, including new information on generic findings; LBP-06-23, 64 NRC 294 n.151 (2006)
- Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-14, 55 NRC 278, 291 (2002)
the vehicle by which a petitioner may seek to raise issues that would otherwise be beyond the scope of a license renewal proceeding is discussed; LBP-07-11, 66 NRC 79 n.163 (2007)
- Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-14, 55 NRC 278, 293 (2002)
NRC licensing proceedings are not occasions for far-reaching speculation about unimplemented and uncertain plans of applicants or licensees; LBP-08-17, 68 NRC 455 (2008)
- Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-14, 55 NRC 278, 293-94 (2002)
contention related to facility's possible future use of mixed oxide fuel is irrelevant to and outside the scope of a license renewal application that did not request approval for use of such fuel, despite evidence that applicant might request approval to use such fuel in a separate, future proceeding; CLI-09-12, 69 NRC 570 n.160 (2009)
- Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-14, 55 NRC 278, 294 (2002)
NRC proceedings are to be based on the application as it exists at a given time and not on any potential future amendments; LBP-08-11, 67 NRC 478 (2008)
to the extent a contention concerns future changes to the combined license application that may come about as a result of amendments to the certified design, it is inadmissible; CLI-09-8, 69 NRC 325 n.36 (2009)

LEGAL CITATIONS INDEX

CASES

- Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-14, 55 NRC 278, 295 (2002)
a possible future action must at least constitute a proposal pending before the agency to be ripe for adjudication; LBP-08-11, 67 NRC 479 (2008)
- Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-17, 56 NRC 1 (2002)
the evaluation of risk is at the heart of a SAMA analysis, and only by considering risk can one determine those alternatives that provide the greatest benefit for the dollars expended; LBP-06-23, 64 NRC 327 (2006)
- Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-17, 56 NRC 1, 5 (2002)
if the cost of implementing a particular severe accident mitigation alternative is greater than its associated benefit, the SAMA would not be considered cost-beneficial; LBP-06-7, 63 NRC 199 n.6 (2006)
severe accident mitigation alternatives are rooted in a cost-benefit assessment, the purpose of which is to identify plant changes whose costs would be less than their benefit, i.e., the potential for significantly improving severe accident safety performance; LBP-10-14, 72 NRC 127 n.171 (2010)
the purpose of the severe accident mitigation alternatives review is to ensure that any plant changes that have a potential for significantly improving severe accident safety performance are identified and assessed; CLI-10-11, 71 NRC 291 (2010)
- Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-17, 56 NRC 1, 7-8 (2002)
if intervenors provide no facts or expert opinion explaining why a conclusion in applicant's environmental report is incorrect, or fail to identify any SAMDAs that should be adopted if some unspecified new analysis were performed or any cost-beneficial SAMAs, their contention should be dismissed; LBP-10-10, 71 NRC 563 (2010)
use of probabilistic risk assessment and modeling is accepted and standard practice in SAMA analyses; LBP-06-23, 64 NRC 340 (2006)
whether a SAMA may be worthwhile to implement is based upon a cost-benefit analysis; LBP-06-23, 64 NRC 327 (2006)
- Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-17, 56 NRC 1, 7-8 n.14 (2002)
petitioner must approximate the relative cost and benefit of a challenged severe accident mitigation alternative in order to get an adjudicatory hearing; LBP-08-13, 68 NRC 103 (2008)
- Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-17, 56 NRC 1, 8 n.14 (2002)
reductions in risk are assessed in terms of the total averted risk; LBP-06-23, 64 NRC 327 (2006)
- Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-17, 56 NRC 1, 9-10 (2002)
a factual dispute cannot be resolved against petitioners at the contention admissibility stage, especially when petitioners' version of the facts is supported by sworn affidavits and applicant's version is not; LBP-09-6, 69 NRC 418 (2009)
at the contention admissibility stage, intervenors are not required, under the rubric of materiality, to run a sensitivity analysis and/or to prove that alleged defects would change the result; LBP-10-14, 72 NRC 128 n.182 (2010)
to require petitioners to rerun a model themselves, in order to demonstrate the individual or collective effects of the defects they allege, would improperly require boards to adjudicate the merits of contentions before admitting them; LBP-09-6, 69 NRC 416 (2009)
- Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-17, 56 NRC 1, 10 (2002)
although NEPA does not require agencies to select particular options, it is intended to foster both informed decisionmaking and informed public participation, and thus to ensure the agency does not act on incomplete information, only to regret its decision after it is too late to correct; LBP-06-23, 64 NRC 340 (2006)

LEGAL CITATIONS INDEX

CASES

- if further analysis is called for, that in itself is a valid and meaningful remedy under the National Environmental Policy Act; LBP-10-13, 71 NRC 697 (2010)
- SAMA contentions will be admitted in license renewal proceedings only if it looks genuinely plausible that inclusion of an additional factor or use of other assumptions or models may change the cost-benefit conclusions for the SAMA candidates evaluated; LBP-10-13, 71 NRC 692 (2010)
- Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-17, 56 NRC 1, 11-12 (2002)
- petitioner must proffer some indication of what the differences might be if a proposed severe accident mitigation alternative is performed; LBP-08-13, 68 NRC 104 (2008)
- Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-17, 56 NRC 1, 12 (2002)
- a contention that fails to provide even a ballpark figure for the cost of implementing any proposed severe accident mitigation alternatives is inadmissible because it is difficult to assess whether a SAMA may be cost-beneficial and thus warrant serious consideration; LBP-09-26, 70 NRC 969 n.151 (2009)
- the Commission is unwilling to throw open its hearing doors to petitioners who have done little in the way of research or analysis, provide no expert opinion, and rest merely on unsupported conclusions; LBP-10-15, 72 NRC 320 (2010)
- Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-26, 56 NRC 358 (2002)
- NRC has no legal duty to consider the environmental impacts of terrorism at NRC-licensed facilities; LBP-08-6, 67 NRC 333 (2008)
- Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-26, 56 NRC 358, 361 (2002)
- there is no need to address terrorism issues in license renewal proceedings because it is sensible not to devote resources to the likely impact of terrorism during the license renewal period, but instead to concentrate on how to prevent a terrorist attack in the near term at the already licensed facilities; LBP-06-23, 64 NRC 300 (2006)
- Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-26, 56 NRC 358, 363 (2002)
- contentions not related to the potential effects of aging are beyond the scope of a license renewal proceeding; LBP-07-11, 66 NRC 70 (2007)
- Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-26, 56 NRC 358, 363-64 (2002)
- even if terrorism issues require analysis under NEPA, the generic environmental impact statement concluded that if such an event were to occur, the resultant core damage and radiological release would be no worse than those expected from internally initiated events; LBP-06-23, 64 NRC 285 (2006)
- license renewal proceedings generally concern requests to renew 40-year operating licenses for additional 20-year terms; LBP-06-23, 64 NRC 274 (2006)
- the Commission has specifically excluded emergency planning from license renewal proceedings because the issue is not germane to age-related degradation or unique to the period of time covered by the license renewal; LBP-07-4, 65 NRC 336 (2007)
- the provisions of Parts 51 and 54 relating to the scope of license renewal proceedings are discussed; LBP-06-10, 63 NRC 343 (2006)
- the scope of a license renewal proceeding is limited to a review of the plant structures and components that will require an aging management review for the period of extended operation and the plant's systems, structures, and components that are subject to an evaluation of time-limited aging analyses; LBP-06-7, 63 NRC 198 (2006); LBP-06-22, 64 NRC 235, 241 (2006); LBP-06-23, 64 NRC 274 (2006)
- the scope of license renewal proceedings is quite limited under Commission rules and case law; LBP-08-22, 68 NRC 598 (2008)

LEGAL CITATIONS INDEX

CASES

- Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-26, 56 NRC 358, 363-65 (2002)
the scope of safety and environmental issues relevant to license renewal is discussed; LBP-07-4, 65 NRC 306 (2007)
the Commission interprets the provisions of Parts 51 and 54 as they apply to license renewal proceedings; LBP-07-11, 66 NRC 59 (2007)
- Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-26, 56 NRC 358, 364 (2002)
an "aircraft attack" scenario is outside the scope of, and not material to, a license renewal proceeding; LBP-06-7, 63 NRC 201 (2006)
because the Commission's ongoing regulatory oversight programs routinely address many safety issues and will continue to address them in years 41 through 60 of a plant's life, consideration of those issues in a license renewal proceeding would be unnecessary and wasteful; LBP-06-7, 63 NRC 225 (2006)
security issues are not among the aging-related questions that are relevant in license renewal review; LBP-06-20, 64 NRC 171 (2006)
terrorism contentions are, by their very nature, directly related to security and are therefore, under NRC license renewal rules, unrelated to the detrimental effects of aging and thus are beyond the scope of, not material to, and inadmissible in a license renewal proceeding; CLI-07-8, 65 NRC 129 (2007); CLI-07-9, 65 NRC 141 (2007); LBP-06-7, 63 NRC 226 n.36 (2006); LBP-06-20, 64 NRC 173 (2006); LBP-08-13, 68 NRC 142 (2008)
the scope of a license renewal hearing excludes consideration of matters that are the subject of the agency's ongoing regulatory oversight programs which routinely address many safety issues and will continue to address them in years 41 through 60 of a plant's life; LBP-06-7, 63 NRC 229 (2006)
the scope of a license renewal proceeding is far more limited than the Atomic Energy Act issues that a licensing board addresses when reviewing an initial operating license application; LBP-06-7, 63 NRC 225 (2006)
there is no need to address terrorism issues in license renewal proceedings because it is sensible not to devote resources to the likely impact of terrorism during the license renewal period, but instead to concentrate on how to prevent a terrorist attack in the near term at the already-licensed facilities; LBP-06-20, 64 NRC 160 (2006)
- Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-26, 56 NRC 358, 365 (2002)
particularly in the case of a license renewal application, where reactor operation will continue for many years regardless of the Commission's ultimate decision, it is sensible not to devote resources to the likely impact of terrorism during the license renewal period, but instead to concentrate on how to prevent a terrorist attack in the near term at the already licensed facilities; CLI-07-8, 65 NRC 134 (2007)
the National Environmental Policy Act imposes no legal duty on NRC to consider intentional malevolent acts on a case-by-case basis in conjunction with commercial power reactor license renewal applications; CLI-07-8, 65 NRC 129 (2007); CLI-10-14, 71 NRC 476 (2010); LBP-06-7, 63 NRC 201 (2006); LBP-07-11, 66 NRC 87 (2007); LBP-08-13, 68 NRC 142 (2008)
- Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-26, 56 NRC 358, 365 n.24 (2002)
in its Generic Environmental Impact Statement for License Renewal of Nuclear Plants, the NRC Staff performed a discretionary analysis of terrorist acts in connection with license renewal, and it concluded that the core damage and radiological release from such acts would be no worse than the damage and release to be expected from internally initiated events; LBP-06-7, 63 NRC 201 n.8 (2006); LBP-06-20, 64 NRC 154, 160-61 (2006)
- Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-26, 56 NRC 358, 365-66 (2002)
a NEPA analysis is not the vehicle for exploring questions about the potential for a terrorist attack upon a proposed nuclear facility; LBP-07-3, 65 NRC 269 (2007)

LEGAL CITATIONS INDEX

CASES

- Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-28, 56 NRC 373, 378-81 (2002)
the scope of a contention is limited to issues of law and fact pleaded with particularity in the intervention petition, including its stated bases; CLI-10-5, 71 NRC 100 (2010)
- Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-28, 56 NRC 373, 379 (2002)
because the reach of a contention necessarily hinges upon its terms and its stated bases, the brief explanation helps define the scope of the contention; LBP-09-26, 70 NRC 953 (2009)
where any issue arises over the proper scope of a contention, NRC opinions have long referred back to the bases set forth in support of the contention; CLI-09-12, 69 NRC 553 (2009); CLI-10-11, 71 NRC 309 (2010); LBP-07-3, 65 NRC 255 (2007); LBP-07-16, 66 NRC 286 (2007); LBP-08-9, 67 NRC 430 (2008); LBP-08-13, 68 NRC 61 (2008); LBP-08-16, 68 NRC 386 (2008); LBP-10-6, 71 NRC 366 n.49 (2010)
- Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-28, 56 NRC 373, 379, 383 (2002)
the reach of a contention necessarily hinges upon its terms coupled with its stated bases; CLI-10-11, 71 NRC 309 (2010)
- Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-28, 56 NRC 373, 379, 386 (2002)
if a question arises over the scope of an admitted contention, the board or Commission will refer back to the bases set forth in support of the contention; CLI-10-15, 71 NRC 482 (2010)
- Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-28, 56 NRC 373, 382 (2002)
a contention challenging an applicant's environmental report can be superseded by the subsequent issuance of licensing-related documents, whether a draft environmental impact statement or an applicant's response to a request for additional information; LBP-10-14, 72 NRC 108, 112 (2010)
where a contention is superseded by the subsequent issuance of licensing-related documents, the contention must be disposed of or modified; LBP-10-17, 72 NRC 507 (2010)
- Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-28, 56 NRC 373, 382-83 (2002)
intervenor must timely file a new or amended contention that addresses the factors in section 2.714(b) in order to raise specific challenges regarding new information; LBP-10-10, 71 NRC 604 (2010)
the distinction between contentions of omission and contentions of inadequacy does not appear in NRC contention pleading regulations, but rather is a useful concept from agency case law; CLI-10-2, 71 NRC 36 n.44 (2010)
there is a difference between contentions that merely allege an omission of information and those that challenge substantively and specifically how particular information has been discussed in a license application; CLI-10-9, 71 NRC 270 (2010); LBP-08-11, 67 NRC 488 n.68 (2008); LBP-10-14, 72 NRC 108-09 (2010)
when facility proponents bring forward a solution that allegedly cures the deficiency alleged in a contention and then move to dismiss the contention, this triggers a period during which petitioners can amend the original contention to challenge the solution's substance; LBP-07-14, 66 NRC 206 (2007)
where a contention alleges the omission of particular information or an issue from an application, and the information is later supplied by the applicant or considered by the Staff in a draft EIS, the contention is moot; LBP-07-2, 65 NRC 157 n.7 (2007); LBP-10-10, 71 NRC 604 (2010)
- Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-28, 56 NRC 373, 382-84 (2002)
a contention of omission that has been cured can be dismissed as moot; CLI-07-8, 65 NRC 127 (2007); CLI-07-11, 65 NRC 150 n.8 (2007)
- Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-28, 56 NRC 373, 383 (2002)
a contention of omission alleges the improper omission of particular information or an issue from an application; LBP-08-12, 68 NRC 20 (2008)

LEGAL CITATIONS INDEX

CASES

- an intervenor attempting to litigate an issue based on expressed concerns about the draft environmental impact statement may need to amend the admitted contention or, if the information in the DEIS is sufficiently different from that in the environmental report that supported the contention's admission, submit a new contention; LBP-08-2, 67 NRC 64 (2008); LBP-08-3, 67 NRC 95 (2008)
- facts relied upon in a contention of omission need not show that the facility cannot be safely operated, but rather that the application is incomplete; LBP-09-4, 69 NRC 190 (2009)
- for contentions or portions of contentions challenging an application as having omitted a required item or items, post-contention admission events, such as issuance of a Staff DEIS, can render the contention subject to dismissal as moot; LBP-08-2, 67 NRC 63 (2008); LBP-08-3, 67 NRC 94 (2008)
- if applicant cures the omission on which a contention is based, the contention will become moot; CLI-08-28, 68 NRC 676 n.72 (2008); CLI-06-9, 63 NRC 444 (2006); LBP-06-16, 63 NRC 742 (2006); LBP-08-12, 68 NRC 21 (2008); LBP-08-15, 68 NRC 317 (2008); LBP-08-24, 68 NRC 748 n.325 (2008); LBP-09-4, 69 NRC 190 (2009); LBP-10-14, 72 NRC 109, 136 (2010); LBP-10-16, 72 NRC 395 (2010)
- NRC contention rules require reasonably specific factual and legal allegations at the outset to ensure that matters admitted for hearing have at least some minimal foundation, are material to the proceeding, and provide notice to opposing parties of the issues they will need to defend against; CLI-10-11, 71 NRC 309 (2010)
- once information asserted to have been omitted is supplied, the original contention is moot, and intervenors must timely file a new or amended contention in order to raise specific challenges regarding the new information; CLI-06-9, 63 NRC 444 (2006); LBP-08-15, 68 NRC 318 (2008); LBP-09-15, 70 NRC 210, 211 (2009); LBP-09-16, 70 NRC 245 (2009); LBP-09-21, 70 NRC 596 n.59 (2009); LBP-09-27, 70 NRC 999 (2009); LBP-10-5, 71 NRC 339 (2010); LBP-10-10, 71 NRC 540 (2010); LBP-10-14, 72 NRC 109, 136 (2010)
- petitioner's burden on a contention of omission is only to show the facts necessary to establish that the application omits information that should have been included; LBP-09-4, 69 NRC 190 (2009)
- when a contention of omission has been rendered moot, and the intervenor wishes to raise specific challenges regarding the new information, it may timely file a new contention that addresses the admissibility factors of 10 C.F.R. 2.309(f)(1); LBP-06-16, 63 NRC 744 (2006); LBP-09-27, 70 NRC 999 (2009)
- Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-28, 56 NRC 373, 383 n.45 (2002)
- it may be necessary to examine the language of the bases to determine a contention's scope; LBP-06-16, 63 NRC 742 (2006)
- Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-28, 56 NRC 373, 383-84 (2002)
- in a case with an open record, when a contention of omission is rendered moot, the intervenor may be permitted to timely file a new contention arising from the new information; LBP-08-12, 68 NRC 22 n.15 (2008)
- Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-28, 56 NRC 373, 386 (2002)
- hearing petitioners have an ironclad obligation to examine the publicly available documentary material pertaining to the facility in question with sufficient care to enable the petitioner to uncover any information that could serve as the foundation for a specific contention; CLI-09-2, 69 NRC 65 n.47 (2009); CLI-10-27, 72 NRC 496 (2010)
- Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-28, 56 NRC 373, 386 & n.61 (2002)
- intervenors may not freely change the focus of an admitted contention at will to add a host of new issues and objections that could have been raised at the outset; CLI-10-11, 71 NRC 309 (2010)
- Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-28, 56 NRC 373, 388 n.77 (2002)
- an order by NRC Staff to implement severe accident mitigation alternatives not dealing with aging management can be issued concurrently as part of a Part 50 current licensing basis review; LBP-10-13, 71 NRC 679 (2010)

LEGAL CITATIONS INDEX

CASES

- Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-03-17, 58 NRC 419 (2003)
contentions are inadmissible where intervenors did not perform the bare minimum preparations and there was no attempt to perform any independent analysis; LBP-09-6, 69 NRC 415 n.234 (2009)
- Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-03-17, 58 NRC 419, 424 (2003)
although technical perfection is not an essential element of contention pleading, the rules have nonetheless been held to bar contentions where petitioners have only what amounts to generalized suspicions, hoping to substantiate them later; LBP-06-10, 63 NRC 338 (2006); LBP-06-23, 64 NRC 353 (2005); LBP-08-6, 67 NRC 292 (2008); LBP-08-17, 68 NRC 441 (2008); LBP-09-6, 69 NRC 390 (2009); LBP-09-17, 70 NRC 326 (2009); LBP-09-18, 70 NRC 404 (2009)
- Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-03-17, 58 NRC 419, 426-28 (2003)
contention standards require pleading specific grievances, not simply providing general notice pleadings; CLI-10-11, 71 NRC 308 n.101 (2010)
- Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-03-17, 58 NRC 419, 427 (2003)
petitioners must raise and reasonably specify at the outset their objections to a licensing action; CLI-08-3, 67 NRC 169 (2008)
- Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-03-17, 58 NRC 419, 428 (2003)
contention standards require petitioners to plead specific grievances, not simply to provide general notice pleadings; CLI-10-15, 71 NRC 482 (2010)
unlike federal court practice, the Commission does not accept mere notice pleading in support of an admissible contention; CLI-06-9, 63 NRC 437 (2006); CLI-06-24, 64 NRC 119 (2006); LBP-08-24, 68 NRC 730 (2008)
- Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-03-17, 58 NRC 419, 428-29 (2003)
a listing of issues with which petitioners disagree with the application is the form of notice pleading that the Commission has long held is insufficient; LBP-10-16, 72 NRC 414 (2010)
a reply may not be used as a vehicle to introduce new arguments or support, may not expand the scope of arguments set forth in the original petition, and may not attempt to cure an otherwise deficient contention; LBP-09-17, 70 NRC 323 (2009)
admission of new contentions under 10 C.F.R. 2.309(f)(2) does not run afoul of the Commission's aversion to petitioners who disregard NRC's timeliness requirements, nor does it allow petitioners to add new contentions that simply did not occur to them at the outset; LBP-09-10, 70 NRC 139 (2009)
contention admissibility and timeliness rules require a high level of discipline and preparation by petitioners, who must examine the publicly available material and set forth their claims and the support for their claims at the outset; CLI-09-7, 69 NRC 272 (2009); LBP-06-12, 63 NRC 405 (2006)
once an initial intervention petition is filed, facility proponents routinely press within the adjudicatory process to ensure that any attempt thereafter to cure any deficiencies is rejected as untimely; LBP-08-11, 67 NRC 507 (2008)
petitioners have an ironclad obligation to search the public record for information supporting their contentions; LBP-08-6, 67 NRC 256 (2008)
there simply would be no end to NRC licensing proceedings if petitioners could disregard the timeliness requirements and add new bases or new issues that simply did not occur to them at the outset; CLI-08-19, 68 NRC 262 (2008); LBP-06-12, 63 NRC 405 (2006)
- Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-03-17, 58 NRC 419, 429 (2003)
petitioners have an obligation to examine the application and publicly available information, and to set forth their claims at the earliest possible moment; CLI-07-18, 65 NRC 413-14 n.46 (2007)

LEGAL CITATIONS INDEX

CASES

- Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-03-17, 58 NRC 419, 431 (2003)
a litigable NEPA issue is one that concerns whether the NRC Staff has taken the requisite hard look at mitigation in sufficient detail to ensure that environmental consequences of the proposed project have been fairly evaluated; LBP-10-13, 71 NRC 679 (2010)
for a mitigation analysis, the National Environmental Policy Act demands no fully developed plan or detailed examination of specific measures that will be employed to mitigate adverse environmental effects; CLI-10-11, 71 NRC 316 (2010)
NRC adjudicatory hearings are not environmental impact statement editing sessions; CLI-09-11, 69 NRC 533 (2009); LBP-10-10, 71 NRC 581 n.266 (2010)
under NEPA, mitigation need only be discussed in sufficient detail to ensure that environmental consequences of the proposed project have been fairly evaluated; LBP-06-23, 64 NRC 329 (2006)
- Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), LBP-02-4, 55 NRC 49 (2002)
a Category 1 issue does not require a site-specific analysis and is outside the scope of a license renewal proceeding; LBP-08-13, 68 NRC 216 (2008)
- Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), LBP-02-4, 55 NRC 49, 66 (2002)
expert opinion must not be limited to bald conclusory statements such as that the application under consideration is “deficient,” “inadequate,” or “wrong”; LBP-09-6, 69 NRC 411 (2009)
- Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), LBP-02-4, 55 NRC 49, 77 (2002)
although pro se intervenors must be afforded some latitude in their pleadings, the board expects that an organization that has appeared several times previously will have a heightened awareness of the agency’s pleading rules; LBP-08-16, 68 NRC 405-06 (2008)
- Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), LBP-02-4, 55 NRC 49, 80 (2002)
intervention petitioners must point to specific portions of an application that are either deficient or do not comply with the Commission’s regulations; LBP-07-11, 66 NRC 71 (2007)
- Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), LBP-02-4, 55 NRC 49, 85-87 (2002)
a Category 1 environmental issue that is adequately addressed by the generic environmental impact statement is outside the scope of a license renewal proceeding; LBP-08-13, 68 NRC 195 (2008)
- Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), LBP-03-17, 58 NRC 221 (2003)
contention is inadmissible where intervenors did not show that a model was defective or used incorrectly but simply that a different result would be achieved using their own model; LBP-09-6, 69 NRC 415 n.234 (2009)
- Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), LBP-03-17, 58 NRC 221, 240-41 (2003)
regulatory guidance documents are merely suggestions with no legal authority to supersede the plain language of the regulatory criteria that requires aging management review for a structure or component that performs its safety functions without moving parts and without a change in configuration or properties; LBP-08-13, 68 NRC 88 (2008)
- Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-98-17, 48 NRC 123, 125 (1998)
the Commission interprets the provisions of Parts 51 and 54 as they apply to license renewal proceedings; LBP-06-10, 63 NRC 343 (2006); LBP-07-11, 66 NRC 59 (2007)
the scope of safety and environmental issues relevant to license renewal is discussed; LBP-07-4, 65 NRC 307 (2007)
the scope of license renewal proceedings is quite limited under Commission rules and case law; LBP-08-22, 68 NRC 598 (2008)
the scope of license renewal proceedings, which generally concern requests to renew 40-year operating licenses for additional 20-year terms, is discussed; LBP-06-23, 64 NRC 274 (2006)

LEGAL CITATIONS INDEX

CASES

- Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 333-34 (1999)
a dispute is material if its resolution would make a difference in the outcome of the licensing proceeding; LBP-10-6, 71 NRC 360 (2010)
- Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 333-35 (1999)
NRC contention rules require reasonably specific factual and legal allegations at the outset to ensure that matters admitted for hearing have at least some minimal foundation, are material to the proceeding, and provide notice to opposing parties of the issues they will need to defend against; CLI-10-11, 71 NRC 309 (2010)
- Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 334 (1999)
a licensing proceeding is plainly not the proper forum for an attack on applicable statutory requirements or for challenges to the basic structure of the Commission's regulatory process; CLI-09-5, 69 NRC 123 (2009); LBP-08-9, 67 NRC 443 n.135 (2008)
admission standards for contentions were raised in an effort to obviate serious hearing delays caused in the past by poorly defined or supported contentions; CLI-06-10, 63 NRC 455 (2006); LBP-06-10, 63 NRC 380 (2006)
at the contention admission stage, petitioner must simply proffer some minimal factual foundation sufficient to raise a genuine dispute regarding the existence of a corrosive environment; LBP-06-22, 64 NRC 243, 244 (2006)
contention pleading rules are designed to ensure both that only well-defined issues are admitted for hearing and that parties admitted to litigate sophisticated technical issues are qualified to do so; CLI-09-12, 69 NRC 552 (2009)
NRC procedural rules include the need for a petitioner to show at least some minimal factual and legal foundation in order to trigger a full adjudicatory hearing, which must be focused on real disputes susceptible of resolution in an adjudication; LBP-07-4, 65 NRC 340 n.286 (2007); LBP-09-6, 69 NRC 453 (2009)
NRC's strict contention admission rules are intended to adjudicate genuine, substantive safety and environmental issues placed in contention by qualified intervenors; CLI-06-10, 63 NRC 455 (2006)
NRC's strict contention pleading rule fosters fair and meaningful adjudicatory hearings; CLI-06-9, 63 NRC 440 (2006)
petitioners cannot seek to use a specific adjudicatory proceeding to attack generic NRC regulations and requirements, or express generalized grievances about NRC policies; CLI-08-17, 68 NRC 233, 242 (2008)
section 2.309(f)(1)(v) is not designed to erect an onerous evidentiary hurdle, but rather helps to ensure that full adjudicatory hearings are triggered only by those able to proffer at least some minimal factual and legal foundation in support of their contentions; LBP-06-7, 63 NRC 221 n.33 (2006)
the contention rule is strict by design, having been toughened in 1989 because in prior years licensing boards had admitted and litigated numerous contentions that appeared to be based on little more than speculation; LBP-06-10, 63 NRC 336 (2006); LBP-06-23, 64 NRC 272, 352 (2006); LBP-07-4, 65 NRC 303 (2007); LBP-07-11, 66 NRC 56 (2007); LBP-08-6, 67 NRC 290 (2008); LBP-09-6, 69 NRC 453 (2009); LBP-09-17, 70 NRC 325 n.47 (2009)
the sole question before a board in ruling on an intervention petition is whether petitioner has submitted the requisite minimal factual and legal foundation to support its contention; LBP-06-7, 63 NRC 225 (2006)
the strict contention pleading rule is designed to focus the hearing process on genuine disputes susceptible of resolution, puts the other parties on notice of the specific grievances at issue, and restricts participation to those able to proffer at least some minimal factual and legal foundation in support of their contentions; CLI-08-1, 67 NRC 8 (2008); LBP-06-10, 63 NRC 337 (2006); LBP-06-23, 64 NRC 273, 352 (2006); LBP-08-6, 67 NRC 291 (2008)
the strict contention rule serves multiple interests; LBP-07-4, 65 NRC 304 (2007); LBP-07-11, 66 NRC 56 (2007); LBP-09-17, 70 NRC 325 (2009)
- Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 334-35 (1999)
rules on contention admissibility are strict by design; LBP-09-10, 70 NRC 72 (2009); CLI-08-17, 68 NRC 233 (2008); LBP-09-4, 69 NRC 189 (2009); LBP-09-16, 70 NRC 244 (2009); LBP-10-15, 72 NRC 278 (2010); LBP-10-16, 72 NRC 394 (2010)

LEGAL CITATIONS INDEX

CASES

- Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 335 (1999) although support for a contention may be weak and the contention may be technically imperfect, it may still raise a valid and significant issue with reasonably specific factual and legal allegations and be sufficient to support further inquiry; LBP-06-10, 63 NRC 381 (2006) in revising its contention admissibility requirements, the Commission sought to preclude a contention from being admitted where an intervenor had no facts to support its positions, but rather hoped to use discovery or cross-examination as a fishing expedition; LBP-09-6, 69 NRC 453 (2009) the contention requirements were never intended to be turned into a fortress to deny intervention; CLI-07-18, 65 NRC 414 (2007); LBP-06-7, 63 NRC 225 (2006); LBP-09-6, 69 NRC 453 (2009); LBP-09-21, 70 NRC 602 n.94 (2009)
- Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 336 (1999) issuance of requests for additional information does not alone establish deficiencies in an application; LBP-09-16, 70 NRC 270 n.134 (2009)
- Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 336-37 (1999) contention that the mere existence of numerous requests for additional information constituted prima facie evidence that the application is incomplete is rejected; CLI-08-17, 68 NRC 242 (2008); CLI-09-12, 69 NRC 550 n.65 (2009); LBP-08-9, 67 NRC 444 (2008) mere issuance of a Staff request for additional information does not establish grounds for a litigable contention; CLI-06-6, 63 NRC 164 (2006); LBP-09-10, 70 NRC 144 (2009)
- Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 336-39 (1999) NRC Staff issuance of a request for additional information does not alone establish deficiencies in an application, and intervention petitioner must do more than merely quote an RAI to justify admission of a contention; CLI-09-16, 70 NRC 38 n.25 (2009)
- Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 337 (1999) a petitioner may not ground a contention on the Staff's request for additional information, when the request shows only an ongoing Staff dialogue with the applicant, not any ultimate Staff determinations; LBP-06-11, 63 NRC 399 (2006) contentions are inadmissible if petitioners provide no analysis, discussion, or information on their own on any of the issues raised in Staff requests for additional information; LBP-09-10, 70 NRC 76 (2009); LBP-09-16, 70 NRC 271 n.135 (2009)
- Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 337-39 (1999) although technical perfection is not an essential element of contention pleading, the rules have nonetheless been held to bar contentions where petitioners have only what amounts to generalized suspicions, hoping to substantiate them later; LBP-06-10, 63 NRC 338 (2006); LBP-06-23, 64 NRC 353 (2005); LBP-08-6, 67 NRC 292 (2008); LBP-08-17, 68 NRC 441 (2008); LBP-09-17, 70 NRC 326 (2009); LBP-09-18, 70 NRC 404 (2009) it is legitimate for the Commission to screen out contentions of doubtful worth and to avoid starting down the path toward a hearing at the behest of petitioners who themselves have no particular expertise or expert assistance and no particularized grievance, but are hoping something will turn up later as a result of NRC Staff work; LBP-06-23, 64 NRC 356 (2005)
- Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 338 (1999) Commission rules bar contentions where petitioners have only what amounts to generalized suspicions, hoping to substantiate them later; LBP-09-6, 69 NRC 390 (2009) NRC contention rules require petitioners to work within a limited time frame to review the license application and any available related licensing documents, and this can pose a significant burden, especially for pro se petitioners who are likely to have less available time and resources; CLI-06-10, 63 NRC 456 (2006) petitioners have an ironclad obligation to search the public record for information supporting their contentions; LBP-08-6, 67 NRC 256 (2008)
- Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 338-39 (1999) a person who invokes the right to participate in an NRC proceeding also voluntarily accepts the obligations attendant upon such participation; CLI-09-8, 69 NRC 329 (2009) obligations of parties include participation within the schedule established for the proceeding despite the burden on a participant's time and resources and despite uncertainties engendered by the potential for new information; CLI-09-8, 69 NRC 329 n.53 (2009)

LEGAL CITATIONS INDEX

CASES

- Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 339 (1999)
any member of the public may provide the NRC Staff with comments relating to health and safety at any time during the license review process, and the NRC Staff will consider and resolve all safety questions regardless of whether any hearing takes place; LBP-10-4, 71 NRC 231 n.16 (2010)
- Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 341-42 (1999)
a contention must explain why the application is deficient through reference to specific portions of the application, and it must directly controvert a position taken by the applicant in the application; LBP-09-17, 70 NRC 327 (2009)
- Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 342 (1999)
contentions must directly controvert a position taken by the applicant in the application; LBP-08-6, 67 NRC 292 (2008)
expert support is not required for admission of a contention because a fact-based argument may be sufficient on its own; LBP-08-27, 68 NRC 956 (2008)
it is legitimate for the Commission to screen out contentions of doubtful worth and to avoid starting down the path toward a hearing at the behest of petitioners who themselves have no particular expertise or expert assistance and no particularized grievance, but are hoping something will turn up later as a result of NRC Staff work; LBP-06-10, 63 NRC 339 (2006)
petitioner must support its contentions with documents, expert opinion, or at least a fact-based argument; LBP-08-6, 67 NRC 292, 318 (2008); LBP-09-17, 70 NRC 329 (2009)
petitioners are not required to provide expert support at the contention admissibility stage, although expert support is certainly one means to supply the basis and specificity NRC rules do require; CLI-09-12, 69 NRC 553 (2009)
whether petitioners have expert assistance can be related to how qualified petitioners may be to effectively litigate issues put forth in contentions, and whether contentions should therefore be admitted; LBP-06-10, 63 NRC 380 (2006)
- Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 343 (1999)
Category 1 waste issues may not be introduced into a license renewal proceeding; CLI-06-17, 63 NRC 734 n.29 (2006)
in the area of waste storage, the Commission largely has chosen to proceed generically through the rulemaking process instead of litigating issues case-by-case in adjudicatory proceedings; CLI-10-19, 72 NRC 99 (2010)
- Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 343-44 (1999)
because onsite spent fuel is a Category 1 issue, a contention challenging licensee's SAMA analysis for failing to consider spent fuel pool vulnerability is beyond the scope of a license renewal proceeding and thus not admissible; LBP-06-7, 63 NRC 202 (2006)
the expected increase in the volume of spent fuel from an additional 20 years of operation can be safely accommodated onsite with small environmental effects through dry or pool storage at all plants if a permanent repository or monitored retrievable storage is not available; LBP-06-23, 64 NRC 291 (2006)
- Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 344 n.4 (1999)
issues involving an independent spent fuel storage installation are outside the scope of a license renewal proceeding; CLI-06-17, 63 NRC 733 (2006)
- Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 344-45 (1999)
issues related to the environmental impact of onsite spent fuel storage after the license renewal term are outside the scope of a license renewal proceeding because contentions may not challenge the NRC's Waste Confidence Rule; LBP-06-20, 64 NRC 170 (2006)
- Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 345 (1999)
contentions that attack a Commission rule, or seek to litigate a matter that is, or clearly is about to become, the subject of a rulemaking, are inadmissible; CLI-10-9, 71 NRC 273 (2010); CLI-10-19, 72 NRC 100 (2010); LBP-06-7, 63 NRC 203 (2006); LBP-06-23, 64 NRC 312 n.255 (2006); LBP-08-16, 68 NRC 383 (2008); LBP-09-17, 70 NRC 338, 339, 340-41 (2009); LBP-09-18, 70 NRC 403 (2009); LBP-09-26, 70 NRC 978 (2009)
if petitioners are dissatisfied with NRC's generic approach to the waste disposal issue, their remedy lies in the rulemaking process, not in a licensing proceeding; CLI-10-19, 72 NRC 100 (2010); LBP-06-7, 63 NRC 204 n.10 (2006); LBP-08-23, 68 NRC 689 n.50 (2008); LBP-09-4, 69 NRC 218

LEGAL CITATIONS INDEX

CASES

- (2009); LBP-09-10, 70 NRC 116 n.52 (2009); LBP-09-16, 70 NRC 251 (2009); LBP-09-18, 70 NRC 408 n.127 (2009); LBP-09-21, 70 NRC 600 (2009)
- the SAMDA analysis is part of the design certification application and thus intervenor's contention constitutes an impermissible challenge to a future rulemaking; LBP-10-10, 71 NRC 563 (2010)
- Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 346 (1999)
- it would be counterproductive and contrary to longstanding agency policy to initiate litigation on an issue that by all accounts very soon will be resolved generically; CLI-10-19, 72 NRC 100 (2010)
- Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), LBP-98-33, 48 NRC 381, 385 n.1 (1998)
- the distance from the significant source of radioactivity that is presumed to affect the petitioners in license renewal cases logically must be the same 50-mile distance that forms the current basis for the proximity presumption for reactor construction permit and initial operating license proceedings; LBP-06-7, 63 NRC 197 (2006)
- the proximity presumption extends to petitioners living in or having frequent contacts with an area within a 50-mile radius of a nuclear reactor; LBP-08-18, 68 NRC 539 (2008)
- Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), LBP-98-33, 48 NRC 381, 385 n.1 (1998), *aff'd*, CLI-99-11, 49 NRC 328 (1999)
- the 50-mile proximity presumption should apply to license extension cases because reactor operation over the additional period is subject to the same equipment failure and personnel errors; LBP-07-10, 66 NRC 18 (2007)
- Duke Power Co. v. Carolina Environmental Study Group*, 438 U.S. 59 (1978)
- constitutionality of the Price-Anderson Act has been upheld against a constitutional due process challenge; LBP-08-17, 68 NRC 452 (2008)
- Duke Power Co. v. Carolina Environmental Study Group*, 438 U.S. 59, 62-68, 81-82 (1978)
- in deciding the ripeness question, it is important to look to whether delayed resolution of issues would foreclose any relief from the present injury suffered by appellees; LBP-09-1, 69 NRC 38 n.114 (2009)
- Duke Power Co. v. Carolina Environmental Study Group*, 438 U.S. 59, 72-78 (1978)
- not building a proposed nuclear power plant satisfies the redressability criterion for standing; CLI-09-9, 69 NRC 340 (2009)
- Duke Power Co. v. Carolina Environmental Study Group*, 438 U.S. 59, 74 (1978)
- the threat of injury from radiation exposure is sufficient to satisfy the injury in fact requirement of traditional standing; LBP-06-4, 63 NRC 104 (2006)
- Duke Power Co. v. Carolina Environmental Study Group*, 438 U.S. 59, 78 (1978)
- petitioners need not demonstrate a substantial likelihood of redressability, but rather need only show that redress is likely as opposed to speculative; LBP-10-11, 71 NRC 636 n.101 (2010)
- Duke Power Co. v. Carolina Environmental Study Group*, 438 U.S. 59, 78-79 (1978)
- a "nexus" requirement is not required for cases other than taxpayer lawsuits; CLI-09-9, 69 NRC 340 (2009)
- Duke Power Co. v. Carolina Environmental Study Group*, 438 U.S. 59, 78-81 (1978)
- a requirement for a nexus between the injury claimed and the right being asserted was rejected; LBP-09-1, 69 NRC 18 (2009)
- Duke Power Co. v. Carolina Environmental Study Group*, 438 U.S. 59, 81-82 (1978)
- it is appropriate to assess both the fitness of the issue for judicial decision and the hardship to the parties of withholding court consideration; LBP-09-1, 69 NRC 39 n.114 (2009)
- Duke Power Co.* (Catawba Nuclear Station, Units 1 and 2), ALAB-355, 4 NRC 397, 410 (1976)
- NRC's longstanding approach to electric power demand forecasting has emphasized historical, conservative planning to ensure electricity generating capacity will be available to meet reasonably expected needs; LBP-08-16, 68 NRC 406 (2008)
- Duke Power Co.* (Catawba Nuclear Station, Units 1 and 2), ALAB-355, 4 NRC 397, 411 & n.46 (1976)
- asserted procedural defects should be called to an agency's attention when, if in fact they were defects, they would have been correctable; CLI-10-14, 71 NRC 471 (2010)
- objections not raised at hearing are deemed waived; CLI-10-14, 71 NRC 469 (2010)

LEGAL CITATIONS INDEX

CASES

- Duke Power Co.* (Catawba Nuclear Station, Units 1 and 2), ALAB-687, 16 NRC 460, 467 (1982)
a licensing board is not authorized to admit conditionally, for any reason, a contention that falls short of meeting the specificity requirements set forth in NRC procedural rules; CLI-09-2, 69 NRC 63 n.33 (2009)
- Duke Power Co.* (Catawba Nuclear Station, Units 1 and 2), ALAB-687, 16 NRC 460, 468 (1982)
petitioners have an ironclad obligation to search the public record for information supporting their contentions; LBP-06-20, 64 NRC 188 (2006); LBP-08-6, 67 NRC 256 (2008)
- Duke Power Co.* (Catawba Nuclear Station, Units 1 and 2), ALAB-768, 19 NRC 988, 992 & n.14 (1984)
even "truly exceptional" expenses would not meet the irreparable impact standard governing a petition for interlocutory review; CLI-09-6, 69 NRC 134 (2009)
- Duke Power Co.* (Catawba Nuclear Station, Units 1 and 2), ALAB-794, 20 NRC 1630, 1635 (1984)
failure to satisfy the first two stay factors renders it unnecessary to make determinations on the two remaining factors, harm to other parties and where the public interest lies; CLI-10-8, 71 NRC 163 (2010)
- Duke Power Co.* (Catawba Nuclear Station, Units 1 and 2), ALAB-813, 22 NRC 59, 86 (1985)
licensing boards should not accept in individual license proceedings contentions that are (or are about to become) the subject of general rulemaking by the Commission; LBP-06-23, 64 NRC 312 n.255 (2006)
- Duke Power Co.* (Catawba Nuclear Station, Units 1 and 2), ALAB-825, 22 NRC 785, 790-91 (1985)
a contention is not cognizable unless it is material to matters that fall within the scope of the proceeding for which the licensing board has been delegated jurisdiction; LBP-06-23, 64 NRC 354 (2005); LBP-07-4, 65 NRC 304 (2007); LBP-07-11, 66 NRC 57 (2007)
all proffered contentions must be within the scope of the proceeding as defined by the Commission in its initial hearing notice and order referring the proceeding to the licensing board; LBP-07-3, 65 NRC 253 (2007); LBP-07-10, 66 NRC 23 (2007); LBP-07-16, 66 NRC 286 (2007); LBP-08-13, 68 NRC 62 (2008); LBP-08-15, 68 NRC 314 (2008); LBP-08-16, 68 NRC 384 (2008); LBP-08-26, 68 NRC 916 (2008); LBP-09-3, 69 NRC 153 (2009); LBP-10-7, 71 NRC 420 (2010)
the scope of a proceeding is generally established by the Commission in its initial hearing notice and any order referring the proceeding to a licensing board; LBP-06-20, 64 NRC 148 (2006); LBP-08-9, 67 NRC 431 (2008); LBP-09-6, 69 NRC 462 (2009); LBP-09-26, 70 NRC 953 (2009); LBP-10-17, 72 NRC 511 (2010)
- Duke Power Co.* (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 NRC 1041, 1043 (1983)
the unavailability of documents does not constitute a showing of good cause for admitting a late-filed contention when the factual predicate for that contention is available from other sources in a timely manner; CLI-10-27, 72 NRC 496 n.69 (2010)
- Duke Power Co.* (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 NRC 1041, 1048 (1983)
a person who invokes the right to participate in an NRC proceeding also voluntarily accepts the obligations attendant upon such participation; CLI-09-8, 69 NRC 329 (2009)
although an intervenor may have fewer resources and less ability than other participants, both share the same burden of uncovering relevant information that is publicly available; LBP-08-12, 68 NRC 32 (2008)
- Duke Power Co.* (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 NRC 1041, 1049 (1983)
adequacy of NRC's environmental review as reflected in the adequacy of an environmental impact statement is an appropriate issue for litigation in a licensing proceeding; LBP-10-24, 72 NRC 746 (2010)
although all environmental contentions may, in a general sense, ultimately be challenges to the NRC's compliance with NEPA, factual disputes of particular issues can be raised before the draft environmental impact statement is prepared; CLI-10-2, 71 NRC 34 n.30 (2010)
much of the information in an applicant's environmental report is used in the draft environmental impact statement; LBP-09-16, 70 NRC 263 (2009)
should NRC Staff provide a different analysis in its draft environmental statement than applicant in its environmental report, there will be ample opportunity to either amend or dispose of contentions based on the ER; LBP-09-4, 69 NRC 228 (2009)

LEGAL CITATIONS INDEX

CASES

- when environmental contentions are involved, the burden of proof shifts to the Staff, because the NRC, not an applicant, has the burden of complying with the National Environmental Policy Act; LBP-09-7, 69 NRC 635 (2009)
- Duke Power Co.* (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 NRC 1041, 1050 (1983) a contention challenging applicant's environmental report can be superseded by the subsequent issuance of licensing-related documents, whether a draft environmental impact statement or an applicant's response to a request for additional information; CLI-06-9, 63 NRC 444 (2006); LBP-10-14, 72 NRC 108 (2010)
- although the ultimate burden with respect to NEPA lies with the NRC Staff, NRC policy with respect to the identification of issues for hearing has long been that such issues must be raised as early as possible; CLI-10-2, 71 NRC 34-35 (2010)
- where a contention is superseded by the subsequent issuance of licensing-related documents the contention must be disposed of or modified; LBP-10-17, 72 NRC 507 (2010)
- Duke Power Co.* (Catawba Nuclear Station, Units 1 and 2), LBP-82-107A, 16 NRC 1791, 1808 (1982) relitigation of issues that were decided against petitioner in its earlier administrative litigation is prohibited; LBP-08-15, 68 NRC 337 (2008)
- the doctrine of collateral estoppel should be applied in appropriate circumstances in NRC proceedings; LBP-08-15, 68 NRC 310 (2008)
- Duke Power Co.* (Catawba Nuclear Station, Units 1 and 2), LBP-82-116, 16 NRC 1937, 1946 (1982) a contention about a matter not covered by a specific rule need only allege that the matter poses a significant safety problem; LBP-06-23, 64 NRC 316 (2006)
- Duke Power Co.* (Catawba Nuclear Station, Units 1 and 2), LBP-83-8A, 17 NRC 282, 285 (1983) although NRC may require an applicant to submit certain information, the NRC cannot delegate its duty to comply with the National Environmental Policy Act to the applicant; LBP-09-10, 70 NRC 87 (2009)
- Duke Power Co.* (Perkins Nuclear Station, Units 1, 2, and 3), ALAB-431, 6 NRC 460, 462 (1977) determinations on any nontimely filing of a petition must be based on a balancing of factors under 10 C.F.R. 2.309(c), the most important of which is good cause, if any, for the failure to file on time; LBP-08-6, 67 NRC 257 (2008)
- Duke Power Co.* (Perkins Nuclear Station, Units 1, 2, and 3), LBP-82-81, 16 NRC 1128, 1140-41 (1982) licensing boards have awarded payment of litigation fees and expenses from a licensee to an intervenor if there has been legal harm to the intervenors caused by some activity or action of the licensee; LBP-09-1, 69 NRC 43 n.134 (2009)
- Duke Power Co.* (William B. McGuire Nuclear Station, Units 1 and 2), ALAB-128, 6 AEC 399, 401 (1973) a contention that merely seeks to advance generalizations regarding a petitioner's particular view of what applicable policies ought to be is not admissible; CLI-07-25, 66 NRC 106 (2007)
- Duke Power Co.* (William B. McGuire Nuclear Station, Units 1 and 2), ALAB-669, 15 NRC 453, 475 (1982)
- although the Federal Rules of Evidence are not mandated for NRC adjudicatory proceedings, the Commission has endorsed the use of the FRE as guidance for the boards with the express proviso that boards must apply the Part 2 rules with greater flexibility than the FRE; LBP-12-23, 72 NRC 705-06 (2010)
- an abuse of discretion standard is applied to Commission review of decisions on evidentiary questions; CLI-10-18, 72 NRC 73 (2010)
- licensing boards normally have considerable discretion in making evidentiary rulings; CLI-10-5, 71 NRC 99 (2010); CLI-10-18, 72 NRC 73 (2010)
- Duncan v. Walker*, 533 U.S. 167, 174 (2001)
- a statute ought, on the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant; LBP-07-11, 66 NRC 78 n.161 (2007)
- Duncan's Point Lot Owners Association, Inc. v. Federal Energy Regulatory Commission*, 522 F.3d 371 (D.D.C. 2008)
- tribes that have addressed procedural violations of the National Historic Preservation Act have uniformly been granted standing under the relaxed standard and have proceeded directly to the merits of the NHPA claim; LBP-08-24, 68 NRC 715 (2008); LBP-10-16, 72 NRC 393 n.123 (2010)

LEGAL CITATIONS INDEX

CASES

- Duquesne Light Co.* (Beaver Valley Power Station, Unit 2), LBP-84-6, 19 NRC 393, 401 (1984)
to meet its burden to justify certification of its request to waive 10 C.F.R. 51.53(b), 51.95(b), and 51.106(c), petitioner must make a *prima facie* showing that the proposed facility would not be needed to meet increased energy needs or to replace older, less economical operating capacity, and that there are viable alternatives likely to exist that could tip the NEPA cost-benefit balance against issuance of the operating license; LBP-10-12, 71 NRC 663, 670 (2010)
- Earth Island Institute v. U.S. Forest Service*, 351 F.3d 1291, 1300-31 (9th Cir. 2003)
an environmental assessment shall identify the proposed action and include a list of agencies and persons consulted, and identification of sources used; CLI-08-1, 67 NRC 14 (2008)
- Eastern Testing & Inspection, Inc.*, LBP-96-11, 43 NRC 279, 282 n.1 (1996)
when an adjudicatory proceeding has been terminated before a licensing board pursuant to a settlement agreement, the board loses its jurisdiction over, and thus its authority to act with respect to, that licensing action; LBP-09-23, 70 NRC 668 n.27 (2009)
- Elflow International Co.*, CLI-76-6, 3 NRC 563, 574, 578, 589-91 (1976)
standing as of right is not available in export license proceedings but the Commission has exercised its discretion to hold an open legislative-type hearing; LBP-09-1, 69 NRC 39 n.115 (2009)
- Electric Power Supply Association v. Federal Energy Regulatory Commission*, 391 F.3d 1255 (D.C. Cir. 2004)
petitioners may enforce procedural rights only if the procedures in question are designed to protect some threatened concrete interest of theirs that is the ultimate basis of their standing; LBP-10-11, 71 NRC 635 n.100 (2010)
- Electric Power Supply Association v. Federal Energy Regulatory Commission*, 391 F.3d 1255, 1262 (D.C. Cir. 2004)
petitioner's standing is not defeated by the fact that it cannot show, with any certainty, that its or its members' financial interests will be damaged by the operation of a rule; LBP-10-11, 71 NRC 635 n.100 (2010)
- Eli Lilly & Co. v. Medtronic, Inc.*, 496 U.S. 661, 668-69 (1990)
a provision of a regulation should not be read in a way that is inconsistent with its purpose; LBP-07-6, 65 NRC 464 (2007)
- Elmore v. Sands*, 54 N.Y. 512 (1874)
presiding officer questions whether Staff SERs are good long enough to keep a licensing proceeding moving at the mandated speed but not long enough to guide that proceeding to its eventual destination; LBP-08-11, 67 NRC 500 (2008)
- Emery Mining Co. v. Secretary of Labor, Mine Safety & Health Administration*, 744 F.2d 1411, 1414 (10th Cir. 1984)
courts must construe regulations in light of the statutes they implement, keeping in mind that where there is an interpretation of an ambiguous regulation that is reasonable and consistent with the statute, that interpretation is to be preferred; LBP-09-16, 70 NRC 261 (2009)
- Energy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-06-26, 64 NRC 225, 226 (2006)
petitioners' request for the imposition of backfit requirements is not a proper subject for consideration in license renewal adjudication; LBP-07-11, 66 NRC 96 (2007)
- Energy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-10-11, 71 NRC 287, 315 (2010)
although there will always be more data that could be gathered, agencies must have some discretion to draw the line and move forward with decisionmaking; LBP-10-15, 72 NRC 285 (2010)
- EnergySolutions, LLC* (Radioactive Waste Import/Export Licenses), CLI-08-24, 68 NRC 491, 493 (2008)
a facility that is licensed to receive only Class A low-level radioactive waste it is not pertinent to a contention regarding Class B and C waste; LBP-09-18, 70 NRC 423 n.250 (2009)
- Enos v. United States*, 672 F. Supp. 1391, 1993-94 (D. Wyo. 1987)
a trust duty in the NRC as a federal permitting agency arises out of 1851 and 1868 treaties with Indian tribes; LBP-08-6, 67 NRC 267 (2008)
- Entergy Nuclear Generation Inc.* (Pilgrim Nuclear Power Station), CLI-07-2, 65 NRC 10, 11 (2007)
if the Commission's supervisory authority constituted grounds for a party's own request for appellate review, there would be no limit to the kinds of arguments parties could legitimately present on appeal, and particularly on interlocutory appeal, a result at odds with the Commission's oft-expressed intent to limit the availability of such appeals; CLI-07-1, 65 NRC 7 (2007)

LEGAL CITATIONS INDEX

CASES

- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-07-2, 65 NRC 10, 11-12 (2007)
once a petition to intervene and request for hearing have been granted and contentions are admitted for hearing, appeals of board rulings on new or amended contentions are treated under section 2.341(f)(2), regardless of the subject matter of those contentions; CLI-10-16, 71 NRC 490 (2010)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-07-2, 65 NRC 10, 12 (2007)
the Commission disfavors review of interlocutory board orders, which would result in unnecessary piecemeal interference with ongoing licensing board proceedings; CLI-08-2, 67 NRC 34 n.10 (2008); CLI-09-6, 69 NRC 137 n.38 (2009)
the rejection or admission of a contention, where the petitioner has been admitted as a party and has other contentions pending, neither constitutes serious and irreparable impact, nor affects the basic structure of the proceeding in a pervasive and unusual manner; CLI-08-7, 67 NRC 192 (2008); CLI-09-9, 69 NRC 365 (2009)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-08-2, 67 NRC 31, 35 (2008)
the mere potential for legal error in a contention admissibility decision is not a ground for interlocutory review; CLI-10-30, 72 NRC 568 (2010)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-08-9, 67 NRC 353, 355 (2008)
the purpose of obtaining "interested state" status was so that a state could request a suspension of the license renewal proceeding; LBP-08-25, 68 NRC 783 n.13 (2008)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-09-11, 69 NRC 529, 533 (2009)
a genuine material dispute is one that could lead to a different conclusion on potential cost-beneficial severe accident mitigation alternatives; LBP-09-26, 70 NRC 969 (2009)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-10-11, 71 NRC 287, 293, 317 (2010)
SAMA contentions will be admitted in license renewal proceedings only if it looks genuinely plausible that inclusion of an additional factor or use of other assumptions or models may change the cost-benefit conclusions for the SAMA candidates evaluated; LBP-10-13, 71 NRC 692 (2010)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-10-11, 71 NRC 287, 293-94 n.26 (2010)
the only severe accident mitigation alternatives that applicant must implement as part of a license renewal safety review are those dealing with aging management; LBP-10-13, 71 NRC 679 (2010)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-10-11, 71 NRC 287, 297 (2010)
summary disposition rules 2.1205 and 2.710 are substantially similar; LBP-10-20, 72 NRC 579 n.10 (2010)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-10-11, 71 NRC 287, 315, 316-17 (2010)
contention is deficient because it does not allege that additional SAMAs should have been identified as potentially cost-beneficial or that any significant errors were made in applicant's SAMA reanalysis; LBP-10-13, 71 NRC 694 (2010)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-10-14, 71 NRC 449, 453-54 (2010)
the current licensing basis is the set of NRC requirements (including regulations, orders, technical specifications, and license conditions) applicable to a specific plant and includes licensee's written, docketed commitments for ensuring compliance with applicable NRC requirements and the plant-specific design basis; LBP-10-13, 71 NRC 678 n.12 (2010)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-10-14, 71 NRC 449, 453-56 (2010)
broad-based issues akin to safety culture, such as operational history, quality assurance, quality control, management competence, and human factors, are beyond the bounds of a license renewal proceeding; CLI-10-27, 72 NRC 491 n.47 (2010)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-10-14, 71 NRC 449, 454 (2010)
the aging management review for license renewal does not focus on all aging-related issues; CLI-10-27, 72 NRC 492 n.53 (2010)
the only safety issue where the regulatory process may not adequately maintain a plant's current licensing basis involves the potential detrimental effects of aging on the functionality of certain systems, structures, and components in the period of extended operations; CLI-10-27, 72 NRC 491 n.47 (2010)

LEGAL CITATIONS INDEX

CASES

- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-10-14, 71 NRC 449, 463 (2010)
the regulatory process continuously reassesses whether there is a need for additional oversight or regulations to protect public health and safety; CLI-10-27, 72 NRC 492 (2010)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-10-14, 71 NRC 449, 466 (2010)
the Atomic Safety and Licensing Board is considered to be a panel of experts; CLI-10-17, 72 NRC 49-50 n.276 (2010)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-10-14, 71 NRC 449, 471-75 (2010)
SAMA analyses are not required for the spent fuel storage impacts associated with license renewals; LBP-10-15, 72 NRC 308 (2010)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-10-15, 71 NRC 479, 482 (2010)
a listing of issues with which petitioners disagree with the application is the form of notice pleading that the Commission has long held is insufficient; LBP-10-16, 72 NRC 414 (2010)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), LBP-06-23, 64 NRC 257 (2006)
a well-supported contention is admissible; LBP-09-6, 69 NRC 415 n.234 (2009)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), LBP-06-23, 64 NRC 257, 270 (2006)
the proximity presumption extends to petitioners living in or having frequent contacts with an area within a 50-mile radius of a nuclear reactor; LBP-08-18, 68 NRC 539 (2008)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), LBP-06-23, 64 NRC 257, 272-74 (2006)
to intervene in a proceeding a petitioner must, in addition to demonstrating standing, submit at least one contention meeting the requirements of 10 C.F.R. 2.309(f)(1); LBP-08-6, 67 NRC 289 (2008)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), LBP-06-23, 64 NRC 257, 272-74 (2006), *aff'd*, CLI-07-3, 65 NRC 13, *reconsideration denied*, CLI-07-13, 65 NRC 211 (2007)
to intervene in an NRC proceeding, a petitioner must, in addition to demonstrating standing, submit at least one contention meeting the requirements of 10 C.F.R. § 2.309(f)(1); LBP-07-11, 66 NRC 55 n.37 (2007)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), LBP-06-23, 64 NRC 257, 272-74, 351-59 (2006)
details of requirements a contention must meet are described; LBP-07-4, 65 NRC 302 n.89 (2007); LBP-07-14, 66 NRC 184 (2007)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), LBP-06-23, 64 NRC 257, 288, 294-300 (2006), *aff'd*, CLI-07-3, 65 NRC 13, *reconsideration denied*, CLI-07-13, 65 NRC 211 (2007)
new and significant information about a Category 1 issue is not a proper subject for a contention, absent a waiver of section 51.53(c)(3)(i); LBP-07-4, 65 NRC 311 n.134 (2007); LBP-07-11, 66 NRC 64 n.83 (2007)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), LBP-06-23, 64 NRC 257, 288-93 (2006)
although the terms “severe accident,” “severe accident mitigation alternatives,” and “SAMA” are not defined in NRC’s NEPA regulations, the NRC policy documents that originated these terms clearly limit them to nuclear reactors, and do not include spent fuel pools or storage; LBP-10-15, 72 NRC 307 (2010)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), LBP-06-23, 64 NRC 257, 300 (2006), *aff'd*, CLI-07-3, 65 NRC 13, *reconsideration denied*, CLI-07-13, 65 NRC 211 (2007)
as a general matter, NEPA imposes no legal duty on the NRC to consider intentional malevolent acts in conjunction with commercial power reactor license renewal applications; LBP-07-11, 66 NRC 84 (2007)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), LBP-06-23, 64 NRC 257, 323-41 (2006)
a contention involving certain emergency evacuation issues was admitted because it was in the context of three of the specific input data for the severe accident mitigation alternatives analysis that license renewal applicants are required to perform; LBP-07-4, 65 NRC 336 n.277 (2007)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), LBP-06-23, 64 NRC 257, 338-41 (2006), *aff'd*, CLI-07-3, 65 NRC 13, *reconsideration denied*, CLI-07-13, 65 NRC 211 (2007)
a contention challenging the input data for certain parameters related to emergency planning issues in a severe accident mitigation alternatives analysis has been admitted in a license renewal proceeding as an environmental issue; LBP-07-11, 66 NRC 95 (2007)

LEGAL CITATIONS INDEX

CASES

- a contention related to emergency planning that touches on the adequacy of a severe accident mitigation alternative analysis in the context of environmental review during license renewal proceedings is admissible; LBP-08-13, 68 NRC 165-66 (2008)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), LBP-06-23, 64 NRC 257, 340 (2006)
- a generic challenge to the MACCS2 code is inadmissible; LBP-08-13, 68 NRC 101 (2008)
- probabilistic risk assessment is the Commission's accepted and standard practice in severe accident mitigation alternatives analyses; LBP-10-15, 72 NRC 282, 286 (2010)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), LBP-06-23, 64 NRC 257, 341 (2006)
- licensing boards may reformulate contentions to eliminate extraneous issues or to consolidate issues for a more efficient proceeding; CLI-09-12, 69 NRC 552 (2009); CLI-10-2, 71 NRC 33 (2010); LBP-10-16, 72 NRC 403 (2010)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), LBP-06-23, 64 NRC 257, 351-59 (2006), *aff'd*, CLI-07-3, 65 NRC 13, *reconsideration denied*, CLI-07-13, 65 NRC 211 (2007)
- a detailed summary of relevant case law on contention admissibility is provided; LBP-07-11, 66 NRC 55 n.39 (2007); LBP-08-6, 67 NRC 289 (2008); LBP-09-17, 70 NRC 324 n.44 (2009)
- the scope of license renewal proceedings generally concerns requests to renew 40-year reactor operating licenses for additional 20-year terms; LBP-07-11, 66 NRC 59 (2007)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), LBP-06-23, 64 NRC 257, 355 (2006)
- petitioner must provide documents or other factual information or expert opinion that sets forth the necessary technical analysis to show why the proffered bases support its contention; LBP-09-4, 69 NRC 216 (2009)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), LBP-06-23, 64 NRC 257, 356 (2006)
- failure to present factual information and expert opinions to support a contention adequately requires that the contention be rejected; LBP-08-9, 67 NRC 432 (2008); LBP-08-26, 68 NRC 917 (2008)
- petitioner does not have to provide a complete or final list of its experts or evidence or prove the merits of its contention at the admissibility stage; LBP-09-6, 69 NRC 410 (2009)
- the requirement under 10 C.F.R. 2.309(f)(1)(v) that contentions be supported by alleged facts or expert opinion generally is fulfilled when the sponsor of an otherwise acceptable contention provides a brief recitation of the factors underlying the contention or references to documents and text that provide such reasons; LBP-09-4, 69 NRC 195, 207 (2009); LBP-10-14, 72 NRC 129 (2010)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), LBP-06-23, 64 NRC 257, 358 (2006)
- an expert opinion that merely states a conclusion that the application is deficient, inadequate, or wrong without providing a reasoned basis or explanation for that conclusion is inadequate because it deprives the board of its ability to make the necessary, reflective assessment of the opinion; LBP-10-6, 71 NRC 368 n.54 (2010)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), LBP-06-23, 64 NRC 257, 359 (2006)
- documents that provide legitimate amplification of originally filed contentions are discussed; LBP-08-6, 67 NRC 258 (2008)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), LBP-07-13, 66 NRC 131, 142-43 (2007)
- a generic challenge to the MACCS2 code is inadmissible; LBP-08-13, 68 NRC 101 (2008)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), LBP-08-22, 68 NRC 590, 648 (2008)
- reasonable assurance requires a licensing board to take all relevant facts and circumstances into account; LBP-09-6, 69 NRC 422 n.272 (2009)
- Entergy Nuclear Operations, Inc.* (Big Rock Point Plant), CLI-08-19, 68 NRC 251, 258-59, 266 (2008)
- when an organization requests a hearing, it may seek to establish standing either on its own behalf or on behalf of one or more of its members; LBP-10-16, 72 NRC 389 (2010)
- Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), CLI-07-28, 66 NRC 275 (2007)
- the Commission generally declines to interfere with a board's day-to-day case management decisions unless there has been an abuse of power; CLI-08-7, 67 NRC 192 (2008)
- Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), CLI-07-28, 66 NRC 275, 275-76 (2007)
- sanctions have been imposed against a party requesting a hearing only when that party has not followed established Commission procedures; LBP-08-18, 68 NRC 543 (2008); LBP-08-19, 68 NRC 547 (2008); LBP-08-20, 68 NRC 552 (2008)

LEGAL CITATIONS INDEX

CASES

- Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), CLI-08-7, 67 NRC 187 (2008)
adjudicatory boards have broad discretion to regulate the course of proceedings and the conduct of participants, and the Commission is reluctant to embroil itself in day-to-day case management issues; CLI-08-14, 67 NRC 406 (2008)
- Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), CLI-08-7, 67 NRC 187, 191 (2008)
oral argument on contention admissibility is not a right; LBP-08-23, 68 NRC 683 (2008)
- Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), CLI-08-7, 67 NRC 187, 192 (2008)
boards have broad discretion to issue procedural orders to regulate the course of proceedings and the conduct of participants, and as a general matter, the Commission declines to interfere with the board's day-to-day case management decisions, unless there has been an abuse of power; CLI-08-29, 68 NRC 901 (2008); CLI-10-28, 72 NRC 554 (2010); LBP-08-23, 68 NRC 683 (2008)
rejection or admission of a contention, where petitioner has been admitted as a party and has other contentions pending, neither constitutes serious and irreparable impact nor affects the basic structure of the proceeding in a pervasive and unusual manner; CLI-09-9, 69 NRC 365 (2009); CLI-10-16, 71 NRC 491 (2010)
- Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), CLI-08-27, 68 NRC 655, 656 (2008)
licensing board decisions denying a petition for rule waiver generally are not appealable until the board has issued a final decision resolving the case, unless a party seeking review shows that one of the grounds for interlocutory review has been met; CLI-10-29, 72 NRC 560 (2010)
- Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), CLI-09-6, 69 NRC 128, 132 (2009)
petitioners may request, and the Commission, in its discretion, may grant interlocutory review if it is shown that the issue threatens petitioners with immediate and serious irreparable impacts or affects the basic structure of the proceeding in a pervasive manner; LBP-09-10, 70 NRC 148 n.89 (2009)
- Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), CLI-09-6, 69 NRC 128, 132, 137 (2009)
because it disfavors piecemeal appeals, the Commission will grant interlocutory review only in extraordinary circumstances; CLI-10-29, 72 NRC 560(2010)
- Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), CLI-09-6, 69 NRC 128, 133 (2009)
interlocutory review is granted only in extraordinary circumstances; CLI-10-30, 72 NRC 568 (2010)
- Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), CLI-09-6, 69 NRC 128, 137 (2009)
that interlocutory review will only be granted under extraordinary circumstances reflects the Commission's disfavor of piecemeal appeals during ongoing licensing board proceedings; CLI-10-16, 71 NRC 490 (2010)
- Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), CLI-09-6, 69 NRC 128, 138 (2009)
the Commission generally does not entertain requests to invoke its inherent supervisory authority over adjudications; CLI-10-13, 71 NRC 388 n.6 (2010)
- Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), LBP-08-13, 68 NRC 43, 61 (2008)
the purpose of the contention admissibility rules is to focus litigation on concrete issues and result in a clearer and more focused record for decision; LBP-09-26, 70 NRC 952 (2009)
- Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), LBP-08-13, 68 NRC 43, 62 (2008)
contentions that fall outside the scope of the proceeding must be rejected; LBP-09-26, 70 NRC 953 (2009)
materiality requires a showing that the alleged error or omission is of possible significance to the result of the proceeding; LBP-09-26, 70 NRC 953 (2009)
petitioner must show that the subject matter of a contention would impact the grant or denial of a pending license application; LBP-09-26, 70 NRC 953 (2009); LBP-10-6, 71 NRC 359 (2010)
- Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), LBP-08-13, 68 NRC 43, 63 (2008)
determining whether the contention is adequately supported by a concise allegation of the facts or expert opinion is not a hearing on the merits; LBP-09-26, 70 NRC 954 (2009)
providing any material or document as the foundation for a contention without setting forth an explanation of its significance is inadequate to support the admission of a contention; LBP-09-26, 70 NRC 954 (2009); LBP-10-6, 71 NRC 361 (2010)
- Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), LBP-08-13, 68 NRC 43, 64 (2008)
a contention that attacks applicable statutory requirements or represents a challenge to the basic structure of the Commission's regulatory process must be rejected; LBP-09-26, 70 NRC 956 (2009)

LEGAL CITATIONS INDEX

CASES

- Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), LBP-08-13, 68 NRC 43, 86 (2008)
commitment of one party to fulfill its statutory duties in the application process is not enough to demonstrate that the issue will be properly addressed; LBP-08-24, 68 NRC 720 (2008)
- Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), LBP-08-13, 68 NRC 43, 89 (2008)
admissibility of contentions does not hinge on access to a draft guidance document, which is not a legal requirement; LBP-10-5, 71 NRC 343 (2010)
guidance documents are not binding legal authority; LBP-10-5, 71 NRC 346 (2010)
- Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), LBP-08-13, 68 NRC 43 (2008)
a contention that is not well supported by the expert is not admissible; LBP-09-6, 69 NRC 415 n.234 (2009)
- Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), LBP-08-13, 68 NRC 43, 102 (2008)
contention challenging cost estimates for site remediation after a severe accident is admissible; LBP-08-26, 68 NRC 925 (2008)
- Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), LBP-08-13, 68 NRC 43, 109-10 (2008)
petitioners fail to explain why more recent information regarding earthquakes would make a material change in the conclusions of the seismic severe accident mitigation alternatives analysis and fail to suggest feasible alternatives to address new risks or estimate costs of additional measures; LBP-10-15, 72 NRC 283 (2010)
- Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), LBP-08-13, 68 NRC 43, 110-13 (2008)
contention challenging a particular use of a straight-line Gaussian air dispersion model in the applicant's SAMA analysis is admissible in a license renewal proceeding; CLI-09-11, 69 NRC 533 n.27 (2009)
- Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), LBP-08-13, 68 NRC 43, 138 (2008)
applicant's proposal to perform the modified calculations in the future, albeit in accordance with specified guidance, is unacceptable because these calculations are not a component of an aging management plan, but are the fundamental fatigue analyses for time-limited aging required to be included in the license renewal application; LBP-08-25, 68 NRC 827 (2008)
- Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), LBP-08-13, 68 NRC 43, 199 (2008)
NEPA is the only legal grounds for an admissible contention relating to environmental justice issues; LBP-09-18, 70 NRC 430 (2009)
to qualify as an environmental justice contention, the contention must show that the affected local population qualifies as a minority or low-income population; LBP-09-18, 70 NRC 430 (2009)
- Entergy Nuclear Operations, Inc.* (Palisades Nuclear Plant), CLI-08-19, 68 NRC 251, 260 (2008)
absent an obvious potential for harm, it is petitioner's burden to show how harm will or may occur; LBP-09-28, 70 NRC 1026 (2009)
- Entergy Nuclear Operations, Inc.* (Palisades Nuclear Plant), CLI-08-19, 68 NRC 251, 261 (2008)
it is not acceptable in NRC practice for petitioner to claim standing based on vague assertions, and when that fails, to attempt to repair the defective pleading with fresh details offered for the first time in its reply; LBP-09-2, 69 NRC 94 nn.18, 20 (2009); CLI-10-1, 71 NRC 6 (2010)
- Entergy Nuclear Operations, Inc.* (Palisades Nuclear Plant), CLI-08-19, 68 NRC 251, 261 n.30 (2008)
petitioner's reply must narrowly focus upon the legal and factual arguments first presented in its petition and cannot be used as a vehicle to remedy a very deficient petition to which opposing parties have no opportunity to respond; LBP-09-6, 69 NRC 424 n.283 (2009)
- Entergy Nuclear Operations, Inc.* (Palisades Nuclear Plant), CLI-08-19, 68 NRC 251, 263 n.40 (2008)
licensing board decisions carry no precedential weight; CLI-10-23, 72 NRC 222 (2010)
- Entergy Nuclear Operations, Inc.* (Palisades Nuclear Plant), CLI-08-19, 68 NRC 251, 269-70 (2008)
no obvious potential for offsite consequences sufficient to establish organizational standing was shown even though the organization's office was a mere 3 miles from the facility; LBP-09-28, 70 NRC 1025 n.35 (2009)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), CLI-06-8, 63 NRC 235, 237 (2006)
a party seeking a stay must show it faces imminent, irreparable harm that is both certain and great; CLI-09-23, 70 NRC 936 n.4 (2009)
the proponent of a stay must show that likelihood of success on the merits, irreparable harm, absence of harm to others, and the public interest weigh in its favor; CLI-08-13, 67 NRC 399 (2008)

LEGAL CITATIONS INDEX

CASES

- when evaluating a motion for a stay, the Commission places the greatest weight on irreparable injury to the moving party unless a stay is granted; CLI-10-8, 71 NRC 151 (2010)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), CLI-06-8, 63 NRC 235, 237 n.4 (2006)
- a motion to stay issuance of a license might be granted where the factors usually considered in granting emergency injunctive relief are satisfied; CLI-08-13, 67 NRC 399 (2008)
- although technically not applicable to a request for a stay of NRC Staff action, the section 2.342(e) standards simply restate commonplace principles of equity universally followed when judicial (or quasi-judicial) bodies consider stays or other forms of temporary injunctive relief; CLI-10-8, 71 NRC 147 n.25 (2010)
- four factors should be considered in ruling on any request for stay; LBP-07-11, 66 NRC 98 (2007)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), CLI-06-8, 63 NRC 235, 237-38 & nn.4-7 (2006)
- as litigation moves forward or terminates, the equities that traditionally govern stays or injunctive relief may change; CLI-06-23, 64 NRC 109 (2006)
- there is no presumption that irreparable damage occurs whenever there is a failure to adequately evaluate the environmental impact of a proposed project; CLI-06-27, 64 NRC 402 n.9 (2006)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), CLI-06-8, 63 NRC 235, 238 (2006)
- a license renewal may be set aside or appropriately conditioned even after it has been issued, upon subsequent administrative or judicial review; CLI-08-13, 67 NRC 400 (2008)
- if a board determines after full adjudication that the license amendment should not have been granted, it may be revoked or conditioned; LBP-07-2, 65 NRC 159 (2007)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), CLI-07-1, 65 NRC 1, 3 (2007)
- NRC rules set a high bar for interlocutory review petitions; CLI-09-6, 69 NRC 137 n.38 (2009)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), CLI-07-1, 65 NRC 1, 4-5 nn.11-19 (2007)
- the Commission may review a board ruling pursuant to the inherent supervisory powers where a significant issue may affect multiple pending or imminent licensing proceedings; CLI-08-2, 67 NRC 34 n.12 (2008)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), CLI-07-1, 65 NRC 1, 5 (2007)
- interlocutory review is granted where the issues are significant, have potentially broad impact, and may well recur in the likely license renewal proceedings for other plants; CLI-10-27, 72 NRC 489 (2010)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), CLI-07-3, 65 NRC 13 (2007), *reconsideration denied*, CLI-07-13, 65 NRC 211 (2007)
- a contention on spent fuel pool fires is rejected as an impermissible challenge to NRC regulations and the license renewal generic environmental impact statement; CLI-10-11, 71 NRC 305 n.93 (2010)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), CLI-07-3, 65 NRC 13, 16 (2007)
- spent fuel pool fires are Category 1 environmental issues and are addressed in the generic environmental impact statement for license renewals; LBP-08-13, 68 NRC 185 (2008)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), CLI-07-3, 65 NRC 13, 17 (2007)
- a petition for rulemaking that addresses issues related to spent fuel pool fires would be a more appropriate venue to seek relief for resolving generic concerns about spent fuel fires than a site-specific contention in an adjudication; LBP-08-13, 68 NRC 186 (2008)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), CLI-07-3, 65 NRC 13, 19-21 (2007)
- because onsite storage of spent fuel during the license renewal term is a Category 1 issue, and as such explicitly has been found not to warrant any additional site-specific analysis of mitigation measures, the required SAMA analysis for license renewal is intended to focus on reactor accidents; CLI-10-14, 71 NRC 472 (2010)

LEGAL CITATIONS INDEX

CASES

- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), CLI-07-3, 65 NRC 13, 20 (2007) reconsideration denied, CLI-07-13, 65 NRC 211 (2007)
a contention seeking ER analysis of long-term effects of high-density spent fuel pool storage inappropriately challenges rule-based generic environmental findings for reactor life extension proceedings; LBP-07-3, 65 NRC 267-68 (2007)
in the hearing process, petitioners with new information showing that a generic rule would not serve its purpose at a particular plant may seek a waiver of the rule; LBP-07-11, 66 NRC 84 (2007)
only Category 2 environmental issues must be addressed in an environmental report and may therefore be litigated at an adjudicatory hearing; CLI-07-16, 65 NRC 390 (2007)
petitioners seeking to challenge a rule or regulation must first request a waiver or exception to the application of a rule in a particular adjudicatory proceeding; LBP-07-3, 65 NRC 268 (2007)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), CLI-07-3, 65 NRC 13, 22 & n.37 (2007)
where there is no threat of immediate and irreparable harm and license renewal is not imminent, a motion for a stay of license renewal is premature; CLI-08-13, 67 NRC 400 (2008)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), CLI-07-13, 65 NRC 211, 214-15 (2007)
only if one has been admitted as a party to a proceeding, through showing standing and submitting an admissible contention, can one have a request for stay considered by a presiding officer; LBP-07-11, 66 NRC 97 (2007)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), CLI-07-16, 65 NRC 371, 377 (2007)
petitioner may not demand a hearing to challenge a federal statute; LBP-08-17, 68 NRC 452 (2008)
the Clean Water Act precludes NRC from either second-guessing the conclusions in NPDES permits or imposing its own effluent limitations, thermal or otherwise; LBP-08-9, 67 NRC 448 n.151 (2008)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), CLI-07-16, 65 NRC 371, 383 (2007)
adjudication is not the proper forum for challenging applicable statutory requirements or the basic structure of the agency's regulatory process; LBP-08-16, 68 NRC 384 (2008)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), CLI-07-16, 65 NRC 371, 383-84 (2007)
an administratively extended state-issued permit satisfies the 10 C.F.R. 51.53(c)(3)(ii)(B) requirements; LBP-08-13, 68 NRC 152 (2008)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), CLI-07-16, 65 NRC 371, 385 n.69 (2007)
absent delegated authority, licensing boards lack authority to direct the Staff's nonadjudicatory actions; CLI-09-2, 69 NRC 63 (2009)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), CLI-07-16, 65 NRC 371, 387 (2007)
licensing boards must defer to a state's ruling on once-through cooling as reflected in equivalent permits; LBP-08-13, 68 NRC 156 (2008)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), CLI-07-16, 65 NRC 371, 387-88 (2007)
boards must take state permit determinations at face value and are prohibited from undertaking any independent analysis of the permit's limits; LBP-08-13, 68 NRC 157 (2008)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), CLI-07-16, 65 NRC 371, 389 (2007)
legislative intent is to implement the Clean Water Act in a way that avoids duplication and unnecessary delays; LBP-08-13, 68 NRC 157 (2008)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), CLI-10-17, 72 NRC 1 (2010)
licensing boards have the authority to regulate the course of the proceeding, and the Commission generally defers to boards on case management decisions; CLI-10-28, 72 NRC 554 (2010)

LEGAL CITATIONS INDEX

CASES

- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), DD-05-2, 62 NRC 389, 396 (2005)
differences between proposed and codified design criteria are not a concern for operating plants and whether a plant was issued a construction permit based on plant-specific criteria or final criteria presents no issue for license renewal proceedings; LBP-08-13, 68 NRC 75 (2008)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), LBP-04-28, 60 NRC 548, 552 (2004)
when assessing whether petitioner has set forth a sufficient interest to intervene, licensing boards apply judicial concepts of standing; LBP-08-14, 68 NRC 286 (2008); LBP-08-15, 68 NRC 302 (2008); LBP-08-18, 68 NRC 538 (2008); LBP-09-4, 69 NRC 177 (2009)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), LBP-04-28, 60 NRC 548, 552-53 (2004)
intervention petitioner must show that it has personally suffered or will personally suffer in the future a distinct and palpable harm that constitutes injury-in-fact, the injury can be fairly traced to the challenged action, and the injury is likely to be redressed by a favorable decision; LBP-08-18, 68 NRC 538 (2008)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), LBP-04-28, 60 NRC 548, 553-54 (2004)
an extended power uprate amendment involves an increase in reactor core radioactivity with obvious potential for offsite consequences; LBP-07-10, 66 NRC 18 (2007)
in an uprate proceeding, demonstrating proximity-based standing requires a determination that the proposed action involves a significant source of radioactivity producing an obvious potential for offsite consequences; LBP-08-9, 67 NRC 427, 428 (2008)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), LBP-04-28, 60 NRC 548, 555 (2004)
petitioner need not prove its case at the contention admissibility stage of the proceeding; LBP-09-4, 69 NRC 195 (2009)
petitioner's issues will be ruled inadmissible if petitioner has offered no tangible information, no experts, no substantive affidavits, but instead only bare assertions and speculation; LBP-09-4, 69 NRC 216 (2009)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), LBP-04-28, 60 NRC 548, 557 (2004)
it is the admissibility of the contention, not the basis, that must be determined; LBP-08-17, 68 NRC 447 (2008)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), LBP-04-28, 60 NRC 548, 560 n.16 (2004)
wholesale endorsement of pleadings by an expert affiant seriously undermines the board's ability to differentiate between the legal pleadings and the facts and opinions expressed by the expert; CLI-09-7, 69 NRC 292 n.318 (2009)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), LBP-04-28, 60 NRC 548, 580 (2004)
examples of admitted contentions that satisfied the requirement to provide a specific statement of the issue of law or fact to be raised or controverted are provided; LBP-08-5, 67 NRC 235 n.79 (2008)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), LBP-04-31, 60 NRC 686, 692 (2004)
the informal procedural rules of Part 2, Subpart L place greater emphasis and responsibility on the presiding officer to oversee the development of a full and complete record; CLI-10-17, 72 NRC 48 n.264 (2010)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), LBP-04-31, 60 NRC 686, 692-93 (2004)
as NRC hearings have moved away from the traditional trial-type adversarial format and toward a more informal model, the inquisitorial role of the presiding officer necessarily has increased; CLI-10-17, 72 NRC 47-48 (2010)

LEGAL CITATIONS INDEX

CASES

- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), LBP-04-31, 60 NRC 686, 704-06 (2004)
if no particular hearing procedure is compelled, the board must exercise its discretion and select the hearing procedure most appropriate for the newly admitted contentions; LBP-09-10, 70 NRC 146 (2009)
Subpart L and Subpart N cannot simultaneously govern license renewal proceedings for materials licensees; LBP-10-15, 72 NRC 344 (2010)
there is no mandatory or automatic default to Subpart L procedures for contentions in license renewal proceedings; LBP-07-15, 66 NRC 272 (2007)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), LBP-04-31, 60 NRC 686, 705 (2004)
the board determines the specific hearing procedures to be used on a contention-by-contention basis, selecting the hearing procedure most appropriate for the specific contentions before it; LBP-06-20, 64 NRC 204 (2006); LBP-07-15, 66 NRC 272 (2007); LBP-08-24, 68 NRC 758 (2008); LBP-08-24, 68 NRC 759 n.390 (2008)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), LBP-04-31, 60 NRC 686, 710 (2004)
since the opportunity for cross-examination under Subpart L is equivalent to the opportunity for cross-examination under the Administrative Procedure Act, it is likewise consistent with the state's reasonable opportunity to interrogate witnesses under 42 U.S.C. § 2021(i); LBP-06-20, 64 NRC 203 (2006)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), LBP-04-33, 60 NRC 749 (2004)
it is common for applicants to modify and amend their applications, often many times, and this does not, per se, render the application deficient; LBP-09-10, 70 NRC 77 (2009)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), LBP-04-33, 60 NRC 749, 754 (2004)
NRC regulations preserve the right to a hearing when an application is amended by allowing new or amended contentions to be filed in response to material new information; LBP-10-17, 72 NRC 515 (2010)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), LBP-05-24, 62 NRC 429, 431 (2005)
a contention of omission is rendered moot by applicant's submission to the NRC of its confirmatory analysis; CLI-08-28, 68 NRC 676 n.72 (2008)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), LBP-05-24, 62 NRC 429, 433 (2005)
to give petitioner the opportunity to file a new contention raising a specific substantive challenge to applicant's new periodic UT program for the sand bed region, the board forbears from issuing an order of dismissal for 20 days from the date of the Memorandum and Order; LBP-06-16, 63 NRC 744 (2006)
when a contention of omission has been rendered moot, and the intervenor wishes to raise specific challenges regarding the new information, the new contention shall address the remaining factors in 10 C.F.R. 2.309(f)(2), as well as the admissibility factors in section 2.309(f)(1); LBP-06-16, 63 NRC 744 (2006)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), LBP-05-32, 62 NRC 813, 821 (2005)
a new or amended contention that is found to be timely in accord with section 2.309(f)(2) need not be assessed under the section 2.309(c) factors, which are considered to apply only to otherwise nontimely submissions; LBP-10-1, 71 NRC 187 (2010); LBP-10-14, 72 NRC 108 n.27 (2010)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), LBP-05-32, 62 NRC 813, 821 n.21 (2005)
if a contention satisfies the timeliness requirement of 10 C.F.R. 2.309(f)(2)(iii), then, by definition, it is not subject to 10 C.F.R. 2.309(c) which specifically applies to nontimely filings; LBP-06-11, 63 NRC 396 n.3 (2006); LBP-09-27, 70 NRC 998-99 (2009)

LEGAL CITATIONS INDEX

CASES

- intervenors with contentions rooted in new material information need not make the same showing as intervenors who have simply delayed filing their contentions until after expiration of the regulatory deadline; LBP-07-14, 66 NRC 210 n.95 (2007); LBP-08-27, 68 NRC 955 (2008); LBP-10-9, 71 NRC 506 n.46 (2010)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), LBP-05-33, 62 NRC 828, 839 (2005)
- all levels of NRC adjudicators have consistently applied the deliberative process privilege; LBP-06-25, 64 NRC 381 (2006)
- the fact that the Staff puts a document on a privilege log, and thus labels a document as deliberative, is not sufficient to assess whether it is; LBP-06-25, 64 NRC 379 n.35 (2006)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), LBP-05-33, 62 NRC 828, 843 (2005)
- materials are deliberative if they reflect a consultative process; LBP-06-25, 64 NRC 381 (2006)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), LBP-05-33, 62 NRC 828, 846-47 (2005)
- to earn recognition, deliberative process privilege must be asserted by a qualified person, such as the head of the department or division, having both expertise and an overview-type perspective concerning the balance between the agency's duty of disclosure versus its need to conduct frank internal debate; LBP-06-25, 64 NRC 383 (2006)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), LBP-06-5, 63 NRC 116, 121 (2006)
- summary disposition is not a tool for trying to convince a licensing board to decide, on written submissions, genuine issues of material fact that warrant resolution at a hearing; LBP-07-12, 66 NRC 126 (2007)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), LBP-06-5, 63 NRC 116, 121-22 (2006)
- summary disposition is not a tool for trying to convince a licensing board to decide, on written submissions, genuine issues of material fact that warrant resolution at a hearing; LBP-07-13, 66 NRC 131 (2007)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), LBP-06-5, 63 NRC 116, 122 (2006)
- a summary disposition movant fails to meet its burden when the filings demonstrate the existence of a genuine material fact, when the evidence introduced does not show that the nonmovant's position is a sham, when the matters presented fail to foreclose the possibility of a factual dispute, or when there is an issue as to the credibility of the moving party's evidentiary material; LBP-07-12, 66 NRC 125 (2007)
- if a summary disposition proponent meets its burden, an opponent must set forth specific facts showing that there is a genuine issue, and may not rely on mere allegations or denials; LBP-07-12, 66 NRC 125 (2007); LBP-07-13, 66 NRC 131 (2007)
- summary judgment is not appropriate if it would require a judge to assess the correctness of facts and conclusions that are embodied in the competing, well-founded opinions of the parties' experts; LBP-07-12, 66 NRC 127 (2007); LBP-07-13, 66 NRC 131 (2007)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), LBP-06-5, 63 NRC 116, 125 (2006)
- weighing the affidavits of competing experts is not appropriate at the summary disposition stage; LBP-07-2, 65 NRC 158 (2007)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), LBP-06-5, 63 NRC 116, 128 (2006)
- to be sincere, movant should contact other parties sufficiently in advance to provide enough time for the possible resolution of the matter or issues in question; LBP-09-22, 70 NRC 649 n.24 (2009)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), LBP-06-14, 63 NRC 568 (2006)
- new, amended, or nontimely contentions would have to meet the requirements of 10 C.F.R. 2.309(c) and (f)(1); LBP-06-20, 64 NRC 174 (2006)

LEGAL CITATIONS INDEX

CASES

- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), LBP-06-14, 63 NRC 568, 572 (2006)
the first step in assessing the admissibility of a new contention is to determine if it is timely under 10 C.F.R. 2.309(f)(2)(iii) or nontimely under section 2.309(c); LBP-07-15, 66 NRC 266 (2007); LBP-09-10, 70 NRC 138 (2009)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), LBP-06-14, 63 NRC 568, 572-74 (2006)
a new or amended contention that is found to be timely in accord with section 2.309(f)(2) need not be assessed under the section 2.309(c) factors, which are considered to apply only to otherwise nontimely submissions; LBP-10-1, 71 NRC 187 (2010); LBP-10-14, 72 NRC 108 (2010)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), LBP-06-14, 63 NRC 568, 572-74 & n.14 (2006)
if petitioner files a new contention within the 20-day time limit set by the board, and if it satisfies the remaining factors in section 2.309(f)(2), petitioner need not address the requirements under section 2.309(c), which apply to nontimely filings; LBP-06-16, 63 NRC 745 n.12 (2006)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), LBP-06-14, 63 NRC 568, 573 n.14 (2006)
if a contention satisfies the timeliness requirement of 10 C.F.R. 2.309(f)(2)(iii), then, by definition, it is not subject to section 2.309(c) which specifically applies to nontimely filings; LBP-10-9, 71 NRC 506 n.46 (2010)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), LBP-06-14, 63 NRC 568, 573-74 (2006)
if a contention satisfies the timeliness requirement of 10 C.F.R. 2.309(f)(2)(iii), then, by definition, it is not subject to 10 C.F.R. 2.309(c) which specifically applies to nontimely filings; LBP-09-27, 70 NRC 998-99 (2009)
intervenors with contentions rooted in new material information need not make the same showing as intervenors who have simply delayed filing their contentions until after expiration of the regulatory deadline; LBP-10-9, 71 NRC 505-06 n.46 (2010)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), LBP-06-14, 63 NRC 568, 574 (2006)
submission of a new contention within 30 days of the event giving rise to that contention is timely; LBP-08-12, 68 NRC 33 n.2 (2008); LBP-10-17, 72 NRC 509 n.25 (2010)
thirty days is a reasonable limit for fulfilling the timing requirement of 10 C.F.R. 2.309(f)(2)(iii) because of the significant effort involved in identifying new information, assembling the required expertise, and then drafting a contention that satisfies 10 C.F.R. 2.309(f)(1); LBP-09-27, 70 NRC 1003 (2009)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), LBP-06-14, 63 NRC 568, 575 (2006)
a newly filed contention must meet the requirements of 10 C.F.R. 2.309(f)(2) as well as the six basic contention admissibility standards set forth in section 2.309(f)(1)(i)-(vi); LBP-08-27, 68 NRC 955 (2008)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), LBP-06-14, 63 NRC 568, 579 (2006)
when information forming the foundation for a new or amended contention becomes available piecemeal over time, the admissibility decision turns on a determination about when, as a cumulative matter, the separate pieces of the information puzzle were sufficiently in place to make the particular concerns reasonably apparent; LBP-09-10, 70 NRC 143 n.82 (2009)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), LBP-06-14, 63 NRC 568, 581 (2006)
pro se petitioners are held to less rigid pleading standards, so that parties with a clear but imperfectly stated interest in the proceeding are not excluded; CLI-10-20, 72 NRC 192 (2010)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), LBP-06-20, 64 NRC 131, 146-52 (2006)
a short discussion of the general admissibility criteria of 10 C.F.R. 2.309(f)(1)(i)-(vi) is provided; LBP-09-9, 70 NRC 45 n.12 (2009)

LEGAL CITATIONS INDEX

CASES

- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), LBP-06-20, 64 NRC 131, 147 (2006)
at the admission stage of the proceedings, boards admit contentions, not bases; LBP-09-26, 70 NRC 988 (2009)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), LBP-06-20, 64 NRC 131, 147-51 (2006)
details of requirements a contention must meet are described; LBP-07-14, 66 NRC 184 (2007)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), LBP-06-20, 64 NRC 131, 149 (2006)
a dispute is not material unless it involves a significant inaccuracy or omission and resolution of the dispute could affect the outcome of the licensing proceeding; LBP-10-14, 72 NRC 117 n.93 (2010)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), LBP-06-20, 64 NRC 131, 151 (2006)
determining whether a contention is adequately supported by a concise allegation of the facts or expert opinion is distinct from what is required to support petitioner's case at a hearing on the merits; LBP-08-9, 67 NRC 432 (2008); LBP-08-26, 68 NRC 917 (2008)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), LBP-06-20, 64 NRC 131, 155-59 (2006), *aff'd*, CLI-07-3, 65 NRC 13, *reconsideration denied*, CLI-07-13, 65 NRC 211 (2007)
new and significant information about a Category 1 issue is not a proper subject for a contention, absent a waiver of section 51.53(c)(3)(i); LBP-07-4, 65 NRC 311 n.134 (2007); LBP-07-11, 66 NRC 64 n.83 (2007)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), LBP-06-20, 64 NRC 131, 160 (2006), *aff'd*, CLI-07-3, 65 NRC 13, 17-18 (2007)
contentions dealing with risks associated with the high-density storage and racking of spent nuclear fuel in pools encompass information and grounds characterized as a board as well trod, rather than new information; LBP-09-10, 70 NRC 143 (2009)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), LBP-06-20, 64 NRC 131, 179 (2006), *rev'd on other grounds*, CLI-07-16, 65 NRC 371, 381-85 (2007)
while NEPA requires consideration of information regarding other regulatory requirements and permits, the fact that the applicant is subject to and complying with them does not obviate the NEPA mandate that the federal agency perform an EIS covering these topics; LBP-09-16, 70 NRC 279 (2009)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), LBP-06-20, 64 NRC 131, 182, 198-99 (2006)
a reply may not be used as a vehicle to introduce new arguments or support, may not expand the scope of arguments set forth in the original petition, and may not attempt to cure an otherwise deficient contention; LBP-09-17, 70 NRC 323 (2009)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), LBP-06-20, 64 NRC 131, 183, 187, 192 (2006)
examples of admitted contentions that satisfy the requirement to provide a specific statement of the issue of law or fact to be raised or controverted are provided; LBP-08-5, 67 NRC 235 n.79 (2008)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), LBP-06-20, 64 NRC 131, 186-87 (2006)
an aging management plan that merely summarizes options for future plans does not meet the specific requirement for demonstrating that the effects of aging will be adequately managed for the period of extended operations as required by Part 54; LBP-08-13, 68 NRC 140, 173 (2008)
it is not sufficient for an applicant to propose a plan to develop a plan; LBP-08-13, 68 NRC 172 (2008)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), LBP-06-20, 64 NRC 131, 200-01 (2006), *rev'd on other grounds*, CLI-07-16, 65 NRC 371 (2007)
in the absence of documentary or expert support, reliance on a guidance document to form the basis of a proposed contention does not, by itself, demonstrate a dispute with applicant; LBP-10-5, 71 NRC 343 (2010)

LEGAL CITATIONS INDEX

CASES

- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), LBP-06-20, 64 NRC 131, 201 (2006), *aff'd*, CLI-07-3, 65 NRC 13 (2007)
under Part 2, Subpart G procedures, parties are permitted to propound interrogatories, take depositions, and cross-examine witnesses without leave of the board; LBP-09-10, 70 NRC 145 (2009)
use of the permissive term, "may," in 10 C.F.R. 2.310(a) indicates that licensing boards have some discretion in determining whether to hold hearings under Subpart L or Subpart G; LBP-08-6, 67 NRC 343 (2008)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), LBP-06-20, 64 NRC 131, 201-02 (2006)
in Subpart G proceedings, parties are permitted to propound interrogatories, take depositions, and cross-examine witnesses without leave of the board; LBP-10-15, 72 NRC 343 (2010); LBP-10-16, 72 NRC 442 (2010)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), LBP-06-20, 64 NRC 131, 202 (2006), *aff'd*, CLI-07-3, 65 NRC 13 (2007)
Subpart G procedures are used if the resolution of the contention meets specified criteria; LBP-09-10, 70 NRC 145 (2009)
the board determines which hearing procedure to use on a contention-by-contention basis; LBP-10-15, 72 NRC 344 (2010)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), LBP-06-20, 64 NRC 131, 206 (2006)
two petitioners, each of which has submitted an admissible contention, may adopt the contentions of a third petitioner, and of each other; LBP-08-13, 68 NRC 65 (2008)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), LBP-06-20, 64 NRC 131, 206-08 (2006)
the issue of contention adoption in a license renewal proceeding is addressed; LBP-08-13, 68 NRC 65 (2008)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), LBP-06-20, 64 NRC 131, 207-08 (2006)
in ruling that petitioners could adopt contentions, a board found unpersuasive the Commission's dicta in an earlier decision that an adopting party must demonstrate an independent ability to litigate; LBP-08-13, 68 NRC 66 (2008)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), LBP-07-15, 66 NRC 261, 264 (2007)
if CUFen metal fatigue analysis produces a value of greater than unity, then the analysis indicates that the component would be likely to develop metal fatigue cracks that might affect their function during the 20-year license renewal period of extended operation, and thus requires an aging management program; LBP-09-9, 70 NRC 43 n.4 (2009)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), LBP-07-15, 66 NRC 261, 265 n.5 (2007)
if a contention meets the 10 C.F.R. 2.309(f)(2) criteria, it is timely and the intervenor proffering the contention need not also make a showing under 10 C.F.R. 2.309(c); LBP-10-1, 71 NRC 187 (2010); LBP-10-14, 72 NRC 108 (2010)
the first step in assessing the admissibility of a new contention is to determine if it is timely under 10 C.F.R. 2.309(f)(2)(iii) or nontimely under section 2.309(c); LBP-09-10, 70 NRC 138 (2009)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), LBP-07-15, 66 NRC 261, 266 n.11 (2007)
unless a deadline has been specified in the scheduling order for the proceeding, the determination of timeliness is subject to a reasonableness standard that depends on the facts and circumstances of each situation; LBP-10-24, 72 NRC 731, 741 (2010)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), LBP-07-15, 66 NRC 261, 266-67 (2007)
a detailed analysis of the legal standards governing the admission of new contentions is provided; LBP-09-9, 70 NRC 45 n.11 (2009)

LEGAL CITATIONS INDEX

CASES

- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), LBP-07-15, 66 NRC 261, 272 (2007)
selection of hearing procedures for contentions at the outset of a proceeding is not immutable because the availability of Subpart G procedures depends critically on whether the credibility of eyewitnesses is important in resolving a contention, and witnesses relevant to each contention are not identified until after contentions are admitted; LBP-09-10, 70 NRC 147 n.88 (2009); LBP-10-15, 72 NRC 345 n.99 (2010); LBP-10-16, 72 NRC 443 n.471 (2010)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), LBP-08-25, 68 NRC 763, 824 (2008)
to defer determining a significant safety issue until after the license has already been issued would impermissibly remove it from the opportunity to be reviewed in the hearing process; LBP-09-15, 70 NRC 222 (2009)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), LBP-08-25, 68 NRC 763, 824-25 (2008)
licensing boards are not bound by NRC Staff's position or by changes in that position; LBP-10-9, 71 NRC 522 n.133 (2010)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), LBP-10-19, 72 NRC 529, 545 (2010)
in light of the requirements that any new contention be based on material information that was not previously available, the timeliness determination required under section 2.309(f)(2) and the section 2.326(a) reopening standard can be closely equated; LBP-10-21, 72 NRC 650 (2010)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), LBP-10-19, 72 NRC 529, 545-50 (2010)
reopening standards are discussed and analyzed; LBP-10-21, 72 NRC 643 (2010)
- Envirocare of Utah, Inc. v. NRC*, 194 F.3d 72 (D.C. Cir. 1999)
although Article III of the Constitution does not constrain the NRC hearing process, and NRC hearings therefore are not governed by judicially created standing doctrine, the Commission nonetheless has generally looked to judicial concepts of standing where appropriate to determine those interests affected within the meaning of section 189a of the Atomic Energy Act; LBP-09-1, 69 NRC 25 n.54 (2009)
interest in the promotion of economic use of energy falls outside the zone of interests protected by either the Atomic Energy Act or the National Environmental Policy Act; CLI-07-18, 65 NRC 411 n.32 (2007)
- Envirocare of Utah, Inc. v. NRC*, 193 F.3d 72, *passim* (D.C. Cir. 1999)
although the Commission has long looked for guidance to judicial concepts of standing, it is not bound to do so; CLI-08-19, 68 NRC 265 (2008)
- Envirocare of Utah, Inc. v. NRC*, 194 F.3d 72, 74 (D.C. Cir. 1999)
because agencies are not constrained by Article III of the Constitution, nor are they governed by judicially created standing doctrines restricting access to federal courts, the criteria for establishing administrative standing may permissibly be less demanding than the criteria for judicial standing; CLI-09-20, 70 NRC 915 (2009); LBP-08-24, 68 NRC 702 n.32 (2008); LBP-09-18, 70 NRC 397 (2009)
even if NRC's proximity presumption is viewed as more lenient than judicial standing requirements, NRC may choose to retain it; CLI-09-20, 70 NRC 917 n.27 (2009)
- Envirocare of Utah, Inc. v. NRC*, 194 F.3d 72, 75 (D.C. Cir. 1999)
although the Commission commonly looks to Article III concepts for guidance, it is not required to automatically follow them in all respects because NRC proceedings are not subject to Article III; LBP-09-15, 70 NRC 210 (2009)
- Envirocare of Utah, Inc. v. NRC*, 194 F.3d 72, 75-76 (D.C. Cir. 1999)
although licensing boards are encouraged to apply contemporaneous judicial concepts of standing, the ultimate test is not whether the NRC's test for standing conforms to that applied by federal courts, but whether the NRC's test represents a reasonable construction of section 189a of the Atomic Energy Act; LBP-09-4, 69 NRC 186 (2009)

LEGAL CITATIONS INDEX

CASES

- Envirocare of Utah, Inc.* (Salt Lake City, Utah), DD-98-9, 48 NRC 173, 176 (1998)
challenges to an Agreement State's program may be raised in a section 2.206 petition; CLI-10-8, 71 NRC 153 n.57 (2010)
- Environmental Law & Policy Center v. NRC*, 470 F.3d 676, 681 (7th Cir. 2006)
a request for judicial review must be brought immediately after a decision is final; CLI-07-13, 65 NRC 214 (2007)
- Environmental Law & Policy Center v. NRC*, 470 F.3d 676, 682 (7th Cir. 2006)
deferral of the NEPA analysis of the need for power until the combined operating license stage does not violate NEPA; LBP-07-9, 65 NRC 604 (2007)
reviewing courts must decide a narrow issue as to whether the agency action was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; LBP-07-9, 65 NRC 602 n.92 (2007)
- Environmental Law & Policy Center v. NRC*, 470 F.3d 676, 683 (7th Cir. 2006)
a narrower project goal and subsequently narrower collection of alternatives was approved partly because the applicant was in no position to implement the additional alternatives; CLI-07-27, 66 NRC 227 (2007); LBP-07-9, 65 NRC 608 (2007)
agencies are permitted to defer certain issues in an environmental impact statement for a multistage project when detailed useful information on a given topic is not meaningfully possible to obtain, and the unavailable information is not essential to determination at the earlier stage; CLI-07-27, 66 NRC 235 (2007)
blindly adopting applicant's goals is a losing proposition because it does not allow for the full range of alternatives required by NEPA; LBP-09-10, 70 NRC 128 (2009); LBP-09-17, 70 NRC 379 (2009)
NEPA requires an agency to exercise a degree of skepticism in dealing with the self-serving statements from the prime beneficiary of a project and to look at the general goal of the project, rather than only those alternatives by which a particular applicant can reach its own specific goals; LBP-07-9, 65 NRC 636 (2007); LBP-09-10, 70 NRC 128 (2009); LBP-09-17, 70 NRC 379 (2009)
- Environmental Law & Policy Center v. NRC*, 470 F.3d 676, 684 (7th Cir. 2006)
NRC may, consistent with NEPA, define baseload power generation as the purpose of and need for a project; LBP-10-24, 72 NRC 757 n.79 (2010)
the National Environmental Policy Act does not require consideration of energy efficiency alternatives when applicant is in no position to implement such measures; LBP-08-13, 68 NRC 99 n.282 (2008)
- Environmental Law & Policy Center v. NRC*, 470 F.3d 676, 685 (7th Cir. 2006)
an environmental impact statement must discuss alternatives to the proposed action, and this discussion must incorporate a hard look at alternatives to a proposed action; LBP-10-10, 71 NRC 581 (2010)
- Environmental Protection Agency v. Mink*, 410 U.S. 73, 87-88 (1973)
deliberative process privilege applies only if the information is both predecisional and deliberative; LBP-06-3, 63 NRC 91 (2006)
deliberative process privilege does not extend to factual material severable from the deliberative context; LBP-06-3, 63 NRC 91 (2006)
Staff communications that summarize the applicable procedures or report on the status of a matter are factual in nature and are not protected by deliberative process privilege; LBP-06-3, 63 NRC 93 (2006)
- Environmental Protection Agency v. Mink*, 410 U.S. 73, 91 (1973)
purely factual material is not generally protected by the deliberative process privilege; LBP-06-25, 64 NRC 382, 389 (2006)
- Environmental Protection Information Center v. U.S. Forest Service*, 451 F.3d 1005, 1009 (9th Cir. 2006)
the purpose of an environmental assessment is to determine whether an action has a significant impact, thus informing the decision whether the preparation of an EIS and detailed assessment of impacts is required; CLI-08-1, 67 NRC 29 (2008)
- Environmental Protection Information Center v. U.S. Forest Service*, 451 F.3d 1005, 1016 (9th Cir. 2006)
the obligation of agencies to consider alternatives is a lesser one under an environmental assessment than under an environmental impact statement; CLI-10-18, 72 NRC 75 n.106 (2010)
- Excel Communications, Inc. v. AT&T Corp.*, 528 U.S. 946 (1999)
denial of *certiorari* carries with it no implication whatever regarding the Court's views on the merits of a case which it has declined to review; LBP-07-11, 66 NRC 87 n.206 (2007)

LEGAL CITATIONS INDEX

CASES

- Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), CLI-04-31, 60 NRC 461, 465-66 (2004)
- the Commission is generally reluctant to consider interlocutory appeals; CLI-09-2, 69 NRC 61 (2009)
- Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), CLI-04-31, 60 NRC 461, 466 (2004)
- added delay and expense occasioned by the admission of a contention, even if erroneous, do not alone warrant interlocutory review; CLI-09-6, 69 NRC 133, 135 (2009)
- routine rulings on contention admissibility are usually not occasions for the Commission to exercise its authority to undertake interlocutory review; CLI-09-3, 69 NRC 72 (2009); CLI-09-6, 69 NRC 133 n.16, 138 (2009)
- the Commission customarily does not entertain interlocutory appeals due in large part to its general unwillingness to engage in piecemeal interference in ongoing licensing board proceedings; CLI-07-1, 65 NRC 3 (2007); CLI-07-2, 65 NRC 12 (2007)
- the Commission has authority to review board rulings sua sponte, in the exercise of its inherent supervisory authority over NRC adjudications; CLI-09-3, 69 NRC 72 (2009)
- Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), CLI-04-31, 60 NRC 461, 466-67 (2004)
- the Commission disfavors review of interlocutory board orders, which would result in unnecessary piecemeal interference with ongoing licensing board proceedings; CLI-08-2, 67 NRC 34 n.10 (2008)
- the rejection or admission of a contention, where the petitioner has been admitted as a party and has other contentions pending, neither constitutes serious and irreparable impact, nor affects the basic structure of the proceeding in a pervasive and unusual manner; CLI-08-7, 67 NRC 192 (2008); CLI-09-9, 69 NRC 365 (2009)
- Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), CLI-04-31, 60 NRC 461, 467 (2004)
- claims that a board has wrongly rejected a contention are commonplace and cannot, without more, be said to affect a proceeding's 'basic structure'; CLI-07-2, 65 NRC 12 (2007)
- Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), CLI-04-31, 60 NRC 461, 468 (2004)
- appeals of rejected contentions are permitted only where a petitioner claims that the board wrongly rejected all contentions; CLI-07-2, 65 NRC 11 (2007)
- Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), CLI-05-17, 62 NRC 5 (2005)
- in its mandatory review, boards are not to undertake a de novo review of the application, but rather are to perform merely a sufficiency review of the NRC Staff's findings; CLI-06-20, 64 NRC 19 (2006)
- the mandatory hearing board is required to answer six questions for the uncontested early site permit proceedings; LBP-08-15, 68 NRC 301 (2008)
- the procedures to be followed by the licensing board when an application for a construction permit is uncontested are described; LBP-07-6, 65 NRC 437 (2007)
- Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), CLI-05-17, 62 NRC 5, 21-22 (2005)
- in uncontested proceedings, boards must narrow their inquiry to those topics or sections in Staff documents that they deem most important and should concentrate on portions of the documents that do not on their face adequately explain the logic, underlying facts, and applicable regulations and guidance; LBP-07-1, 65 NRC 35-36 (2007)
- Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), CLI-05-17, 62 NRC 5, 30 (2005)
- on NEPA baseline issues, the board has a special responsibility and the scope of the board's review is significantly different; LBP-07-9, 65 NRC 555 (2007)
- Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), CLI-05-17, 62 NRC 5, 33 n.32 (2005)
- in a mandatory early site permit hearing, NRC must address whether issuance of an ESP will be inimical to the common defense and security or to the health and safety of the public; CLI-07-27, 66 NRC 221 (2007)
- in a mandatory early site permit hearing, NRC must address whether, taking into consideration the site criteria contained in 10 C.F.R. Part 100, a reactor, or reactors, having the characteristics that fall within the parameters for the site, can be constructed and operated without undue risk to the health and safety of the public; CLI-07-27, 66 NRC 221 (2007)
- on AEA Safety Issue 1, the board must determine whether the application and the record of the proceeding contain sufficient information, and the review of the application by NRC Staff has been

LEGAL CITATIONS INDEX

CASES

- adequate, to support a negative finding on the question of whether the issuance of the early site permit will be inimical to the common defense and security or to the health and safety of the public; LBP-07-9, 65 NRC 556, 598 (2007)
- on AEA Safety Issue 2, the board must decide whether, taking into consideration the site criteria contained in 10 C.F.R. Part 100, a reactor or reactors having the characteristics that fall within the parameters for the site can be constructed without undue risk to the health and safety of the public; LBP-07-9, 65 NRC 557, 599-600 (2007)
- Exelon Generation Co. LLC* (Early Site Permit for Clinton ESP Site), CLI-05-17, 62 NRC 5, 35 n.40 (2005)
- although Appendix A to Part 2 was rescinded, the licensing board may still rely on it as an authoritative expression of the Commission's policy; LBP-07-9, 65 NRC 554 n.23 (2007)
- Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), CLI-05-17, 62 NRC 5, 39 (2005)
- in a mandatory hearing, a board's task is to ensure that NRC Staff's review is adequate and that the Staff has made findings with reasonable support in logic and fact; CLI-06-20, 64 NRC 19, 25 (2006); LBP-07-1, 65 NRC 35 (2007); LBP-07-6, 65 NRC 437 (2007); LBP-09-19, 70 NRC 456 (2009)
- in a mandatory hearing, the licensing board's role in evaluating the record and the adequacy of the Staff's review is analogous to that of an appellate court applying the substantial-evidence test; LBP-07-9, 65 NRC 555, 598 (2007)
- mandatory hearings do not involve a de novo review of the NRC Staff's findings, but rather whether the safety and environmental record is sufficient to support license issuance; CLI-07-5, 65 NRC 111 n.9 (2007); LBP-07-1, 65 NRC 35 (2007); LBP-07-6, 65 NRC 437 (2007); LBP-09-19, 70 NRC 456 (2009)
- Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), CLI-05-17, 62 NRC 5, 39-40 (2005)
- a board's role in an early site permit proceeding is to carefully probe Staff findings by asking appropriate questions and by requiring supplemental information when necessary, but Staff's underlying technical and factual findings are not open to board reconsideration unless, after a review of the record, the board finds the NRC Staff review inadequate or its findings insufficient; CLI-06-20, 64 NRC 19 (2006); LBP-07-9, 65 NRC 555 (2007); LBP-09-19, 70 NRC 457 (2009)
- Exelon Generation Co. LLC* (Early Site Permit for Clinton ESP Site), CLI-05-17, 62 NRC 5, 40 (2005)
- a licensing board's sufficiency review is not to be a rubber stamp, but instead must carefully probe NRC Staff findings by asking appropriate questions and by requiring supplemental information; CLI-06-20, 64 NRC 19 (2006); LBP-07-9, 65 NRC 555 (2007)
- Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), CLI-05-17, 62 NRC 5, 44 (2005)
- with respect to certain NEPA findings, boards in early site permit proceedings are to make independent environmental judgments, though they need not rethink or redo every aspect of the NRC Staff's environmental findings or undertake their own fact-finding activities; LBP-09-19, 70 NRC 456 (2009)
- Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), CLI-05-17, 62 NRC 5, 45 (2005)
- on baseline NEPA issues in early site permit cases, boards must reach their own independent determination, but should do so without second-guessing underlying technical or factual findings by the NRC Staff; LBP-09-19, 70 NRC 459 (2009)
- on NEPA baseline issues, a board must independently determine whether the applicable requirements of NEPA have been complied with and, after considering the final balance among conflicting factors, independently determine whether the license should be issued, denied, or appropriately conditioned to protect the environment; LBP-07-1, 65 NRC 37 (2007); LBP-07-6, 65 NRC 438 (2007); LBP-07-9, 65 NRC 555, 559-60, 598, 614 (2007)
- Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), CLI-05-17, 62 NRC 5, 48 (2005)
- at the early site permit stage the boards' reasonable alternatives responsibilities are limited and focus on the consideration and comparison of alternative sites; CLI-07-27, 66 NRC 237 (2007); LBP-07-1, 65 NRC 36 n.14 (2007)
- Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), CLI-05-29, 62 NRC 801 (2005)
- energy conservation or efficiency or, as it is sometimes called, demand-side management, is not a reasonable alternative that would advance the goals of the applicant's project; LBP-09-2, 69 NRC 109 n.86 (2009)

LEGAL CITATIONS INDEX

CASES

- the reasonableness of energy conservation as an alternative in light of the need for a large amount of baseload electric power is questioned; LBP-09-10, 70 NRC 132 (2009)
- Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), CLI-05-29, 62 NRC 801, 805, 807 (2005), *aff'g* LBP-05-19, 62 NRC 134 (2005)
- energy conservation is not a reasonable alternative that would advance the goals of a nuclear energy project; LBP-08-13, 68 NRC 91 (2008)
- the National Environmental Policy Act does not require an analysis of conservation as an alternative; LBP-08-13, 68 NRC 205 (2008)
- Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), CLI-05-29, 62 NRC 801, 805-08 (2005)
- consideration of energy efficiency is not a reasonable alternative, where that alternative would not achieve applicant's goal of providing additional power to sell on the open market, and is not possible for an applicant who has no transmission or distribution system of its own, and no link to the ultimate power consumer; CLI-10-21, 72 NRC 199 n.7 (2010)
- there is no requirement that an applicant for a uranium enrichment facility must also specifically consider potential electricity conservation measures; CLI-06-10, 63 NRC 462 n.59 (2006)
- when reviewing a license application filed by a private applicant, NRC may appropriately accord substantial weight to the preferences of the applicant and/or sponsor in the siting and design of the project; CLI-06-10, 63 NRC 468 (2006)
- Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), CLI-05-29, 62 NRC 801, 806 (2005), *aff'g* LBP-05-19, 62 NRC 134 (2005)
- neither NRC nor the applicant has the mission or authority to implement a general societal interest in energy efficiency; LBP-08-13, 68 NRC 99 n.282 (2008)
- NRC makes no practical distinction between energy efficiency and energy conservation; LBP-08-13, 68 NRC 99 (2008)
- Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), CLI-05-29, 62 NRC 801, 806-07 (2005)
- the National Environmental Policy Act does not require an analysis of energy conservation or efficiency as an alternative to an early site permit; LBP-08-13, 68 NRC 93 (2008)
- the NEPA rule of reason does not require applicant to consider energy efficiency in its NEPA analysis, because energy efficiency is not a reasonable alternative for a merchant power producer; CLI-10-1, 71 NRC 20 (2010)
- Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), CLI-05-29, 62 NRC 801, 806-08 (2005)
- the National Environmental Policy Act's rule of reason excludes consideration of demand-side management if the proposed new plant is intended to be a merchant plant, selling power on the open market, because it is not feasible for licensee to engage in demand-side management; CLI-10-21, 72 NRC 199 (2010)
- Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), CLI-05-29, 62 NRC 801, 806-08 (2005), *aff'd sub nom. Environmental Law & Policy Center v. NRC*, 470 F.3d 676, 685 (7th Cir. 2006)
- NRC need only consider a range of alternatives in its environmental impact statement that are technologically feasible and economically practicable alternatives for producing baseload power; LBP-10-10, 71 NRC 581 (2010)
- Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), CLI-05-29, 62 NRC 801, 807 (2005)
- applicant is not required to evaluate demand-side management as an alternative because it is not an alternative to the proposal to build new baseload power generation; LBP-09-21, 70 NRC 624 (2009)
- Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), CLI-05-29, 62 NRC 801, 807-08 (2005), *aff'g* LBP-05-19, 62 NRC 134 (2005)
- the National Environmental Policy Act's rule of reason does not demand an analysis of energy efficiency, because conservation measures are beyond the ability of an applicant to implement, and are therefore outside the scope required by a National Environmental Policy Act analysis of reasonable alternatives; LBP-08-13, 68 NRC 93 (2008)

LEGAL CITATIONS INDEX

CASES

- Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), CLI-05-29, 62 NRC 801, 808 (2005), *aff'd sub nom. Environmental Law & Policy Center v. NRC*, 470 F.3d 676 (7th Cir. 2006)
- applicant is not obliged to examine general efficiency or conservation proposals that would do nothing to satisfy the particular project's goals of producing baseload power; LBP-06-19, 64 NRC 87 (2006); LBP-09-17, 70 NRC 377 (2009); LBP-09-21, 70 NRC 623 (2009)
- contention pleading requirements are deliberately strict, and any contention that does not satisfy them will not be admitted; CLI-06-9, 63 NRC 437 (2006); CLI-06-10, 63 NRC 455 (2006); CLI-06-24, 64 NRC 118 (2006); LBP-07-5, 65 NRC 352 (2007)
- intervenor is obliged to offer specific contentions on material issues, supported by 'alleged facts or expert opinion; CLI-09-8, 69 NRC 323 (2009)
- mere notice pleading does not suffice for admission of contentions; CLI-06-24, 64 NRC 119 (2006)
- NRC contention admission rules require a clear statement of the bases for contentions and the submission of supporting information and references to specific documents and sources that establish the validity of the contention; CLI-06-9, 63 NRC 437 (2006); CLI-06-24, 64 NRC 119 (2006)
- Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), CLI-05-29, 62 NRC 801, 810 (2005), *aff'd sub nom. Environmental Law & Policy Center v. NRC*, 470 F.3d 676 (7th Cir. 2006)
- a solely wind- or solar-powered facility could not satisfy a project's purpose of providing baseload power; LBP-09-17, 70 NRC 377 (2009); LBP-10-6, 71 NRC 383 n.99 (2010)
- Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), CLI-05-29, 62 NRC 801, 811 (2005)
- significant inaccuracies and omissions from the environmental report are proper subjects of contentions but details or nuances are not, nor are boards to flyspeck environmental documents; LBP-07-3, 65 NRC 266 n.13 (2007); LBP-10-10, 71 NRC 581 (2010)
- there may be mistakes in an environmental impact statement, but in an NRC adjudication, it is intervenor's burden to show their significance and materiality; LBP-07-3, 65 NRC 266 n.13 (2007); LBP-10-6, 71 NRC 384 n.104 (2010)
- Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), CLI-06-20, 64 NRC 15, 20-21 (2006)
- the Commission may review a board ruling pursuant to the inherent supervisory powers where novel questions of potentially broad application are involved; CLI-08-2, 67 NRC 34 n.12 (2008)
- Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), CLI-06-20, 64 NRC 15, 21 (2006)
- the Commission has used sua sponte review as a vehicle to provide guidance to a licensing board; CLI-07-1, 65 NRC 5 (2007)
- Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), CLI-06-20, 64 NRC 15, 21-22 (2006)
- in a mandatory hearing, a licensing board must narrow its inquiry to those topics or sections in Staff documents that it deems most important and should concentrate on portions of the documents that do not on their face adequately explain the logic, underlying facts, and applicable regulations and guidance; LBP-07-6, 65 NRC 437 (2007); LBP-09-19, 70 NRC 456 (2009)
- Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), CLI-07-12, 65 NRC 203, 205 (2007)
- an initial decision is not effective until the Commission completes its review and takes final agency action; LBP-07-9, 65 NRC 549, 616 (2007)
- Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), CLI-07-12, 65 NRC 203, 207-08 (2007)
- the Commission expressly rejected the idea that the Staff's review of the ESP application had not been adequate; CLI-08-23, 68 NRC 480 (2008)
- Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), CLI-07-12, 65 NRC 203, 209 (2007)
- if certain safety issues cannot be meaningfully assessed at the ESP stage, the Staff's decision to defer consideration of those effects until a time when they can be accurately assessed is consistent with NEPA's requirements; CLI-07-27, 66 NRC 236 n.116 (2007)
- Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), LBP-04-17, 60 NRC 229, 241 (2004)
- a contention that attacks a Commission rule, or which seeks to litigate a matter that is, or clearly is about to become, the subject of a rulemaking, is inadmissible; LBP-09-8, 69 NRC 739 n.13 (2009)
- neither mere speculation nor bare or conclusory assertions, even by an expert, alleging that a matter should be considered will suffice to allow the admission of a proffered contention; LBP-06-20, 64 NRC 164, 165, 188 (2006)

LEGAL CITATIONS INDEX

CASES

- Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), LBP-04-17, 60 NRC 229, 245 (2004)
the concept of need for power and the use of demand-side management as an alternative to building additional generation capacity are inextricably linked; LBP-10-6, 71 NRC 377 n.80 (2010)
- Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), LBP-04-17, 60 NRC 229, 245, 252 (2004), *review denied*, CLI-04-31, 60 NRC 461 (2004)
licensing boards may reformulate contentions to eliminate extraneous issues or to consolidate issues for a more efficient proceeding; CLI-09-12, 69 NRC 552-53 (2009); CLI-10-2, 71 NRC 33 (2010); LBP-10-16, 72 NRC 403 (2010)
- Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), LBP-04-17, 60 NRC 229, 246-47 (2004)
a decision may be referred to the Commission if it raises significant and novel legal or policy issues, and resolution of the issues would materially advance the orderly disposition of the proceeding; LBP-09-18, 70 NRC 407 (2009)
contentions challenging the Waste Confidence Rule are inadmissible; LBP-08-17, 68 NRC 456 (2008); LBP-09-4, 69 NRC 217 (2009); LBP-09-10, 70 NRC 114 (2009); LBP-09-17, 70 NRC 337 (2009)
contentions on the environmental impacts of spent fuel storage are inadmissible; LBP-09-18, 70 NRC 406 (2009)
licensing boards may not admit a contention that directly or indirectly challenges 10 C.F.R. 51.51, Table S-3; LBP-09-10, 70 NRC 115 (2009)
challenges to NRC regulations are inadmissible; LBP-08-21, 68 NRC 587 (2008)
- Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), LBP-04-17, 60 NRC 229, 252 (2004)
examples of admitted contentions that satisfy the requirement to provide a specific statement of the issue of law or fact to be raised or controverted are provided; LBP-08-5, 67 NRC 235 n.79 (2008)
- Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), CLI-04-31, 60 NRC 461, 468 (2004)
an applicant has the right to file an interlocutory appeal of board orders admitting contentions, but only if the appeal challenges the admissibility of all admitted contentions; CLI-06-13, 63 NRC 509 n.3 (2006)
- Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), LBP-05-19, 62 NRC 134, 154 (2005)
as an independent agency, NRC has the authority to promulgate its own regulations implementing NEPA and is only bound by Council on Environmental Quality regulations when the NRC expressly adopts them; LBP-10-16, 72 NRC 437 (2010)
- Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), LBP-05-19, 62 NRC 134, 156-58, *aff'd*, CLI-05-29, 62 NRC 801 (2005), *aff'd sub nom. Environmental Law & Policy Center v. NRC*, 470 F.3d 676 (7th Cir. 2006)
when the goal of a proposed action is renewal of the operating licenses that allow production of approximately 2158 MWe of baseload power, the environmental report does not have to consider in detail alternatives that do not meet this goal; LBP-08-13, 68 NRC 90 (2008)
- Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), LBP-05-19, 62 NRC 134, 158 (2005)
regarding consideration of specific combination alternatives, the burden rests on petitioner to propose a particular alternative, and bare generalizations will not support an admissible contention; LBP-10-6, 71 NRC 380 n.88 (2010)
to the extent that petitioner asserts that applicant had an obligation to examine other alternatives, the obligation falls squarely upon petitioner to specify such alternatives and indicate why they are appropriate; LBP-09-2, 69 NRC 111 (2009)
- Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), LBP-05-19, 62 NRC 134, 159, *aff'd*, CLI-05-29, 62 NRC 801, 805-08 (2005)
because demand-side management reduces by a small portion applicant's demand for power, it should be analyzed in this instance as a surrogate for need for power; LBP-10-6, 71 NRC 382 (2010)
- Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), LBP-05-19, 62 NRC 134, 181 (2005)
what actually is to be litigated must be determined by a board through examination not only of the general formulation of the contention by the petitioner, but by examination of the bases and support actually offered; LBP-08-9, 67 NRC 430 (2008)
- Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), LBP-06-28, 64 NRC 460 (2006), *aff'd*, CLI-07-12, 65 NRC 203 (2007)
adequacy of Staff review is questioned by licensing board; CLI-08-23, 68 NRC 473 (2008)

LEGAL CITATIONS INDEX

CASES

- Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), LBP-06-28, 64 NRC 460, 495 (2006)
permit condition language precluding “any and all” releases is so broad as to be unachievable as a practical matter and therefore may be unenforceable as a legal matter; CLI-07-14, 65 NRC 218 n.8 (2007)
- Exelon Generation Co., LLC* (Peach Bottom Atomic Power Station, Units 2 and 3), CLI-05-26, 62 NRC 577, 579 & n.4 (2005)
intervenor may not act as private attorneys-general and raise issues that are of concern to them but do not affect them directly; CLI-07-18, 65 NRC 411 (2007)
- Exelon Generation Co., LLC* (Peach Bottom Atomic Power Station, Units 2 and 3), CLI-05-26, 62 NRC 577, 580 (2005)
in cases involving uranium mining and other source materials licensing, petitioner must independently establish the requisite elements of standing; LBP-08-24, 68 NRC 704 (2008)
proximity standing rests on the presumption that an accident associated with the nuclear facility could adversely affect the health and safety of people working or living offsite but within a certain distance of that facility; LBP-07-14, 66 NRC 182 (2007)
some circumstances exist in which petitioners may be presumed to have standing based on their geographical proximity to a facility or source of radioactivity, without the need to show injury in fact, causation, or redressability; LBP-08-6, 67 NRC 272 (2008)
the Commission has accepted a proximity presumption granting standing to residents within 50 miles of a reactor, but has not accepted any such presumption in nonreactor cases; LBP-07-14, 66 NRC 178 (2007)
- Exelon Generation Co., LLC* (Peach Bottom Atomic Power Station, Units 2 and 3), CLI-05-26, 62 NRC 577, 580-81 (2005)
how the Commission considers proximity-based standing in license transfer cases is described; CLI-08-19, 68 NRC 269 (2008)
in proceedings other than for construction permits, operating licenses, or significant amendments thereto, the Commission decides on a case-by-case basis whether the proximity presumption should apply, taking into account any obvious potential for offsite radiological consequences, as well as the nature of the proposed action and the significance of the radioactive source; CLI-07-19, 65 NRC 426 (2007); CLI-07-21, 65 NRC 521 (2007); LBP-09-20, 70 NRC 575 (2009)
- Exelon Generation Co., LLC* (Peach Bottom Atomic Power Station, Units 2 and 3), CLI-05-26, 62 NRC 577, 580-83 (2005)
absent an obvious potential for harm, it is petitioner’s burden to show how harm will or may occur; CLI-08-19, 68 NRC 260 (2008); LBP-09-28, 70 NRC 1026 (2009)
although license transfers, like irradiators, are categorically excluded from NEPA review except when special circumstances are present, no mention was made of a categorical exclusion, nor was it suggested that such a determination would be dispositive of the issue for proximity standing; LBP-06-4, 63 NRC 106 n.27 (2006)
if petitioner fails to show that a particular licensing action raises an obvious potential for offsite consequences, then the standing inquiry reverts to a traditional standing analysis of whether the petitioner has made a specific showing of injury, causation, and redressability; CLI-08-19, 68 NRC 269 n.68 (2008)
there is no obvious potential for offsite consequences from an ISFSI transfer sufficient to justify applying a presumption of standing based on proximity; CLI-07-19, 65 NRC 426 (2007)
- Exelon Generation Co., LLC* (Peach Bottom Atomic Power Station, Units 2 and 3), CLI-05-26, 62 NRC 577, 581 (2005)
if petitioner cannot establish the elements of proximity-based standing, then he must establish standing according to traditional standing principles; CLI-10-20, 72 NRC 189 (2010); LBP-10-4, 71 NRC 229 (2010)
in nonreactor cases, the potential for offsite consequences is not always clear, and thus the burden falls on petitioner to demonstrate that the proposed action involves a significant source of radioactivity producing an obvious potential for offsite consequences; LBP-09-20, 70 NRC 577 (2009)

LEGAL CITATIONS INDEX

CASES

- Exelon Generation Co., LLC* (Peach Bottom Atomic Power Station, Units 2 and 3), CLI-05-26, 62 NRC 577, 582 (2005)
proximity-based standing in license transfer proceedings has been denied to petitioners residing within 40 miles; CLI-07-21, 65 NRC 523 (2007)
- Exxon Corp. v. Train*, 554 F.2d 1310 (5th Cir. 1977)
the Clean Water Act does not authorize regulation of discharges to groundwater; LBP-09-25, 70 NRC 890 n.145 (2009)
- Exxon Corp. v. Train*, 554 F.2d 1310, 1312 (5th Cir. 1977)
the Clean Water Act does not authorize regulation of discharges to groundwater and so applicant's environmental report must address those discharges; LBP-10-14, 72 NRC 137 n.238 (2010)
- Exxon Nuclear Co.* (Nuclear Fuel Recovery and Recycling Center), ALAB-447, 6 NRC 873, 878 (1977)
it is an elementary canon of construction that an agency cannot interpret federal statutes to negate its own stated purposes; LBP-06-1, 63 NRC 69 (2006)
- Fansteel, Inc.* (Muskogee, Oklahoma Site), CLI-03-13, 58 NRC 195, 202 (2003)
the Commission has long recognized the benefits of participation in NRC proceedings by representatives of interested states; LBP-09-16, 70 NRC 291 (2009)
- Fansteel, Inc.* (Muskogee, Oklahoma Site), CLI-03-13, 58 NRC 195, 203 (2003)
a contention is inadmissible if intervenors offer no tangible information, no experts, no substantive affidavits, but instead only bare assertions and speculation; LBP-06-7, 63 NRC 208 (2006); LBP-06-20, 64 NRC 150, 164, 165 (2006); LBP-06-23, 64 NRC 355 (2005); LBP-07-10, 66 NRC 23 (2007); LBP-07-16, 66 NRC 288 (2007); LBP-08-6, 67 NRC 302, 303 (2008); LBP-08-9, 67 NRC 433 (2008); LBP-08-13, 68 NRC 63, 200 (2008); LBP-08-16, 68 NRC 384-85 (2008); LBP-08-17, 68 NRC 441 (2008); LBP-08-26, 68 NRC 917 (2008); LBP-08-27, 68 NRC 956 (2008); LBP-09-4, 69 NRC 216 (2009); LBP-09-15, 70 NRC 224 (2009); LBP-09-16, 70 NRC 273, 290 (2009); LBP-09-17, 70 NRC 328 (2009); LBP-09-26, 70 NRC 954 (2009); LBP-10-6, 71 NRC 360 (2010); LBP-10-7, 71 NRC 420 (2010); LBP-10-15, 72 NRC 290 n.34 (2010)
allegations of unaccounted costs are no more than bare assertions and fail to provide the required supporting facts or expert opinion; LBP-07-5, 65 NRC 348 (2007)
although a petitioner does not have to prove its contention at the admissibility stage, mere notice pleading is insufficient; LBP-08-9, 67 NRC 432 (2008); LBP-08-17, 68 NRC 441 (2008); LBP-08-26, 68 NRC 917 (2008); LBP-09-6, 69 NRC 390 (2009); LBP-09-17, 70 NRC 328 (2009); LBP-09-18, 70 NRC 404 (2009); LBP-10-6, 71 NRC 359 (2010)
expert opinion must not be limited to bald conclusory statements such as that the application under consideration is "deficient," "inadequate," or "wrong"; LBP-09-6, 69 NRC 411 (2009)
neither mere speculation nor bare or conclusory assertions, even by an expert, alleging that a matter should be considered will suffice to allow the admission of a proffered contention; LBP-07-3, 65 NRC 253 (2007); LBP-07-13, 66 NRC 144 (2007); LBP-09-3, 69 NRC 153 (2009)
petitioner's assertion that trucks are dumping depleted uranium-contaminated soil from the Army site in the community is predicated on bare assertions and speculation and thus is inadmissible; LBP-10-4, 71 NRC 242 (2010)
the affidavit must state with particularity the special circumstances alleged to justify the waiver and may involve the assertion of facts, but does not require the assertion of an expert opinion; LBP-10-15, 72 NRC 310 (2010)
the requirement of factual support in 10 C.F.R. 2.309(f)(1)(v) is not intended to prevent intervention when material and concrete issues exist; LBP-08-27, 68 NRC 956 (2008)
- Fansteel, Inc.* (Muskogee, Oklahoma Site), CLI-03-13, 58 NRC 195, 204 (2003)
a contention must make clear why cited references provide a basis for a contention; CLI-06-10, 63 NRC 457 (2006)
providing any material or document as the foundation for a contention without setting forth an explanation of its significance is inadequate to support the admission of a contention; LBP-08-13, 68 NRC 63 (2008); LBP-09-26, 70 NRC 954 (2009); LBP-10-6, 71 NRC 361 (2010)
- Fansteel, Inc.* (Muskogee, Oklahoma Site), CLI-03-13, 58 NRC 195, 204-05 (2003)
authorization affidavits for representational standing may not be filed with a reply; CLI-08-19, 68 NRC 262-63 (2008)

LEGAL CITATIONS INDEX

CASES

- in the case of unexplained material submitted in support of a contention, the board declines to hunt for information that the agency's procedural rules require be explicitly identified and fully explained; LBP-10-21, 72 NRC 647 (2010)
- petitioner has an obligation to explain why cited testimony provides a basis for its contention; LBP-10-17, 72 NRC 510 n.26 (2010)
- simply attaching material or documents as a basis for a contention, without setting forth an explanation of that information's significance, is inadequate to support the admission of the contention; LBP-07-3, 65 NRC 254 (2007); LBP-07-10, 66 NRC 23 (2007); LBP-08-9, 67 NRC 433 (2008); LBP-08-16, 68 NRC 385 (2008); LBP-08-17, 68 NRC 441 (2008); LBP-08-26, 68 NRC 918 (2008); LBP-09-3, 69 NRC 154 (2009); LBP-09-17, 70 NRC 328 (2009); LBP-09-18, 70 NRC 404 (2009); LBP-10-7, 71 NRC 420-21 (2010)
- Fansteel, Inc.* (Muskogee, Oklahoma Site), CLI-03-13, 58 NRC 195, 205 (2003)
- failure to set forth the significance of an online article makes it inadequate to support the admission of the contention; LBP-08-24, 68 NRC 735 n.246 (2008)
- merely quoting or citing documents as the basis for a contention is not enough to demonstrate a genuine dispute with the application on a material issue of law or fact; LBP-10-9, 71 NRC 526 (2010)
- providing any material or document as a basis for a contention, without setting forth an explanation of its significance, is inadequate to support the admission of the contention; LBP-07-16, 66 NRC 288 (2007)
- Farmland Preservation Ass'n v. Goldschmidt*, 611 F.2d 233, 239 (8th Cir. 1979)
- discussion of the no-action alternative in a final environmental impact statement need not be exhaustive or inordinately detailed; LBP-06-19, 64 NRC 90 (2006)
- Federal Deposit Insurance Corp. v. Mallen*, 486 U.S. 230 (1988)
- a five-factor test is applied to determine whether a delay in a post-suspension hearing violates Fifth Amendment due process; LBP-06-13, 63 NRC 535 n.29 (2006)
- Federal Deposit Insurance Corp. v. Mallen*, 486 U.S. 230, 240 (1988)
- an individual's employment relationship is a property right protected by the Fifth Amendment; LBP-06-13, 63 NRC 564 (2006)
- conviction of a crime that is identical to a charge in an enforcement order provides substantial assurance that the enforcement order was not baseless or unwarranted; LBP-09-24, 70 NRC 813 n.5 (2009)
- where the government has deprived an individual of a property interest without a hearing, the government must be prepared to show an important government interest, accompanied by a substantial assurance that the deprivation is not baseless or unwarranted; LBP-09-24, 70 NRC 851-52 n.45 (2009)
- Federal Deposit Insurance Corp. v. Mallen*, 486 U.S. 230, 243 (1988)
- depriving someone of his or her livelihood has been recognized as harm to private interests; LBP-06-13, 63 NRC 542 n.67, 564 (2006)
- Federal Deposit Insurance Corp. v. Mallen*, 486 U.S. 230, 244 (1988)
- returning of an indictment establishes probable cause to believe that the individual has committed a crime punishable by imprisonment for a term in excess of one year and demonstrates that the deprivation is not arbitrary; LBP-06-13, 63 NRC 558 n.125 (2006); LBP-09-24, 70 NRC 852 n.45 (2009)
- Federal Deposit Insurance Corp. v. Mallen*, 486 U.S. 230, 247 (1988)
- when the criminal trial precedes the enforcement proceeding, the defendant has not perforce been deprived of due process, but rather the criminal trial provides an additional forum to litigate the factual underpinnings of the administrative sanction and if the defendant is convicted, the administrative sanction is further supported; LBP-09-24, 70 NRC 852 n.45 (2009)
- Federal Election Commission v. Akins*, 524 U.S. 11, 20 (1998)
- petitioner must meet the prudential standing requirement by showing that the asserted interest arguably falls within the zone of interests protected by the governing law; LBP-08-15, 68 NRC 302 (2008); LBP-09-4, 69 NRC 177 (2009)
- Federal Open Market Committee of Federal Reserve System v. Merrill*, 443 U.S. 340, 362 (1979)
- privilege for trade secrets or confidential information is not absolute; LBP-06-25, 64 NRC 376 (2006)

LEGAL CITATIONS INDEX

CASES

- Federal Power Commission v. Texaco*, 417 U.S. 380, 397 (1974)
post hoc bases have no legal effect on the environmental report; LBP-10-13, 71 NRC 695 (2010)
- Federal Savings & Loan Insurance Corp. v. Molinaro*, 889 F.2d 899, 903 (9th Cir. 1989)
convenience in managing caseload and efficiency in using resources, the interests of nonparties, and the public interest may be considered in determining whether to delay a proceeding; LBP-06-13, 63 NRC 535 n.30 (2006)
- Field v. Mans*, 516 U.S. 59, 68 n.7 (1995)
a court should not adopt an interpretation that would render a statutory provision redundant or nonsensical; LBP-09-16, 70 NRC 264 n.118 (2009)
- Finlay Testing Laboratories, Inc.*, LBP-88-1A, 27 NRC 19, 25 (1988)
where a licensee had put a dollar value on its total and monthly lost revenue, the licensing board had no difficulty concluding that a requested delay would cause further financial and personal devastations; LBP-06-13, 63 NRC 543 (2006)
- Finlay Testing Laboratories, Inc.*, LBP-88-1A, 27 NRC 19, 25-26 (1988)
the party opposing a stay succeeded in showing prejudice due to relocation of witnesses and difficulty retrieving documents; LBP-06-13, 63 NRC 542 n.65 (2006)
- First Eastern Corp. v. Mainwaring*, 21 F.3d 465, 468 (D.C. Cir. 1994)
in creating the FOIA exemptions, Congress acted on a belief that government decisions are better made when staff members are able to share ideas and opinions frankly, rather than operating in a fishbowl; LBP-06-25, 64 NRC 380 (2006)
- FirstEnergy Nuclear Operating Co.* (Beaver Valley Power Station, Units 1 and 2; Davis-Besse Power Station, Unit 1; Perry Nuclear Power Plant, Unit 1), CLI-06-2, 63 NRC 9, 16 (2006)
the Commission will not accept cursory arguments regarding standing; CLI-08-19, 68 NRC 265 (2008)
- FirstEnergy Nuclear Operating Co.* (Davis-Besse Nuclear Power Station, Unit 1), CLI-04-23, 60 NRC 154, 158 (2004)
appellant bears the responsibility of clearly identifying the errors in the decision below and ensuring that its brief contains sufficient information and cogent argument to alert the other parties and the Commission to the precise nature of and support for the appellant's claims; CLI-06-10, 63 NRC 478 (2006)
intervenor has the obligation on appeal to clearly identify asserted errors in the Board's decision, which is not met by a generalized claim followed by multipage citations; CLI-06-10, 63 NRC 473 (2006)
- FirstEnergy Nuclear Operating Co.* (Davis-Besse Nuclear Power Station, Unit 1), LBP-04-11, 59 NRC 379, 385 (2004)
proximity alone is insufficient to show standing in an enforcement proceeding; LBP-08-14, 68 NRC 290 n.59 (2008)
- Flast v. Cohen*, 392 U.S. 83, 94 (1968)
the mootness doctrine derives from the Constitution's limitation of federal courts' jurisdiction to cases or controversies; LBP-09-15, 70 NRC 209 (2009)
- Flast v. Cohen*, 392 U.S. 83, 95 (1968)
the case or controversy jurisdictional limitation restricts the business of federal courts to questions presented in an adversary context and in a form historically viewed as capable of resolution through the judicial process; LBP-09-14, 70 NRC 195 (2009); LBP-09-25, 70 NRC 895 n.179 (2009)
- Florez v. Callahan*, 156 F.3d 438, 443 (2d Cir. 1998)
a basic tenet of statutory construction, equally applicable to regulatory construction, is that a statute should be construed so that effect is given to all its provisions; CLI-06-11, 63 NRC 491 (2006)
- Florida Audubon Society v. Bentsen*, 94 F.3d 658, 666 (D.C. Cir. 1996)
when petitioner claims an increased risk of future harm, that harm must be substantially probable to constitute an injury-in-fact for the purposes of standing; LBP-09-4, 69 NRC 183 (2009)
- Florida Power & Light Co.* (Calvert Cliffs Nuclear Power Plant, Units 1 and 2; Calvert Cliffs Independent Spent Fuel Storage Installation; Nine Mile Point Nuclear Station, Units 1 and 2; R.E. Ginna Nuclear Power Plant; Turkey Point Nuclear Generating Plant, Units 3 and 4; St. Lucie Nuclear Power Plant, Units 1 and 2; Seabrook Station; Duane Arnold Energy Center), CLI-06-21, 64 NRC 30, 33 (2006)
petitioner's tardiness due to its belated realization that it could present its arguments before the NRC did not constitute good cause for its late filing; CLI-10-12, 71 NRC 324 n.28 (2010)

LEGAL CITATIONS INDEX

CASES

- requirements for untimely filings and late-filed contentions are stringent; CLI-09-7, 69 NRC 260 (2009)
- Florida Power & Light Co.* (Calvert Cliffs Nuclear Power Plant, Units 1 and 2; Calvert Cliffs Independent Spent Fuel Storage Installation; Nine Mile Point Nuclear Station, Units 1 and 2; R.E. Ginna Nuclear Power Plant; Turkey Point Nuclear Generating Plant, Units 3 and 4; St. Lucie Nuclear Power Plant, Units 1 and 2; Seabrook Station; Duane Arnold Energy Center), CLI-06-21, 64 NRC 30, 34 (2006)
- failure to comply with Commission pleading requirements for late filings constitutes sufficient grounds for rejecting intervention and hearing requests; CLI-09-7, 69 NRC 260-61 (2009); LBP-10-4, 71 NRC 226 n.11 (2010)
- NRC pleading standards do not allow for mere notice pleading, or the filing of general, vague, or unsupported claims to be elaborated on at some later time; CLI-09-5, 69 NRC 120 n.21 (2009)
- Florida Power & Light Co.* (Calvert Cliffs Nuclear Power Plant, Units 1 and 2; Calvert Cliffs Independent Spent Fuel Storage Installation; Nine Mile Point Nuclear Station, Units 1 and 2; R.E. Ginna Nuclear Power Plant; Turkey Point Nuclear Generating Plant, Units 3 and 4; St. Lucie Nuclear Power Plant, Units 1 and 2; Seabrook Station; Duane Arnold Energy Center), CLI-06-21, 64 NRC 30, 34-35 (2006)
- a union in one facility lacks standing to participate in other interrelated license transfer proceedings, given that the union did not represent employees at the other facilities; CLI-08-19, 68 NRC 267 (2008)
- Florida Power & Light Co.* (Point Beach Nuclear Plant, Unit 1), LBP-08-19, 68 NRC 545 (2008)
- hearing request is denied for failure to demonstrate standing, impermissible challenge to Staff's significant hazards consideration, and failure to proffer an admissible contention; LBP-08-20, 68 NRC 552 (2008)
- Florida Power & Light Co.* (St. Lucie Nuclear Power Plant, Unit 2), ALAB-435, 6 NRC 541 (1977)
- once an adequate alternatives analysis is done, the applicant's proposed site will be rejected only when an alternative site is obviously superior; LBP-07-9, 65 NRC 591 (2007)
- Florida Power & Light Co.* (St. Lucie Nuclear Power Plant, Unit 1), LBP 88-10A, 27 NRC 452, 463 (1988)
- the scope of an adjudicatory proceeding is specified by the notice of hearing; LBP-09-25, 70 NRC 889 (2009)
- Florida Power & Light Co.* (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325, 329 (1989)
- all proffered contentions must be within the scope of the proceeding as defined by the Commission in its initial hearing notice and order referring the proceeding to the licensing board; LBP-07-10, 66 NRC 23 (2007); LBP-09-3, 69 NRC 153 (2009)
- although the Commission has accepted a proximity presumption granting standing to residents within 50 miles of a reactor, it has not accepted any such presumption in nonreactor cases; LBP-07-14, 66 NRC 178 (2007)
- an individual may satisfy the standing requirements by demonstrating that his or her residence is within the geographical area that might be affected by an accidental release of fission products, and in proceedings involving nuclear power plants this area has been defined as being within a 50-mile radius of such a plant; CLI-07-19, 65 NRC 426 (2007); LBP-07-3, 65 NRC 249-50 (2007); LBP-07-4, 65 NRC 294 (2007)
- having established proximity standing, petitioner need not separately establish the requisite injury, causation, and redressability elements; LBP-09-10, 70 NRC 115 (2009); LBP-09-18, 70 NRC 397 (2009)
- in cases involving the possible construction or operation of a nuclear power reactor, the Commission has created a presumption that residing or regularly conducting activities within a 50-mile proximity of the proposed facility is considered sufficient to establish the requisite injury, causation, and redressability elements for standing; LBP-06-20, 64 NRC 144 n.16 (2006); LBP-06-23, 64 NRC 270 (2006); LBP-07-10, 66 NRC 14-15 (2007); LBP-07-11, 66 NRC 52 (2007); LBP-08-15, 68 NRC 303 (2008); LBP-10-16, 72 NRC 381 (2010)
- in cases involving the possible construction or operation of a reactor, proximity to the proposed facility has been considered sufficient to establish the requisite standing elements; LBP-08-9, 67 NRC 427 (2008); LBP-08-14, 68 NRC 290 (2008); LBP-08-16, 68 NRC 378 (2008); LBP-08-17, 68 NRC 438 (2008); LBP-08-26, 68 NRC 911 (2008); LBP-09-3, 69 NRC 149 (2009)

LEGAL CITATIONS INDEX

CASES

- intervention petitioner must himself fulfill the requirement for standing; LBP-08-18, 68 NRC 539 (2008)
- living within 50 miles from the plant is enough to confer standing on an individual or group in proceedings for construction permits, operating licenses, or significant amendments thereto; LBP-09-10, 70 NRC 115 n.10 (2009); LBP-09-13, 70 NRC 177 n.19 (2009); LBP-09-16, 70 NRC 240 n.19 (2009); LBP-09-18, 70 NRC 395 (2009); LBP-09-20, 70 NRC 575 (2009); LBP-09-21, 70 NRC 590 n.15 (2009); LBP-09-26, 70 NRC 947 n.15 (2009)
- NRC's proximity presumption does not disregard contemporaneous judicial concepts of standing, but rather the Commission applied its expertise to determine that persons living within a 50-mile radius of a nuclear reactor face a realistic threat of harm if a release of radioactive material were to occur from the facility; LBP-09-16, 70 NRC 242 (2009)
- persons living within a 50-mile radius of a proposed new reactor face a realistic threat of harm if a release of radioactive material were to occur from the facility and thus are not required to make individual showings of injury, causation, and redressability; LBP-09-4, 69 NRC 183 (2009)
- petitioner may not establish standing by alleging injury on behalf of another entity, but rather, petitioner must be the object of the actual or threatened injury; LBP-10-4, 71 NRC 228-29 (2010)
- proximity factors as a standing requirement are discussed; LBP-08-21, 68 NRC 560 n.2 (2008); LBP-09-2, 69 NRC 94 n.17 (2009)
- proximity-based presumption of standing applies in proceedings for nuclear power plant construction permits, operating licenses, or significant amendments thereto; LBP-06-20, 64 NRC 144 n.16 (2006); LBP-08-13, 68 NRC 60 n.18 (2008); LBP-08-15, 68 NRC 303 (2008); LBP-09-4, 69 NRC 177 n.19 (2009); LBP-10-15, 72 NRC 276 (2010); LBP-10-16, 72 NRC 381 n.37 (2010); LBP-10-21, 72 NRC 639 (2010)
- the Commission interprets the provisions of Parts 51 and 54 as they apply to license renewal proceedings; LBP-07-11, 66 NRC 59 (2007)
- Florida Power & Light Co.* (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325, 329-30 (1989)
- in certain types of cases, petitioner may establish standing based entirely upon geographical proximity to the facility at issue; LBP-06-4, 63 NRC 105 (2006); LBP-08-15, 68 NRC 303 (2008); LBP-09-20, 70 NRC 575 (2009)
- intervention petitioner must show an obvious potential for offsite consequences from the requested action that would justify recognizing any proximity presumption, much less one extending over 100 miles from the plant site; LBP-08-18, 68 NRC 537 (2008)
- the proximity presumption has been found to arise in a license renewal proceeding if petitioner lives within a specific distance from the power reactor; LBP-08-26, 68 NRC 911 (2008)
- unless a proposed action involves obvious potential for offsite consequences, such as with construction or operation of reactor or certain major alterations to facility, petitioner must allege some specific injury in fact that will result from the action taken; LBP-08-18, 68 NRC 539 n.38 (2008)
- Florida Power & Light Co.* (St. Lucie Nuclear Power Plant, Units 1 and 2), LBP-08-14, 68 NRC 279 (2008)
- a hearing request is denied where petitioner fails to demonstrate standing and provide an admissible contention and impermissibly challenges Staff's significant hazards consideration; LBP-08-19, 68 NRC 547 (2008)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), 4 AEC 9, 12 (1967)
- the phrase "inimical to the common defense and security" refers to several factors including the absence of foreign control over the applicant; LBP-08-24, 68 NRC 747 (2008)
- with respect to a production or utilization facility, foreign ownership and control would be inimical to the common defense and security; CLI-09-9, 69 NRC 360 n.153 (2009)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), 4 AEC 9, 12-13 (1967)
- the common defense and security standard refers principally to the safeguarding of special nuclear material, the absence of foreign control over the applicant, the protection of restricted data, and the availability of special nuclear material for defense needs; CLI-09-9, 69 NRC 360 n.153 (2009)

LEGAL CITATIONS INDEX

CASES

- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), 4 AEC 787, 788 (1972)
petitioner may not challenge applicable statutory requirements as part of an administrative adjudication; CLI-09-14, 69 NRC 605 (2009)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), ALAB-952, 33 NRC 521, 528, *aff'd in relevant part*, CLI-91-13, 34 NRC 185, 187-88 (1991)
organizations seeking to intervene in their own right must satisfy the same standing requirements as individuals seeking to intervene; CLI-07-18, 65 NRC 411 (2007)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), ALAB-952, 33 NRC 521, 528-30 (1991)
an organization seeking to intervene in its own right must demonstrate a palpable injury in fact to its organizational interests that is within the zone of interests protected by the Atomic Energy Act or the National Environmental Policy Act; LBP-08-24, 68 NRC 702 (2008); LBP-09-21, 70 NRC 590 n.16 (2009)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), ALAB-952, 33 NRC 521, 530, *aff'd*, CLI-91-13, 34 NRC 185 (1991)
nothing precludes an individual from seeking to intervene both on his/her own behalf and as a representative of others; CLI-07-19, 65 NRC 427 n.17 (2007)
to establish organizational standing, an organization must demonstrate an injury-in-fact to the organization's interests or the interests of its members and that the injury is within the zone of interests protected by the National Environmental Policy Act or the Atomic Energy Act; LBP-09-13, 70 NRC 178 (2009); LBP-10-16, 72 NRC 383 (2010)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), ALAB-952, 33 NRC 521, 532, *aff'd*, CLI-91-13, 34 NRC 185 (1991)
under the abuse-of-discretion review standard, it is not enough for the appellant to establish simply that the licensing board might justifiably have reached the same conclusion as the appellant regarding the petition for discretionary intervention; CLI-06-16, 63 NRC 715 (2006)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-91-5, 33 NRC 238, 240 (1991)
counsel's alleged unfamiliarity with the agency's rules of practice or counsel's asserted busy schedule are not satisfactory explanations for late filings; LBP-10-21, 72 NRC 637 (2010)
unfamiliarity with NRC's Rules of Practice is not sufficient excuse for late filings, particularly where the order that is being challenged expressly advised petitioner of his appellate rights and of the time within which those rights had to be exercised; CLI-10-26, 72 NRC 476 (2010)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-00-23, 52 NRC 327, 329 (2000)
all proffered contentions must be within the scope of the proceeding as defined by the Commission in its initial hearing notice and order referring the proceeding to the licensing board; LBP-07-3, 65 NRC 253 (2007); LBP-08-16, 68 NRC 384 (2008); LBP-10-7, 71 NRC 420 (2010)
the provisions of Parts 51 and 54 relating to the scope of license renewal proceedings are discussed; LBP-06-10, 63 NRC 343 (2006)
the scope of license renewal proceedings, which generally concern requests to renew 40-year operating licenses for additional 20-year terms, is discussed; LBP-06-23, 64 NRC 274 (2006)
the scope of license renewal review for a nuclear power reactor is generally restricted to plant structures and components that will require an aging management review for the period of extended operation and the plant's systems, structures, and components that are subject to an evaluation of time-limited aging analysis; LBP-08-13, 68 NRC 66 (2008); LBP-08-22, 68 NRC 598 (2008); LBP-10-13, 71 NRC 678 (2010)
the scope of safety and environmental issues relevant to license renewal is discussed; LBP-07-4, 65 NRC 307 (2007)
to the degree that the general precept that a rule, including a design certification, cannot be challenged in an adjudication might be seen as placing such matters outside the scope of the proceeding; LBP-10-21, 72 NRC 654 n.24 (2010)

LEGAL CITATIONS INDEX

CASES

- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3 (2001)
- challenges to findings in a generic environmental impact statement are not admissible absent a waiver of the NRC's generic finding or a successful petition for rulemaking; CLI-07-3, 65 NRC 16 (2007)
 - licensing boards cannot admit an environmental contention regarding a Category 1 issue in a license renewal proceeding; LBP-08-25, 68 NRC 782 n.13 (2008)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 6-13 (2001)
- a license renewal environmental report need not provide information regarding the storage of spent fuel; LBP-06-20, 64 NRC 154 (2006)
 - the Commission interprets the provisions of Parts 51 and 54 as they apply to license renewal proceedings; LBP-07-11, 66 NRC 59 (2007)
 - the scope of a license renewal proceeding is governed by 10 C.F.R. Part 54; LBP-06-7, 63 NRC 198 (2006)
 - the scope of safety and environmental issues relevant to license renewal is discussed; LBP-07-4, 65 NRC 306 (2007)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 7 (2001)
- a significant safety or environmental issue raised in a motion to reopen a license renewal proceeding must focus on the potential impacts of an additional 20 years of nuclear power plant operation, not on everyday operational issues; CLI-06-4, 63 NRC 37 (2006)
 - adverse aging effects that license renewal applicants must address may result from potential metal fatigue, erosion, corrosion, thermal and radiation embrittlement, microbiologically induced effects, creep, and shrinkage; CLI-06-24, 64 NRC 117 (2006)
 - certain safety issues that were reviewed for the initial license have been closely monitored by NRC inspection during the license term and need not be reviewed again in the context of a license renewal application; LBP-08-13, 68 NRC 67 (2008)
 - corrosion can be an adverse aging effect; LBP-06-7, 63 NRC 224 n.35, 229 n.3 (2006)
 - if a petition has raised an issue within the scope of a license renewal proceeding, the contention would still be inadmissible unless it either raised an issue that was not the subject of an ongoing regulatory oversight program or presented a colorable and supported argument that the ongoing regulatory oversight program was insufficient to manage the problem over the period of extended operation; LBP-06-7, 63 NRC 233 (2006)
 - if a structure or component is already required to be replaced at mandated, specified time periods, it would fall outside the scope of license renewal review; LBP-08-22, 68 NRC 599 (2008)
 - in developing 10 C.F.R. Part 54 beginning in the 1980s, the Commission sought to develop a process that would be both efficient, avoiding duplicative assessments where possible, and effective, allowing the NRC Staff to focus its resources on the most significant safety concerns at issue during the renewal term; LBP-06-10, 63 NRC 343 (2006); LBP-06-23, 64 NRC 275 (2006); LBP-07-4, 65 NRC 307 (2007); LBP-07-11, 66 NRC 60 (2007); LBP-08-22, 68 NRC 598 (2008)
 - issues and concerns involved in an extended 20 years of operation are not identical to the issues reviewed when a reactor facility is first built and licensed; LBP-06-10, 63 NRC 343 (2006); LBP-07-4, 65 NRC 308 (2007); LBP-07-11, 66 NRC 60 (2007)
 - license renewal safety review focuses upon those potential detrimental effects of aging that are not routinely addressed by ongoing regulatory oversight programs; LBP-06-10, 63 NRC 344 (2006); LBP-07-11, 66 NRC 61 (2007)
 - requiring a full reassessment of safety issues that were thoroughly reviewed when the facility was first licensed and continue to be routinely monitored and assessed by ongoing agency oversight and agency-mandated licensee programs would be both unnecessary and wasteful; LBP-06-10, 63 NRC 343 (2006); LBP-06-23, 64 NRC 276 (2006); LBP-07-4, 65 NRC 308 (2007); LBP-07-11, 66 NRC 60 (2007); LBP-08-22, 68 NRC 598 (2008)
 - safety contentions in license renewal proceedings must focus on topics related to the detrimental effects of aging and related time-limited issues dealt within 10 C.F.R. Part 54; LBP-06-20, 64 NRC 148 (2006)

LEGAL CITATIONS INDEX

CASES

- the detrimental effects of aging and related time-limited issues are described; LBP-07-4, 65 NRC 309 (2007)
- the license renewal process is not meant to duplicate ongoing programs that review safety at operating reactors; LBP-08-25, 68 NRC 788 (2008)
- the NRC license renewal safety review focuses upon those potential detrimental effects of aging that are not routinely addressed by ongoing regulatory oversight programs; LBP-06-23, 64 NRC 276 (2006); LBP-07-4, 65 NRC 308 (2007); LBP-08-22, 68 NRC 599 (2008)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 7, 9 (2001)
- a license renewal review does not revisit the full panoply of issues considered during review of an initial license application; CLI-06-24, 64 NRC 117 (2006)
- contentions that focus on safety issues that were thoroughly reviewed when the plant was initially licensed and are continually monitored as part of the NRC's ongoing oversight programs are outside of the scope of license renewal proceedings; LBP-06-20, 64 NRC 148 (2006)
- the scope of the health and safety review on a license renewal is limited to those potentially detrimental effects of aging that are not routinely addressed by ongoing regulatory oversight programs; CLI-06-24, 64 NRC 117 (2006)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 7-8 (2001)
- a license renewal inquiry includes age-related degradation of components that, left unmitigated, can unacceptably reduce safety margins and lead to the loss of required plant functions with a potential for offsite exposures; LBP-06-7, 63 NRC 225 (2006); LBP-06-22, 64 NRC 241 (2006)
- any safety-related opposition to license renewal can be based only on matters stemming from the aging of the facility; LBP-07-14, 66 NRC 207 n.89 (2007)
- contentions not related to the potential effects of aging are beyond the scope of a license renewal proceeding; LBP-07-11, 66 NRC 70 (2007)
- issues that concern age-related degradation, such as metal fatigue, corrosion, and thermal and radiation embrittlement, are within the scope of a license renewal proceeding; LBP-06-20, 64 NRC 148 (2006)
- some of the detrimental effects of aging and related time-limited issues are described; LBP-07-11, 66 NRC 61 (2007)
- the adverse aging effects can affect a number of reactor and auxiliary systems, including the reactor vessel, the reactor coolant system pressure boundary, steam generators, electrical cables, the pressurizer, heat exchangers, and the spent fuel pool; CLI-06-24, 64 NRC 117 (2006)
- the detrimental effects of aging that are important principally during the period of extended operation beyond the initial 40-year license term are described; LBP-06-23, 64 NRC 277 (2006)
- the relevant matters of concern in a license renewal proceeding are characterized as managing aging-related degradation; LBP-08-22, 68 NRC 601 (2008)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 7-8, 21-23 (2001)
- a license renewal proceeding focuses on those detrimental effects of aging that are not addressed as a matter of ongoing agency oversight and enforcement; CLI-07-3, 65 NRC 20 (2007)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 7-10 (2001)
- the rationale for reliance on maintenance requirements to manage aging effects of active components is discussed; CLI-08-23, 68 NRC 467 n.10 (2008)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 8 (2001)
- adverse aging effects generally are gradual and thus can be detected by programs that ensure sufficient inspections and testing; LBP-07-17, 66 NRC 340 (2007); LBP-08-22, 68 NRC 599 (2008)
- applicants for license renewal must demonstrate how their programs will be effective in managing the effect of aging during the period of extended operations and identify any additional actions that will need to be taken to adequately manage the detrimental effects of aging; LBP-08-22, 68 NRC 599, 647 (2008)
- applicants for license renewal must demonstrate how their programs will be effective in managing the effects of aging during the proposed period of extended operation at a detailed component and

LEGAL CITATIONS INDEX

CASES

structure level, rather than at a more generalized system level; LBP-06-10, 63 NRC 343 (2006); LBP-08-22, 68 NRC 599 (2008)

challenges to the current licensing basis are outside the scope of a license renewal proceeding; LBP-10-15, 72 NRC 283 (2010)

in the context of a license renewal proceeding, whether the reasonable assurance standard is satisfied is directly linked to an assessment of the adequacy of the aging management program; LBP-07-17, 66 NRC 340 (2007)

issues relating to a plant's current licensing basis are ordinarily beyond the scope of a license renewal review because those issues already are monitored, reviewed, and commonly resolved as needed by ongoing regulatory oversight; LBP-06-7, 63 NRC 198 (2006); LBP-06-22, 64 NRC 235-36, 253 (2006); LBP-08-22, 68 NRC 601-02 n.50 (2008)

license renewal applicants must demonstrate how their programs will be effective in managing the effects of aging during the proposed period of extended operation at a detailed component and structure level, rather than at a more generalized system level; CLI-06-24, 64 NRC 117 (2006); LBP-06-23, 64 NRC 275 (2006); LBP-07-11, 66 NRC 60 (2007); LBP-07-17, 66 NRC 339 (2007); LBP-08-22, 68 NRC 599 (2008)

the focus of a license renewal proceeding is on the detrimental effects of aging on reactor and auxiliary systems resulting from operation beyond the initial license term; CLI-06-17, 63 NRC 734 (2006)

to the extent that any health and safety analyses performed during the initial licensing process were limited to the initial 40-year license period, the license renewal applicant must show that it has reassessed these time-limited aging analyses and that these analyses remain valid for the period of extended operation; CLI-06-24, 64 NRC 117 (2006)

Florida Power & Light Co. (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 8-9 (2001)

even if timely, a challenge to the adequacy of the acceptance criteria or any other component of the current licensing basis is not within the scope of the license renewal proceeding; CLI-09-7, 69 NRC 272 (2009)

petitioners may not challenge licensee's current licensing basis in a license renewal proceeding because such issues are not germane to aging management concerns, previously have been the subject of thorough review and analysis, and, accordingly, need not be revisited; LBP-07-17, 66 NRC 339 n.17 (2007); LBP-08-13, 68 NRC 70 (2008)

review of a license renewal application does not reopen issues relating to a plant's current licensing basis, or any other issues that are subject to routine and ongoing regulatory oversight and enforcement; CLI-06-24, 64 NRC 118 (2006)

Florida Power & Light Co. (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 9 (2001)

"current licensing basis" is a term of art comprehending the various NRC requirements applicable to a specific plant that are in effect at the time of the license renewal application; LBP-08-13, 68 NRC 68 (2008); LBP-08-22, 68 NRC 600 n.44 (2008); LBP-08-25, 68 NRC 786 (2008)

current licensing basis represents an evolving set of requirements and commitments for a specific plant that are modified as necessary over the life of a plant to ensure continuation of an adequate level of safety; LBP-08-25, 68 NRC 786, 830 (2008)

emergency planning is one of the safety issues that need not be reexamined within the context of license renewal; LBP-06-23, 64 NRC 340 (2006); LBP-06-7, 63 NRC 226 n.36 (2006)

emergency plans are periodically reviewed to ensure they are adequate throughout the life of any plant even in the face of changing demographics and other site-related factors; LBP-07-11, 66 NRC 94 (2007)

it is unnecessary and inappropriate to throw open the full gamut of provisions in a plant's current licensing basis to reanalysis during the license renewal review; LBP-06-10, 63 NRC 344 (2006); LBP-06-23, 64 NRC 276 (2006); LBP-07-4, 65 NRC 308 (2007); LBP-07-11, 66 NRC 60 (2007); LBP-08-22, 68 NRC 599 (2008)

the current licensing basis is effectively addressed and maintained by ongoing agency oversight, review, and enforcement; LBP-07-11, 66 NRC 61 (2007)

LEGAL CITATIONS INDEX

CASES

- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 9-10 (2001)
- a plant's current licensing basis is effectively addressed and maintained by ongoing agency oversight, review, and enforcement, and issues that already are the focus of ongoing regulatory processes do not come within the NRC's safety review at the license renewal stage; LBP-07-11, 66 NRC 74 (2007)
 - consideration of emergency plans is outside the scope of a license renewal proceeding; LBP-08-13, 68 NRC 165 (2008)
 - emergency planning is excluded from license renewal proceedings because the issue is not germane to age-related degradation or unique to the period of time covered by the license renewal; LBP-06-10, 63 NRC 367 (2006); LBP-06-20, 64 NRC 148 (2006); LBP-07-4, 65 NRC 336 (2007)
 - emergency planning issues already are the focus of ongoing regulatory processes and thus do not come within NRC safety review at the license renewal stage; LBP-07-11, 66 NRC 92 (2007)
 - the current licensing basis need not be reviewed again and is not subject to attack in a license renewal proceeding; LBP-08-13, 68 NRC 68 (2008)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 10 (2001)
- a contention challenging the input data for certain parameters related to emergency planning issues in a severe accident mitigation alternatives analysis was admitted in a license renewal proceeding as an environmental issue; LBP-07-11, 66 NRC 94 (2007)
 - a contention that fails to show that current compliance with fire protection requirements is material to the findings NRC must make for granting or denying license renewal is asserted to be outside the scope of a license renewal proceeding because it does not raise any aspect of the applicants' aging management review; LBP-07-11, 66 NRC 71 (2007)
 - adjudicatory hearings in individual license renewal proceedings will share the same scope of issues as NRC Staff review, because the hearing process, like Staff's review, necessarily examines only the questions that the safety rules make pertinent; LBP-06-20, 64 NRC 159 n.32 (2006); LBP-06-23, 64 NRC 294 (2006); LBP-07-11, 66 NRC 62, 77 n.154 (2007); LBP-10-15, 72 NRC 333, 341 (2010)
 - any change to a plant's licensing basis that requires a license amendment, i.e., a change in the technical specifications, will offer an opportunity for hearing; LBP-06-10, 63 NRC 389 (2006)
 - issues such as emergency planning already are the focus of ongoing regulatory processes and thus do not come within NRC safety review at the license renewal stage; LBP-08-13, 68 NRC 148 n.642 (2008)
 - NRC's program of oversight is sufficiently broad and rigorous to establish that the added discipline of a formal license renewal review against the full range of current safety requirements would not add significantly to safety, and such a review is not needed to ensure that continued operation during the period of extended operation is not inimical to the public health and safety; LBP-06-10, 63 NRC 384 (2006)
 - perfect compliance by applicant is not required for license renewal; LBP-10-15, 72 NRC 335-36 (2010)
 - the focus of license renewal review is on plant systems, structures, and components for which current regulatory activities and requirements may not be sufficient to manage the effects of aging in the period of extended operation; LBP-06-7, 63 NRC 198-99, 224 (2006); LBP-06-10, 63 NRC 344 (2006); LBP-06-22, 64 NRC 235 (2006); LBP-06-23, 64 NRC 277 (2006); LBP-07-4, 65 NRC 309 (2007); LBP-07-11, 66 NRC 62 (2007)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 10 n.2 (2001)
- an issue can be related to plant aging and still not warrant review at the time of a license renewal application, if an aging-related issue is adequately dealt with by regulatory processes on an ongoing basis; LBP-06-10, 63 NRC 344 (2006); LBP-06-23, 64 NRC 277 (2006); LBP-07-4, 65 NRC 309 (2007); LBP-07-11, 66 NRC 62 (2007); LBP-08-22, 68 NRC 599 (2008)
 - if a structure or component is already required to be replaced at mandated, specified time periods, it would fall outside the scope of license renewal review; LBP-06-10, 63 NRC 344 (2006); LBP-07-4, 65 NRC 309 (2007); LBP-07-11, 66 NRC 62 (2007)

LEGAL CITATIONS INDEX

CASES

- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 11 (2001)
- a generic environmental impact statement provides an extensive study of potential environmental impacts of extending the operating licenses for nuclear power plants for 20 years; LBP-06-20, 64 NRC 148 (2006)
- applicants must provide plant-specific analyses of the environmental impacts characterized by the Commission as involving severity levels that might differ significantly from one plant to another, or impacts for which additional plant-specific mitigation measures should be considered; LBP-06-10, 63 NRC 346 (2006)
- Category 1 issues involve environmental effects that are essentially similar for all plants, and thus they need not be assessed repeatedly on a site-specific basis, plant-by-plant; LBP-06-20, 64 NRC 148 (2006); LBP-06-23, 64 NRC 279 (2006); LBP-07-4, 65 NRC 311 (2007); LBP-08-13, 68 NRC 67 (2008)
- Category 2 issues involve environmental impact severity levels that might differ significantly from one plant to another, or impacts for which additional plant-specific mitigation measures should be considered; LBP-06-23, 64 NRC 279 (2006); LBP-07-4, 65 NRC 311 (2007); LBP-07-11, 66 NRC 64 (2007)
- Category 2 issues must be reviewed on a site-specific basis, and accordingly, challenges relating to these issues are properly part of a license renewal proceeding; LBP-08-13, 68 NRC 67 (2008)
- environmental issues for which the Commission was not able to make generic environmental findings are designated as Category 2 matters, and applicants must provide plant-specific analyses of their environmental impacts; LBP-06-10, 63 NRC 345 (2006); LBP-06-23, 64 NRC 279 (2006)
- even where the generic environmental impact statement has found that a particular impact applies generically (Category 1), the applicant must still provide additional analysis in its environmental report if new and significant information may bear on the applicability of the Category 1 finding at its particular plant; LBP-06-20, 64 NRC 156 (2006); LBP-06-23, 64 NRC 294 (2006)
- generic issues involve environmental effects that are essentially similar for all plants, and thus they need not be assessed repeatedly on a site-specific basis, plant-by-plant; LBP-07-11, 66 NRC 64 (2007)
- in their environmental report, applicants must address environmental issues for which the Commission was not able to make generic environmental findings; LBP-07-11, 66 NRC 64 (2007)
- issuance of the 1996 generic environmental impact statement was part of an amendment of the requirements of Part 51 undertaken by the Commission to establish environmental review requirements for license renewals that were both efficient and more effectively focused; LBP-06-10, 63 NRC 345 (2006)
- issues on which the Commission can draw generic conclusions applicable to all existing nuclear power plants, or to a specific subgroup of plants, are identified as "Category 1" issues; LBP-06-10, 63 NRC 345 (2006); LBP-07-4, 65 NRC 311 (2007)
- license renewal applicants may in their site-specific environmental reports refer to and adopt the generic environmental impact findings found in Table B-1, Appendix B, Subpart A of Part 51 for all Category 1 issues; LBP-06-10, 63 NRC 345 (2006); LBP-06-23, 64 NRC 279 (2006)
- license renewal applicants must address environmental issues for which the Commission was not able to make generic environmental findings; LBP-07-4, 65 NRC 311 (2007)
- NRC's Part 51 environmental review requirements are tailored to provide an efficient and focused renewal-specific review, rather than duplicating the review required for an initial license; CLI-06-24, 64 NRC 118 (2006)
- the 1996 Generic Environmental Impact Statement for License Renewal of Nuclear Plants was part of an amendment of the requirements of Part 51 undertaken by the Commission to establish environmental review requirements for license renewals that were both efficient and more effectively focused; LBP-06-23, 64 NRC 279 (2006); LBP-07-11, 66 NRC 63 (2007)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 11-12 (2001)
- NEPA issues are divided between inadmissible Category 1 issues and Category 2 issues which must be analyzed on a site-by-site basis and thus are within the scope of license renewal proceedings; LBP-10-13, 71 NRC 678 (2010)

LEGAL CITATIONS INDEX

CASES

- plant-specific, or Category 2, issues must be addressed in a license renewal applicant's environmental report; LBP-06-20, 64 NRC 148 (2006)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 11-13 (2001)
- contentions implicating Category 2 issues ordinarily are deemed to be within the scope of license renewal proceedings; LBP-06-7, 63 NRC 199 (2006)
- the opportunity and procedures for presenting new and significant information that could undermine the findings in the GEIS, including asking for a rule waiver or filing a petition for rulemaking to change the GEIS finding, are outlined; CLI-07-3, 65 NRC 20 (2007)
- the provisions of Parts 51 and 54 relating to the scope of license renewal proceedings are discussed; LBP-06-10, 63 NRC 343 (2006)
- the scope of license renewal proceedings is quite limited under Commission rules and case law; LBP-08-22, 68 NRC 598 (2008)
- the scope of license renewal proceedings, which generally concern requests to renew 40-year operating licenses for additional 20-year terms, is discussed; LBP-06-23, 64 NRC 274 (2006)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 12 (2001)
- absent a waiver pursuant to 10 C.F.R. 2.335, Category 1 issues cannot be addressed in a license renewal proceeding; LBP-08-13, 68 NRC 67 (2008)
- although the initial requirement to discuss the extent to which adverse effects can be avoided falls upon applicants, the ultimate responsibility lies with the Staff, who must address these issues in a supplemental environmental impact statement that is specific to the particular site involved and provides the Staff's independent assessment of the applicant's environmental report; LBP-06-20, 64 NRC 149 (2006); LBP-06-23, 64 NRC 280 (2006)
- failure of an environmental report to include known new and significant information concerning a Category 1 issue cannot give rise to an admissible contention because there are three options for addressing this information that might arise after the GEIS on Category 1 issues has been finalized; LBP-06-20, 64 NRC 156-57 (2006)
- if petitioner believes there is reason to depart from the license renewal generic environmental impact statement and related regulations, its remedy is a petition for rulemaking to modify NRC rules or a petition for a waiver of the rules based on special circumstances; CLI-07-8, 65 NRC 133 (2007)
- if petitioner wants to raise its concerns that new and significant information relating to terrorism needs to be considered, it should pursue one of the three paths specified by the Commission; LBP-06-20, 64 NRC 160 (2006)
- new and significant information about a Category 1 issue is not a proper subject for a contention, absent a waiver of section 51.53(c)(3)(i); LBP-07-4, 65 NRC 311 n.134 (2007); LBP-07-11, 66 NRC 64 n.83 (2007)
- petitioners with evidence that a generic finding is incorrect for all plants may petition the Commission to initiate a fresh rulemaking or may use the SEIS notice-and-comment process to ask the NRC to forgo use of the suspect generic finding and to suspend license renewal proceedings, pending a rulemaking or updating of the GEIS; LBP-06-23, 64 NRC 295 (2006)
- petitioners with new information showing that a generic rule would not serve its purpose at a particular plant may seek a waiver of the rule; LBP-06-23, 64 NRC 295 (2006); LBP-07-11, 66 NRC 84 (2007); LBP-08-26, 68 NRC 929 n.168 (2008)
- Staff's supplemental environmental impact statement is specific to the particular site involved and provides the Staff's independent assessment of the applicant's environmental report; LBP-07-4, 65 NRC 312 (2007); LBP-07-11, 66 NRC 65 (2007)
- the final supplemental environmental impact statement must consider new and significant information on Category 1 issues; LBP-06-20, 64 NRC 149 (2006)
- the final supplemental environmental impact statement takes account of public comments, including new information on generic findings; LBP-06-20, 64 NRC 156 (2006); LBP-06-23, 64 NRC 294 n.151 (2006)
- the impact of extended operation on endangered or threatened species varies from one location to another, and is thus included within Category 2; LBP-06-10, 63 NRC 346 (2006); LBP-06-23, 64 NRC 279 (2006); LBP-07-4, 65 NRC 312 (2007); LBP-07-11, 66 NRC 64 (2007)

LEGAL CITATIONS INDEX

CASES

- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 12, 14-15 (2001)
NRC rules recognize the possibility of new and significant information calling into question prior generic findings, and a petition for rulemaking is one means to alert the Commission to new information that may render a GEIS finding incorrect; CLI-09-10, 69 NRC 527 (2009)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 13 (2001)
in the context of license renewal, the Commission's Atomic Energy Act aging-based safety review under Part 54 does not compromise or limit NEPA; LBP-10-13, 71 NRC 678 (2010); LBP-10-15, 72 NRC 288, 296, 307 n.59 (2010)
Part 54 compliance is not dependent on complete fulfillment of Part 51 requirements given that the Commission has explicitly excluded SAMA analysis from Part 54 and distinguished the safety requirements of Part 54 from the environmental evaluation commanded by Part 51; LBP-10-13, 71 NRC 691 (2010)
the Atomic Energy Act and the National Environmental Policy Act contemplate separate NRC reviews of proposed licensing actions; CLI-10-18, 72 NRC 91 (2010)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 13-14 (2001)
reliance on generic environmental impact statement tiering comports with the National Environmental Policy Act; LBP-06-20, 64 NRC 159 (2006)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 15 (2001)
pro se litigants are not exempt from contention pleading requirements; CLI-07-20, 65 NRC 502 (2007)
the Commission has determined that a number of environmental issues that might otherwise be relevant to license renewal shall be resolved generically for all plants, and such issues, classified as "Category 1" issues, are normally beyond the scope of a license renewal hearing; LBP-06-7, 63 NRC 199 (2006)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 15, 20-24 (2001)
because onsite spent fuel is a Category 1 issue, a contention challenging licensee's SAMA analysis for failing to consider the spent fuel pool is beyond the scope of a license renewal proceeding and thus not admissible; LBP-06-7, 63 NRC 202 (2006)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 19 (2001)
only Category-2 environmental issues must be addressed in an environmental report and may therefore be litigated at an adjudicatory hearing; CLI-07-16, 65 NRC 390 (2007)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 21 (2001)
Part 51 reference to SAMA analyses applies only to nuclear reactor accidents, not to spent fuel storage accidents; LBP-10-15, 72 NRC 295, 307 (2010)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 21-22 (2001)
an environmental report need not address severe accident mitigation alternatives for mitigating spent fuel pool accidents; LBP-06-20, 64 NRC 154 (2006)
for a license renewal, severe accident mitigation alternatives are not required for spent fuel pool accidents; LBP-06-20, 64 NRC 161 (2006)
no discussion of mitigation alternatives is needed in a license renewal application for a Category 1 issue; CLI-07-3, 65 NRC 21 (2007)
severe accident mitigation alternatives apply only to reactor accidents, not to spent fuel pool accidents; LBP-06-23, 64 NRC 291 (2006)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 21-23 (2001)
because onsite storage of spent fuel during the license renewal term is a Category 1 issue, and as such explicitly has been found not to warrant any additional site-specific analysis of mitigation

LEGAL CITATIONS INDEX

CASES

- measures, the required SAMA analysis for license renewal is intended to focus on reactor accidents; CLI-10-14, 71 NRC 472 (2010)
- environmental impacts from the spent fuel pool, including potential beyond-design-basis accidents and the need for mitigation measures, are addressed in NRC's generic environmental impact statement for license renewal and do not require a site-specific analysis as part of an individual license renewal environmental review; CLI-10-14, 71 NRC 471 (2010)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 22 (2001)
- for all issues designated as Category 1, the Commission has concluded that (generically) additional site-specific mitigation alternatives are unlikely to be beneficial; CLI-07-3, 65 NRC 21 (2007)
- Part 51 treats all spent fuel pool accidents, whatever their cause, as generic, Category 1, events not suitable for case-by-case adjudication; LBP-06-20, 64 NRC 157 (2006); LBP-06-23, 64 NRC 295 (2006)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 23 (2001)
- a safety-related contention regarding the impact of hurricanes or an aircraft crash on a spent fuel storage pool is outside the scope of a license renewal proceeding because it does not relate to managing the aging of systems, structures, and components; LBP-06-7, 63 NRC 226 n.36 (2006)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 23 n.14 (2001)
- Part 51, with its underlying generic environmental impact statement, precludes litigation of spent fuel pool accidents; LBP-06-20, 64 NRC 157 (2006)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 23, 24 n.18 (2001)
- to the extent petitioner believes that NRC Staff has overlooked facts indicating an inadequate safety culture as a matter separate and apart from license renewal, then its remedy is to direct Staff's attention to the supporting facts via a petition for enforcement action; CLI-10-27, 72 NRC 492 (2010)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 24-25 (2001)
- petitioner has an iron-clad obligation to examine the publicly available documentary material with sufficient care to enable it to uncover any information that could serve as the foundation for a specific contention; CLI-10-27, 72 NRC 496 (2010); LBP-08-6, 67 NRC 256 (2008)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 26 (2001)
- although complying with Commission regulations may be especially difficult for pro se petitioners, it has long been a basic principle that a person who invokes the right to participate in an NRC proceeding also voluntarily accepts the obligations attendant upon such participation; LBP-10-4, 71 NRC 243 (2010)
- to gain admission as a party, a petitioner must proffer at least one valid contention for litigation; CLI-06-9, 63 NRC 446 n.74 (2006)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-90-16, 31 NRC 509 (1990)
- contentions are inadmissible where petitioner makes minimal effort to support them; LBP-09-6, 69 NRC 415 n.234 (2009)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-90-16, 31 NRC 509, 521 & n.12 (1990)
- an allegation that some aspect of a license application is "inadequate" or "unacceptable" does not give rise to a genuine dispute unless it is supported by facts and a reasoned statement of why the application is unacceptable in some material respect; LBP-06-10, 63 NRC 341 (2006); LBP-06-23, 64 NRC 358 (2005); LBP-07-4, 65 NRC 306 (2007); LBP-07-11, 66 NRC 58 (2007); LBP-08-17, 68 NRC 442 (2008); LBP-09-18, 70 NRC 404 n.102 (2009); LBP-10-6, 71 NRC 362 (2010)

LEGAL CITATIONS INDEX

CASES

- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-90-24, 32 NRC 12, 16-17 & n.16 (1990), *aff'd*, ALAB-952, 33 NRC 521, *aff'd*, CLI-91-13, 34 NRC 185 (1991)
all six discretionary intervention factors, regardless of the result on the critical first factor, typically are examined; CLI-06-16, 63 NRC 722 n.47 (2006)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-91-2, 33 NRC 42, 47 (1991)
to establish the requisite proximity for standing, petitioner must clearly indicate where he lives and/or what contact he has with the site; LBP-10-1, 71 NRC 176 (2010); LBP-10-7, 71 NRC 411 (2010)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-01-6, 53 NRC 138 (2001)
section 51.53 of 10 C.F.R. does not require an applicant to broadly consider severe accident risks, only severe accident mitigation alternatives; LBP-06-23, 64 NRC 290 n.143 (2006)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-01-6, 53 NRC 138, 146 (2001)
under the proximity presumption, petitioner is presumed to have standing to intervene without the need to specifically plead injury, causation, and redressability if petitioner lives within 50 miles of the proposed facility; LBP-09-18, 70 NRC 395 (2009)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-01-6, 53 NRC 138, 146 (2001), *aff'd on other grounds*, CLI-01-17, 54 NRC 3 (2001)
a petitioner has standing to intervene without the need to specifically plead injury, causation, and redressability if the petitioner lives within, or otherwise has frequent contacts with, the zone of possible harm from the nuclear reactor or other source of radioactivity; LBP-06-4, 63 NRC 105 (2006); LBP-08-9, 67 NRC 427 (2008); LBP-08-17, 68 NRC 438 (2008); LBP-08-18, 68 NRC 539 (2008); LBP-08-26, 68 NRC 911 (2008)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-01-6, 53 NRC 138, 146, 148 (2001), *aff'd on other grounds*, CLI-01-17, 54 NRC 3 (2001)
for proximity-based standing, frequency of contact must reflect regular interaction with the zone of harm, not merely occasional contact; CLI-07-21, 65 NRC 524 (2007)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-01-6, 53 NRC 138, 146-50 (2001)
an individual may satisfy the standing requirements by demonstrating that his or her residence is within the geographical area that might be affected by an accidental release of fission products, and in proceedings involving nuclear power plants this area has been defined as being within a 50-mile radius of such a plant; LBP-07-4, 65 NRC 294 (2007)
based on the physical proximity of an organization's representative to the nuclear power plant, and because the affected member has authorized the petitioner organization to represent her in this proceeding, the organization has demonstrated representational standing; LBP-06-23, 64 NRC 271 (2006)
close proximity to a facility has always been deemed to be enough, standing alone, to establish the requisite interest to confer standing; LBP-06-23, 64 NRC 270 (2006); LBP-07-11, 66 NRC 52 (2007)
the Commission has clearly established a 50-mile presumption in the context of reactor licensing cases, where the potential for offsite radiological consequences is obvious; LBP-09-20, 70 NRC 577 (2009)
the proximity presumption for standing to intervene is applied in operating license renewal proceedings; LBP-06-20, 64 NRC 144 n.16 (2006)
under the proximity presumption, petitioner is presumed to have standing to intervene in a license renewal proceeding without the need specifically to plead injury, causation, and redressability if the petitioner lives within 50 miles of the nuclear power reactor; LBP-08-13, 68 NRC 60 n.18 (2008); LBP-08-26, 68 NRC 911 (2008)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-01-6, 53 NRC 138, 146-50, *aff'd on other grounds*, CLI-01-17, 54 NRC 3 (2001)
individual petitioners may demonstrate standing to participate in a proceeding based on their proximity within 50 miles of a nuclear plant; LBP-06-10, 63 NRC 328 (2006)

LEGAL CITATIONS INDEX

CASES

- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-01-6, 53 NRC 138, 148-49 (2001)
in nuclear power reactor construction permit and operating license proceedings, showing proximity within 50 miles of a plant is often enough on its own to demonstrate standing; LBP-08-6, 67 NRC 272 (2008); LBP-08-24, 68 NRC 703 (2008)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-01-6, 53 NRC 138, 148-49, *aff'd on other grounds*, CLI-01-17, 54 NRC 3 (2001)
organizational petitioners must be authorized by individual affected members who have authorized the organization to represent them; LBP-06-10, 63 NRC 328 (2006)
the distance from the significant source of radioactivity that is presumed to affect the petitioners logically must be the same 50-mile distance that forms the current basis for the proximity presumption for reactor construction permit and initial operating license proceedings; LBP-06-7, 63 NRC 197 (2006)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-01-6, 53 NRC 138, 148-50, *aff'd on other grounds*, CLI-01-17, 54 NRC 3, 26 n.20 (2001)
the proximity presumption rule for determining standing has been applied by licensing boards in license renewal cases; LBP-06-7, 63 NRC 196 (2006)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-01-6, 53 NRC 138, 149 (2001)
under the proximity presumption, petitioner is presumed to have standing to intervene without the need to specifically plead injury, causation, and redressability if petitioner lives within 50 miles of the proposed facility; LBP-09-18, 70 NRC 395 (2009)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-01-6, 53 NRC 138, 149, *aff'd on other grounds*, CLI-01-17, 54 NRC 3 (2001)
an individual may satisfy standing requirements by demonstrating that his or her residence or activities are within the geographical area that might be affected by an accidental release of fission products, and in proceedings involving nuclear power plants this area has been defined as being within a 50-mile radius of such a plant; LBP-09-4, 69 NRC 178 (2009)
in reactor license proceedings, the zone of possible harm for proximity-based standing is generally deemed to constitute the areas within a 50-mile radius of the site; LBP-08-17, 68 NRC 438 (2008)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-01-6, 53 NRC 138, 150, *aff'd on other grounds*, CLI-01-17, 54 NRC 3 (2001)
in construction permit and operating license proceedings for power reactors, petitioner is presumed to have standing to intervene if petitioner lives within, or otherwise has frequent contacts with, the zone of possible harm; CLI-09-20, 70 NRC 915 (2009)
NRC's proximity presumption does not disregard contemporaneous judicial concepts of standing, but rather the Commission applied its expertise to determine that persons living within a 50-mile radius of a nuclear reactor face a realistic threat of harm if a release of radioactive material were to occur from the facility; LBP-09-16, 70 NRC 242 (2009)
persons living within a 50-mile radius of a proposed new reactor face a realistic threat of harm if a release of radioactive material were to occur from the facility and thus are not required to make individual showings of injury, causation, and redressability; LBP-09-4, 69 NRC 183 (2009)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-01-6, 53 NRC 138, 150-51 (2001)
the prohibition against challenges to NRC regulations applies not only to a direct challenge to the validity of a regulation, but also to a claim that NRC should promulgate requirements that are more stringent than those already included in its regulations; LBP-08-15, 68 NRC 332 (2008)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-01-6, 53 NRC 138, 152 (2001)
Part 54 is confined to issues uniquely relevant to the public health and safety during the period of extended operations; LBP-10-15, 72 NRC 327 (2010)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-01-6, 53 NRC 138, 153, *aff'd on other grounds*, CLI-01-17, 54 NRC 3 (2001)
"Category 1" issues under 10 C.F.R. Part 51, Appendix B, are not subject to further evaluation in any license renewal proceeding; LBP-06-10, 63 NRC 356-57 (2006)

LEGAL CITATIONS INDEX

CASES

- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-01-6, 53 NRC 138, 154 (2001)
contentions raising legal issues, like fact-based contentions, must fall within the allowable scope of the proceeding to be admissible; LBP-10-17, 72 NRC 511 (2010)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-01-6, 53 NRC 138, 159 (2001)
contentions that advocate stricter requirements than agency rules impose or that otherwise seek to litigate a generic determination established by a Commission rulemaking are inadmissible; LBP-07-3, 65 NRC 252 (2007); LBP-09-3, 69 NRC 152 (2009); LBP-10-7, 71 NRC 419 (2010); LBP-10-21, 72 NRC 651 (2010)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-01-6, 53 NRC 138, 159, *aff'd on other grounds*, CLI-01-17, 54 NRC 3 (2001)
contentions that advocate more stringent requirements than NRC rules impose or that otherwise seek to litigate a generic determination that the Commission has established by rulemaking, or that raise a matter that is or is about to become the subject of rulemaking are barred; LBP-07-10, 66 NRC 22 (2007); LBP-08-16, 68 NRC 383 (2008); LBP-08-17, 68 NRC 441 (2008)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-08-18, 68 NRC 533 (2008)
hearing request is denied for failure to demonstrate standing, impermissible challenge to Staff's significant hazards consideration, and failure to proffer an admissible contention; LBP-08-20, 68 NRC 552 (2008)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-08-18, 68 NRC 533, 543 (2008)
a meritless petition warrants denial, not sanctions; LBP-08-19, 68 NRC 547 (2008)
- FMRI, Inc. [formerly Fansteel, Inc.]* (Muskogee, Oklahoma Facility), LBP-04-8, 59 NRC 266, 275 (2004)
despite lack of compliance with various agency NUREGs, a decommissioning plan is lawful because it acknowledges the fiscal realities of the licensee's bankruptcy and is consistent with the mandate that the plan be completed as soon as practicable and adequately protect the health and safety of workers and the public; LBP-08-4, 67 NRC 115 n.65 (2008)
- Food and Drug Administration v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000)
common sense to a degree must guide as to the manner in which Congress is likely to delegate a policy decision of economic and political magnitude to an administrative agency; LBP-10-11, 71 NRC 625 (2010)
the words of a statute must be read in their context and with a view to their place in the overall statutory scheme; LBP-10-11, 71 NRC 623 (2010); LBP-10-20, 72 NRC 610 (2010)
- Food and Drug Administration v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 143 (2000)
a specific policy embodied in a later federal statute should control the construction of the earlier statute, even though it has not been expressly amended; LBP-10-11, 71 NRC 623 (2010)
- Forest Guardians v. U.S. Forest Service*, 495 F.3d 1162, 1172 (10th Cir. 2007)
NEPA requires federal agencies to consider the likely environmental impacts of the preferred course of action as well as reasonable alternatives; LBP-10-24, 72 NRC 729 n.16 (2010)
- Fort Stewart Schools v. Federal Labor Relations Authority*, 495 U.S. 641, 654 (1990)
it is a familiar rule of administrative law that an agency must abide by its own regulations; LBP-06-4, 63 NRC 109 n.38 (2006)
- Founding Church of Scientology v. Kelley*, 77 F.R.D. 378, 380-81 (D.D.C. 1977)
government stays are requested because of concerns that broad disclosure of the essentials of prosecution's case may lead to perjury and manufactured evidence, revealing the identity of prospective witnesses may create the opportunity for intimidation, and criminal defendants may unfairly surprise the prosecution at trial with information developed through discovery, while the self-incrimination privilege would effectively block any attempts by the Government to discover relevant evidence from the defendants; LBP-06-13, 63 NRC 539 n.48 (2006)
- Free Transcripts of Adjudicatory Proceedings — Nuclear Regulatory Commission*, B-200585, 1981 WL 23995, 3 (Comp. Gen. 1981)
a Commission action does not violate section 502 of the Energy and Water Development Appropriations Act simply because it incidentally eases the cost burden on intervenors by, for

LEGAL CITATIONS INDEX

CASES

- example, providing free hearing transcripts to all parties to Commission proceedings, even though the proposal would technically provide monetary assistance to intervenors; LBP-09-1, 69 NRC 44 n.136 (2009)
- licensing board authority to sanction parties that violate NRC rules does not have the purpose of relieving intervenors of their adjudicatory expenses, but would merely have an incidental effect, as part of an overall effort to ensure that the licensing process moves along at an expeditious pace, which in no way singles out intervenors as a special class; LBP-09-1, 69 NRC 44 (2009)
- Friedman v. Bache Halsey Stuart Shields, Inc.*, 738 F.2d 1336, 1344 (D.C. Cir. 1984)
- although information available under FOIA is likely to be available through discovery, information unavailable under FOIA is not necessarily unavailable through discovery; LBP-06-25, 64 NRC 384 n.68 (2006)
- Friends of Endangered Species, Inc. v. Jantzen*, 760 F.2d 976, 986 (1985)
- the National Environmental Policy Act does not require a decision whether an environmental impact report is based on the best scientific methodology available, nor does NEPA require resolution of disagreements among various scientists as to methodology; CLI-08-26, 68 NRC 518 n.51 (2008)
- Friends of Southeast's Future v. Morrison*, 153 F.3d 1059, 1065 (9th Cir.1998)
- existence of reasonable but unexamined alternatives renders an environmental impact statement inadequate; LBP-10-24, 72 NRC 756 (2010)
- Friends of Southeast's Future v. Morrison*, 153 F.3d 1059, 1067 (9th Cir. 1998)
- in selecting the preferred alternative under NEPA, it is appropriate for an agency to consider the stated purposes of a project; CLI-06-10, 63 NRC 468 (2006)
- Friends of the Boundary Waters Wilderness v. Dombeck*, 164 F.3d 1115, 1128 (8th Cir. 1999)
- existence of a viable but unexamined alternative renders an environmental impact statement inadequate; LBP-10-10, 71 NRC 584-85 n.288 (2010)
- Friends of the Earth, Bluewater Network Division v. U.S. Department of Interior*, 478 F. Supp. 2d 11, 16 (D.D.C. 2007)
- while standing to challenge uniform, systemwide regulations requires only that an association identify a single member with standing as to those counts and at least one unit, in order to show standing to challenge site-specific regulations at 18 individual units, an association has to identify a member affected by each site-specific action; LBP-09-1, 69 NRC 23 n.43 (2009)
- Friends of the Earth, Inc. v. Gaston Copper Recycling Corp.*, 204 F.3d 149, 160 (4th Cir. 2000) (en banc)
- federal courts of appeal have failed to reach a consensus on the question whether a risk of future injury must exceed a numerical threshold; LBP-09-4, 69 NRC 184 (2009)
- Friends of the Earth, Inc. v. Hintz*, 800 F.2d 822, 833 (9th Cir. 1986)
- agencies are not required to conduct a further study of alternatives or to independently find possible sites overlooked by the applicant; LBP-07-9, 65 NRC 609 (2007)
- Friends of the Earth, Inc. v. Laidlaw Environmental Services, Inc.*, 528 U.S. 167, 180-81 (2000)
- basic elements of constitutional standing are set forth; LBP-09-4, 69 NRC 182 (2009)
- Friends of the Earth, Inc. v. Laidlaw Environmental Services, Inc.*, 528 U.S. 167, 182-84 (2000)
- to establish injury-in-fact, petitioners do not have to show that pollutant discharges have actually harmed the environment; LBP-09-4, 69 NRC 185 n.44 (2009)
- Friends of the Earth, Inc. v. Laidlaw Environmental Services, Inc.*, 528 U.S. 167, 185 (2000)
- plaintiff in federal court must demonstrate standing separately for each form of relief sought and for each separate claim; LBP-09-1, 69 NRC 19, 21-22 (2009)
- Frothingham v. Mellon*, 262 U.S. 447, 486-87 (1923)
- standing on the part of plaintiffs is found at a bare minimum as municipal taxpayers under case law in which the peculiar relation of the corporate taxpayer to the corporation distinguishes such a case from the general bar on taxpayer suits; LBP-09-1, 69 NRC 23 (2009)
- Fuel Safe Washington v. Federal Energy Regulatory Commission*, 389 F.3d 1313, 1329 (10th Cir. 2004)
- a final environmental impact statement need only furnish such information as appears to be reasonably necessary under the circumstances for evaluation of a proposed action; CLI-06-15, 63 NRC 706 (2006)

LEGAL CITATIONS INDEX

CASES

- Fusari v. Steinberg*, 419 U.S. 379, 391 (1975) (Burger, C.J., concurring)
counsel have a broader, more general duty of candor and good faith, which is related to the duty to update a tribunal about any development that may conceivably affect the outcome of litigation; LBP-06-10, 63 NRC 370 (2006)
- GE-Hitachi Global Laser Enrichment LLC* (GLE Commercial Facility), CLI-10-4, 71 NRC 56, 63 (2010)
nontimely intervention petitions/contentions, amended petitions, and supplemental petitions will not be entertained absent a determination based on a balancing of section 2.309(c)(1)(i)-(viii) factors; LBP-10-1, 71 NRC 187 (2010)
- General Dynamics Corp. v. Selb Manufacturing Co.*, 481 F.2d 1204, 1212 (8th Cir. 1973)
a party seeking to indefinitely postpone civil discovery has the burden to make a particular and specific demonstration of fact, as distinguished from stereotyped and conclusory statements; LBP-06-13, 63 NRC 540 n.52 (2006)
- General Electric Co.*, 3 AEC 99 (1966)
the words “owned, controlled, or dominated” refer to relationships where the will of one party is subjugated to the will of another; LBP-09-4, 69 NRC 192 (2009)
- General Electric Co.*, 3 AEC 99, 101 (1966)
a facility is foreign-owned when a foreign interest has the power, direct or indirect, whether or not exercised, to direct or decide matters affecting the management or operations of the applicant; LBP-08-6, 67 NRC 337 n.545 (2008)
corporate relationships where an alien has the power to direct the actions of the licensee are prohibited; LBP-09-4, 69 NRC 193 (2009)
the prohibition on foreign ownership of a licensee is oriented toward safeguarding the national defense and security of the United States; LBP-09-4, 69 NRC 193 (2009)
- General Electric Co.* (GE Morris Operation Spent Fuel Storage Facility), LBP-82-14, 15 NRC 530, 532 (1982)
if there is doubt as to whether the parties should be required to proceed further, a motion for summary disposition should be denied; LBP-07-12, 66 NRC 127-28 (2007)
- General Electric Co.* (GE Test Reactor, Vallecitos Nuclear Center), LBP-79-28, 10 NRC 578, 582-83 (1979)
one does not acquire standing as a consequence of being a member of a legislative tribunal; LBP-07-5, 65 NRC 351 (2007)
- General Public Utilities Nuclear Corp.* (Oyster Creek Nuclear Generating Station), LBP-96-23, 44 NRC 143, 160-61 (1996)
discretionary intervention is an extraordinary procedure that is rarely granted; CLI-06-16, 63 NRC 716 (2006)
- General Public Utilities Nuclear Corp.* (Three Mile Island Nuclear Station, Unit 1), ALAB-881, 26 NRC 465, 473 (1987)
although the Commission has authority to make de novo findings of fact, it does not do so where a licensing board has issued a plausible decision that rests on carefully rendered findings of fact; CLI-09-7, 69 NRC 259 (2009); CLI-10-5, 71 NRC 98 (2010); CLI-10-18, 72 NRC 72-73 (2010)
the Commission will not overturn a hearing judge’s findings simply because the Commission might have reached a different result; CLI-10-23, 72 NRC 241 n.153 (2010)
to prevail on appeal, petitioners must show clear error that compels a different result; CLI-09-7, 69 NRC 264 (2009)
- General Public Utilities Nuclear Corp.* (Three Mile Island Nuclear Station, Unit 1), ALAB-881, 26 NRC 465, 476 (1987)
contentions must be within the scope of the proceeding as defined by the Commission in its initial hearing notice and order referring the proceeding to the licensing board; LBP-08-16, 68 NRC 384 (2008)
- Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Georgia), CLI-95-10, 42 NRC 1, 3 (1995)
petitioners are precluded from using discovery as a device to uncover additional information supporting the admissibility of contentions; CLI-07-18, 65 NRC 416 (2007)

LEGAL CITATIONS INDEX

CASES

- Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Georgia), CLI-95-12, 42 NRC 111, 113-17 (1995)
- although a research reactor is much smaller than a power reactor, it is not a stretch of the imagination to presume some offsite injury due to the release of noble gases; LBP-07-14, 66 NRC 183 (2007)
- Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Georgia), CLI-95-12, 42 NRC 111, 115 (1995)
- although boards may view petitioner's supporting information in a light favorable to the petitioner, it cannot do so by ignoring our contention admissibility rules, which require petitioner (not the board) to supply all of the required elements for a valid intervention petition; CLI-10-20, 72 NRC 192 n.39 (2010)
- an organization claiming representational standing is required to demonstrate that an individual member has standing to participate, and has authorized the organization to represent his or her interests; CLI-08-19, 68 NRC 259 (2008); CLI-10-1, 71 NRC 7 n.31 (2010); LBP-09-13, 70 NRC 177-78 n.20 (2009); LBP-10-16, 72 NRC 382 n.49 (2010)
- based on the physical proximity of an organization's representative to nuclear power plant, and because the affected member has authorized the petitioner organization to represent her in this proceeding, the organization has demonstrated representational standing; LBP-06-23, 64 NRC 271 (2006)
- for an organizational petitioner to establish standing, it must show immediate or threatened injury to either its organizational interests or to the interest of identified members; LBP-08-6, 67 NRC 271 (2008); LBP-08-24, 68 NRC 702 (2008); LBP-09-13, 70 NRC 177 n.20 (2009); LBP-09-17, 70 NRC 322 (2009); LBP-10-16, 72 NRC 382 n.49 (2010)
- in assessing an intervention petition to determine whether all elements are met, the presiding officer is to construe the petition in favor of the petitioner; LBP-06-20, 64 NRC 144 (2006); LBP-07-3, 65 NRC 250 (2007); LBP-07-10, 66 NRC 15 (2007); LBP-07-11, 66 NRC 53 (2007); LBP-07-14, 66 NRC 188 (2007); LBP-08-6, 67 NRC 270 (2008); LBP-08-16, 68 NRC 378 (2008); LBP-08-17, 68 NRC 439 (2008); LBP-08-21, 68 NRC 559 (2008); LBP-08-26, 68 NRC 912 (2008); LBP-09-1, 69 NRC 17 (2009); LBP-09-2, 69 NRC 93 (2009); LBP-09-3, 69 NRC 149-50 (2009); LBP-09-6, 69 NRC 382 (2009); LBP-09-10, 70 NRC 70 (2009); LBP-09-18, 70 NRC 396 (2009); LBP-09-21, 70 NRC 591 (2009); LBP-10-1, 71 NRC 179 (2010); LBP-10-4, 71 NRC 230 (2010); LBP-10-15, 72 NRC 276 (2010); LBP-10-21, 72 NRC 639-40 (2010)
- individual petitioners may demonstrate standing to participate in a proceeding based on their proximity within 50 miles of a nuclear plant; LBP-06-10, 63 NRC 328 (2006)
- intervention petitioners must allege a concrete and particularized injury that is fairly traceable to the challenged action and is likely to be redressed by a favorable decision; LBP-06-4, 63 NRC 103 (2006); LBP-07-14, 66 NRC 182 (2007); LBP-08-24, 68 NRC 701 (2008); LBP-09-16, 70 NRC 240 (2009)
- licensing boards must assess intervention petitions to determine whether elements for standing are met even though if there are no objections to petitioner's standing; LBP-10-21, 72 NRC 639-40 (2010)
- the character or integrity of an applicant is a proper consideration in a licensing proceeding; LBP-09-6, 69 NRC 458 (2009)
- to establish organizational standing, an organization must demonstrate that the action at issue will cause an injury-in-fact to the organization's interests and the injury is within the zone of interests protected by NEPA or the AEA; LBP-09-13, 70 NRC 178 (2009); LBP-10-16, 72 NRC 383 (2010)
- when assessing whether petitioner has set forth a sufficient interest to intervene, the Commission applies traditional judicial concepts of standing; LBP-06-4, 63 NRC 103 (2006); LBP-06-10, 63 NRC 327 (2006); LBP-06-23, 64 NRC 270 (2006); LBP-07-4, 65 NRC 293 (2007); LBP-07-11, 66 NRC 52 (2007); LBP-07-14, 66 NRC 182 (2007); LBP-08-6, 67 NRC 271 (2008); LBP-09-6, 69 NRC 382 (2009); LBP-09-16, 70 NRC 240 (2009); LBP-09-17, 70 NRC 321-22 n.30 (2009); LBP-10-4, 71 NRC 228 (2010)
- where a facility will not be located within an Indian tribe's boundaries, the tribe must meet the standing requirements imposed by 10 C.F.R. 2.309(d)(1); LBP-10-16, 72 NRC 390-91 (2010)

LEGAL CITATIONS INDEX

CASES

- Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Georgia), CLI-95-12, 42 NRC 111, 115-17 (1995)
Commission precedents describing the requirements for establishing representational and organizational standing are longstanding; LBP-09-5, 69 NRC 311 n.6 (2009)
- Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Georgia), CLI-95-12, 42 NRC 111, 116 (1995)
a facility that will handle large amounts of fissile and fissionable material presents an obvious potential for offsite consequences over the area in which its affiants reside; LBP-07-14, 66 NRC 186 (2007)
even in those nonreactor construction permit/operating license cases involving an increased potential for offsite consequences in which proximity can be the primary basis for establishing standing, the distance at which a petitioner can be presumed to be affected must take into account the nature of the proposed action and the significance of the radioactive source; CLI-10-20, 72 NRC 188 (2010); LBP-07-10, 66 NRC 15 (2007); LBP-07-14, 66 NRC 183 (2007); LBP-09-20, 70 NRC 577 (2009)
in an uprate proceeding, demonstrating proximity-based standing requires a determination that the proposed action involves a significant source of radioactivity producing an obvious potential for offsite consequences; LBP-06-4, 63 NRC 105 (2006); LBP-08-9, 67 NRC 427 (2008)
licensing board determinations on standing involve a reasonable degree of discretion; LBP-08-6, 67 NRC 277 (2008)
- Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Georgia), CLI-95-12, 42 NRC 111, 116-17 (1995)
daily commute near vicinity of a reactor is sufficient to establish standing; LBP-08-9, 67 NRC 429 n.39 (2008)
in determining whether petitioner has met requirements for standing, the board must construe the petition in favor of the petitioner; LBP-08-9, 67 NRC 427 (2008)
in proceedings that do not involve nuclear power plants, whether and at what distance a petitioner can be presumed to be affected must be judged on a case-by-case basis, taking into account the nature of the proposed action and the significance of the radioactive source; LBP-06-4, 63 NRC 106 (2006); LBP-07-14, 66 NRC 183 (2007); LBP-08-6, 67 NRC 272 (2008); LBP-08-9, 67 NRC 427 (2008); LBP-09-28, 70 NRC 1024 (2009); LBP-10-4, 71 NRC 229 (2010)
petitioner whose daily commute took her within less than one-half mile of a research reactor had standing based on the obvious potential for offsite consequences; CLI-10-7, 71 NRC 139 n.31 (2010)
petitioner whose office was located within one-half mile from a research reactor may be presumed to be affected by operation of the facility; CLI-10-7, 71 NRC 139 n.31 (2010)
the Commission has accepted a proximity presumption granting standing to residents within 50 miles of a reactor, but has not accepted any such presumption in nonreactor cases; LBP-07-14, 66 NRC 178 (2007)
- Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Georgia), CLI-95-12, 42 NRC 111, 117 (1995)
daily commute taking petitioner in front of a nuclear power plant entrance is sufficient to establish injury-in-fact; LBP-07-10, 66 NRC 21 n.14 (2007)
- Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Georgia), CLI-95-12, 42 NRC 111, 118 (1995)
although support for a contention may be weak and the contention may be technically imperfect, it may still raise a valid and significant issue with reasonably specific factual and legal allegations and be sufficient to support further inquiry; LBP-06-10, 63 NRC 381 (2006); LBP-10-10, 71 NRC 580 (2010); LBP-10-24, 72 NRC 756-57 (2010)
although the contention admissibility rule imposes on a petitioner the burden of going forward with a sufficient factual basis, it does not shift the ultimate burden of proof from applicant to petitioner; LBP-10-24, 72 NRC 756-57 (2010)
at the contention admissibility stage, petitioner need not proffer facts in formal affidavit or evidentiary form, sufficient to withstand a summary disposition motion, but it must present sufficient information to show a genuine dispute and reasonably indicate that a further inquiry is appropriate; LBP-06-10, 63 NRC 342 (2006); LBP-08-6, 67 NRC 292 (2008); LBP-09-17, 70 NRC 328 (2009); LBP-10-24, 72 NRC 756-57 (2010)

LEGAL CITATIONS INDEX

CASES

- demonstration that intervention petitioners have expert assistance to address the issues they raise is sometimes in the form of an affidavit or written statement of an expert's opinion, but this is not required; LBP-06-10, 63 NRC 380 (2006)
- petitioner's allegations of several serious safety problems that had persisted with respect to the reactor over a period of years are a legitimate attack on management quality and integrity; CLI-09-9, 69 NRC 355 n.129 (2009)
- the contention admissibility rules do not require a petitioner to prove its case at the contention stage; LBP-06-10, 63 NRC 342 (2006); LBP-10-24, 72 NRC 756-57 (2010)
- the level of support necessary for an admissible contention is explained; LBP-10-24, 72 NRC 756-57 (2010)
- the scope of a proceeding generally is defined by the Commission's notice of opportunity for hearing; LBP-06-12, 63 NRC 420 (2006)
- Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Georgia), CLI-95-12, 42 NRC 111, 120 (1995)
- a license renewal proceeding is an appropriate time to review the adequacy of a licensee's corporate organization and the integrity of its management; CLI-09-9, 69 NRC 355 n.126 (2009); LBP-08-24, 68 NRC 728, 753 (2008); LBP-10-15, 72 NRC 337 (2010)
- allegations of management improprieties must be of more than historical interest; CLI-06-10, 63 NRC 464 (2006); CLI-09-9, 69 NRC 355 (2009); CLI-10-9, 71 NRC 255 (2010); LBP-09-6, 69 NRC 467 n.563 (2009)
- although applicant's past management practices may help indicate whether a licensee will comply with agency standards, that performance must bear on the licensing action currently under review; LBP-10-15, 72 NRC 330 n.86, 334-45 (2010)
- to provide the basis of an admissible contention, allegations of management improprieties or lack of integrity must relate directly to the currently proposed licensing action; LBP-08-15, 68 NRC 327 (2008)
- Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Georgia), CLI-95-12, 42 NRC 111, 120-21 (1995)
- as long as petitioner alleges, with sufficient support, that applicant's bad character or lack of integrity has direct and obvious relevance to the licensing action at issue in the proceeding, a character-based contention is admissible; LBP-09-6, 69 NRC 466, 467, 473 (2009)
- Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Georgia), CLI-95-12, 42 NRC 111, 121 (1995)
- allegations of historical improprieties are relevant in a license renewal proceeding because NRC must assure the public that the facility's current management encourages a safety-conscious attitude and must provide reasonable assurance that the facility can be safely operated; LBP-08-24, 68 NRC 729 (2008)
- Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Georgia), LBP-95-6, 41 NRC 281, 300 (1995)
- petitioner's inaccurate reading and presentation of applicant's spent fuel storage plan cannot serve as a litigable basis for a contention; LBP-09-27, 70 NRC 1008 (2009)
- Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Georgia), LBP-95-6, 41 NRC 281, 300, *vacated in part and remanded on other grounds*, CLI-95-10, 42 NRC 1, *aff'd in part on other grounds*, CLI-95-12, 42 NRC 111 (1995)
- if petitioner neglects to provide the requisite support for its contentions, the board may not make assumptions of fact that favor the petitioner or supply information that is lacking; LBP-08-9, 67 NRC 433 (2008)
- Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Georgia), LBP-95-6, 41 NRC 281, 305, *vacated in part and remanded on other grounds*, CLI-95-10, 42 NRC 1, *and aff'd in part*, CLI-95-12, 42 NRC 111 (1995)
- a board cannot be expected to sift through reams of data to determine whether a contention is admissible; LBP-07-3, 65 NRC 262-63 n.6 (2007)
- although NRC may reasonably accommodate pro se petitioners who are not technically perfect in their pleadings, such parties must still meet the basic requirements of the contention admissibility rules,

LEGAL CITATIONS INDEX

CASES

- and if these are not met, boards may not fill in any missing support, but, rather, are legally required to deny the contention; LBP-06-10, 63 NRC 340 (2006); LBP-07-4, 65 NRC 340 n.286 (2007)
- contentions that fail to meet the pleading requirements are subject to dismissal; LBP-07-11, 66 NRC 70 (2007)
- if petitioner neglects to provide the requisite support for its contentions, the board may not make assumptions of fact that favor the petitioner or supply information that is lacking; LBP-06-20, 64 NRC 150 (2006); LBP-06-23, 64 NRC 355 (2005); LBP-07-3, 65 NRC 253 (2007); LBP-07-10, 66 NRC 23 (2007); LBP-07-16, 66 NRC 288 (2007); LBP-08-13, 68 NRC 63 (2008); LBP-08-16, 68 NRC 385 (2008); LBP-08-26, 68 NRC 918 (2008); LBP-09-3, 69 NRC 153 (2009); LBP-09-26, 70 NRC 954 (2009); LBP-10-6, 71 NRC 361, 380 (2010); LBP-10-7, 71 NRC 420 (2010)
- petitioner must present factual information and expert opinions necessary to support its contention adequately; LBP-06-10, 63 NRC 340 (2006); LBP-06-23, 64 NRC 355 (2005); LBP-07-3, 65 NRC 253 (2007); LBP-07-10, 66 NRC 23 (2007); LBP-07-16, 66 NRC 287 (2007); LBP-08-13, 68 NRC 63 (2008); LBP-08-16, 68 NRC 384 (2008); LBP-09-3, 69 NRC 153 (2009); LBP-09-4, 69 NRC 204 n.129 (2009); LBP-09-26, 70 NRC 954 (2009); LBP-10-6, 71 NRC 360 (2010); LBP-10-7, 71 NRC 420 (2010)
- Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Georgia), LBP-95-19, 42 NRC 191, 194 (1995)
- mootness occurs when a justiciable controversy no longer exists; LBP-10-10, 71 NRC 540 (2010)
- Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Georgia), LBP-95-23, 42 NRC 215, 217 (1995)
- where a petitioner is accorded standing in one proceeding, that petitioner need not make a separate demonstration of standing in another proceeding regarding that same facility and the same parties; LBP-07-10, 66 NRC 19 n.9 (2007); LBP-07-14, 66 NRC 189 (2007); LBP-08-24, 68 NRC 703 (2008)
- Georgia Power Co.* (Alvin W. Vogtle Nuclear Plant, Units 1 and 2), DD-79-18, 10 NRC 617, 619-20 (1979)
- joint ventures are common within the nuclear industry and thus merit consideration in the alternatives analysis; LBP-07-9, 65 NRC 634 (2007)
- Georgia Power Co.* (Vogtle Electric Generating Plant, Units 1 and 2), ALAB-872, 26 NRC 127, 136 (1987)
- when a contention is based on a factual underpinning in a document that has been essentially repudiated by the source of that document, the contention may be dismissed unless the intervenor offers another independent source; LBP-10-9, 71 NRC 516 (2010)
- Georgia Power Co.* (Vogtle Electric Generating Plant, Units 1 and 2), CLI-92-3, 35 NRC 63, 66 (1992)
- fairness requires that all participants in NRC adjudicatory proceedings abide by its procedural rules, especially those who are cognizant of those rules and represented by counsel; CLI-10-12, 71 NRC 327 (2010)
- lack of a brief is sufficient reason, without more, to reject petitioner's "appeal"; CLI-06-6, 63 NRC 163 (2006)
- Georgia Power Co.* (Vogtle Electric Generating Plant, Units 1 and 2), CLI-93-16, 38 NRC 25 (1993)
- although applicant's past management practices may help indicate whether a licensee will comply with agency standards, that performance must bear on the licensing action currently under review; LBP-10-15, 72 NRC 329-30 n.86 (2010)
- circumstances of the high-level waste repository proceeding are quite different from cases in which the NRC considers the character and competence of a private enterprise, not under the government's control; CLI-09-14, 69 NRC 605 (2009)
- the character or integrity of an applicant is a proper consideration in a licensing proceeding; LBP-09-6, 69 NRC 458 (2009)
- Georgia Power Co.* (Vogtle Electric Generating Plant, Units 1 and 2), CLI-93-16, 38 NRC 25, 30 (1993)
- as part of its licensing and oversight responsibilities, the Commission may consider the adequacy of a licensee's corporate organization and the integrity of its management; LBP-10-15, 72 NRC 337 (2010)

LEGAL CITATIONS INDEX

CASES

- Georgia Power Co.* (Vogtle Electric Generating Plant, Units 1 and 2), CLI-93-16, 38 NRC 25, 30-31 (1993)
lack of either technical competence or character qualifications on the part of licensee or applicant is sufficient grounds for the revocation of a license or the denial of a license application; LBP-09-6, 69 NRC 469 n.584 (2009)
- Georgia Power Co.* (Vogtle Electric Generating Plant, Units 1 and 2), CLI-93-16, 38 NRC 25, 31 (1993)
in making determinations about integrity or character, the Commission may consider evidence bearing upon the licensee's candor, truthfulness, willingness to abide by regulatory requirements, and acceptance of responsibility to protect public health and safety; LBP-09-6, 69 NRC 466 (2009)
past performance of management or high-ranking officers, as reflected in deliberate violations of regulations or untruthful reports to the Commission, may indicate whether a licensee will comply with agency standards, and will candidly respond to NRC inquiries; LBP-09-6, 69 NRC 466 (2009)
- Georgia Power Co.* (Vogtle Electric Generating Plant, Units 1 and 2), CLI-93-16, 38 NRC 25, 32 (1993)
a materials license amendment proceeding is not an appropriate forum to throw open an opportunity to engage in a free-ranging inquiry into the character of the licensee; LBP-09-1, 69 NRC 49 (2009)
a relatively high threshold exists for the admission of contentions alleging that applicant or its management lack integrity or are guilty of improprieties such that the license being sought should not be granted; LBP-10-15, 72 NRC 337 (2010)
- Georgia Power Co.* (Vogtle Electric Generating Plant, Units 1 and 2), CLI-93-16, 38 NRC 25, 35 (1993)
regular but intermittent residence 1 week a month in a house 35 miles from a nuclear power plant is sufficient to establish standing; LBP-07-10, 66 NRC 17 (2007)
significant contacts with an affected area can be sufficient to establish standing, even when full-time residence within the 50-mile zone is not shown; LBP-07-4, 65 NRC 296 (2007)
- Georgia Power Co.* (Vogtle Electric Generating Plant, Units 1 and 2), CLI-93-16, 38 NRC 25, 36 (1993)
license amendment proceedings are not a forum to address past violations or accidents that have no direct bearing on the proposed amendment; CLI-09-12, 69 NRC 560 (2009)
- Georgia Power Co.* (Vogtle Electric Generating Plant, Units 1 and 2), CLI-93-16, 38 NRC 25, 36, 39-42 (1993)
as long as petitioner alleges, with sufficient support, that applicant's bad character or lack of integrity has direct and obvious relevance to the licensing action at issue in the proceeding, a character-based contention is admissible; LBP-09-6, 69 NRC 466, 467, 473 (2009)
- Georgia Power Co.* (Vogtle Electric Generating Plant, Units 1 and 2), CLI-93-16, 38 NRC 25, 41 (1993)
a genuine dispute exists despite the fact that character or integrity is not required by regulation to be addressed in the license application; LBP-09-6, 69 NRC 468 (2009)
- Georgia Power Co.* (Vogtle Electric Generating Plant, Units 1 and 2), CLI-94-5, 39 NRC 190, 193 (1994)
where the adverse impact of a release would occur now, the alleged harm is immediate for purpose of interlocutory appeal; CLI-10-29, 72 NRC 561 n.32 (2010)
- Georgia Power Co.* (Vogtle Electric Generating Plant, Units 1 and 2), CLI-94-5, 39 NRC 190, 197 (1994)
a document is predecisional when it was prepared before the adoption of an agency decision and specifically prepared to assist the decisionmaker in arriving at his or her decision; LBP-06-25, 64 NRC 381 (2006)
a document must be predecisional and deliberative to be categorized as deliberative process; LBP-06-25, 64 NRC 381 (2006)
absent support to the contrary, NRC declines to assume that licensees will contravene its regulations; LBP-06-27, 64 NRC 454 n.39 (2006)
all levels of NRC adjudicators have consistently applied the deliberative process privilege; LBP-06-25, 64 NRC 381 (2006)
the exemption of interagency or intra-agency memoranda or letters that would not be available by law to a party from disclosure is meant to encompass the common-law discovery exemptions for attorney work product and government deliberative process; LBP-06-25, 64 NRC 380 (2006)
- Georgia Power Co.* (Vogtle Electric Generating Plant, Units 1 and 2), CLI-94-5, 39 NRC 190, 198 (1994)
analysis of whether deliberative process privilege applies turns on three factors under 10 C.F.R. 2.709(d) and the overriding-need test; LBP-06-25, 64 NRC 380 (2006)
materials are deliberative if they reflect a consultative process; LBP-06-25, 64 NRC 381 (2006)
once material has been determined to be deliberative process, the litigant must demonstrate an overriding need for the material; LBP-06-25, 64 NRC 390 (2006)

LEGAL CITATIONS INDEX

CASES

- Georgia Power Co.* (Vogtle Electric Generating Plant, Units 1 and 2), CLI-94-5, 39 NRC 190, 200 (1994)
a licensing board considered the withholding of an OI Report for deliberative process reasons, but it was planned that the entire report would be released after the Commission made its final decision; LBP-06-25, 64 NRC 389 n.91 (2006)
- Georgia Power Co.* (Vogtle Electric Generating Plant, Units 1 and 2), CLI-95-15, 42 NRC 181 (1995)
although the NRC public website states that SUNSI encompasses a wide variety of categories (e.g., personnel privacy, attorney-client privilege, confidential source), there is no legal basis for sweeping aside well-established and long-recognized privileges such as the Privacy Act, 5 U.S.C. § 552(a), and the attorney-client privilege; LBP-10-2, 71 NRC 200 n.29 (2010)
the Commission rejected a subpoena issued in a proceeding before a panel of the Atomic Safety and Licensing Board; CLI-08-6, 67 NRC 181 (2008)
- Georgia Power Co.* (Vogtle Electric Generating Plant, Units 1 and 2), CLI-95-15, 42 NRC 181, 184 (1995)
to be "irreparable," the harm must be of a kind that cannot be reversed on appeal, as when the challenged order would reveal safeguards or privileged information to persons not authorized to review it; CLI-08-2, 67 NRC 36 n.20 (2008)
- Georgia Power Co.* (Vogtle Electric Generating Plant, Units 1 and 2), LBP-84-35, 20 NRC 887, 893-94 (1984)
to meet its burden to justify certification of its request to waive 10 C.F.R. 51.53(b), 51.95(b), and 51.106(c), petitioner must make a prima facie showing that the proposed facility would not be needed to meet increased energy needs or to replace older, less economical operating capacity, and that there are viable alternatives likely to exist that could tip the NEPA cost-benefit balance against issuance of the operating license; LBP-10-12, 71 NRC 663 (2010)
- Georgia Power Co.* (Vogtle Electric Generating Plant, Units 1 and 2), LBP-93-5, 37 NRC 96, *aff'd*, CLI-93-16, 38 NRC 25 (1993)
in a license transfer proceeding, standing was granted to a petitioner living within 35 miles of the licensed facility; CLI-07-21, 65 NRC 521 (2007)
- Georgia Power Co.* (Vogtle Electric Generating Plant, Units 1 and 2), LBP-93-21, 38 NRC 143, 146 (1993)
it is a settled rule of practice that contentions ought to be interpreted in light of the required specificity, so that adjudicators and parties need not search out broader meanings than were clearly intended; LBP-10-16, 72 NRC 398 n.153 (2010)
- Gilbert v. Ferry*, 413 F.3d 578, 580 (6th Cir. 2005)
a tribunal retains discretion to overlook waiver in the collateral estoppel context, and its exercise of discretion should be based on a balancing of the relevant public and private interests; LBP-09-24, 70 NRC 822 (2009)
the purposes of collateral estoppel are to shield litigants (and the judicial system) from the burden of relitigating identical issues and to avoid inconsistent results; LBP-09-24, 70 NRC 810, 822 (2009)
- Gilda Marx, Inc. v. Wildwood Exercise, Inc.*, 85 F.3d 675, 679 (D.C. Cir. 1996)
the Commission declined to exercise pendent jurisdiction where the challenged interlocutory issues were not inextricably intertwined with the two immediately appealable issues; CLI-08-27, 68 NRC 657 n.8 (2008)
- Ginsburg, Feldman, & Bress v. Federal Energy Administration*, 591 F.2d 717, 730 (D.C. Cir.), *aff'd en banc and per curiam by an equally divided court*, 591 F.2d 752 (D.C. Cir. 1978), *cert. denied*, 441 U.S. 906 (1979)
NRC records are protected from disclosure under FOIA Exemption 2 to the extent they contain internal analytic guidance, operating rules, or practices, the disclosure of which would aid terrorists or saboteurs seeking to circumvent security measures designed to protect nuclear materials; LBP-08-7, 67 NRC 375 n.11 (2008)
- Girsh v. Jepson*, 521 F.2d 153 (3d Cir. 1975)
when evaluating whether a settlement in an enforcement proceeding is in the public interest, four factors are considered; LBP-06-18, 63 NRC 837 (2006)
- Gitto Global Corp. v. Worcester Telegram & Gazette Corp.*, 422 F.3d 1 (1st Cir. 2005)
the First Amendment requires a presumption of openness in civil proceedings; LBP-10-2, 71 NRC 208 n.58 (2010)

LEGAL CITATIONS INDEX

CASES

- Gladstone Realtors v. Village of Bellwood*, 441 U.S. 91, 109 (1979)
to determine whether petitioners have standing, boards accept as true all material allegations of the complaint and construe the complaint in favor of the complaining party; CLI-10-20, 72 NRC 192 n.39 (2010)
- Glass Packaging Institute v. Regan*, 737 F.2d 1083, 1091 (D.C. Cir.), *cert. denied*, 469 U.S. 1035 (1984)
the National Environmental Policy Act does not require an agency to assess every impact or effect of its proposed action, but only effects on the environment; CLI-08-16, 68 NRC 228 (2008)
to be encompassed by the National Environmental Policy Act, there needs to be a reasonably close causal relationship between a change in the physical environment and the effect at issue because otherwise, the words “adverse environmental effects” might embrace virtually any consequence of a proposed federal action that someone thought adverse; CLI-08-16, 68 NRC 228 (2008)
- Glass Packaging Institute v. Regan*, 737 F.2d 1083, 1092 (D.C. Cir.), *cert. denied*, 469 U.S. 1035 (1984)
conformity of a proposed action to federal regulations governing other aspects of that action’s interrelationship with the environment will buttress a finding of no significant impact; CLI-08-16, 68 NRC 227 n.32 (2008)
it simply is not the National Environmental Policy Act’s purpose to transplant specific regulatory burdens from those expert agencies otherwise authorized to redress specific nonenvironmental problems and to pointlessly reimpose those objectives on other unqualified agencies; CLI-08-16, 68 NRC 229 (2008)
- Gluck v. Unisys Corp.*, 960 F.2d 1168, 1176 (3d Cir. 1992)
constructive knowledge is knowledge of facts sufficient to prompt an inquiry that would have uncovered misrepresentations and is not actual knowledge; LBP-09-24, 70 NRC 708 n.46 (2009)
- Goehring v. United States*, 870 F. Supp. 106, 109 (D. Md. 1994)
to discount the maxim that the government wins when justice is done would be to adhere to the converse, that justice is done whenever the government wins; LBP-09-24, 70 NRC 799 n.8 (2009)
- Goldstein v. Miller*, 488 F. Supp. 156 (D. Md. 1980)
a stay pending appeal is granted where the absence of a stay would force plaintiff out of business; CLI-10-8, 71 NRC 152 n.54 (2010)
- Gonzales v. Oregon*, 546 U.S. 243, 267 (2006)
like Congress, the Commission is not to be assumed to hide elephants in mouseholes; LBP-08-1, 67 NRC 48 (2008)
- Gooden v. Neal*, 17 F.3d 925, 935 (7th Cir. 1994)
a winner cannot appeal a judgment; CLI-10-17, 72 NRC 44 (2010)
- Goodyear Atomic Corp. v. Miller*, 486 U.S. 174, 184-85 (1988)
Congress can be presumed to be aware of one specific agency rule only when that rule has been expressly discussed in the legislative history; LBP-10-11, 71 NRC 625 n.52 (2010)
- Goss v. Lopez*, 419 U.S. 565, 583-84 (1975)
providing predeprivation notice and informal hearing permits the employee to give his version of the events and provides a meaningful hedge against erroneous action; LBP-09-24, 70 NRC 801 n.11, 852 n.45 (2009)
- GPU Nuclear, Inc.* (Oyster Creek Nuclear Generating Station), CLI-00-6, 51 NRC 193 (2000)
petitioners in direct license transfer cases who qualified for proximity-based standing lived within 1 to 2 miles of their plant; CLI-08-19, 68 NRC 269 (2008)
- GPU Nuclear, Inc.* (Oyster Creek Nuclear Generating Station), CLI-00-6, 51 NRC 193, 194 (2000)
an organization asserting representational standing must demonstrate that the interest of at least one of its members will be harmed and the member would have standing in his or her own right, identify that member by name and address, and demonstrate that the organization is authorized to request a hearing on behalf of that member; LBP-09-13, 70 NRC 178 (2009); LBP-10-16, 72 NRC 383 (2010)
- GPU Nuclear, Inc.* (Oyster Creek Nuclear Generating Station), CLI-00-6, 51 NRC 193, 201 (2000)
NRC Staff is not a party in license transfer cases; CLI-06-2, 63 NRC 12 (2006)
- GPU Nuclear, Inc.* (Oyster Creek Nuclear Generating Station), CLI-00-6, 51 NRC 193, 202 (2000)
authorization affidavits for representational standing may not be filed with a reply; CLI-08-19, 68 NRC 263 n.37 (2008)
for an organization to qualify for the proximity presumption, a bare assertion that a member lives within 50 miles is not sufficient; LBP-07-4, 65 NRC 296 (2007)

LEGAL CITATIONS INDEX

CASES

- to establish representational standing, an organization must show that at least one of its members may be affected by the licensing action and, accordingly, would have standing to sue in his or her own right, must identify that member by name and address, and must show that the organization is authorized to request a hearing on behalf of that member; CLI-07-18, 65 NRC 409 (2007); CLI-08-19, 68 NRC 259 (2008); LBP-06-7, 63 NRC 195 (2006); LBP-06-23, 64 NRC 271 (2006); LBP-07-4, 65 NRC 294 (2007); LBP-07-11, 66 NRC 52 (2007); LBP-08-6, 67 NRC 271 (2008); LBP-08-24, 68 NRC 702 (2008); LBP-09-21, 70 NRC 590 n.16 (2009)
- GPU Nuclear, Inc.* (Oyster Creek Nuclear Generating Station), CLI-00-6, 51 NRC 193, 203 (2000) petitioner's statement that the unenforceability of the antitrust conditions will adversely affect its "important rights relating to generation, transmission, and distribution" services is too vague and general to show a real potential for injury sufficient for standing; CLI-06-2, 63 NRC 16 (2006)
- GPU Nuclear, Inc.* (Oyster Creek Nuclear Generating Station), CLI-00-6, 51 NRC 193, 204 n.6 (2000) cursory, unsupported arguments will not be considered; CLI-10-23, 72 NRC 246 n.177 (2010); CLI-10-17, 72 NRC 30-31 n.172 (2010)
- GPU Nuclear, Inc.* (Oyster Creek Nuclear Generating Station), CLI-00-6, 51 NRC 193, 207 (2000) absent evidence to the contrary, the Commission will not assume that licensees will contravene its regulations; CLI-09-12, 69 NRC 569 (2009); LBP-06-7, 63 NRC 208-09 (2006); LBP-06-12, 63 NRC 412 (2006); LBP-07-10, 66 NRC 28 n.20 (2007); LBP-07-14, 66 NRC 209 n.94 (2007); LBP-09-6, 69 NRC 467 n.569 (2009); LBP-10-20, 72 NRC 608 n.1 (2010)
- mere speculation that an applicant will not comply with NRC regulations, in the absence of documentary support, does not amount to an admissible contention; LBP-08-26, 68 NRC 942 n.258 (2008); LBP-10-15, 72 NRC 327, 328, 335 (2010)
- petitioner's issue will be ruled inadmissible if petitioner has offered no tangible information, no experts, or no substantive affidavits; LBP-10-15, 72 NRC 290 n.34 (2010)
- GPU Nuclear, Inc.* (Oyster Creek Nuclear Generating Station), CLI-00-6, 51 NRC 193, 208 (2000) a contention is inadmissible if intervenors offer no tangible information, no experts, no substantive affidavits, but instead only bare assertions and speculation; LBP-06-7, 63 NRC 208 (2006); LBP-06-20, 64 NRC 150, 190 (2006); LBP-06-23, 64 NRC 355 (2005); LBP-07-16, 66 NRC 288 (2007); LBP-08-9, 67 NRC 433 (2008); LBP-08-13, 68 NRC 63 (2008); LBP-08-16, 68 NRC 405 (2008); LBP-08-17, 68 NRC 441 (2008); LBP-08-26, 68 NRC 917 (2008); LBP-09-15, 70 NRC 224 (2009); LBP-09-17, 70 NRC 328 (2009); LBP-09-26, 70 NRC 954 (2009); LBP-10-6, 71 NRC 360 (2010)
- petitioner's assertion that trucks are dumping depleted uranium-contaminated soil from the Army site in the community is predicated on bare assertions and speculation and thus is inadmissible; LBP-10-4, 71 NRC 242 (2010)
- GPU Nuclear, Inc.* (Oyster Creek Nuclear Generating Station), CLI-00-6, 51 NRC 193, 211 (2000) if applicants and petitioners cannot agree on the terms of a confidentiality and nondisclosure agreement, then they shall inform the presiding officer, indicate specifically the areas where they disagree, and then move the presiding officer for issuance of a protective order; CLI-07-18, 65 NRC 416 (2007)
- licensing boards have continued to withhold documents or quash subpoenas once an applicable protective order has been issued or requested if the information request is simply not material; LBP-06-25, 64 NRC 388 n.85 (2006)
- Gray v. Faulkner*, 148 F.R.D. 220, 223 (N.D. Ind. 1992)
- a party must seek information reasonably available from employees, agents, or others subject to the party's control; LBP-12-23, 72 NRC 708 n.24 (2010)
- Green v. Fulton*, 157 F.R.D. 136, 142 (D. Me. 1994)
- when a party has right, authority, or ability to obtain documents on demand, they will be deemed to be under party's control; LBP-12-23, 72 NRC 707 n.20 (2010)
- Greenbaum v. U.S. Environmental Protection Agency*, 370 F.3d 527, 535-36 (6th Cir. 2004)
- rules of statutory construction must be employed to give each word Congress used a separate and distinct significance which is consistent with its ordinary meaning; LBP-09-30, 70 NRC 1049 n.11 (2009)

LEGAL CITATIONS INDEX

CASES

- Greene v. McElroy*, 360 U.S. 474, 492 (1959)
the right to hold specific private employment and to follow a chosen profession free from unreasonable governmental interference comes within the “liberty” and “property” concepts of the Fifth Amendment; LBP-06-13, 63 NRC 557 n.118 (2006); LBP-09-24, 70 NRC 806 n.20 (2009)
- Groppi v. Leslie*, 404 U.S. 496, 504 n.8 (1972)
the exercise of the summary contempt power is limited strictly to cases in which it is clear that all of the elements of misconduct are personally observed by the judge; LBP-09-24, 70 NRC 798-99 n.5 (2009)
- Ground Zero Center for Non-Violent Action v. U.S. Department of the Navy*, 383 F.3d 1082, 1090 (9th Cir. 2004)
NRC’s decision to use its Atomic Energy Act authority to require all of its power reactor licensees to take precautionary measures against improbable, but potentially destructive, terrorist attacks does not compel the agency to analyze the consequences of successful attacks at particular sites under NEPA; CLI-07-8, 65 NRC 131 n.31 (2007)
- Grove Fresh Distributors, Inc. v. Everfresh Juice Co.*, 24 F.3d 893 (7th Cir. 1994)
the First Amendment requires a presumption of openness in civil proceedings; LBP-10-2, 71 NRC 208 n.58 (2010)
- GUARD v. NRC*, 753 F.2d 1144, 1146 (D.C. Cir. 1985)
although administrative history and other available guidance may be consulted for background information and the resolution of ambiguities in a regulation’s language, its interpretation may not conflict with the plain meaning of the wording used in that regulation; LBP-09-15, 70 NRC 215 (2009)
- Guerrero v. Clinton*, 157 F.3d 1190, 1194 (9th Cir. 1998)
the court declined to decide whether petitioners’ concrete interests were affected because it found that nothing can be done by way of judicial review to redress the adverse consequences that they say they are suffering; LBP-10-11, 71 NRC 635 n.100 (2010)
- Guidry v. Sheet Metal Workers National Pension Fund*, 493 U.S. 365, 375 (1990)
in statutory construction, the specific prevails over the general; CLI-08-26, 68 NRC 523 (2008)
- Gulf States Utilities Co.* (River Bend Station, Unit 1), CLI-94-10, 40 NRC 43, 48-50 (1994)
NRC has acknowledged the analogous standing of the part-owner of a facility; LBP-09-6, 69 NRC 432 (2009)
- Gulf States Utilities Co.* (River Bend Station, Unit 1), CLI-94-10, 40 NRC 43, 51 (1994)
although the contention admissibility rule imposes on a petitioner the burden of going forward with a sufficient factual basis, it does not shift the ultimate burden of proof from applicant to petitioner; LBP-09-27, 70 NRC 1006-07 (2009); LBP-10-24, 72 NRC 756-57 (2010)
for factual disputes, petitioner need not proffer facts in formal affidavit or evidentiary form, sufficient to withstand a summary disposition motion, but must present sufficient information to show a genuine dispute and reasonably indicating that a further inquiry is appropriate; LBP-06-7, 63 NRC 222 (2006); LBP-06-10, 63 NRC 342 (2006); LBP-09-16, 70 NRC 290 (2009); LBP-09-17, 70 NRC 329 (2009); LBP-09-27, 70 NRC 1006-07 (2009); LBP-10-24, 72 NRC 756-57 (2010)
petitioner must present sufficient information to show a genuine dispute and reasonably indicating that a further inquiry is appropriate; LBP-06-23, 64 NRC 359 (2005); LBP-08-6, 67 NRC 292 (2008); LBP-10-24, 72 NRC 756-57 (2010)
the contention admissibility rule does not require a petitioner to prove its case at the contention stage; LBP-06-10, 63 NRC 342 (2006); LBP-09-27, 70 NRC 1006-07 (2009); LBP-10-24, 72 NRC 756-57 (2010)
the level of support necessary for an admissible contention is explained; LBP-10-24, 72 NRC 756-57 (2010)
- Gulf States Utilities Co.* (River Bend Station, Units 1 and 2), ALAB-183, 7 AEC 222 (1974)
the rule of thumb generally applied in reactor licensing proceedings includes a presumption of standing for persons who reside or frequent the area within a 50-mile radius of the facility; LBP-09-4, 69 NRC 181 (2009)
- Gulf States Utilities Co.* (River Bend Station, Units 1 and 2), ALAB-183, 7 AEC 222, 224 & n.5 (1974)
close proximity to a facility has always been deemed to be enough, standing alone, to establish the requisite interest to confer standing; LBP-06-7, 63 NRC 196 (2006)

LEGAL CITATIONS INDEX

CASES

- Gulf States Utilities Co.* (River Bend Station, Units 1 and 2), ALAB-183, 7 AEC 222, 226 (1974)
in construction permit and operating license proceedings for power reactors, petitioner is presumed to have standing to intervene if petitioner lives within, or otherwise has frequent contacts with, the zone of possible harm; CLI-09-20, 70 NRC 915 (2009)
the benefits of the proximity presumption are not limited to those who reside within the area in which the presumption applies, but can be extended to those who conduct everyday activities or visit within that area; CLI-07-21, 65 NRC 524 (2007); LBP-07-10, 66 NRC 17 (2007)
- Gulf States Utilities Co.* (River Bend Station, Units 1 and 2), ALAB-183, 7 AEC 222, 227-28 (1974)
the “direct participation of local citizens in nuclear reactor licensing” is not a right to have all legal arguments on contention admissibility take place near the facility at issue, but rather the right of persons with standing to file contentions in licensing proceedings and litigate admissible contentions; LBP-08-23, 68 NRC 685 n.31 (2008)
- Gulf States Utilities Co.* (River Bend Station, Units 1 and 2), ALAB-444, 6 NRC 760, 773 (1977)
information arising from a discussion of proposed changes to nonbinding guidance documents regarding a generic problem, standing alone, is insufficient to support an admissible contention; LBP-06-11, 63 NRC 400 (2006)
NRC Staff guidance documents are not binding and therefore nonconformance with such guidance does not equate to noncompliance with the regulations; LBP-06-11, 63 NRC 400 n.8 (2006)
- Gun South, Inc. v. Brady*, 877 F.2d 858, 862-63 (11th Cir. 1989)
administrative agencies have inherent authority to change and modify their own prior decisions; CLI-10-6, 71 NRC 123 (2010)
- Gwaltney of Smithfield, Ltd. v. Chesapeake Bay Foundation, Inc.*, 484 U.S. 49, 59 (1987)
a provision of a regulation should not be read in a way that is inconsistent with its purpose; LBP-07-6, 65 NRC 464 (2007)
- Hale v. Colorado River Municipal Water District*, 818 S.W.2d 537, 538-39 (Tex. 1991)
farmer could sue for release of chlorides into river 100 miles upstream that destroyed the farmer’s peanut crop; CLI-09-12, 69 NRC 546 n.43 (2009)
plaintiffs have prevailed against a motion for summary judgment where chloride spillage was allegedly carried 100 miles to plaintiff’s farm; LBP-08-6, 67 NRC 287 (2008)
- Hamilton’s Bogarts, Inc. v. Michigan*, 501 F.3d 644, 650 (6th Cir. 2007)
four elements must be satisfied before a tribunal may apply collateral estoppel; LBP-09-24, 70 NRC 810 (2009)
- Hamlin Testing Laboratories, Inc.*, 2 AEC 423, 428 (1964)
a license renewal proceeding is an appropriate occasion for appraising the entire past performance of the licensee; CLI-09-9, 69 NRC 355 n.126 (2009); LBP-08-24, 68 NRC 728 (2008)
- Hamm v. Members of Board of Regents of State of Florida*, 708 F.2d 647, 651, *reh’g denied*, 715 F.2d 580 (11th Cir. 1983)
friction between the court and counsel, including intemperate and impatient remarks by the judge, does not constitute evidence of personal bias; CLI-10-17, 72 NRC 47 (2010)
- Hanly v. Kleindienst*, 471 F.2d 823, 828-29 (2d Cir. 1972), *cert. denied*, 412 U.S. 908 (1973)
NRC Staff’s hard look at all potentially cost-beneficial severe accident mitigation alternatives under NEPA and Part 51 ensures that it has given proper consideration to all relevant factors in granting a license renewal; LBP-10-13, 71 NRC 679 (2010)
- Hanly v. Kleindienst*, 471 F.2d 823, 831 (2d Cir. 1972)
notwithstanding the Staff’s findings of minor impacts relative to impingement and entrainment, which are supported by the preponderance of the evidence, those impacts might be the straw that breaks the back of the environmental camel; LBP-09-7, 69 NRC 683-84 (2009)
- Harding v. Dana Transport, Inc.*, 914 F. Supp. 1084, 1096 (D.N.J. 1996)
if a company claims that the internal investigation establishes that it has met its obligation, then the company has waived the attorney-client privilege associated with the internal investigation; CLI-08-6, 67 NRC 184 (2008)
- Hardy v. Bureau of Alcohol, Tobacco & Firearms*, 631 F.2d 653, 657 (9th Cir. 1980)
NRC records are protected from disclosure under FOIA Exemption 2 to the extent they contain internal analytic guidance, operating rules, or practices, the disclosure of which would aid terrorists

LEGAL CITATIONS INDEX

CASES

- or saboteurs seeking to circumvent security measures designed to protect nuclear materials; LBP-08-7, 67 NRC 375 n.11 (2008)
- petitioner argues that the context of some redactions in NRC Staff documents suggests that the Staff is withholding secret law on how to conduct its analysis, which should have been disclosed under FOIA; CLI-08-5, 67 NRC 177 (2008)
- Harris v. United States*, 933 F. Supp. 972 (D. Idaho 1995)
- remedies short of complete abeyance of a proceeding are sometimes appropriate; LBP-06-13, 63 NRC 538 n.43 (2006)
- Havasupai Tribe v. United States*, 752 F. Supp. 1471 (D. Ariz. 1990)
- Native Americans have tribal rights to, and interests in, aboriginal lands; LBP-08-24, 68 NRC 713 (2008)
- preservation of Native American cultural traditions is a protected interest under federal law; LBP-10-16, 72 NRC 391 (2010)
- Headwaters, Inc. v. Bureau of Land Management*, 914 F.2d 1174 (9th Cir. 1990)
- an agency need not undertake a separate NEPA analysis of alternatives that are not significantly distinguishable from alternatives already considered, or that have substantially similar consequences; CLI-06-29, 64 NRC 422 n.22 (2006)
- Headwaters, Inc. v. Bureau of Land Management*, 914 F.2d 1174, 1181 (9th Cir. 1990)
- NEPA does not require a separate analysis of alternatives that are not significantly distinguishable from alternatives actually considered or that have substantially similar consequences; LBP-10-10, 71 NRC 581 (2010)
- Heckler v. Campbell*, 461 U.S. 458, 467 (1983)
- agencies generally are free to exercise their discretion in determining whether to formulate policy through rulemaking or adjudication; LBP-06-7, 63 NRC 203 (2006)
- Heckler v. Chaney*, 470 U.S. 821, 832 (1985)
- courts generally will defer to an agency's construction of the statute it is charged with implementing, and to the procedures it adopts for implementing that statute; CLI-10-13, 71 NRC 389 n.9 (2010)
- Heckler v. Chaney*, 470 U.S. 821, 837-38 (1985)
- agencies have wide latitude in administering their enforcement program; LBP-08-14, 68 NRC 292 (2008)
- Hells Canyon Alliance v. United States Forest Service*, 227 F.3d 1170, 1184-85 (9th Cir. 2000)
- NEPA requirements are tempered by a practical rule of reason; CLI-10-22, 72 NRC 208 (2010)
- Hells Canyon Alliance v. United States Forest Service*, 227 F.3d 1170, 1185 (9th Cir. 2000)
- there is no National Environmental Policy Act requirement to use the best scientific methodology; CLI-10-11, 71 NRC 315 (2010)
- Helvering v. Stockholms Enskilda Bank*, 293 U.S. 84, 87 (1934)
- since most words admit of different shades of meaning, susceptible of being expanded or abridged to conform to the sense in which they are used, the presumption that identical words in a statute always have identical meaning readily yields to the controlling force of the circumstance that the words, though in the same act, are found in such dissimilar connections as to warrant the conclusion that they were employed in the different parts of the act with different intent; LBP-09-30, 70 NRC 1049 n.11 (2009)
- Herbert v. Lando*, 441 U.S. 153, 175 (1979)
- evidentiary privileges in litigation are not favored, and even those rooted in the Constitution must give way in proper circumstances; LBP-06-25, 64 NRC 376 (2006)
- Herbert v. Lando*, 441 U.S. 153, 175-77 (1979)
- privilege for journalists is not absolute; LBP-06-25, 64 NRC 376 (2006)
- Hickman v. Taylor*, 329 U.S. 495, 501 (1947)
- parties are entitled to obtain, through discovery and other pretrial activities, the fullest possible knowledge of the issues and facts before trial; LBP-06-25, 64 NRC 375 (2006)
- Hicks v. City of New York*, 268 F. Supp. 2d 238, 241 (E.D.N.Y. 2003)
- convenience in managing caseload and efficiency in using resources, the interests of nonparties, and the public interest may be considered in determining whether to delay a proceeding; LBP-06-13, 63 NRC 535 n.30 (2006)

LEGAL CITATIONS INDEX

CASES

- Highway J Citizens Group v. Mineta*, 349 F.3d 938, 960-61 (7th Cir. 2003)
in considering alternatives under NEPA, an agency is required to address the purpose of the proposed project, reasonable alternatives to the project, and to what extent the agency should explore each particular reasonable alternative; CLI-10-18, 72 NRC 77-78 n.119 (2010)
- Hinckley v. United States*, 140 F.3d 277, 277 (D.C. Cir. 1998)
even limited disclosure in a courtroom could harm the frankness of debate, which explains the lack of precedent for allowing deliberative process documents to be released under a protective order, or for even considering such a measure; LBP-06-25, 64 NRC 391 n.107 (2006)
- Hinckley v. United States*, 140 F.3d 277, 281 n.1 (D.C. Cir. 1998)
in the context of deliberative process privilege, policy and lawmaking can be viewed as including most decisions of government agencies; LBP-06-25, 64 NRC 382 (2006)
- Hinckley v. United States*, 140 F.3d 277, 285 (D.C. Cir. 1998)
in creating the FOIA exemptions, Congress acted on a belief that government decisions are better made when staff members are able to share ideas and opinions frankly, rather than operating in a fishbowl; LBP-06-25, 64 NRC 380 (2006)
where there is reason to believe the documents sought may shed light on government misconduct, the deliberative process privilege is routinely denied; LBP-06-25, 64 NRC 391 n.109 (2006)
- Hinckley v. United States*, 140 F.3d 277, 286 (D.C. Cir. 1998)
that the subject of an enforcement order does not agree with the agency's final enforcement decision is not sufficient to show need for deliberative process documents; LBP-06-25, 64 NRC 392 (2006)
- Horn v. District of Columbia*, 210 F.R.D. 13 (D.D.C. 2002)
sometimes the pendency of a criminal prosecution does not necessitate delaying a parallel civil or administrative proceeding; LBP-06-13, 63 NRC 538 n.42 (2006)
- Horn v. District of Columbia*, 210 F.R.D. 13, 16 (D.D.C. 2002)
a claim of likely interference falls far short of the showing of hardship or inequality required to establish good cause for delay of a proceeding; LBP-06-13, 63 NRC 541 n.56 (2006)
- Houston Lighting and Power Co.* (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 NRC 377, 389-90, *reconsideration denied*, ALAB-539, 9 NRC 422 (1979)
if an organization does not identify the members it purportedly represents, the Commission cannot determine whether the organization actually does represent members who consider that they will be affected by the licensing action or, rather, is simply seeking the vindication of its own value preference; CLI-07-18, 65 NRC 410 (2007)
- Houston Lighting and Power Co.* (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 NRC 377, 389-400 (1979)
an organization seeking representational standing on behalf of its members may meet the injury-in-fact requirement by demonstrating that at least one of its members, who has authorized the organization to represent his or her interest, will be injured by the possible outcome of the proceeding; LBP-09-4, 69 NRC 178 n.22 (2009); LBP-09-16, 70 NRC 240 n.22 (2009); LBP-09-20, 70 NRC 574 n.43 (2009)
- Houston Lighting and Power Co.* (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 NRC 377, 390-94 (1979)
organizational petitioners must be authorized by individual affected members who have authorized the organization to represent them; LBP-06-10, 63 NRC 328 (2006)
- Houston Lighting and Power Co.* (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 NRC 377, 393 (1979)
an affidavit supporting representational standing must describe precisely how the affiant is aggrieved, whether based on employment, residence, or activities; CLI-08-19, 68 NRC 260 (2008)
in ruling on standing, NRC cannot automatically assume that an organization member necessarily considers him- or herself potentially aggrieved by a particular outcome of the proceeding; CLI-08-19, 68 NRC 260 (2008)
- Houston Lighting and Power Co.* (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 NRC 377, 395-97 (1979)
when an organization takes formal corporate action to initiate litigation not only germane but integral to its purpose, that action can constitute the requisite, if implicit, proof of authorization for intervention; LBP-09-6, 69 NRC 435 (2009)

LEGAL CITATIONS INDEX

CASES

- Houston Lighting and Power Co.* (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 NRC 377, 396 (1979), *reconsideration denied*, ALAB-539, 9 NRC 422 (1979)
an organization must submit written authorization from a member whose interests it purports to represent in order to have a concrete indication that the member wishes to have the organization represent his interests there; CLI-07-18, 65 NRC 410 (2007); CLI-09-9, 69 NRC 343-44 n.62 (2009) it might be reasonably inferred that by joining an organization, the members are implicitly authorizing it to represent any personal interests which might be affected by the proceeding; LBP-09-6, 69 NRC 434 (2009)
there are certain organizations for which member authorization for organizational standing might be presumed; LBP-09-6, 69 NRC 434 (2009)
- Houston Lighting and Power Co.* (Allens Creek Nuclear Generating Station, Unit 1), ALAB-544, 9 NRC 630 (1979)
an organization must submit written authorization from a member whose interests it purports to represent in order to have a concrete indication that the member wishes to have the organization represent his interests there; CLI-09-9, 69 NRC 343 (2009)
if an organization does not identify the members it purportedly represents, the Commission cannot determine whether the organization actually does represent members who consider that they will be affected by the licensing action or, rather, is simply seeking the vindication of its own value preference; CLI-07-18, 65 NRC 410 (2007)
- Houston Lighting and Power Co.* (Allens Creek Nuclear Generating Station, Unit 1), ALAB-590, 11 NRC 542, 548 (1980)
in passing upon the question as to whether an intervention petition should be granted, it is not the function of a licensing board to reach the merits of any contention contained therein; LBP-06-6, 63 NRC 177 (2006)
the contention admissibility decision should not examine, under the guise of materiality or scope, whether the environmental impacts that petitioners allege have been omitted from the environmental report are indeed reasonable or significant, or whether an alternative that petitioners propound is reasonable; LBP-09-10, 70 NRC 86 n.29 (2009)
- Houston Lighting and Power Co.* (Allens Creek Nuclear Generating Station, Unit 1), ALAB-671, 15 NRC 508 (1982)
petitioner sought to intervene well after the commencement of the evidentiary hearing and raised an evidentiary matter; LBP-10-11, 71 NRC 644 n.148 (2010)
- Houston Lighting and Power Co.* (South Texas Project, Units 1 and 2), ALAB-549, 9 NRC 644, 646 (1979)
organizational petitioners must be authorized by individual affected members who have authorized the organization to represent them; LBP-06-10, 63 NRC 328 (2006)
- Houston Lighting and Power Co.* (South Texas Project, Units 1 and 2), ALAB-549, 9 NRC 644, 649 (1979)
although support for a contention may be weak and the contention may be technically imperfect, it may still raise a valid and significant issue with reasonably specific factual and legal allegations and be sufficient to support further inquiry; LBP-06-10, 63 NRC 381 (2006)
it is neither congressional nor NRC policy to exclude parties because the niceties of pleading were imperfectly observed, the sounder practice being to decide issues on their merits, not to avoid them on technicalities; LBP-06-10, 63 NRC 340 (2006); LBP-06-23, 64 NRC 358 n.42 (2005); LBP-08-6, 67 NRC 291 (2008)
technical perfection is not an essential element of contention pleading; LBP-08-6, 67 NRC 291 n.259 (2008); LBP-09-17, 70 NRC 326 (2009)
- Houston Lighting and Power Co.* (South Texas Project, Units 1 and 2), ALAB-799, 21 NRC 360, 373-74 (1985)
an investigation into applicant's character should also include a review of the applicant's good character; LBP-09-6, 69 NRC 468 n.575 (2009)
- Houston Lighting and Power Co.* (South Texas Project, Units 1 and 2), ALAB-799, 21 NRC 360, 381-84 (1985)
a party that had not previously adopted the withdrawing party's contention may replace the withdrawing party upon a favorable balancing of the timeliness factors; LBP-06-18, 63 NRC 840 (2006)

LEGAL CITATIONS INDEX

CASES

- Houston Lighting and Power Co.* (South Texas Project, Units 1 and 2), ALAB-799, 21 NRC 360, 382 (1985)
the initial admission of a contention does not automatically establish the existence of a serious environmental or safety issue for purposes of a board exercising its authority to raise an issue sua sponte; LBP-06-18, 63 NRC 840 (2006)
when a party withdraws from a proceeding, its contentions do not necessarily continue as important safety issues requiring litigation under a Board's sua sponte authority; LBP-06-18, 63 NRC 840 (2006)
- Houston Lighting and Power Co.* (South Texas Project, Units 1 and 2), ALAB-799, 21 NRC 360, 382-83 (1985)
withdrawal of a party from a proceeding results in the removal of the withdrawing party's contentions from litigation; LBP-06-18, 63 NRC 840 (2006)
- Houston Lighting and Power Co.* (South Texas Project, Units 1 and 2), ALAB-799, 21 NRC 360, 384 n.108 (1985)
availability of Staff review outside the hearing process generally does not constitute adequate protection of a private party's rights when considering 10 C.F.R. 2.309(c)(1)(v); LBP-08-12, 68 NRC 42 (2008)
- Houston Lighting and Power Co.* (South Texas Project, Units 1 and 2), CLI-82-9, 15 NRC 1363, 1365-67 (1982)
the disqualification standard under 28 U.S.C. §455 is not directed to administrative judges, but the Commission and its adjudicatory boards have applied it in assessing a motion for disqualification under 10 C.F.R. 2.313, and it provides a helpful framework for such an assessment; CLI-10-22, 72 NRC 203 (2010)
- Houston Lighting and Power Co.* (South Texas Project, Units 1 and 2), CLI-82-9, 15 NRC 1363, 1366 (1982)
extra-record conduct such as stares, glares, and scowls do not constitute evidence of personal bias, nor do occasional outbursts toward counsel; CLI-10-17, 72 NRC 47 (2010)
- Houston Lighting and Power Co.* (South Texas Project, Units 1 and 2), LBP-79-27, 10 NRC 563, 566 (1979), *aff'd*, ALAB-575, 11 NRC 14 (1980)
collateral estoppel is applicable if the issue sought to be precluded is the same as that involved in the prior action, the issue was actually litigated in a prior action, there is a valid and final judgment in the prior action, and the determination was essential to the prior judgment; CLI-10-23, 72 NRC 249 (2010); LBP-09-24, 70 NRC 711, 810 (2009)
- Houston Lighting and Power Co.* (South Texas Project, Units 1 and 2), LBP-83-26, 17 NRC 945, 946-47 (1983)
the Commission's decision not to entertain a state's integrity and competence contentions in the high-level waste repository proceeding is consistent with its practice of extending comity to other governmental entities; CLI-09-14, 69 NRC 606 n.150 (2009)
- Houston North Hospital Properties v. Telco Leasing, Inc.*, 680 F.2d 19, 22 (5th Cir. 1982)
in a case heard by a judge without a jury, a judge may be warranted in drawing inferences without resort to the expense of trial and may grant summary judgment if trial would not enhance its ability to draw inferences and conclusions, if there are no issues of witness credibility and a trial on the merits would reveal no additional data; LBP-07-12, 66 NRC 127 (2007); LBP-07-13, 66 NRC 131 (2007)
- Hudson River Sloop Clearwater, Inc. v. Department of the Navy*, 891 F.2d 414, 420 (2d Cir. 1989)
Congress, in enacting section 102(2)(C) of NEPA set the balance between the public's need to be informed and the government's need for secrecy; LBP-08-7, 67 NRC 370 (2008)
disclosure of documents under the National Environmental Policy Act is expressly governed by the Freedom of Information Act; CLI-08-5, 67 NRC 176 (2008)
NEPA provides that any information kept from the public under the exemptions in FOIA need not be disclosed; CLI-08-1, 67 NRC 15 (2008)
- Hughes River Watershed Conservancy v. Glickman*, 81 F.3d 437, 443 (4th Cir. 1996)
the principal goals of an environmental impact statement are to force agencies to take a hard look at the environmental consequences of a proposed project, and, by making relevant analyses openly

LEGAL CITATIONS INDEX

CASES

- available, to permit the public a role in the agency's decisionmaking process; LBP-10-24, 72 NRC 763 n.86 (2010)
- Hughes River Watershed Conservancy v. Glickman*, 81 F.3d 437, 444 (4th Cir. 1996)
"new information" requires a supplemental environmental impact statement when it raises a previously unknown environmental concern, but not necessarily when it amounts to mere additional evidence supporting one side or the other of a disputed environmental effect; CLI-06-3, 63 NRC 28 (2005)
- Huminski v. Corsones*, 396 F.3d 53 (2d Cir. 2005)
the First Amendment requires a presumption of openness in civil proceedings; LBP-10-2, 71 NRC 208 n.58 (2010)
- Hunt v. Cromartie*, 526 U.S. 541, 553 (1999)
even if the basic facts are uncontroverted, summary disposition would be inappropriate when the evidence is susceptible of different interpretations or inferences; LBP-07-12, 66 NRC 126 (2007)
- Hunt v. Washington State Apple Advertising Commission*, 432 U.S. 333, 342-45 (1977)
when an organization takes formal corporate action to initiate litigation not only germane but integral to its purpose, that action can constitute the requisite, if implicit, proof of authorization for intervention; LBP-09-6, 69 NRC 435 (2009)
- Hunt v. Washington State Apple Advertising Commission*, 432 U.S. 333, 343 (1977)
a three-pronged test for associational standing is applied to unions; CLI-08-19, 68 NRC 264 (2008)
criteria for representational standing are applied to a state agency acting as a de facto trade association by representing its regulated entities; CLI-08-19, 68 NRC 265 n.48 (2008)
- Huron Holding Corp. v. Lincoln Mine Operating Co.*, 312 U.S. 183, 189 (1941)
pendency of an appeal need not preclude reliance on the lower court's decision being appealed to estop relitigation of the same matter in another forum; LBP-09-24, 70 NRC 713 n.62 (2009)
- Hydro Resources, Inc.* (2929 Coors Road, Suite 101, Albuquerque, NM 87120), CLI-98-8, 47 NRC 314, 320 (1998)
stay motions were formerly appealable under 10 C.F.R. 2.786(g) and absent contrary Commission directive, petitioners should follow the same appeal procedure that was previously in force; LBP-08-11, 67 NRC 495 n.85 (2008)
- Hydro Resources, Inc.* (2929 Coors Road, Suite 101, Albuquerque, NM 87120), CLI-98-9, 47 NRC 326, 330 (1998)
the Commission does not use procedural technicalities to avoid addressing disqualification motions; CLI-10-17, 72 NRC 45 n.246 (2010)
- Hydro Resources, Inc.* (2929 Coors Road, Suite 101, Albuquerque, NM 87120), CLI-98-9, 47 NRC 326, 331 (1998)
the disqualification standard under 28 U.S.C. § 455 is not directed to administrative judges, but the Commission and its adjudicatory boards have applied it in assessing a motion for disqualification under 10 C.F.R. 2.313, and it provides a helpful framework for such an assessment; CLI-10-22, 72 NRC 203 (2010)
- Hydro Resources, Inc.* (2929 Coors Road, Suite 101, Albuquerque, NM 87120), CLI-98-9, 47 NRC 326, 332 (1998)
the Commission has used sua sponte review as a vehicle to decide whether to disqualify a presiding officer; CLI-07-1, 65 NRC 4 (2007)
- Hydro Resources, Inc.* (2929 Coors Road, Suite 101, Albuquerque, NM 87120), CLI-98-16, 48 NRC 119, 120 (1998)
the Commission has used sua sponte review as a vehicle to provide guidance to a licensing board; CLI-07-1, 65 NRC 5 (2007)
whether non-NRC permits are required is the responsibility of bodies that issue such permits, such as the Environmental Protection Agency or state and local authorities; LBP-08-15, 68 NRC 329 (2008)
- Hydro Resources, Inc.* (2929 Coors Road, Suite 101, Albuquerque, NM 87120), CLI-98-16, 48 NRC 119, 121 (1998)
applicant cannot rely upon an NRC license to avoid obtaining all other applicable federal, state, or local permits; LBP-08-15, 68 NRC 329 (2008)
whether other permits may be required from other agencies is outside the scope of NRC proceedings, and those concerns are properly raised before those respective permitting authorities; LBP-09-21, 70 NRC 594 (2009)

LEGAL CITATIONS INDEX

CASES

- Hydro Resources, Inc.* (2929 Coors Road, Suite 101, Albuquerque, NM 87120), CLI-98-16, 48 NRC 119, 121-22 (1998)
absent some need for resolution to meet the agency's statutory responsibilities, the agency's adjudicatory process is not a forum for litigating matters that are primarily the responsibility of other federal or state/local regulatory agencies; CLI-07-25, 66 NRC 105, 106 (2007); LBP-07-10, 66 NRC 27 (2007)
licensing boards do not have jurisdiction over matters properly before other regulatory bodies; LBP-06-8, 63 NRC 280 n.32 (2006)
- Hydro Resources, Inc.* (2929 Coors Road, Suite 101, Albuquerque, NM 87120), CLI-99-1, 49 NRC 1, 2 (1999)
the Commission has used sua sponte review as a vehicle to address unappealed orders or to set a specific timetable; CLI-07-1, 65 NRC 4 (2007)
- Hydro Resources, Inc.* (2929 Coors Road, Suite 101, Albuquerque, NM 87120), CLI-99-18, 49 NRC 411, 412 (1999)
the Commission has used sua sponte review as a vehicle to customize its procedures for individual adjudications; CLI-07-1, 65 NRC 4 (2007)
- Hydro Resources, Inc.* (2929 Coors Road, Suite 101, Albuquerque, NM 87120), CLI-99-22, 50 NRC 3, 6 (1999)
where a presiding officer has reviewed an extensive record in detail, with the assistance of a technical advisor, the Commission is generally disinclined to upset his findings and conclusions, particularly on matters involving fact-specific issues or where the affidavits or submissions of experts must be weighed; CLI-06-1, 63 NRC 2 (2006); CLI-08-28, 68 NRC 675 (2008)
- Hydro Resources, Inc.* (2929 Coors Road, Suite 101, Albuquerque, NM 87120), CLI-99-22, 50 NRC 3, 8 (1999)
section 40.31(h) applies to uranium mills, not to in situ leach facilities; LBP-10-16, 72 NRC 434 (2010)
- Hydro Resources, Inc.* (2929 Coors Road, Suite 101, Albuquerque, NM 87120), CLI-99-22, 50 NRC 3, 9 (1999)
the principal regulatory standards for in situ leach applications are 10 C.F.R. 40.32(c) and (d), which mandate protection of public health and safety; LBP-10-16, 72 NRC 434 (2010)
- Hydro Resources, Inc.* (2929 Coors Road, Suite 101, Albuquerque, NM 87120), CLI-99-22, 50 NRC 3, 14 (1999)
an environmental impact statement is not to be supplemented any time that any new information becomes available, but only when the new information presents a seriously different picture of the environmental impact of the proposed project from what was previously envisioned; LBP-07-14, 66 NRC 192 (2007)
- Hydro Resources, Inc.* (2929 Coors Road, Suite 101, Albuquerque, NM 87120), CLI-00-8, 51 NRC 227, 240 n.15 (2000)
a surety arrangement is necessary as a prerequisite to operating, not as a prerequisite to licensing; LBP-10-16, 72 NRC 430 (2010)
- Hydro Resources, Inc.* (2929 Coors Road, Suite 101, Albuquerque, NM 87120), CLI-00-8, 51 NRC 227, 243 (2000)
the Commission does not entertain on appeal arguments not raised before the licensing board or presiding officer; CLI-09-12, 69 NRC 546 (2009)
- Hydro Resources, Inc.* (2929 Coors Road, Suite 101, Albuquerque, NM 87120), LBP-98-5, 47 NRC 119, 120 (1998)
if a stay proponent cannot show irreparable harm, it must make an overwhelming showing that it is likely to succeed on the merits; CLI-08-13, 67 NRC 399 (2008)
- Hydro Resources, Inc.* (2929 Coors Road, Suite 101, Albuquerque, NM 87120), LBP-98-9, 47 NRC 261 (1998), *rev'd on other grounds*, CLI-98-16, 48 NRC 119 (1998)
an organization seeking to intervene in its own right must demonstrate a palpable injury in fact to its organizational interests that is within the zone of interests protected by the Atomic Energy Act or the National Environmental Policy Act; LBP-08-24, 68 NRC 702 (2008)

LEGAL CITATIONS INDEX

CASES

- Hydro Resources, Inc.* (2929 Coors Road, Suite 101, Albuquerque, NM 87120), LBP-98-9, 47 NRC 261, 269 (1998), *rev'd on other grounds*, CLI-98-16, 48 NRC 119 (1998)
to assert an appropriate injury for organizational standing, an organization must demonstrate a palpable injury in fact to its organizational interests; LBP-09-13, 70 NRC 178 (2009); LBP-10-16, 72 NRC 383 (2010)
- Hydro Resources, Inc.* (2929 Coors Road, Suite 101, Albuquerque, NM 87120), LBP-98-9, 47 NRC 261, 271 (1998)
an organization seeking to intervene in its own right must demonstrate a palpable injury in fact to its organizational interests that is within the zone of interests protected by the AEA or NEPA; LBP-08-6, 67 NRC 271 (2008); LBP-09-21, 70 NRC 590 n.16 (2009)
to obtain standing, an organization must demonstrate an effect upon its organizational interests or show that at least one of its members would suffer injury as a result of the challenged action, sufficient to confer upon it representational standing; LBP-10-16, 72 NRC 389 (2010)
- Hydro Resources, Inc.* (2929 Coors Road, Suite 101, Albuquerque, NM 87120), LBP-98-9, 47 NRC 261, 272 (1998), *rev'd on other grounds*, CLI-98-16, 48 NRC 119 (1998)
a licensing board's review of a petition for intervention is to avoid the familiar trap of confusing the standing determination with the assessment of a petitioner's case on the merits; LBP-08-24, 68 NRC 708 (2008); LBP-10-16, 72 NRC 388 (2010)
- Hydro Resources, Inc.* (2929 Coors Road, Suite 101, Albuquerque, NM 87120), LBP-98-9, 47 NRC 261, 275 (1998)
a showing that anyone who uses a substantial quantity of water personally or for livestock from a source that is reasonably contiguous to either an injection or processing site is sufficient to demonstrate an injury in fact for standing; LBP-08-6, 67 NRC 273 (2008)
because knowledge of the relevant rock formations is still rudimentary, there are enough reasonable doubts to establish injury in fact for standing; LBP-08-6, 67 NRC 279 (2008)
standing in cases involving uranium mining and other source materials licensing can be accorded where a petitioner uses a substantial quantity of water personally or for livestock from a source that is reasonably contiguous to either the injection or processing sites because such a showing demonstrates an injury in fact; CLI-09-9, 69 NRC 345 (2009); LBP-08-24, 68 NRC 704 (2008); LBP-10-16, 72 NRC 384 (2010)
- Hydro Resources, Inc.* (2929 Coors Road, Suite 101, Albuquerque, NM 87120), LBP-98-9, 47 NRC 261, 280 (1998), *rev'd on other grounds*, CLI-98-16, 48 NRC 119 (1998)
the organization or format of an application is not germane to license issuance because the objection to the application's organization is not an objection to the licensing action at issue in the proceeding; LBP-10-16, 72 NRC 403 (2010)
- Hydro Resources, Inc.* (2929 Coors Road, Suite 101, Albuquerque, NM 87120), LBP-99-1, 49 NRC 29, 33 (1999)
although Part 40 generally applies to in situ leach mining, Appendix A to Part 40, including Criterion 1, was designed to address the problems related to mill tailings and not problems related to injection mining; LBP-10-16, 72 NRC 434 (2010)
- Hydro Resources, Inc.* (2929 Coors Road, Suite 101, Albuquerque, NM 87120), LBP-99-15, 49 NRC 261, 266-67, *interlocutory petition for review denied*, CLI-99-8, 49 NRC 311 (1999)
radioactive emissions from material left on the mine site, as well as emissions from an underground mine, should be not be considered part of the total effective dose equivalent from licensee's operations; CLI-06-14, 63 NRC 515 (2006)
- Hydro Resources, Inc.* (P.O. Box 15910, Rio Rancho, NM 87174), CLI-00-12, 52 NRC 1, 3 (2000)
on fact-specific technical issues, where a Presiding Officer has reviewed an extensive record in detail, with the assistance of a technical advisor, the Commission is disinclined to upset the presiding officer's findings and conclusions, particularly where the submissions of experts have been weighed; CLI-06-1, 63 NRC 2 (2006); CLI-06-29, 64 NRC 422 (2006); CLI-08-28, 68 NRC 675 (2008)
the Commission's denial of review is not a decision on the merits, but simply indicates that the appealing party identified no clearly erroneous factual finding or important legal error requiring Commission correction; LBP-06-1, 63 NRC 59 n.15 (2006)

LEGAL CITATIONS INDEX

CASES

- Hydro Resources, Inc.* (P.O. Box 15910, Rio Rancho, NM 87174), CLI-00-12, 52 NRC 1, 5 (2000)
an untimely motion to reopen must demonstrate that the issue raised is not merely significant but exceptionally grave; LBP-10-21, 72 NRC 643 (2010)
- Hydro Resources, Inc.* (P.O. Box 15910, Rio Rancho, NM 87174), CLI-01-4, 53 NRC 31, 39 (2001)
a stay of indeterminate length would adversely affect NRC's ability to plan and allocate resources for adjudicatory proceedings by having a proceeding lurking on the agency case docket, pending on a timetable to be triggered only by, and thus subject to the exclusive knowledge and control of, an entity other than itself; CLI-06-12, 63 NRC 502 n.18 (2006)
- Hydro Resources, Inc.* (P.O. Box 15910, Rio Rancho, NM 87174), CLI-01-4, 53 NRC 31, 44 (2001)
it is inappropriate, perhaps even impossible, for an intervenor to prove at the contention admissibility stage that correcting an error or omission in the environmental report or environmental impact statement would, in fact, change the NRC's ultimate decision; LBP-10-14, 72 NRC 129 n.182 (2010)
NEPA is a procedural statute that does not require an agency to select any particular options; CLI-06-10, 63 NRC 467 (2006)
- Hydro Resources, Inc.* (P.O. Box 15910, Rio Rancho, NM 87174), CLI-01-4, 53 NRC 31, 46 (2001)
an intervenor bears responsibility for any misunderstanding of its claims that are unclear or indeterminate; LBP-06-19, 64 NRC 67 n.9 (2006)
generalized claims followed by unelaborated references to oral arguments and multiple pages run afoul of page limitation rules; CLI-06-10, 63 NRC 476 (2006)
the Commission should not be expected to sift unaided through earlier briefs or other documents filed before the board to piece together and discern a party's argument and the grounds for its claims; CLI-09-11, 69 NRC 534 (2009)
- Hydro Resources, Inc.* (P.O. Box 15910, Rio Rancho, NM 87174), CLI-01-4, 53 NRC 31, 47 (2001)
Commission precedent directs that the final environmental impact statement should be read and understood as a whole; LBP-06-19, 64 NRC 85 (2006)
- Hydro Resources, Inc.* (P.O. Box 15910, Rio Rancho, NM 87174), CLI-01-4, 53 NRC 31, 48-49 (2001)
business decisions of licensees or applicants are beyond NRC purview; CLI-10-1, 71 NRC 22 (2010)
- Hydro Resources, Inc.* (P.O. Box 15910, Rio Rancho, NM 87174), CLI-01-4, 53 NRC 31, 52 (2001)
an environmental impact statement must be supplemented only when changed circumstances cause effects that are significantly different from those already studied; LBP-06-19, 64 NRC 99 (2006)
- Hydro Resources, Inc.* (P.O. Box 15910, Rio Rancho, NM 87174), CLI-01-4, 53 NRC 31, 53 (2001)
in the context of an NRC adjudicatory proceeding, even if an environmental impact statement prepared by the Staff is found to be inadequate in certain respects, the board's findings, as well as the adjudicatory record, become, in effect, part of the final EIS; CLI-08-26, 68 NRC 527 n.87 (2008); CLI-10-18, 72 NRC 68 (2010); LBP-06-19, 64 NRC 69 n.11 (2006); LBP-09-7, 69 NRC 632 (2009)
Staff's addition of mitigation measures to a final environmental impact statement is not only permissible, it is properly viewed as the Staff's conscientious performance of its NEPA responsibilities; LBP-06-19, 64 NRC 101 (2006)
the final environmental impact statement, in response to comments received, may supplement, refine, or otherwise adapt the project alternatives; LBP-06-19, 64 NRC 101 (2006)
when a board decision supplements or differs from the findings of the Staff as set forth in its final environmental impact statement, the FEIS is deemed modified by the decision to that extent; LBP-06-8, 63 NRC 260 (2006)
- Hydro Resources, Inc.* (P.O. Box 15910, Rio Rancho, NM 87174), CLI-01-4, 53 NRC 31, 54 (2001)
one of the alternatives generally discussed in a final environmental impact statement is the alternative of taking no action; LBP-06-19, 64 NRC 89 (2006)
the ER discussion of the no-action alternative can be brief and can incorporate by reference other sections of the ER discussing the project's adverse consequences; LBP-07-3, 65 NRC 259 (2007)
the no-action alternative in a final environmental impact statement need not contain much discussion, since it is most simply viewed as maintaining the status quo; CLI-06-10, 63 NRC 468 (2006); LBP-06-19, 64 NRC 90 (2006)
- Hydro Resources, Inc.* (P.O. Box 15910, Rio Rancho, NM 87174), CLI-01-4, 53 NRC 31, 55 (2001)
an agency must be guided by an applicant's goals, including economic goals, in its environmental impact statement; LBP-07-9, 65 NRC 608, 611 (2007)

LEGAL CITATIONS INDEX

CASES

- in the alternatives analysis in its environmental report, applicant need only consider the range of possibilities that are capable of achieving the goals of the proposed action; CLI-06-10, 63 NRC 469 (2006); LBP-07-9, 65 NRC 603 (2007); LBP-08-13, 68 NRC 92, 95, 204 (2008); LBP-10-6, 71 NRC 363 (2010)
- it is not the Staff's job to either change the applicant's project goals or search independently for alternatives in addition to the reasonable ones submitted by the applicant; LBP-07-9, 65 NRC 611 (2007)
- NEPA imposes no obligation to select the most environmentally benign alternative; LBP-06-19, 64 NRC 90 (2006)
- when a federal agency acts, not as a proprietor, but to approve a project being sponsored by a local government or private applicant, the federal agency is necessarily more limited; CLI-06-10, 63 NRC 468 (2006)
- when reviewing a discrete license application filed by a private applicant, a federal agency may appropriately accord substantial weight to the preferences of the applicant and/or sponsor in the siting and design of the project; CLI-06-10, 63 NRC 468 (2006); CLI-10-18, 72 NRC 78 (2010); LBP-06-8, 63 NRC 259 (2006); LBP-07-9, 65 NRC 608 (2007); LBP-09-7, 69 NRC 632 (2009); LBP-10-14, 72 NRC 110 (2010)
- when reviewing a discrete license application filed by a private applicant, a federal agency may appropriately accord substantial weight to the preferences of the applicant, and may take into account the economic goals of the project's sponsor; LBP-09-10, 70 NRC 127 (2009); LBP-09-17, 70 NRC 379 (2009)
- when the purpose of a project is to accomplish one thing, it makes no sense to consider the alternative ways by which another thing might be achieved; CLI-06-10, 63 NRC 469 (2006)
- Hydro Resources, Inc.* (P.O. Box 15910, Rio Rancho, NM 87174), CLI-01-4, 53 NRC 31, 55-56 (2001)
- when an agency is being asked to approve a private applicant's proposed project, the agency may take into account the applicant's economic goals, according appropriate deference to the applicant's proposed siting and design plans; LBP-06-19, 64 NRC 89 (2006)
- when reviewing a license application filed by a private applicant, NRC should take into account the needs and goals of the parties involved in the application; CLI-06-10, 63 NRC 468 (2006)
- Hydro Resources, Inc.* (P.O. Box 15910, Rio Rancho, NM 87174), CLI-01-4, 53 NRC 31, 57 (2001)
- cumulative impacts analysis considers whether the incremental impacts from an action will combine with preexisting environmental impacts in a fashion that will enhance the significance of their individual effects; CLI-06-29, 64 NRC 422 (2006)
- cumulative impacts analysis may also look to whether a proposed action's impacts will have interregional synergistic effects; LBP-06-19, 64 NRC 67 n.8 (2006)
- Hydro Resources, Inc.* (P.O. Box 15910, Rio Rancho, NM 87174), CLI-01-4, 53 NRC 31, 57-58 (2001)
- a "cumulative impact" is a sum greater than its parts; CLI-08-1, 67 NRC 24 (2008)
- Hydro Resources, Inc.* (P.O. Box 15910, Rio Rancho, NM 87174), CLI-01-4, 53 NRC 31, 60 (2001)
- cumulative impacts analysis in the NEPA context is not concerned with the singular impacts that an individual project may have on the environment, but rather it looks to whether the proposed action's impacts will be significantly enhanced by already-existing environmental effects from prior actions; LBP-06-19, 64 NRC 66-67, 72 (2006)
- Hydro Resources, Inc.* (P.O. Box 15910, Rio Rancho, NM 87174), CLI-01-4, 53 NRC 31, 61-62 (2001)
- cumulative impacts analysis looks to whether the impacts from a proposed project will combine with the existing, residual impacts in the area to result in a new impact that is significantly enhanced by already existing environmental effects; LBP-06-1, 63 NRC 60 (2006)
- Hydro Resources, Inc.* (P.O. Box 15910, Rio Rancho, NM 87174), CLI-01-4, 53 NRC 31, 64 (2001)
- pursuant to environmental justice principles, each agency should identify and address, as appropriate, any disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority and low-income populations; LBP-06-19, 64 NRC 79 (2006)
- Hydro Resources, Inc.* (P.O. Box 15910, Rio Rancho, NM 87174), CLI-01-4, 53 NRC 31, 64-71 (2001)
- one can always flyspeck a final environmental impact statement's discussion to come up with more specifics and more areas of discussion that conceivably could have been included, but there is no standard formula for how environmental justice issues should be identified or addressed; CLI-07-27, 66 NRC 242 (2007)

LEGAL CITATIONS INDEX

CASES

- treatment of environmental justice issues is described; CLI-07-27, 66 NRC 238 (2007)
- Hydro Resources, Inc.* (P.O. Box 15910, Rio Rancho, NM 87174), CLI-01-4, 53 NRC 31, 69 (2001)
the environmental justice analysis is similar to a cumulative impacts analysis but also takes into account relevant features of the minority community; LBP-06-19, 64 NRC 79 (2006)
- Hydro Resources, Inc.* (P.O. Box 15910, Rio Rancho, NM 87174), CLI-01-4, 53 NRC 31, 71 (2001)
intervenor's preference that the final environmental impact statement contain additional details on any particular issue is not, standing alone, probative of the FEIS adequacy; LBP-06-19, 64 NRC 81 n.27 (2006)
- Hydro Resources, Inc.* (P.O. Box 15910, Rio Rancho, NM 87174), LBP-04-3, 59 NRC 84, 88 (2004)
Criterion 9 of 10 C.F.R. Part 40, Appendix A requires an applicant to establish a surety arrangement that ensures sufficient funds will be available for decommissioning and decontamination of an NRC-licensed source materials site; LBP-08-24, 68 NRC 755 (2008); LBP-10-16, 72 NRC 430 (2010)
- Hydro Resources, Inc.* (P.O. Box 15910, Rio Rancho, NM 87174), CLI-04-33, 60 NRC 581, 592 (2004)
arguments or legal theories not raised before a presiding officer or licensing board are deemed waived; CLI-06-29, 64 NRC 421 (2006)
- Hydro Resources, Inc.* (P.O. Box 15910, Rio Rancho, NM 87174), CLI-04-33, 60 NRC 581, 596 (2004)
calculations for surety bonds are to be estimated to the extent possible, and based on the applicant's experience with generally accepted industry practices including research and development at the site or previous operating experience in the case of a license renewal; LBP-08-24, 68 NRC 756 n.375 (2008)
guidance documents are not legally binding, but are useful in instances where legal authority is lacking; LBP-08-24, 68 NRC 756 n.374 (2008); LBP-10-16, 72 NRC 430 n.366 (2010)
NUREGs are guidance documents, with no binding effect, but are entitled to special weight, such that it is appropriate to consider in evaluating contentions; LBP-09-17, 70 NRC 368 (2009)
Staff guidance documents generally do not constitute legally binding interpretations of agency regulations; LBP-06-15, 63 NRC 624 (2006)
- Hydro Resources, Inc.* (P.O. Box 15910, Rio Rancho, NM 87174), CLI-04-33, 60 NRC 581, 597 (2004)
in estimating labor costs for its financial assurance plan relative to its proposed uranium mining operation, an applicant is entitled to draw upon its prior experience in that field as a basis for its cost estimates; LBP-06-15, 63 NRC 641-42 n.44 (2006); LBP-08-24, 68 NRC 756 n.375 (2008)
NRC evaluates applicants' calculations for surety bonds on a case-by-case basis, comparing proposed unit costs with standard industry cost guides as well as consulting with local and state authorities on local and regional costs; LBP-08-24, 68 NRC 756 n.376 (2008)
- Hydro Resources, Inc.* (P.O. Box 15910, Rio Rancho, NM 87174), CLI-04-33, 60 NRC 581, 602-03, 605-06 (2004)
a board's analysis of decommissioning cost estimates should be tailored to the specifics of the proceeding; CLI-06-22, 64 NRC 42 (2006)
- Hydro Resources, Inc.* (P.O. Box 15910, Rio Rancho, NM 87174), CLI-04-39, 60 NRC 657, 658 (2004)
licensing boards include two judges with technical expertise; CLI-10-17, 72 NRC 50 n.276 (2010)
- Hydro Resources, Inc.* (P.O. Box 15910, Rio Rancho, NM 87174), CLI-04-39, 60 NRC 657, 659 (2004)
new information that might emerge following issuance of an environmental impact statement requires a supplement to the impacts analysis if the new information presents a seriously different picture of the environmental impact of the proposed project from what was previously envisioned; CLI-06-29, 64 NRC 419 (2006)
- Hydro Resources, Inc.* (P.O. Box 777, Crownpoint, New Mexico 87313), CLI-06-1, 63 NRC 1, 2 (2006)
although the Commission on occasion may choose to make its own de novo findings of fact, it generally does not exercise that authority where a presiding officer or licensing board has issued a plausible decision that rests on carefully rendered findings of fact; CLI-06-15, 63 NRC 697 (2006); CLI-06-22, 64 NRC 40 (2006); CLI-06-29, 64 NRC 423 (2006)
on fact-specific technical issues, where a presiding officer has reviewed an extensive record in detail, with the assistance of a technical advisor, the Commission is disinclined to upset the presiding officer's findings and conclusions, particularly where the submissions of experts have been weighed; CLI-06-29, 64 NRC 422 (2006)

LEGAL CITATIONS INDEX

CASES

- the Commission defers to a board's factual findings and generally steps in only to correct clearly erroneous findings, that is, findings not even plausible in light of the record viewed in its entirety; CLI-09-7, 69 NRC 259 (2009); CLI-10-5, 71 NRC 99 (2010); CLI-10-18, 72 NRC 73 (2010)
- Hydro Resources, Inc.* (P.O. Box 777, Crownpoint, New Mexico 87313), CLI-06-7, 63 NRC 165, 166 (2006)
- Commission review is in the public interest if the decision could affect pending and future license renewal determinations; CLI-10-17, 72 NRC 13 (2010)
- Hydro Resources, Inc.* (P.O. Box 777, Crownpoint, New Mexico 87313), CLI-06-11, 63 NRC 483, 488 (2006)
- subject to limited exceptions, legal determinations made on appeal in a case are controlling precedent, becoming the law of the case, for all later decisions in the same case; LBP-06-19, 64 NRC 84 n.29 (2006)
- Hydro Resources, Inc.* (P.O. Box 777, Crownpoint, New Mexico 87313), CLI-06-14, 63 NRC 510, 516 (2006)
- the plain language of a regulation is controlling; LBP-10-22, 72 NRC 672 n.37 (2010)
- Hydro Resources, Inc.* (P.O. Box 777, Crownpoint, New Mexico 87313), CLI-06-29, 64 NRC 417, 420 (2006)
- a licensing board has no jurisdiction to consider any treaty-related or water-rights questions in an NRC adjudicatory proceeding; LBP-08-6, 67 NRC 269 n.107 (2008)
- Hydro Resources, Inc.* (P.O. Box 777, Crownpoint, New Mexico 87313), LBP-03-27, 58 NRC 408, 413 (2003)
- petitioners who rely on water supplies adjacent to a mining site have a right to a hearing; LBP-08-24, 68 NRC 705 (2008)
- Hydro Resources, Inc.* (P.O. Box 777, Crownpoint, New Mexico 87313), LBP-03-27, 58 NRC 408, 414 (2003)
- a small or minor unwanted exposure, even one well within regulatory limits, is sufficient to establish an injury in fact; LBP-08-6, 67 NRC 280 (2008)
- asserted harm need not be great to establish an injury in fact for standing; LBP-08-6, 67 NRC 280 (2008)
- Hydro Resources, Inc.* (P.O. Box 777, Crownpoint, New Mexico 87313), LBP-04-23, 60 NRC 441, 447 (2004)
- only reasonable scenarios need to be considered, limited to effects that are shown to have some likelihood of occurring; LBP-06-23, 64 NRC 329 (2006)
- Hydro Resources, Inc.* (P.O. Box 777, Crownpoint, New Mexico 87313), LBP-05-17, 62 NRC 77, 91 (2005)
- a justiciable controversy must involve adverse parties representing a true clash of interests and the questions raised must be presented in an adversary context and in a form historically viewed as capable of resolution through the judicial process; LBP-09-25, 70 NRC 895 n.179 (2009)
- Hydro Resources, Inc.* (P.O. Box 777, Crownpoint, New Mexico 87313), LBP-05-17, 62 NRC 77, 98 n.14 (2005)
- arguments that an intervenor fails to adequately develop are treated as waived; LBP-06-19, 64 NRC 76 n.21 (2006)
- it is not the duty of an adjudicative body to dig through the reams of paper that litigants have deposited to construct and develop their arguments; LBP-06-19, 64 NRC 67 n.8 (2006)
- Hydro Resources, Inc.* (P.O. Box 777, Crownpoint, New Mexico 87313), LBP-05-26, 62 NRC 442, 450 (2005)
- cultural and historic resources are to be considered as part of the environmental impacts assessment that must be completed; LBP-10-16, 72 NRC 418 (2010)
- Hydro Resources, Inc.* (P.O. Box 777, Crownpoint, New Mexico 87313), LBP-05-26, 62 NRC 442, 465 (2005)
- a form letter is not sufficient to constitute the reasonable effort that section 106 of the National Historic Preservation Act requires; LBP-08-6, 67 NRC 330 n.502 (2008)

LEGAL CITATIONS INDEX

CASES

- Hydro Resources, Inc.* (P.O. Box 777, Crownpoint, New Mexico 87313), LBP-05-26, 62 NRC 442, 467-68 (2005)
federal agencies must notify all consulting parties, including Indian tribes, when a finding of no effect has been made, and to provide those consulting parties with an invitation to inspect the documentation prior to approving the undertaking; LBP-08-6, 67 NRC 330 n.502 (2008)
- Hydro Resources, Inc.* (P.O. Box 777, Crownpoint, New Mexico 87313), LBP-06-19, 64 NRC 53, 62 n.3 (2006)
although NRC gives substantial deference to Council on Environmental Quality regulations, it is not bound to follow them; LBP-10-16, 72 NRC 437 (2010)
- Idaho Sporting Congress v. Thomas*, 137 F.3d 1146, 1150 (9th Cir. 1998)
an environmental assessment shall identify the proposed action and include a list of agencies and persons consulted, and identification of sources used; CLI-08-1, 67 NRC 14 (2008)
- Idahoan Fresh v. Advantage Produce, Inc.*, 157 F.3d 197, 202 (3d Cir. 1998)
a basic tenet of statutory construction, equally applicable to regulatory construction, is that a statute should be construed so that effect is given to all its provisions; CLI-06-11, 63 NRC 491 (2006)
- 'Ilio'ulaokalani Coalition v. Rumsfeld*, 464 F.3d 1083, 1092 (9th Cir. 2006)
primary obligation to satisfy the requirements of NEPA rests on the agency; CLI-10-18, 72 NRC 82 (2010)
- Illinois Power Co.* (Clinton Power Station, Unit 1), LBP-81-61, 14 NRC 1735, 1738 (1981)
although the phrase "possession, custody, or control," is used, no relevant interpretation or construction of the phrase, or of the term control, is provided; LBP-12-23, 72 NRC 706 (2010)
- Illinois Power Co.* (Clinton Power Station, Units 1 and 2), ALAB-340, 4 NRC 27, 33-34 (1976)
computer models and associated documentation are within the scope of discovery under NRC regulations; LBP-12-23, 72 NRC 703 (2010)
- Illinois Power Co.* (Clinton Power Station, Units 1 and 2), ALAB-340, 4 NRC 27, 34 (1976)
intervenor's request that applicant bring to the evidentiary hearing the underlying data on computer models that applicant's expert had used in forecasting lifetime fuel cycle costs covered the source decks, data decks, computer programs, and documentation upon which the models were based; LBP-12-23, 72 NRC 703 (2010)
- Immigration and Naturalization Service v. Chadha*, 462 U.S. 919, 959 (1983)
carefully crafted restraints in the Constitution preserve freedom by curbing the exercise of power; LBP-09-24, 70 NRC 799 n.5 (2009)
- Improvement Co. v. Munson*, 14 Wall. 442, 448, 20 L. Ed. 867 (1872)
on summary disposition motions, the judge must determine whether there is any evidence upon which a jury could properly proceed to find a verdict for the nonmovant; LBP-07-13, 66 NRC 141 n.8 (2007)
- In re Aguinda*, 241 F.3d 194, 201 (2d Cir. 2001)
under 28 U.S.C. § 455(a), a showing is required that would cause an objective, disinterested observer fully informed of the underlying facts to entertain significant doubt that justice would be done absent recusal; CLI-10-22, 72 NRC 206 (2010)
- In re Aguinda*, 241 F.3d 194, 204-05 (2d Cir. 2001)
mere experience or background in a relevant technical field does not imply knowledge of the specific disputed facts in a case; CLI-10-22, 72 NRC 206 (2010)
- In re Bankers Trust Co.*, 61 F.3d 465, 469 (6th Cir. 1995)
production of documents is required if the party has practical ability to obtain the documents from another, irrespective of his legal entitlement to the documents; LBP-12-23, 72 NRC 708 n.22 (2010)
- In re Bluewater Network*, 234 F.3d 1305, 1315 (D.C. Cir. 2000)
mandamus may lie where there is a clear duty to act and the agency has unreasonably delayed the contemplated action; LBP-06-13, 63 NRC 560 n.129 (2006)
- In re Bock*, 297 B.R. 22, 31-32 (Bankr. W.D.N.C. 2002)
the purpose and scope of the duty of candor that is placed on lawyers is described; LBP-06-10, 63 NRC 371 n.10 (2006)

LEGAL CITATIONS INDEX

CASES

- In re Campbell*, 628 F.2d 1260, 1262 (9th Cir. 1980)
when a claim becomes moot, a decision on the merits may be appropriate if the same basic dispute is likely to recur in the future, unless it seems sufficient to await the event or better to defer to another court; LBP-09-15, 70 NRC 210 (2009)
- In re Cendant*, 260 F.3d 183 (3d Cir. 2001)
the First Amendment requires a presumption of openness in civil proceedings; LBP-10-2, 71 NRC 208 n.58 (2010)
- In re CFS-Related Securities Fraud Litigation*, 256 F. Supp. 2d 1227, 1239 (N.D. Okla. 2003)
in a complex case, a party has an interest in getting an early start on discovery to ensure the judicious use of resources, and thus granting a stay and preventing early discovery is prejudicial; LBP-06-13, 63 NRC 542 n.63 (2006)
- In re Discipline of Timothy J. Wilka*, 638 N.W.2d 245, 249 (S.D. 2001)
avoidance of evasive responses to a tribunal has been held to fall within a lawyer's duty of candor; LBP-06-10, 63 NRC 371 (2006)
- In re Dobson*, 572 A.2d 328, 334 (Conn. 1990), *cert. denied*, *Dodson v. Superior Court*, 498 U.S. 896 (1990)
the duty of trial judges to deter and correct misconduct of attorneys with respect to their obligations as officers of the court is related to the need to support the authority of the tribunal and enable the proceeding to go forward with dignity; LBP-06-10, 63 NRC 369 (2006)
- In re Domestic Air Transportation Antitrust Litigation*, 142 F.R.D. 354, 356-57 (D. Ga. 1992)
defendants were required to request that their employees order a copy of transcripts of their deposition testimony given to a government agency; LBP-12-23, 72 NRC 708 n.23 (2010)
- In re Franklin National Bank Securities Litigation*, 478 F. Supp. 577, 583 (E.D.N.Y. 1979)
in balancing the need for deliberative documents against the government's interest in nondisclosure, courts have considered relevance of evidence sought to be protected, availability of other evidence, seriousness of litigation and issues involved, role of government in the litigation, and possibility of future timidity by government employees who will be forced to recognize that their secrets are violable; LBP-06-3, 63 NRC 92 (2006)
- In re Grand Jury Proceedings #5 Empanelled January 28, 2004 v. Under Seal, Defendant*, 401 F.3d 247, 250 (4th Cir. 2005)
attorney work-product privilege protects both fact work product, which consists of documents prepared by an attorney that do not contain the attorney's mental impressions, and opinion work product, which does contain an attorney's mental impressions; CLI-08-6, 67 NRC 185 (2008)
- In re Motion to Unseal Electronic Surveillance*, 965 F.2d 637, 641 (8th Cir. 1992)
the rules of discovery allow intrusions into the private affairs of parties to litigation as well as third parties; LBP-06-25, 64 NRC 388 (2006)
- In re Motion To Unseal Electronic Surveillance*, 965 F.2d 637, 642 (8th Cir. 1992)
much of the discovery done in civil suits implicates confidentiality and privacy interests, and courts are often asked to carefully balance these interests with the compelling need for discovery; LBP-06-25, 64 NRC 377 (2006)
- In re Oliver*, 333 U.S. 257, 278 (1948)
Anglo-American jurisprudence has long ensured that judicial proceedings will be open to the public; LBP-10-2, 71 NRC 206 n.54 (2010)
- In re Ramu Corp.*, 903 F.2d 312 (5th Cir. 1990)
sometimes the pendency of a criminal prosecution does not necessitate delaying a parallel civil or administrative proceeding; LBP-06-13, 63 NRC 538 n.42 (2006)
- In re Ramu Corp.*, 903 F.2d 312, 318-19 (5th Cir. 1990)
discretionary stays will be reversed when they are immoderate or of an indefinite duration; LBP-06-13, 63 NRC 536 n.32 (2006)
- In re Ramu Corp.*, 903 F.2d 312, 320 (5th Cir. 1990)
a stay was lifted because the government failed to demonstrate prejudice to a pending criminal case or investigation; LBP-06-13, 63 NRC 541 n.56 (2006)
since any relationship between criminal and civil cases raises the prospect of civil discovery abuse that can prejudice the criminal case, good cause requires more than the mere possibility of prejudice; LBP-06-13, 63 NRC 541 (2006)

LEGAL CITATIONS INDEX

CASES

- the party requesting a delay must provide detailed and specific reasons demonstrating some type of cognizable harm would result absent that relief; LBP-06-13, 63 NRC 540 (2006)
- In re Ross*, 162 B.R. 860 (B. Ct. D. Idaho 1993)
- sometimes the pendency of a criminal prosecution does not necessitate delaying a parallel civil or administrative proceeding; LBP-06-13, 63 NRC 538 n.42 (2006)
- In re Sealed Case*, 121 F.3d 729, 736 (D.C. Cir. 1997)
- agency interests are compromised and government processes are chilled when deliberative process documents are released to the public; LBP-06-25, 64 NRC 391 (2006)
- rooted in common law, variations on the deliberative process privilege doctrine are thought to have been used in American courts since the beginnings of our nation; LBP-06-25, 64 NRC 381 (2006)
- In re Sealed Case*, 121 F.3d 729, 737 (D.C. Cir. 1997)
- privileges protecting deliberative process are not absolute; LBP-06-25, 64 NRC 376 (2006)
- the greater the interest protected by the privilege, the more compelling the need and the other circumstances must be to overcome it; LBP-06-25, 64 NRC 377 (2006)
- where factual material is so inextricably intertwined with the deliberative sections of documents that its disclosure would inevitably reveal the government's deliberations, that material is protected by deliberative process privilege; LBP-06-25, 64 NRC 382, 389 (2006)
- In re Sealed Case*, 121 F.3d 729, 737-38 (D.C. Cir. 1997)
- federal courts use a balancing test for discovery and consider the relevance of the evidence, the availability of other evidence, the seriousness of the litigation, the role of the government, and the possibility of future timidity by government employees; LBP-06-25, 64 NRC 390 (2006)
- In re Sealed Case*, 121 F.3d 729, 755 (D.C. Cir. 1997)
- a far greater showing of need is required to overcome the presidential communications privilege than must be shown to overcome the deliberative process privilege, because the interest in protecting presidential communications is stronger than the interest in protecting communications among executive branch subordinates; LBP-06-25, 64 NRC 377 (2006)
- In re Sealed Case*, 676 F.2d 793, 800 (D.C. Cir. 1982)
- in the context of privilege covering voluntarily disclosed information, the privilege holder has waived its privilege as to the agency that received the investigative materials; CLI-08-6, 67 NRC 183 (2008)
- under the voluntary disclosure program, the Securities & Exchange Commission allows a corporation under investigation to investigate and reform itself, thus saving the government the considerable expense of a full-scale investigation and prosecution; CLI-08-6, 67 NRC 182 (2008)
- In re Sealed Case*, 676 F.2d 793, 801 (D.C. Cir. 1982)
- the difference between the SEC and NRC voluntary disclosure programs is that the SEC program explicitly offers leniency for past misconduct in exchange for cooperation; CLI-08-6, 67 NRC 184 (2008)
- In re Sealed Case*, 676 F.2d 793, 825 (D.C. Cir. 1982)
- in the context of privilege covering voluntarily disclosed information, the privilege holder has waived its privilege as to the agency that received the investigative materials; CLI-08-6, 67 NRC 183 n.1 (2008)
- In re Sealed Case*, 856 F.2d 268, 272 (D.C. Cir. 1988)
- a privacy interest does not exist as a generalized theory but instead will depend on such specific factors as the impact of the information's disclosure upon particular individuals; LBP-06-25, 64 NRC 393 (2006)
- a ten-point test for evaluating personal privacy privilege includes an assessment of how disclosure will thwart governmental processes by discouraging citizens from giving the government information and chilling governmental self-evaluation; LBP-06-25, 64 NRC 385 (2006)
- a ten-point test for evaluating the law enforcement privilege under FOIA has been used; LBP-06-25, 64 NRC 385 (2006)
- harm to an individual is specifically assessed when considering the 7(C) law enforcement privilege claim; LBP-06-25, 64 NRC 386 (2006)
- intrinsic to analyses of the FOIA exceptions is an assessment of harm based on public disclosure; LBP-06-25, 64 NRC 386 n.75 (2006)

LEGAL CITATIONS INDEX

CASES

- In re Sherwin-Williams Co.*, 607 F.3d 474, 477 (7th Cir. 2010)
that an unreasonable person, focusing on only one aspect of the story, might perceive a risk of bias is irrelevant; CLI-10-22, 72 NRC 206 (2010)
- In re Shieldalloy Metallurgical Corp. and NUREG-1757*, 2007 NRC LEXIS 11 at 3-4 (Jan. 12, 2007)
only if one has been admitted as a “party” to a proceeding, through showing standing and submitting an admissible contention, can one have a request for stay considered by a presiding officer; LBP-07-11, 66 NRC 97 (2007)
- In re Subpoena Duces Tecum Served on the Office of the Comptroller of the Currency*, 145 F.3d 1422, 1423-24 (D.C. Cir. 1998)
five factors are applied to test for qualifying the deliberative process privilege; LBP-06-3, 63 NRC 92 n.10 (2006)
- In re Subpoena Duces Tecum Served on the Office of the Comptroller of the Currency*, 145 F.3d 1422, 1424 (D.C. Cir. 1998)
if the plaintiff’s cause of action is directed at the government’s intent, it makes no sense to permit the government to use the privilege as a shield; LBP-06-25, 64 NRC 377 (2006)
- In re Subpoena Served upon the Comptroller of the Currency*, 967 F.2d 630, 634 (D.C. Cir. 1992)
five factors are applied to test for qualifying the deliberative process privilege; LBP-06-3, 63 NRC 92 n.10 (2006)
- In re Subpoenas Duces Tecum*, 738 F.2d 1367 (D.C. Cir. 1984)
in the context of privilege covering voluntarily disclosed information, the privilege holder has waived its privilege as to the agency that received the investigative materials; CLI-08-6, 67 NRC 183 (2008)
- In re Subpoenas Duces Tecum*, 738 F.2d at 1367, 1373 (D.C. Cir. 1984)
the distinction between voluntary disclosure and disclosure by subpoena is that the latter, being involuntary, lacks the self-interest that motivates the former; CLI-08-6, 67 NRC 183 (2008)
- Independent Bankers Association of Georgia v. Board of Governors of Federal Reserve System*, 516 F.2d 1206, 1220 n.57 (D.C. 1975)
petitioner does not become entitled to an evidentiary hearing merely on request, or on a bald or conclusory allegation that a dispute exists, but must make a minimal showing that material facts are in dispute, thereby demonstrating that an inquiry in depth is appropriate; LBP-09-17, 70 NRC 329 (2009)
- Independent Towers of Washington v. Washington*, 350 F.3d 925, 929 (9th Cir. 2003)
the Staff, like every participant in the adjudicative process, has an obligation to fully develop its arguments; LBP-06-7, 63 NRC 223 n.34 (2006)
- Indiana Lumbermens Mutual Insurance Co. v. Reinsurance Results, Inc.*, 513 F.3d 652, 658 (7th Cir.), cert. denied, 555 U.S. 884 (2008)
issues may arise about which the presiding judges lack specific expertise, but they use their training, experience, knowledge, and judgment to ask the right questions and reach sound decisions; CLI-10-17, 72 NRC 50 n.277 (2010)
- Indiana Michigan Power Co. v. U.S. Department of Energy*, 88 F.3d 1272 (D.C. Cir. 1996)
the Nuclear Waste Policy Act created an obligation for DOE to dispose of spent nuclear fuel by January 31, 1998; LBP-10-11, 71 NRC 628-29 n.71 (2010)
- Inquiry into Three Mile Island Unit 2 Leak Rate Data Falsification*, LBP-87-15, 25 NRC 671, 690 (1987)
“reasonable assurance” requires that a case be proved by the “preponderance of the evidence” standard common to NRC proceedings, which has been interpreted as requiring only that the record underlying a finding makes it slightly more likely than not; LBP-08-22, 68 NRC 646 (2008)
- Inquiry into Three Mile Island Unit 2 Leak Rate Data Falsification*, LBP-87-15, 25 NRC 671, 783 (1987)
a board’s findings regarding a particular witness’s knowledge or state of mind generally depend largely on that witness’s credibility; CLI-10-23, 72 NRC 226 n.65 (2010)
- Integrated Systems Analysts, Inc.*, SBA No. 1944, 1984 SBA LEXIS 19, at 4-5 (Small Business Administration Office of Hearings & Appeals, May 1, 1984)
appeal of business size assessment for contract bid eligibility was dismissed as moot because contract had already been awarded; LBP-09-14, 70 NRC 196 n.15 (2009)

LEGAL CITATIONS INDEX

CASES

- International Brotherhood of Teamsters v. Transportation Security Administration*, 429 F.3d 1130, 1134-35 & n.4 (D.C. Cir. 2005)
representational standing to a union is denied, in part because it had submitted no proof that the employee it claimed to represent was in fact a union member at the time the case commenced; CLI-08-19, 68 NRC 263 (2008)
- International Paper Co. v. Ouellette*, 479 U.S. 481, 495 (1987)
boards lack authority to establish prospective sanctions for any failure by the Staff and/or the applicant to comply with the board's notice conditions; CLI-09-2, 69 NRC 63 (2009)
- International Uranium (USA) Corp.* (Receipt of Material from Tonawanda, New York), CLI-98-23, 48 NRC 259, 264 (1998)
although the Commission commonly looks to Article III concepts for guidance, it is not required to automatically follow them in all respects because NRC proceedings are not subject to Article III; LBP-09-15, 70 NRC 210 (2009)
- International Uranium (USA) Corp.* (Receipt of Material from Tonawanda, New York), LBP-98-21, 48 NRC 137, 142 n.7 (1998)
a board cannot be expected to sift through reams of data to determine whether a contention is admissible; LBP-07-3, 65 NRC 263 n.6 (2007)
- International Uranium (USA) Corp.* (Request for Materials License Amendment), CLI-00-1, 51 NRC 1, 19 (2000)
although NRC guidance documents are entitled to some weight, they do not have the force of a legally binding regulation and, like any guidance document, may be challenged in an adjudicatory proceeding; LBP-08-22, 68 NRC 614 (2008); LBP-08-25, 68 NRC 788 (2008)
guidance documents do not create binding legal requirements; CLI-10-24, 72 NRC 467 (2010)
- International Uranium (USA) Corp.* (Request for Materials License Amendment), CLI-00-4, 51 NRC 88, 88-89 (2000)
standing is frequently given to competitors of an applicant or licensee who assert that their businesses would be injured if the pending request were granted; LBP-09-6, 69 NRC 431 (2009)
- International Uranium (USA) Corp.* (White Mesa Uranium Mill), CLI-98-6, 47 NRC 116, 117 n.1 (1998)
in cases involving ISL uranium mining and other source materials licensing, petitioner must demonstrate injury, causation, and redressability because proximity to the proposed facility alone is not adequate to demonstrate standing; CLI-09-12, 69 NRC 548 n.53 (2009); LBP-08-24, 68 NRC 704 (2008); LBP-10-16, 72 NRC 384 (2010)
in proceedings not involving power reactors, proximity alone is not sufficient to establish standing; LBP-08-6, 67 NRC 272 (2008)
- International Uranium (USA) Corp.* (White Mesa Uranium Mill), CLI-98-6, 47 NRC 116, 118 (1998)
licensing board determinations on standing involve a reasonable degree of discretion; LBP-08-6, 67 NRC 277 (2008)
on appeal, the Commission defers to the board's determinations on the admissibility of contentions unless it finds an error of law or abuse of discretion; CLI-09-12, 69 NRC 544 (2009)
- International Uranium (USA) Corp.* (White Mesa Uranium Mill), CLI-01-18, 54 NRC 27, 30 (2001)
petitioner cannot base standing or a contention on the possibility that the licensee will violate the terms of its license; CLI-10-20, 72 NRC 193 n.45 (2010)
- International Uranium (USA) Corp.* (White Mesa Uranium Mill), CLI-01-18, 54 NRC 27, 31 (2001)
licensing board determinations on standing involve a reasonable degree of discretion; LBP-08-6, 67 NRC 277 (2008)
- International Uranium (USA) Corp.* (White Mesa Uranium Mill), CLI-01-21, 54 NRC 247, 251 (2001)
since a license amendment involves a facility with ongoing operations, a petitioner's challenge must show that the amendment will cause a distinct new harm or threat apart from the activities already licensed; CLI-09-12, 69 NRC 544 (2009); LBP-06-22, 64 NRC 246 (2006); LBP-08-6, 67 NRC 265 (2008)
- International Uranium (USA) Corp.* (White Mesa Uranium Mill), CLI-01-21, 54 NRC 247, 252 (2001)
general policy interests alone are not sufficient to establish organizational standing, but rather, a petitioner seeking to show standing in this way must demonstrate a discrete institutional injury to the organization itself; CLI-07-18, 65 NRC 412 (2007); CLI-08-19, 68 NRC 270 (2008); LBP-06-20, 64 NRC 144, 145 (2006); LBP-07-4, 65 NRC 296 (2007); LBP-09-20, 70 NRC 576 (2009)

LEGAL CITATIONS INDEX

CASES

- in the case of an ongoing operation, a petitioner would have to show that the license amendment sought would cause a distinct new harm to himself to gain standing; CLI-09-12, 69 NRC 545 (2009)
- petitioner organization fails to identify any discrete institutional injury to itself other than general environmental and policy interests of the sorts the federal courts and NRC repeatedly have found insufficient for organizational standing; CLI-10-3, 71 NRC 51 n.5 (2010)
- International Uranium (USA) Corp.* (White Mesa Uranium Mill), CLI-01-21, 54 NRC 247, 253 (2001)
- arguments made before the board that are abandoned on appeal are deemed to be waived; CLI-10-9, 71 NRC 257 n.70, 264 n.115, 265 (2010)
- petitioners have not appealed the board's ruling as to organizational standing, and thus the argument is considered waived; CLI-10-3, 71 NRC 51 n.5 (2010)
- petitioner must establish a concrete and particularized injury traceable to the licensed operations; LBP-08-24, 68 NRC 707 (2008)
- standing cannot be based on unfounded conjecture; LBP-09-28, 70 NRC 1025 n.36 (2009)
- International Uranium (USA) Corp.* (White Mesa Uranium Mill), CLI-01-21, 54 NRC 247, 254 (2001)
- mere conclusory allegations about potential harm to petitioner or others is insufficient to confer standing; LBP-08-24, 68 NRC 707 n.63 (2008)
- International Uranium (USA) Corp.* (White Mesa Uranium Mill), CLI-02-10, 55 NRC 251, 259 (2002)
- a party seeking to demonstrate irreparable injury must provide factual substantiation for that claim; CLI-09-6, 69 NRC 136 n.26 (2009)
- International Uranium (USA) Corp.* (White Mesa Uranium Mill), CLI-02-13, 55 NRC 269, 273 (2002)
- boards' case management decisions, such as determinations of whether to permit additional slide shows or enlarged exhibits, lie well within the discretion of the board; CLI-10-17, 72 NRC 47 n.254 (2010)
- in procedural and scheduling matters, where first-hand contact with and appreciation for all the circumstances surrounding a case are necessary, maximum reliance on the proper discretion of a presiding officer is essential; CLI-10-17, 72 NRC 47 n.255 (2010)
- International Uranium (USA) Corp.* (White Mesa Uranium Mill), LBP-97-12, 46 NRC 1, 8 (1997), *aff'd*, CLI-98-6, 47 NRC 116 (1998)
- writing from a post office box and failing to provide a residential home address constitute part of the basis for denying standing in a petition to intervene; LBP-08-14, 68 NRC 289 n.53 (2008)
- International Uranium (USA) Corp.* (White Mesa Uranium Mill), LBP-01-8, 53 NRC 204, 207-08 (2001)
- pro se petitioners are held to less rigid pleading standards, so that parties with a clear but imperfectly stated interest in the proceeding are not excluded; CLI-10-20, 72 NRC 192 (2010)
- International Uranium (USA) Corp.* (White Mesa Uranium Mill), LBP-01-15, 53 NRC 344, 349 (2001)
- intervention petitioner must allege that he has been or will in fact be perceptibly harmed by the challenged agency action, not that he can imagine circumstances in which he could be affected by the agency's action; LBP-08-18, 68 NRC 538 (2008)
- International Uranium (USA) Corp.* (White Mesa Uranium Mill), LBP-01-15, 53 NRC 344, *aff'd*, CLI-01-21, 54 NRC 247 (2001)
- petitioners fail to explain how alleged impacts would arise from the proposed activities as opposed to past activities not in issue; LBP-10-11, 71 NRC 634 n.97 (2010)
- Iowa Independent Bankers v. Board of Governors of Federal Reserve*, 511 F.2d 1288, 1293-94 (C.A.D.C. 1975)
- once a litigant has standing to request invalidation of a particular agency action, it may do so by identifying all grounds on which the agency may have failed to comply with its statutory mandate; LBP-09-1, 69 NRC 24 n.52 (2009)
- Iron Arrow Honor Society v. Heckler* 464 U.S. 67, 70 (1983) (per curiam)
- when a claim becomes moot in federal court, the court loses jurisdiction to decide the merits of that claim; LBP-09-15, 70 NRC 210 (2009)
- Japan Halon Co. v. Great Lakes Chemical Corp.*, 155 F.R.D. 626, 627 (N.D. Ind. 1993)
- in the context of analyzing the "control" issue, Fed. R. Civ. P. 34 is to be liberally construed; LBP-12-23, 72 NRC 707 n.21 (2010)
- Jarecki v. G.D. Searle & Co.*, 367 U.S. 303, 307 (1961)
- statutory language must be read in context and a phrase gathers meaning from the words around it; LBP-09-15, 70 NRC 217 (2009)

LEGAL CITATIONS INDEX

CASES

- Jaskiewicz v. Mossinghoff*, 822 F.2d 1053, 1057 & n.15 (Fed. Cir. 1987)
sanctions may be levied against an attorney for breach of a duty of candor and good faith;
LBP-06-10, 63 NRC 370 n.8 (2006)
- Jessup v. Luther*, 227 F.3d 993 (7th Cir. 2000)
the First Amendment requires a presumption of openness in civil proceedings; LBP-10-2, 71 NRC 208
n.58 (2010)
- Jicarilla Apache Tribe v. Supron Energy Corp.*, 782 F.2d 855, 857 (10th Cir. 1986) (en banc), *modified on
other grounds*, 793 F.2d 1171 (10th Cir.)
a trust duty in the NRC as a federal permitting agency arises out of 1851 and 1868 treaties with
Indian tribes; LBP-08-6, 67 NRC 267 (2008)
- Johnston v. Davis*, 698 F.2d 1088, 1095 (10th Cir. 1983)
where the information in the initial environmental impact statement is so incomplete or misleading that
the decisionmaker and the public cannot make an informed comparison of the alternatives, revision
of an EIS may be necessary to provide a reasonable, good-faith, and objective presentation of the
subjects required by NEPA; LBP-10-24, 72 NRC 762 (2010)
- Jones v. Gordon*, 792 F.2d 821, 828 (9th Cir. 1986)
an explanation of the applicability of a categorical exclusion is required where special circumstances
necessitating an environmental review have been alleged; LBP-06-4, 63 NRC 109 n.36 (2006)
- Jones v. United States*, 527 U.S. 373, 389 (1999)
statutory language must be read in context and a phrase gathers meaning from the words around it;
LBP-09-15, 70 NRC 217 (2009)
- Joseph J. Macktal*, CLI-89-14, 30 NRC 85, 91 (1989)
a judge's use of strong language toward a party or in expressing his views on matters before him do
not constitute evidence of personal bias; CLI-10-17, 72 NRC 47 (2010)
- Joseph J. Macktal*, CLI-89-14, 30 NRC 85, 91-92 (1989)
to prevail on a disqualification motion, petitioner must show either a bias against petitioner or its
counsel based on matters outside the record or a pervasive bias against petitioner based upon matters
in the record; CLI-10-17, 72 NRC 46 n.252 (2010)
- Judicial Watch, Inc. v. Food and Drug Administration*, 449 F.3d 141, 153 (D.C. Cir. 2006)
privileges protecting privacy interests may vary depending on the context in which it is asserted;
LBP-06-25, 64 NRC 376, 385 (2006)
when determining whether documents should be withheld on the basis of the personal privacy
exemption, federal courts have looked to balance the private interest involved against the public
interest; LBP-06-25, 64 NRC 385 n.70 (2006)
- Kansas Gas and Electric Co.* (Wolf Creek Generating Station, Unit 1), ALAB-327, 3 NRC 408, 411, 413
(1976)
certifying a matter involving a board decision directing unrestricted disclosure of a document the
applicant claimed to be proprietary is appropriate when the interlocutory discovery order involved
must be reviewed immediately or not at all; CLI-10-29, 72 NRC 561 n.32 (2010)
- Kansas Gas and Electric Co.* (Wolf Creek Generating Station, Unit 1), ALAB-424, 6 NRC 122, 124 (1977)
a filing that was 3 days late, which the board characterized as not excessively late, was accepted
based on findings that intervenor offered a reasonable explanation for the delay and the delay did
not prejudice any of the other parties; LBP-10-21, 72 NRC 637 (2010)
- Kansas Gas and Electric Co.* (Wolf Creek Generating Station, Unit 1), ALAB-424, 6 NRC 122, 125 (1977)
in the event of some eleventh hour unforeseen development, a party may tender a document belatedly,
but the tender must be accompanied by a motion for leave to file out-of-time which satisfactorily
explains not only the reason for the lateness, but also why a motion for an extension of time could
not have been seasonably submitted; CLI-10-26, 72 NRC 477 n.17 (2010)
- Kansas Gas and Electric Co.* (Wolf Creek Generating Station, Unit 1), ALAB-424, 6 NRC 122, 126 (1977)
intervenor's appeal 3 days out of time was accepted when applicants' motion to strike failed to even
hint at prejudice; LBP-10-21, 72 NRC 638 n.8 (2010)
- Kansas Gas and Electric Co.* (Wolf Creek Generating Station, Unit 1), ALAB-462, 7 NRC 320, 338 (1978)
proponents of motions seeking to reopen the record bear a heavy burden; CLI-09-2, 69 NRC 65-66
n.48 (2009); LBP-08-12, 68 NRC 15 (2008)

LEGAL CITATIONS INDEX

CASES

- Kansas Gas and Electric Co.* (Wolf Creek Generating Station, Unit 1), CLI-77-1, 5 NRC 1, 8 (1977)
even if offsite construction does not appear to be part of the plan, it does not follow that offsite consequences need not be considered; CLI-10-18, 72 NRC 91 (2010)
NRC's environmental analysis in connection with licensing nuclear facilities should extend to related offsite construction projects such as connecting roads and railroad spurs; LBP-09-6, 69 NRC 404 (2009)
offsite health and safety impacts caused by onsite activities can support the admissibility of a contention; LBP-09-6, 69 NRC 435 (2009)
- Kansas Gas and Electric Co.* (Wolf Creek Generating Station, Unit 1), CLI-99-5, 49 NRC 199, 200 (1999)
the Commission has used sua sponte review as a vehicle to address unappealed issues; CLI-07-1, 65 NRC 4 (2007)
- Kansas Gas and Electric Co.* (Wolf Creek Generating Station, Unit 1), CLI-99-19, 49 NRC 441, 459-60 n.14 (1999)
indirect transfers involve corporate restructuring or reorganizations that leave the licensee itself intact as a corporate entity and therefore involve no application for a new operating license; CLI-08-19, 68 NRC 255 n.3 (2008)
- Kansas Gas and Electric Co.* (Wolf Creek Generating Station, Unit 1), CLI-99-19, 49 NRC 441, 466 (1999)
under a Staff order approving a license transfer, entities that would no longer be licensees are deleted from the licenses; CLI-06-2, 63 NRC 12 n.9 (2006)
- Kansas Gas and Electric Co.* (Wolf Creek Generating Station, Unit 1), LBP-84-1, 19 NRC 29, 34 (1984)
at the contention admissibility stage, applicants must be sufficiently put on notice so that they will know at least generally what they will have to defend against or oppose, and that there has been sufficient foundation assigned to warrant further exploration of the contention; LBP-06-20, 64 NRC 190, 194 (2006)
- Kansas Gas and Electric Co.* (Wolf Creek Generating Station, Unit 1), LBP-84-17, 19 NRC 878 (1984)
petitioner sought intervention during the evidentiary hearing and proffered a factual contention; LBP-10-11, 71 NRC 644 n.148 (2010)
- Katzenbach v. Morgan*, 384 U.S. 641, 654 n.15 (1966)
the states can be required to tailor carefully the means of satisfying a legitimate state interest when fundamental liberties and rights are threatened; LBP-09-24, 70 NRC 798 n.5 (2009)
- Keating v. Office of Thrift Supervision*, 45 F.3d 322, 324-25 (9th Cir. 1995)
convenience in managing caseload and efficiency in using resources, the interests of nonparties, and the public interest may be considered in determining whether to delay a proceeding; LBP-06-13, 63 NRC 535 n.30 (2006)
- Keating v. Office of Thrift Supervision*, 45 F.3d 322, 325 (9th Cir. 1995)
the burden that any particular aspect of the proceedings may impose on defendants should be considered when deciding whether to stay a parallel civil proceeding; LBP-06-13, 63 NRC 539 n.47 (2006)
the extent to which the defendant's Fifth Amendment rights are implicated should be considered in deciding whether to stay a civil proceeding; LBP-06-13, 63 NRC 538 n.45 (2006)
- Kelley v. Selin*, 42 F.3d 1501 (6th Cir. 1995)
in the area of waste storage, the Commission largely has chosen to proceed generically through the rulemaking process instead of litigating issues case-by-case in adjudicatory proceedings; CLI-10-19, 72 NRC 99 (2010)
- Kelley v. Selin*, 42 F.3d 1501, 1507-08 (6th Cir. 1995)
to determine whether petitioners have standing, boards accept as true all material allegations of the complaint and construe the complaint in favor of the complaining party; CLI-10-20, 72 NRC 192 n.39 (2010)
- Kelley v. Selin*, 42 F.3d 1501, 1508 (6th Cir. 1995)
although boards may view petitioner's supporting information in a light favorable to petitioner, it cannot do so by ignoring contention admissibility rules, which require the petitioner (not the board) to supply all of the required elements for a valid intervention petition; CLI-10-20, 72 NRC 192 n.39 (2010)
if petitioner requests a remedy that is beyond the scope of the hearing, then the hearing request must be denied because redressability is an element of standing; LBP-08-14, 68 NRC 286 (2008)

LEGAL CITATIONS INDEX

CASES

- under judicial concepts of standing, boards are to consider whether a petitioner has alleged a concrete and particularized injury that is fairly traceable to the challenged action and likely to be redressed by a favorable decision; LBP-06-10, 63 NRC 327 (2006); LBP-06-23, 64 NRC 270 (2006); LBP-07-4, 65 NRC 294 (2007); LBP-07-11, 66 NRC 52 (2007); LBP-08-6, 67 NRC 271 (2008); LBP-08-13, 68 NRC 59 (2008); LBP-09-17, 70 NRC 321-22 n.30 (2009); LBP-09-20, 70 NRC 574 (2009); LBP-09-26, 70 NRC 947 (2009)
- Kelley v. Selin*, 42 F.3d 1501, 1521 (6th Cir.), cert. denied, 515 U.S. 1159 (1995)
alternatives that are technologically unproven need not be considered in an environmental impact statement; LBP-09-7, 69 NRC 633, 695 n.39, 696 (2009)
- Kelley v. Selin*, 42 F.3d 1501, 1521 (6th Cir. 1995)
an alternative need not be considered in detail if it is technologically unproven, unsafe, too costly, or otherwise impracticable; LBP-09-16, 70 NRC 298-99 n.211 (2009)
NRC need only consider a range of alternatives in its environmental impact statement that are technologically feasible and economically practicable alternatives for producing baseload power; LBP-10-10, 71 NRC 581 (2010)
- Kennedy v. U.S. Construction Co.*, 545 F.2d 81, 84 n.1 (8th Cir. 1976)
the civil law concept of "assumption of risk" requires not merely general knowledge of a risk but also that the risk assumed be specifically known, understood, and appreciated; CLI-10-23, 72 NRC 223 (2010)
- Kenneth G. Pierce* (Shorewood, Illinois), CLI-95-6, 41 NRC 381, 382 (1995)
the fact that the board accorded greater weight to one party's evidence than to the other's is not a basis for overturning the initial decision; CLI-10-23, 72 NRC 225 n.62 (2010)
to show clear error, appellant must demonstrate that the board's findings are not even plausible in light of the record viewed in its entirety; CLI-10-23, 72 NRC 225 (2010)
- Kerr-McGee Chemical Corp. v. NRC*, 903 F.2d 1, 2-4 (D.C. Cir. 1990)
to provide for the disposal, long-term stabilization, and control of mill tailings in a safe and environmentally sound manner, Congress enacted the Uranium Mill Tailings Radiation Control Act; LBP-06-1, 63 NRC 64 n.20 (2006)
- Kerr-McGee Chemical Corp.* (West Chicago Rare Earths Facility), ALAB-928, 31 NRC 263, 269 (1990)
if a stay proponent cannot show irreparable harm, it must make an overwhelming showing that it is likely to succeed on the merits; CLI-08-13, 67 NRC 399 (2008); CLI-09-23, 70 NRC 937 (2009); CLI-10-8, 71 NRC 154 (2010)
- Kerr-McGee Chemical Corp.* (West Chicago Rare Earths Facility), CLI-82-2, 15 NRC 232, 239 n.3 (1982)
in cases involving no concern over import or export of nuclear materials, common defense and security considerations under section 40.32(d) are not implicated; LBP-09-1, 69 NRC 36 (2009)
- Kerr-McGee Chemical Corp.* (West Chicago Rare Earths Facility), LBP-85-3, 21 NRC 244, 254-55 (1985)
preparation of either a supplemental or a revised environmental impact statement and a Staff position paper approving or disapproving applicant's regulatory proposal does not constitute irreparable injury; CLI-09-6, 69 NRC 135 n.24 (2009)
- Kerr-McGee Chemical Corp.* (West Chicago Rare Earths Facility), LBP-85-3, 21 NRC 244, 257 (1985)
litigation expense, even substantial and unrecoverable cost, does not constitute irreparable injury; CLI-09-6, 69 NRC 135 (2009)
- Keystone Shipping Co. v. New England Power Co.*, 109 F.3d 46, 52 (1st Cir. 1997)
collateral estoppel effect is given to judgment granting a motion to dismiss, when the party against which collateral estoppel is invoked had a full and fair opportunity to oppose the dismissal; LBP-08-23, 68 NRC 688 (2008)
- King v. U.S. Department of Justice*, 830 F.2d 210, 217 (D.C. Cir. 1987)
a board's determination on a request for access to sensitive unclassified nonsafeguards information is reviewed de novo; CLI-10-24, 72 NRC 461 (2010)
- Kleppe v. Sierra Club*, 427 U.S. 390 (1976)
the environmental consequences of proposals being considered by an agency within a region must be considered together to determine the synergistic and cumulative environmental effects; LBP-09-16, 70 NRC 246 (2009)

LEGAL CITATIONS INDEX

CASES

- Kleppe v. Sierra Club*, 427 U.S. 390, 401-02 (1976)
the statutory language of the National Environmental Policy Act requires an impact statement only in the event of a proposed action, and thus in the absence of a proposal there is nothing that could be the subject of the analysis envisioned by the statute for an impact statement; CLI-10-5, 71 NRC 107 n.87 (2010)
- Kleppe v. Sierra Club*, 427 U.S. 390, 402 n.12 (1976)
environmental impact statements are required in conjunction with specific proposals for action; CLI-10-5, 71 NRC 107 n.87 (2010)
- Kleppe v. Sierra Club*, 427 U.S. 390, 404-06 (1976)
merely contemplating a certain action, even if accompanied by research or study, does not necessarily constitute a proposal for a major federal action requiring National Environmental Policy Act review; CLI-09-14, 69 NRC 593 n.77 (2009)
- Kleppe v. Sierra Club*, 427 U.S. 390, 410 (1976)
a cumulative impacts analysis that looks at whether a proposed action's impacts will have interregional synergistic effects may be appropriate when several proposals for actions that will have a cumulative or synergistic environmental impact upon a region are pending concurrently before an agency; LBP-06-19, 64 NRC 67 n.8 (2006)
when several proposals for actions that will have cumulative or synergistic environmental impacts upon a region are pending concurrently before an agency, their environmental consequences must be considered together; LBP-09-4, 69 NRC 205 (2009)
- Kleppe v. Sierra Club*, 427 U.S. 390, 410 n.21 (1976)
NRC is required to take a hard look at the potential environmental impacts of a license renewal; CLI-07-16, 65 NRC 376 (2007)
- Kodiak Oil Field Haulers, Inc. v. Teamsters Union Local No. 959*, 611 F.2d 1286, 1290 (9th Cir. 1980)
when a claim becomes moot, a decision on the merits may be appropriate if the same basic dispute is likely to recur in the future, unless it seems sufficient to await the event or better to defer to another court; LBP-09-15, 70 NRC 210 (2009)
- KP Permanent Make-Up, Inc. v. Lasting Impression I, Inc.*, 543 U.S. 111, 118 (2004)
where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion; LBP-10-11, 71 NRC 621 (2010)
- Kungys v. United States*, 485 U.S. 759, 778 (1988)
it is a cardinal rule of statutory interpretation that no provision should be construed to be entirely redundant; LBP-08-25, 68 NRC 826 (2008)
- Kurtz v. Baker*, 829 F.2d 1133, 1144 (D.C. Cir. 1987)
when petitioner claims an increased risk of future harm, that harm must be substantially probable to constitute an injury-in-fact for the purposes of standing; LBP-09-4, 69 NRC 183 (2009)
- Laguna Greenbelt, Inc. v. U.S. Department of Transportation*, 42 F.3d 517, 528 (9th Cir. 1994)
NEPA requires NRC to provide a reasonable mitigation alternatives analysis, containing reasonable estimates, including full disclosures of any known shortcomings in methodology, incomplete or unavailable information and significant uncertainties; CLI-10-22, 72 NRC 209 (2010)
- Lambert v. Will Bros. Co.*, 596 F.2d 799, 802 (8th Cir. 1979)
the civil law concept of "assumption of risk" requires not merely general knowledge of a risk but also that the risk assumed be specifically known, understood, and appreciated; CLI-10-23, 72 NRC 223 (2010)
- Lame v. U.S. Department of Justice*, 654 F.2d 917, 923 (3d Cir. 1981)
the privacy interest at stake may vary depending on the context in which it is asserted; LBP-06-25, 64 NRC 385 (2006)
- Land Council v. Powell*, 395 F.3d 1019, 1027-28 (9th Cir. 2005)
there is no basis for providing an EIS description to such a level of detail that it can be duplicated by members of the public, so as to permit an individual to run applicable computer codes or make other detailed computations; LBP-06-9, 63 NRC 302, 310 n.10 (2006)
- Landis v. North American Co.*, 299 U.S. 248, 255 (1936)
it would be an abuse of discretion to grant a stay of indefinite duration in the absence of pressing need; LBP-06-13, 63 NRC 536 n.32 (2006)

LEGAL CITATIONS INDEX

CASES

- Lands Council v. McNair*, 537 F.3d 981, 1001-09 (9th Cir. 2008), *abrogated in part on other grounds by Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7 (2008)
NEPA requires NRC to provide a reasonable mitigation alternatives analysis, containing reasonable estimates, including full disclosures of any known shortcomings in methodology, incomplete or unavailable information and significant uncertainties; CLI-10-22, 72 NRC 209 (2010)
- League of Wilderness Defenders—Blue Mountains Biodiversity Project v. U.S. Forest Service*, 549 F.3d 1211, 1218 (9th Cir. 2008)
the Council on Environmental Quality’s interpretation that 40 C.F.R. 1508.7 permits consideration of all past impacts in the aggregate is not plainly erroneous or inconsistent with the language of the regulation, and CEQ is the agency charged with interpreting the National Environmental Policy Act and that adopted the regulation; LBP-09-4, 69 NRC 203 (2009)
- Leary v. United States*, 395 U.S. 6, 46 n.93 (1969)
the conclusion that a finding of deliberate ignorance is a proxy for a finding of knowledge is supported by the definition of knowledge in the Model Penal Code, which has guided the Supreme Court in determining the intended scope of the word “knowing” in the criminal context; LBP-09-24, 70 NRC 817, 818 (2009)
“knowledge,” is defined; LBP-09-24, 70 NRC 721 n.89 (2009)
- Lesser v. City of Cape May*, 110 F. Supp. 2d 303, 328 (D. N.J. 2000)
the National Historic Preservation Act and its implementing regulations do not impose an obligation to consider alternative sites; CLI-06-9, 63 NRC 449 (2006)
- Lewis v. Casey*, 518 U.S. 343, 349 (1996)
the requirement to show actual injury derives ultimately from the doctrine of standing, a constitutional principle that prevents courts of law from undertaking tasks assigned to the political branches; LBP-09-1, 69 NRC 22 (2009)
- Lewis v. Casey*, 518 U.S. 343, 357 (1996)
if once a plaintiff demonstrates harm from one particular inadequacy in government administration, the court is authorized to remedy all inadequacies in that administration; LBP-09-1, 69 NRC 22 (2009)
plaintiff in federal court must demonstrate standing separately for each separate claim; LBP-09-1, 69 NRC 19 (2009)
- Lewis v. Casey*, 518 U.S. 343, 358 n.6 (1996)
if the right to complain of one administrative deficiency automatically conferred the right to complain of all administrative deficiencies, any citizen aggrieved in one respect could bring the whole structure of state administration before the courts for review; LBP-09-1, 69 NRC 22-23 (2009)
standing is not dispensed in gross; LBP-09-1, 69 NRC 20 (2009)
- Lewis v. Casey*, 518 U.S. 343, 360 n.7 (1996)
the inappropriateness of systemwide relief for illiterate inmates does not rest upon the application of standing rules, but rather upon the respondents’ failure to prove that denials of access to illiterate prisoners pervaded the state’s prison system; LBP-09-1, 69 NRC 22 n.39 (2009)
- Lewis v. Internal Revenue Service*, 823 F.2d 375 (9th Cir. 1987)
challenges in FOIA cases routinely are resolved on the basis of summary judgment pleadings; LBP-08-7, 67 NRC 371 (2008)
- Lewis v. United States*, 445 U.S. 55, 60 (1980)
interpretation of any regulation must begin with the language and structure of the provision itself; LBP-09-15, 70 NRC 215 (2009)
- Limerick Ecology Action, Inc. v. NRC*, 869 F.2d 719 (3d Cir. 1989)
the evaluation of risk is at the heart of a SAMA analysis, and only by considering risk can one determine those alternatives that provide the greatest benefit for the dollars expended; LBP-06-23, 64 NRC 327 (2006)
- Limerick Ecology Action, Inc. v. NRC*, 869 F.2d 719, 725 (3d Cir. 1989)
NRC has recognized its obligation to comply with NEPA and has promulgated the regulations in Part 51, which govern the consideration of the environmental impact of the licensing and regulatory actions of the agency; LBP-10-16, 72 NRC 437 n.424 (2010)
- Limerick Ecology Action, Inc. v. NRC*, 869 F.2d 719, 725, 743 (3d Cir. 1989)
Council on Environmental Quality regulations are not binding on the NRC when the agency has not expressly adopted them, but the regulations are entitled to considerable deference; LBP-06-8, 63

LEGAL CITATIONS INDEX

CASES

- NRC 258 n.14 (2006); LBP-09-7, 69 NRC 631 (2009); LBP-09-10, 70 NRC 128 (2009); LBP-09-17, 70 NRC 380 (2009)
- Limerick Ecology Action, Inc. v. NRC*, 869 F.2d 719, 729-31 (3d Cir. 1989)
the Atomic Energy Act and the National Environmental Policy Act contemplate separate NRC reviews of proposed licensing actions; CLI-10-18, 72 NRC 91 (2010)
- Limerick Ecology Action, Inc. v. NRC*, 869 F.2d 719, 733-36 (3d Cir. 1989)
a policy statement is neither a rule nor an order, and therefore does not establish requirements that bind either the agency or the public; CLI-07-27, 66 NRC 240 (2007)
- Limerick Ecology Action, Inc. v. NRC*, 869 F.2d 719, 736-39 (3d Cir. 1989)
NRC cannot generically dispense with the consideration of SAMAs, under NEPA, through a policy statement issued pursuant to its Atomic Energy Act authority; LBP-10-13, 71 NRC 691 (2010)
- Limerick Ecology Action, Inc. v. NRC*, 869 F.2d 719, 738 (3d Cir. 1989)
use of probabilistic risk assessment and modeling is accepted and standard practice in SAMA analyses; LBP-06-23, 64 NRC 340 (2006)
- Limerick Ecology Action, Inc. v. NRC*, 869 F.2d 719, 738-39 (3d Cir. 1989)
the probability of a risk may change with population density; LBP-06-23, 64 NRC 327 (2006)
- Limerick Ecology Action, Inc. v. NRC*, 869 F.2d 719, 739 (3d Cir. 1989)
agencies may decline to examine remote and speculative or inconsequentially small impacts of a proposed action; LBP-06-8, 63 NRC 259 (2006); LBP-09-7, 69 NRC 632, 719 (2009)
- NEPA does not require consideration of remote and speculative risks; LBP-10-10, 71 NRC 550 (2010)
- Limerick Ecology Action, Inc. v. NRC*, 869 F.2d 719, 739 (3d Cir. 1989), *vacated on other grounds*, CLI-90-4, 31 NRC 333 (1990)
impacts that are remote and speculative or inconsequentially small need not be examined; LBP-10-14, 72 NRC 110 (2010)
- Limerick Ecology Action, Inc. v. NRC*, 869 F.2d 719, 739, 745 (3d Cir. 1989)
NEPA does not require consideration of remote and speculative risks, but there must be a finding that something is remote and speculative to preclude it from further analysis, and there must be support in the agency's record of decision to justify this finding; LBP-10-14, 72 NRC 117 n.91 (2010)
- Limerick Ecology Action, Inc. v. NRC*, 869 F.2d 719, 739-40 (3d Cir. 1989)
the court confronted the problem of whether location of a nuclear plant in a densely populated area allowed adoption of generic risk factors and a severe accident mitigation design alternatives decision supported by a policy statement rather than a rulemaking; LBP-10-10, 71 NRC 548-49 (2010)
- Limerick Ecology Action, Inc. v. NRC*, 869 F.2d 719, 741 (3d Cir. 1989)
after the Three Mile Island accident, it is irrational for NRC to maintain that severe accident risks are too remote to require consideration; LBP-10-10, 71 NRC 552 (2010)
- differences in the standards for AEA-derived security requirements and NEPA environmental evaluations are discussed; CLI-08-1, 67 NRC 11-12 (2008)
- severe accident mitigation alternatives analyses must be site specific and given careful consideration in order to comply with the National Environmental Policy Act and the Atomic Energy Act; LBP-09-10, 70 NRC 108 (2009)
- Limerick Ecology Action, Inc. v. NRC*, 869 F.2d 719, 743-44 (3d Cir. 1989)
substantial practical difficulties impede meaningful NEPA-terrorism review; CLI-07-8, 65 NRC 131 n.29 (2007)
- Limerick Ecology Action, Inc. v. NRC*, 869 F.2d 719, 744 & n.31 (3d Cir. 1989)
petitioner failed to provide any evidence to challenge NRC's conclusion that the environmental effects of a hypothetical terrorist attack on a nuclear plant would be no worse than those caused by a severe accident; LBP-10-10, 71 NRC 552 (2010)
- Lion Raisins Inc. v. U.S. Department of Agriculture*, 354 F.3d 1072, 1080 (9th Cir. 2004)
the experience and expertise of eminently qualified affiants, coupled with their detailed and specific affidavits, lend special weight to their statements and conclusions; LBP-08-7, 67 NRC 373 (2008)
- Lion Raisins Inc. v. U.S. Department of Agriculture*, 354 F.3d 1072, 1082 (9th Cir. 2004)
when access to documents is disputed in FOIA litigation, the government must submit detailed public affidavits identifying the documents withheld, the FOIA exemptions claimed, and a particularized explanation of why each document falls within the claimed exemption; CLI-08-1, 67 NRC 16 (2008); LBP-08-7, 67 NRC 371 (2008)

LEGAL CITATIONS INDEX

CASES

- where a *Vaughn* index is required, it must be sufficiently detailed to support de novo assessment of the validity of the claimed exemption should the matter go to court; CLI-08-1, 67 NRC 16 (2008)
- Lion Raisins Inc. v. U.S. Department of Agriculture*, 354 F.3d 1072, 1082-83 (9th Cir. 2004)
when access to documents is disputed in FOIA litigation, a *Vaughn* index and explanatory affidavits that are sufficiently detailed to support a tribunal's plenary assessment of the validity of a claimed exemption are ordinarily sufficient; LBP-08-7, 67 NRC 371 (2008)
- Lion Raisins Inc. v. U.S. Department of Agriculture*, 354 F.3d 1072, 1083 (9th Cir. 2004)
in camera review of redacted information or sealed declarations ought to occur only in the exceptional case after the government has submitted as detailed public affidavits as possible; LBP-08-7, 67 NRC 372 n.7 (2008)
- Lipan Apache Tribe v. United States*, 180 Ct. Cl. 487, 491-92 (Ct. Cl. 1967)
continuous and exclusive use of property is sufficient, unless duly extinguished, to establish Indian or aboriginal title; LBP-08-24, 68 NRC 712 n.103 (2008)
- Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 434 (1982)
the risk that an immediately effective order erroneously suspended a subject's license or other vested interest is one factor used to determine whether procedural due process is met when a property interest is at stake; LBP-06-13, 63 NRC 544 (2006)
to ensure that a hearing delay comports with the requirements of due process, the decision to grant a delay requested by the government must take into consideration not only the interests of the government but of the persons affected by the order as well; LBP-06-13, 63 NRC 542 (2006)
- Lone Wolf v. Hitchcock*, 187 U.S. 553, 565 (1903)
plenary authority over the tribal relations of the Indians has been exercised by Congress from the beginning, and the power has always been deemed a political one, not subject to be controlled by the judicial department of the government; LBP-08-24, 68 NRC 712 n.99 (2008); LBP-09-13, 70 NRC 187 n.32 (2009)
- Long Island Care at Home, Ltd. v. Coke*, 551 U.S. 158, 171 (2007)
an agency's interpretation of its own regulation is controlling, provided it is not plainly erroneous or inconsistent with the regulation; CLI-10-13, 71 NRC 389 n.10 (2010)
- Long Island Lighting Co. (Shoreham Nuclear Power Station)*, ALAB-99, 6 AEC 53, 55 (1973)
the introduction of essentially generic issues, not unique to any given reactor, would be inappropriate in an individual reactor licensing proceeding" absent evidence that the generic issue applied to that particular proceeding; LBP-06-11, 63 NRC 400 (2006)
- Long Island Lighting Co. (Shoreham Nuclear Power Station)*, ALAB-156, 6 AEC 831, 831 (1973)
the agency's environmental review need only account for those impacts that have some likelihood of occurring or are reasonably foreseeable; LBP-09-26, 70 NRC 970 (2009)
- Long Island Lighting Co. (Shoreham Nuclear Power Station)*, ALAB-156, 6 AEC 831, 836 (1973)
NEPA's requirement that agencies take a hard look at the environmental impacts of a proposed action and reasonable alternatives to that action is subject to a rule of reason in that the agency's environmental review, rather than addressing every impact that could possibly result, need only account for those that have some likelihood of occurring or are reasonably foreseeable; LBP-06-8, 63 NRC 259 (2006); LBP-09-4, 69 NRC 208 (2009); LBP-09-7, 69 NRC 631, 719, 729, 732 (2009); LBP-09-26, 70 NRC 963 (2009); LBP-10-6, 71 NRC 362 (2010)
- Long Island Lighting Co. (Shoreham Nuclear Power Station)*, ALAB-156, 6 AEC 831, 851 (1973)
licensing boards are bound to comply with Commission adjudicatory decisions whether they agree with them or not; LBP-07-14, 66 NRC 194 (2007)
terrorist attacks are not to be considered part of the NEPA analysis required for licensing actions; LBP-07-14, 66 NRC 185 (2007)
- Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1)*, ALAB-743, 18 NRC 387, 397 (1983)
good cause for late filing is the most important factor, and failure to meet this factor considerably enhances the burden of showing that the other factors justify admission of a late-filed petition; LBP-10-21, 72 NRC 648 (2010)

LEGAL CITATIONS INDEX

CASES

- Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), ALAB-743, 18 NRC 387, 399, 402 (1983)
factors (vii) and (viii) of 10 C.F.R. 2.309(c)(1) are generally considered to have the most significance in the balancing process in instances in which there are no other parties or ongoing related proceedings; LBP-10-21, 72 NRC 648 (2010)
- Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), ALAB-773, 19 NRC 1333, 1341 (1984)
deliberative process privilege is not limited to policymaking, but rather, it may attach to the deliberative process that precedes most decisions of government agencies; LBP-06-25, 64 NRC 382 n.51 (2006)
once material has been determined to be deliberative process, the litigant must demonstrate an overriding need for the material; LBP-06-25, 64 NRC 390 (2006)
- Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), ALAB-773, 19 NRC 1333, 1341 n.30 (1984)
boards have looked to FOIA cases and the balancing tests they employ for guidance on issues of public disclosure; LBP-06-25, 64 NRC 380 n.36 (2006)
- Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), ALAB-773, 19 NRC 1333, 1341-42 (1984)
all levels of NRC adjudicators have consistently applied the deliberative process privilege; LBP-06-25, 64 NRC 381 (2006)
- Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), ALAB-773, 19 NRC 1333, 1345 (1984)
even if a draft document for which deliberative process privilege is asserted is relevant and important, once the final version of the document becomes available, the need for the draft (or comments suggesting changes to a draft) may become moot or minimal; LBP-06-3, 63 NRC 92 (2006)
- Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), ALAB-788, 20 NRC 1102, 1151 (1984)
mere demonstration that a board erred is not sufficient to warrant appellate relief, but rather the complaining party must demonstrate actual prejudice, i.e., that the ruling had a substantial effect on the outcome of the proceeding; CLI-10-17, 72 NRC 46 (2010); CLI-10-23, 72 NRC 245 n.175, 247 (2010)
- Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), ALAB-788, 20 NRC 1102, 1155-56 (1984)
appellant failed to make an offer of proof in connection with any affirmative expert testimony it would have put forward; CLI-10-23, 72 NRC 246 n.180 (2010)
- Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), ALAB-788, 20 NRC 1102, 1159 (1984)
certain minor matters may be left to NRC Staff for post-hearing resolution; LBP-08-25, 68 NRC 828 (2008)
- Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), ALAB-855, 24 NRC 792, 795 (1986)
the Commission defers to a board's rulings on standing and contention admissibility unless the appeal points to an error of law or abuse of discretion; CLI-06-24, 64 NRC 121 (2006); CLI-09-16, 70 NRC 35 (2009); CLI-09-22, 70 NRC 933 (2009); CLI-10-1, 71 NRC 5 (2010); CLI-10-9, 71 NRC 253 (2010)
- Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), ALAB-900, 28 NRC 275, 288 (1988)
although administrative history and other available guidance may be consulted for background information and the resolution of ambiguities in a regulation's language, its interpretation may not conflict with the plain meaning of the wording used in that regulation; LBP-09-15, 70 NRC 215 (2009)
- Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), ALAB-900, 28 NRC 275, 288, *review denied*, CLI-88-11, 28 NRC 603 (1988)
administrative history and other available guidance may be consulted for background information and the resolution of ambiguities in a regulation's language; CLI-06-11, 63 NRC 491 (2006)
interpretation of administrative history and other available guidance may not conflict with the plain meaning of the wording used in a regulation; CLI-06-5, 63 NRC 154 (2006)

LEGAL CITATIONS INDEX

CASES

- interpretation of a regulation, like interpretation of a statute, begins with the language and structure of the provision itself and the entirety of the provision must be given effect; CLI-08-12, 67 NRC 391 (2008); CLI-08-28, 68 NRC 674 (2008)
- recourse to regulatory history is not necessary unless the language and structure of the regulation reveal an ambiguity that must be resolved; CLI-08-12, 67 NRC 391 (2008)
- Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), ALAB-900, 28 NRC 275, 290 (1988) as guidance reached in a rulemaking following notice and comment, and endorsed by the Commission, the Statement of Considerations is entitled to special weight; CLI-08-3, 67 NRC 166 (2008)
- Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), ALAB-902, 28 NRC 423, 428 (1988) a licensing board is clearly authorized to dismiss a party who obstructs the discovery process, disobeys board orders, and engages in willful, bad-faith, and prejudicial conduct toward another party; CLI-08-29, 68 NRC 900 (2008)
- Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), CLI-84-20, 20 NRC 1061, 1078 n.46 (1984)
- the standard for disqualification of a judge under 28 U.S.C. § 455 is whether the reasonable person who knows all the circumstances, would harbor doubts about the judge's impartiality; CLI-10-22, 72 NRC 205 (2010)
- Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), CLI-87-12, 26 NRC 383, 395 (1987) the plume-exposure pathway emergency planning zone for nuclear power reactors is an area about 10 miles in radius; LBP-07-11, 66 NRC 93 (2007)
- Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), CLI-88-9, 28 NRC 567, 569 (1988) the Commission has the authority to enter case-specific procedural orders to facilitate the efficient resolution of issues before a licensing board; LBP-07-3, 65 NRC 277 (2007)
- Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), CLI-88-9, 28 NRC 567, 569-71 (1988) the Commission has used sua sponte review as a vehicle to set a specific timetable; CLI-07-1, 65 NRC 4 (2007)
- Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), CLI-91-2, 33 NRC 61, 65 (1991) the National Environmental Policy Act does not require consideration of every conceivable alternative but rather requires only consideration of feasible, non-speculative, reasonable alternatives; LBP-08-13, 68 NRC 92, 95 (2008)
- Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), CLI-91-2, 33 NRC 61, 71 (1991) the alternatives discussion in the environmental report or environmental impact statement need not include every possible alternative, but every reasonable alternative; LBP-09-7, 69 NRC 633 (2009); LBP-09-16, 70 NRC 298 (2009); LBP-09-19, 70 NRC 488 (2009); LBP-10-6, 71 NRC 380 n.87 (2010); LBP-10-10, 71 NRC 604 n.3 (2010); LBP-10-14, 72 NRC 110 (2010)
- Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), CLI-91-2, 33 NRC 61, 72 n.3 (1991) although the Council on Environmental Quality's guidance does not bind NRC, the Commission gives such guidance substantial deference; CLI-07-27, 66 NRC 222 n.21 (2007)
- Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), CLI-91-8, 33 NRC 461, 471 (1991) abeyance request is denied on the ground that there is nothing before the New York Court of Appeals that is central to the Commission's decisions; CLI-10-17, 72 NRC 10 n.34 (2010)
- although a request for suspension of a proceeding does not fit cleanly into NRC procedural rules for stays, the Commission exercises discretion and consider petitioner's request; CLI-10-17, 72 NRC 10 n.32 (2010)
- Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), CLI-92-4, 35 NRC 69, 80-82 (1992) NRC has entertained requests for stays of final agency action in anticipation of judicial review; CLI-10-8, 71 NRC 147 n.25 (2010)
- Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), DD-90-8, 32 NRC 469, 488 (1990) NRC has traditionally read the language "authorized by law" to be the functional equivalent of "not prohibited by law; LBP-07-6, 65 NRC 464 (2007)
- Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), LBP-82-82, 16 NRC 1144, 1153 (1982)
- the burden is on a party claiming the protection of a privilege to establish those facts that are the essential elements of the privilege; LBP-06-10, 63 NRC 335 n.68 (2006)

LEGAL CITATIONS INDEX

CASES

- Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), LBP-83-61, 18 NRC 700, 702 (1983)
the Commission's decision not to entertain a state's integrity and competence contentions in the high-level waste repository proceeding is consistent with its practice of extending comity to other governmental entities; CLI-09-14, 69 NRC 606 n.150 (2009)
- Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), LBP-84-45, 20 NRC 1343, 1400 (1984), *aff'd in part, rev'd in part, and remanded*, ALAB-800, 21 NRC 386 (1985)
congressional intent for the phrase "common defense and security," is analyzed in the context of foreign ownership prohibitions; LBP-08-6, 67 NRC 339 (2008)
the phrase "common defense and security" has been interpreted as referring to the absence of foreign control over the applicant; LBP-09-1, 69 NRC 30 n.74 (2009)
the phrase "inimical to the common defense and security" refers to several factors including the absence of foreign control over the applicant; LBP-08-24, 68 NRC 747 (2008)
- Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), LBP-87-29, 26 NRC 302, 312 (1987)
expenses of any kind do not constitute irreparable injury; CLI-09-6, 69 NRC 135 n.25 (2009)
- Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), LBP-91-7, 33 NRC 179, 183 (1991)
for significant hazards consideration determinations, the Staff's determination is final, subject only to the Commission's discretion, on its own initiative, to review the determination; LBP-08-18, 68 NRC 539 (2008)
- Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), LBP-91-7, 33 NRC 179, 195 (1991)
licensing boards have been lenient in permitting pro se petitioners the opportunity to cure procedural defects in petitions to intervene regarding standing; LBP-09-18, 70 NRC 396 (2009)
- Los Angeles v. Lyons*, 461 U.S. 95, 103, 102-06 (1983)
even if injury sufficient to show an existing case or controversy is established, this does not confer standing with regard to injunctive relief; LBP-09-1, 69 NRC 23 n.43 (2009)
- Los Angeles v. Lyons*, 461 U.S. 95, 105-06 (1983)
standing generally has been denied when the threat of injury is not concrete and particularized; LBP-09-13, 70 NRC 176 (2009); LBP-10-16, 72 NRC 381 (2010)
- Louisiana Crawfish Producers Association—West v. Rowan*, 463 F.3d 352, 357 n.2 (5th Cir. 2006)
agencies must consider a range of alternatives under NEPA and provide adequate explanation for their rejection; CLI-10-18, 72 NRC 84 (2010)
- Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), CLI-92-7, 35 NRC 93 (1992)
this decision resolves a number of issues concerning uranium enrichment licensing and may be relied upon as precedent; CLI-09-15, 70 NRC 17 (2009); CLI-10-4, 71 NRC 71 (2010)
- Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), CLI-95-7, 41 NRC 383, 384 (1995)
a board ruling denying a waiver request is interlocutory in nature, and therefore not appealable until the board has issued a final decision resolving the case; CLI-08-27, 68 NRC 656 (2008)
because it disfavors piecemeal appeals, the Commission will grant interlocutory review only in extraordinary circumstances; CLI-10-29, 72 NRC 560 (2010)
licensing board decisions denying a petition for waiver are interlocutory and not immediately reviewable; CLI-10-29, 72 NRC 560 (2010)
- Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), CLI-97-4, 45 NRC 95, 96 (1997)
although an amicus brief that supplies a perspective that would materially aid a licensing board's deliberations would be permissible, a brief that injects new issues into the proceeding and alters the content of the record developed by the parties would not be; LBP-08-6, 67 NRC 266 (2008)
- Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), CLI-97-7, 45 NRC 437, 438-39 (1997)
NRC regulations contemplate amicus curiae briefs only after the Commission grants a petition for review, and do not provide for amicus briefs supporting or opposing petitions for review; CLI-10-17, 72 NRC 6-7 n.16 (2010)
- Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), CLI-97-12, 46 NRC 52, 53 (1997)
Commission review of an initial decision is purely discretionary; CLI-06-11, 63 NRC 485 (2006)
- Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), CLI-97-15, 46 NRC 294 (1997)
this decision resolves a number of issues concerning uranium enrichment licensing and may be relied upon as precedent; CLI-09-15, 70 NRC 17 (2009); CLI-10-4, 71 NRC 71 (2010)

LEGAL CITATIONS INDEX

CASES

- Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), CLI-97-15, 46 NRC 294, 303 (1997)
the purpose of financial qualification requirements of 10 C.F.R. 50.33(f) is to ensure the protection of public health and safety and the common defense and security and not to evaluate the financial wisdom of the proposed project; LBP-09-10, 70 NRC 83 (2009)
- Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), CLI-97-15, 46 NRC 294, 309 (1997)
financial criteria of 10 C.F.R. 70.22(a)(8) and 70.23(a)(5) can be met by conditioning the license to require funding commitments to be in place prior to construction and operation; CLI-09-15, 70 NRC 18 (2009); CLI-10-4, 71 NRC 72 (2010)
- Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), CLI-98-3, 47 NRC 77 (1998)
this decision resolves a number of issues concerning uranium enrichment licensing and may be relied upon as precedent; CLI-09-15, 70 NRC 17 (2009); CLI-10-4, 71 NRC 71 (2010)
- Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), CLI-98-3, 47 NRC 77, 84 (1998)
a board may consider environmental contentions made against an applicant's environmental report as challenges to an agency's subsequent draft environmental impact statement; LBP-06-8, 63 NRC 263 n.7 (2006); LBP-08-2, 67 NRC 63 (2008); LBP-08-3, 67 NRC 95 (2008)
where the Staff has prepared a draft or final environmental impact statement by the time the contentions come before a licensing board on the merits, such contentions are appropriately treated as challenges to the EIS; LBP-09-7, 69 NRC 634 (2009)
- Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), CLI-98-3, 47 NRC 77, 87 (1998)
the principal goals of an environmental impact statement are to force agencies to take a hard look at the environmental consequences of a proposed project, and, by making relevant analyses openly available, to permit the public a role in the agency's decisionmaking process; LBP-10-24, 72 NRC 763 n.86 (2010)
- Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), CLI-98-3, 47 NRC 77, 87-88 (1998)
as a general matter, NEPA imposes procedural restraints on agencies, requiring them to take a hard look at the environmental impacts of a proposed action and reasonable alternatives to that action; LBP-06-8, 63 NRC 258 (2006); LBP-09-7, 69 NRC 631, 719 (2009); LBP-10-10, 71 NRC 581 (2010)
- Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), CLI-98-3, 47 NRC 77, 88 (1998)
an environmental impact statement must describe the potential environmental impact of a proposed action and discuss any reasonable alternatives; LBP-10-10, 71 NRC 604 n.3 (2010)
nothing in NEPA requires agencies to select the most environmentally benign option or to require an applicant/licensee to do so; LBP-06-15, 63 NRC 649 n.58 (2006)
the National Environmental Policy Act does not require NRC to assess every impact or effect, but only the impact or effect on the environment; LBP-09-2, 69 NRC 112 n.99 (2009)
- Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), CLI-98-3, 47 NRC 77, 88, 94 (1998)
applicant need not provide burdensome analyses; LBP-09-2, 69 NRC 108 n.81 (2009)
- Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), CLI-98-3, 47 NRC 77, 89 (1998)
NEPA requires a weighing of the environmental costs of a project against its benefits to society at large but does not transform financial costs and benefits into environmental costs and benefits; CLI-06-3, 63 NRC 30 (2005)
NRC hearings on safety issues concern the adequacy of the license application, not the NRC Staff's work, but NRC hearings on NEPA issues focus entirely on the adequacy of the NRC Staff's work; CLI-07-17, 65 NRC 395 (2007)
primary obligation to satisfy the requirements of NEPA rests on the agency; CLI-10-18, 72 NRC 82 (2010)
the adjudicatory record and board decision and any Commission appellate decisions become, in effect, part of the final environmental impact statement; CLI-08-26, 68 NRC 526-27 n.87 (2008); LBP-06-8, 63 NRC 260 (2006); LBP-06-19, 64 NRC 69 n.11 (2006)
there is no per se regulatory bar that precludes the Staff from using the hearing process to clarify the administrative record supporting its final environmental assessment, and that record, along with any adjudicatory decision, becomes, in effect, part of the final environmental document; CLI-10-18, 72 NRC 68 (2010)

LEGAL CITATIONS INDEX

CASES

- Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), CLI-98-3, 47 NRC 77, 93 (1998)
the Commission will not lightly reverse licensing board factual determinations and will not overturn a board's findings simply because the Commission might have reached a different result; CLI-10-18, 72 NRC 80 (2010)
- Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), CLI-98-3, 47 NRC 77, 93-94 (1998)
the Commission defers to licensing boards' findings unless clearly erroneous, i.e., not even plausible in light of the record viewed in its entirety; CLI-09-7, 69 NRC 259 (2009)
the Commission will not overturn a hearing judge's findings simply because the Commission might have reached a different result; CLI-10-23, 72 NRC 241 n.153 (2010)
- Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), CLI-98-3, 47 NRC 77, 94 (1998)
the board's price projections reflect not ineluctable truth, but rather a plausible scenario that should be added to the environmental record of decision; CLI-10-1, 71 NRC 18 n.86 (2010)
- Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), CLI-98-3, 47 NRC 77, 94 (1998), *aff'g* LBP-96-25, 44 NRC 331, 369-70 (1996)
adjudicatory findings on NEPA issues become part of the environmental record of decision and in effect supplement the final environmental impact statement; CLI-06-15, 63 NRC 707 n.91 (2006)
- Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), CLI-98-3, 47 NRC 77, 97 (1998)
the adequacy of the no-action alternative discussion in a final environmental impact statement is governed by a rule of reason; LBP-06-19, 64 NRC 90 (2006)
- Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), CLI-98-3, 47 NRC 77, 98 (1998)
the environmental report discussion of the no-action alternative can be brief and can incorporate by reference other sections of the ER discussing the project's adverse consequences; LBP-07-3, 65 NRC 259-60 (2007)
- Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), CLI-98-3, 47 NRC 77, 100 (1998)
a disparate impact analysis is the principal tool for advancing environmental justice under the National Environmental Policy Act; LBP-08-13, 68 NRC 199 (2008)
NRC's environmental justice goal is to identify and adequately weigh, or mitigate, effects on low-income and minority communities that become apparent only by considering factors peculiar to those communities; LBP-06-10, 63 NRC 366 (2006); LBP-08-13, 68 NRC 197 n.995 (2008)
- Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), CLI-98-3, 47 NRC 77, 100, 107-08 (1998)
environmental justice contentions must be based on the specific characteristics of a particular minority community; LBP-07-3, 65 NRC 263 (2007)
- Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), CLI-98-3, 47 NRC 77, 103 (1998)
agencies are given broad discretion in determining how thoroughly to analyze a particular subject; LBP-06-8, 63 NRC 259 (2006); LBP-09-7, 69 NRC 631, 719 (2009); LBP-10-14, 72 NRC 110 (2010)
- Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), CLI-98-3, 47 NRC 77, 104 (1998)
an environmental impact statement must include a detailed statement of reasonable alternatives to a proposed action; CLI-07-27, 66 NRC 222 (2007); LBP-09-7, 69 NRC 633 (2009); LBP-10-24, 72 NRC 755 (2010)
the requirement to discuss alternatives in the environmental report parallels NEPA's requirement that an environmental impact statement provide a detailed statement of reasonable alternatives to a proposed action; LBP-09-16, 70 NRC 298 (2009)
when reviewing a license application filed by a private applicant, as opposed to a federally sponsored project, an agency may give substantial weight to the stated preferences of the applicant with regard to issues such as site selection and facility design; LBP-06-8, 63 NRC 259 (2006); LBP-09-7, 69 NRC 632 (2009)
- Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), CLI-98-3, 47 NRC 77, 106 (1998)
adverse impacts that fall heavily on minority and impoverished citizens call for particularly close scrutiny; LBP-07-3, 65 NRC 262 (2007)
- Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), CLI-98-3, 47 NRC 77, 106-10 (1998)
a board's direction to Staff to revise the final environmental impact statement to consider actions to mitigate the impacts of relocating the road and the project on property values for disadvantaged communities is upheld; CLI-07-27, 66 NRC 248 n.183 (2007)

LEGAL CITATIONS INDEX

CASES

- the essence of an environmental justice claim under the National Environmental Policy Act is disparate environmental harm to a minority or low-income population; LBP-08-13, 68 NRC 199 (2008)
- Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), CLI-98-3, 47 NRC 77, 109 (1998)
a final environmental impact statement's discussion of alternative sites need not be elaborate or lengthy, but a conclusory statement on some negative impact on property values, without explanation or analysis, is plainly deficient; CLI-07-27, 66 NRC 241 (2007)
- Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), LBP-91-41, 34 NRC 332, 343, 359 (1991)
lack of either technical competence or character qualifications on the part of licensee or applicant is sufficient grounds for the revocation of a license or the denial of a license application; LBP-09-6, 69 NRC 469 n.584 (2009)
- Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), LBP-94-11, 39 NRC 205, 212 (1994)
intervenor that has sufficient information to file a NEPA contention but delays that filing until publication of the environmental impact statement does so at its peril; LBP-10-24, 72 NRC 732 (2010)
- Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), LBP-96-25, 44 NRC 331, 339 (1996)
because the Staff, as a practical matter, relies heavily on the applicant's environmental report in preparing the environmental impact statement, should the applicant become a proponent of a particular challenged position set forth in the EIS, then the applicant also has the burden of proof on that matter; LBP-09-7, 69 NRC 635 (2009)
- Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), LBP-97-3, 45 NRC 99, 105 (1997)
the term "plausible strategy" is interpreted as requiring an applicant to demonstrate a reasonable or credible plan to dispose of depleted uranium hexafluoride tails generated at the its facility; LBP-06-15, 63 NRC 626 (2006)
- Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), LBP-97-3, 45 NRC 99, 106-08 (1997)
where applicant had provided documentation even less concrete than an memorandum of understanding, the Board found that applicant had adequately demonstrated the plausibility of its deconversion strategy; LBP-06-15, 63 NRC 637 n.36 (2006)
- Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), LBP-97-3, 45 NRC 99, 108 (1997)
a plan to convert depleted uranium at an offsite facility in the United States and then ship that material as waste to a final disposal site is a reasonable and credible plan for tails disposal; LBP-06-15, 63 NRC 626 (2006)
although no deconversion facility exists in the United States and applicant had not presented any firm commitment in the form of a contract or otherwise by any entity to construct such a facility, the board determined that those facts did not make it unlikely or unreasonable to assume that one would be built here in the future; LBP-06-15, 63 NRC 626 (2006)
the purpose of requiring an applicant to provide a tails disposal strategy is to enable the computation of reasonable cost estimates for the various essential elements of the decommissioning plan; LBP-06-15, 63 NRC 626 (2006)
- Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), LBP-97-8, 45 NRC 367, 375 (1997), *rev'd on other grounds*, CLI-98-3, 47 NRC 77, 100-110 (1998)
although NRC, as an independent agency, is not bound by Executive Order 12,898 on environmental justice, it nonetheless committed to undertake environmental justice reviews; CLI-07-27, 66 NRC 238 (2007)
treatment of environmental justice issues is described; CLI-07-27, 66 NRC 238 (2007)
- Louisiana Energy Services, L.P.* (National Enrichment Facility), 2004 WL 1505412 (N.R.C.) n.2 (Licensing Board June 1, 2004)
the Commission seeks wherever possible to avoid the delays, such as an additional round of pleadings, caused by petitioner's attempt to backstop elemental deficiencies in its original petition to intervene; CLI-08-19, 68 NRC 262 (2008)
- Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-04-3, 59 NRC 10, 13 (2004)
regardless of whether the proceeding is contested or uncontested, a licensing board must consider three baseline NEPA issues; LBP-06-17, 63 NRC 765 (2006)

LEGAL CITATIONS INDEX

CASES

- Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-04-3, 59 NRC 10, 16 (2004)
the Commission will endeavor to identify efficiencies, and provide pertinent resources, to further reduce the time the agency needs to complete reviews and reach decisions in licensing uranium enrichment facilities; CLI-07-17, 65 NRC 397 (2007)
- Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-04-3, 59 NRC 10, 16-21 (2004)
the Commission has the authority to enter case-specific procedural orders to facilitate the efficient resolution of issues before a licensing board; LBP-07-3, 65 NRC 277 (2007)
- Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-04-3, 59 NRC 10, 17 (2004)
the board may start the evidentiary hearing without the final EIS or SER; LBP-07-3, 65 NRC 278 (2007)
threshold environmental legal and policy issues need not await issuance of the final environmental impact statement; CLI-07-17, 65 NRC 396 (2007)
- Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-04-25, 60 NRC 223 (2004),
reconsideration denied, CLI-04-35, 60 NRC 619 (2004)
a reply cannot expand the scope of the arguments set forth in the original hearing request; CLI-06-17, 63 NRC 732 (2006)
petitioner is confined to the contention as initially filed and may not rectify its deficiencies through its reply brief or on appeal; CLI-09-14, 69 NRC 588 (2009)
- Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-04-25, 60 NRC 223 (2004),
reconsideration denied, CLI-04-35, 60 NRC 619, 623 (2004)
a reply is not an opportunity for petitioner to bolster its original contentions with new supporting facts and arguments, but rather it is a chance to amplify issues presented in the initial petition as well as the applicant's and NRC Staff's answers; LBP-08-26, 68 NRC 918 (2008)
- Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-04-25, 60 NRC 223, 224 (2004),
reconsideration denied, CLI-04-35, 60 NRC 619 (2004)
allowing a party to freely augment its contentions in its reply would circumvent the requirements for late or amended contentions in 10 C.F.R. 2.309(c) and (f)(2); LBP-06-12, 63 NRC 405 (2006)
although a board will take into account any information from reply briefs that legitimately amplifies issues presented in original petitions, it will not consider instances of what essentially constitute untimely attempts to amend the original petitions; LBP-07-4, 65 NRC 301 (2007); LBP-06-10, 63 NRC 329 (2006); LBP-09-17, 70 NRC 323 (2009)
because new or amended issues in reply briefs were not accompanied by any attempt to address the late- and new-filing factors of section 2.309(c), (f)(2), they were not considered in determining the admissibility of the contentions; LBP-07-4, 65 NRC 301 (2007)
licensing boards decline to consider new, purportedly material information in support of the contentions that was first submitted as part of a reply pleading; LBP-07-4, 65 NRC 299 (2007); LBP-08-26, 68 NRC 919 (2008)
reply briefs that raise new issues must address the nontimely filing and new-contention factors in section 2.309(c) or (f)(2); LBP-06-10, 63 NRC 329 (2006); LBP-09-17, 70 NRC 324 (2009)
- Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-04-25, 60 NRC 223, 224 (2004),
reconsideration denied, CLI-04-35, 60 NRC 619, 625 (2004)
contentions must be filed with the original intervention petition within 60 days of notice of the proceeding in the *Federal Register*, unless a longer period is therein specified, an extension is granted, or the contentions meet certain criteria for late-filed or new contentions based on information that is available only at a later time; LBP-07-11, 66 NRC 56 n.45 (2007); LBP-08-6, 67 NRC 290-91 n.254 (2008)
- Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-04-25, 60 NRC 223, 224-25,
reconsideration denied, CLI-04-35, 60 NRC 619 (2004)
contention admissibility and timeliness requirements demand a level of discipline and preparedness on the part of petitioners, who must examine the publicly available material and set forth their claims and the support for their claims at the outset; CLI-09-7, 69 NRC 272 (2009); LBP-06-11, 63 NRC 396 n.3 (2006); LBP-06-12, 63 NRC 405 (2006)
once an initial intervention petition is filed, facility proponents routinely press within the adjudicatory process to ensure that any attempt thereafter to cure any deficiencies is rejected as untimely; LBP-08-11, 67 NRC 507 (2008)

LEGAL CITATIONS INDEX

CASES

- petitioners may not use replies as a vehicle to raise new arguments or claims not found in the original contention or use them to cure an otherwise deficient contention; CLI-08-19, 68 NRC 262 n.32 (2008); LBP-06-20, 64 NRC 199 n.73 (2006)
- there simply would be no end to NRC licensing proceedings if petitioners could disregard timeliness requirements and add new bases or new issues that simply did not occur to them at the outset; CLI-08-19, 68 NRC 262 (2008)
- Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-04-25, 60 NRC 223, 225, *reconsideration denied*, CLI-04-35, 60 NRC 619 (2004)
- a petitioner may in instances of exigent or unavoidable circumstances file a request for an extension of time to file an original hearing petition and contentions; LBP-06-10, 63 NRC 329 n.31 (2006); LBP-07-4, 65 NRC 301 n.83 (2007); LBP-09-17, 70 NRC 323 n.41 (2009)
- a petitioner that fails to satisfy the requirements of 10 C.F.R. 2.309(f)(1) in its initial contention submission may not use its reply to rectify the inadequacies of its petition or to raise new arguments, but the reply may respond to and focus on any legal, logical, or factual arguments presented in the answers; CLI-06-29, 64 NRC 421 (2006); LBP-06-20, 64 NRC 152, 191 (2006); LBP-06-23, 64 NRC 359 (2005)
- a petitioner who has failed to develop an argument in its intervention petition is foreclosed from doing so in the first instance in its reply brief; CLI-06-9, 63 NRC 439 n.29 (2006); LBP-06-7, 63 NRC 217 n.28 (2006)
- a reply may not be used as a vehicle to introduce new arguments or support, may not expand the scope of arguments set forth in the original petition, and may not attempt to cure an otherwise deficient contention; LBP-07-4, 65 NRC 299 (2007); LBP-09-17, 70 NRC 323 (2009)
- admission of new contentions under 10 C.F.R. 2.309(f)(2) does not run afoul of the Commission's aversion to petitioners who disregard NRC's timeliness requirements, nor does it allow petitioners to add new contentions that simply did not occur to them at the outset; LBP-09-10, 70 NRC 139 (2009)
- allowing new claims in a reply would unfairly deprive other participants of an opportunity to rebut the new claims; LBP-09-6, 69 NRC 424 n.283, 426 (2009)
- any reply to an answer to a motion should be narrowly focused on the legal or logical arguments presented in the applicant/licensee or the NRC Staff answer; LBP-06-10, 63 NRC 328 n.26 (2006); LBP-06-12, 63 NRC 405 (2006); LBP-07-4, 65 NRC 302 n.87 (2007); LBP-08-26, 68 NRC 919 (2008)
- as a general matter, a party may not present a new contention, or a new basis for a proposed contention, in its reply; LBP-10-9, 71 NRC 514 (2010)
- NRC's expanding adjudicatory docket makes it critically important that parties comply with pleading requirements and that the board enforce those requirements; CLI-09-7, 69 NRC 272 (2009)
- petitioners may not raise entirely new arguments in a reply brief unless the standards for late-filed contentions are met; CLI-09-7, 69 NRC 276 (2009)
- reply pleadings cannot be used to introduce additional supporting information relative to a contention, as opposed to addressing the arguments raised in response to the petition; LBP-08-16, 68 NRC 400 (2008)
- there simply would be no end to NRC licensing proceedings if petitioners could disregard the timeliness requirements and add new bases or new issues that simply did not occur to them at the outset; CLI-09-7, 69 NRC 272 (2009); LBP-06-12, 63 NRC 405 (2006)
- under current rules, contentions must be filed with the original petition within 60 days of notice of the proceeding in the *Federal Register*, unless a longer period is therein specified, an extension is granted, or the contentions meet certain criteria for late-filed or new contentions based on information that is available only at a later time; LBP-09-17, 70 NRC 325 n.50 (2009)
- Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-04-25, 60 NRC 223, 225, *reconsideration denied*, CLI-04-35, 60 NRC 619, 623-24 (2004)
- new arguments may not be introduced for the first time in a reply pleading; CLI-07-25, 66 NRC 106 n.26 (2007); LBP-07-10, 66 NRC 32 (2007)
- Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-04-25, 60 NRC 223, 226 (2004)
- a "plausible strategy" for private conversion of depleted uranium tails does not mean a definite or certain strategy, but it must represent more than mere speculation; LBP-06-15, 63 NRC 637 (2006)

LEGAL CITATIONS INDEX

CASES

- Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-04-35, 60 NRC 619, 621 (2004)
petitioner may not file entirely new support for contentions in a reply; LBP-08-6, 67 NRC 258 (2008)
- Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-04-35, 60 NRC 619, 621-23 (2004)
failure to present adequate privilege logs, including detailed information regarding the location of and reason for any redactions might well lead to rejection of the claimed privilege; LBP-06-25, 64 NRC 379 n.35 (2006)
- Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-04-35, 60 NRC 619, 622 (2004)
the Commission does not lightly revisit its own already-issued and well-considered decisions, doing so only if the party seeking reconsideration brings decisive new information to its attention or demonstrates a fundamental Commission misunderstanding of a key point; CLI-06-27, 64 NRC 401 n.6 (2006)
- Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-04-35, 60 NRC 619, 622-23 (2004)
a reply may not be used as a vehicle to introduce new arguments or support, may not expand the scope of arguments set forth in the original petition, and may not attempt to cure an otherwise deficient contention; LBP-09-17, 70 NRC 323 (2009)
allowing petitioners to file vague, unsupported contentions, and later on appeal change or add contentions at will would defeat the purpose of NRC's contention pleading rules; CLI-06-10, 63 NRC 458 (2006)
once an initial intervention petition is filed, facility proponents routinely press within the adjudicatory process to ensure that any attempt thereafter to cure any deficiencies is rejected as untimely; LBP-08-11, 67 NRC 507 (2008)
petitioners may not seek to skirt contention rules by initially filing unsupported contentions, and later recasting or modifying their contentions on appeal with new arguments never raised before the board; CLI-08-17, 68 NRC 234 (2008); CLI-09-5, 69 NRC 123 (2009)
rewriting a contention on appeal is not permitted; CLI-06-24, 64 NRC 122 (2006)
- Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-04-35, 60 NRC 619, 623 (2004)
a claim not raised in the hearing petition, but added as a new claim in petitioners' reply brief is considered impermissibly late; CLI-08-17, 68 NRC 237 n.27 (2008)
a petitioner may in instances of exigent or unavoidable circumstances file a request for an extension of time to file an original hearing petition and contentions; CLI-06-10, 63 NRC 458 (2006); LBP-06-10, 63 NRC 329 n.31 (2006); LBP-07-4, 65 NRC 301 n.83 (2007); LBP-09-17, 70 NRC 323 n.41 (2009)
although petitioners may not use their reply pleadings to provide new threshold support for their contentions, they may use their reply to clarify and to develop information included in their initial petition; LBP-09-6, 69 NRC 434 (2009)
any reply to an answer to a motion should be narrowly focused on the legal or logical arguments presented in the applicant/licensee or NRC Staff answer; LBP-06-10, 63 NRC 328 n.26 (2006)
intervenor need not provide all supporting facts for a contention in the original submission or prove its case to have the contention admitted; LBP-10-9, 71 NRC 513 (2010)
NRC rules do not allow use of reply briefs to provide, for the first time, the necessary threshold support for contentions; LBP-07-4, 65 NRC 300 (2007)
petitioner does not have to provide a complete or final list of its experts or evidence or prove the merits of its contention at the admissibility stage; LBP-06-20, 64 NRC 147, 150 (2006); LBP-06-23, 64 NRC 356 (2005); LBP-07-15, 66 NRC 271 (2007)
the brief explanation of the logical underpinnings of a contention does not require a petitioner to provide an exhaustive list of possible bases, but simply to provide sufficient alleged factual or legal bases to support the contention; LBP-06-23, 64 NRC 353 (2005); LBP-08-6, 67 NRC 292 (2008); LBP-08-26, 68 NRC 915 (2008)
- Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-04-35, 60 NRC 619, 623-25 (2004)
under current rules, contentions must be filed with the original petition within 60 days of notice of the proceeding in the *Federal Register*, unless a longer period is therein specified, an extension is granted, or the contentions meet certain criteria for late-filed or new contentions based on information that is available only at a later time; LBP-09-17, 70 NRC 325 n.50 (2009)

LEGAL CITATIONS INDEX

CASES

- Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-04-35, 60 NRC 619, 624 (2004)
in a reply, petitioner may submit arguments that are focused on the legal or logical arguments presented in the applicant/licensee or NRC Staff answer; LBP-08-6, 67 NRC 258 (2008)
- Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-04-35, 60 NRC 619, 625 (2004)
a board will take into account any information from reply briefs that legitimately amplifies issues presented in original petitions in a case, but it will not consider instances of what essentially constitute untimely attempts to amend the original petition; LBP-06-10, 63 NRC 329 (2006); LBP-07-4, 65 NRC 301 n.83 (2007); LBP-09-17, 70 NRC 323 n.41 (2009)
in an abundance of caution and in order to give petitioners every benefit of the doubt, the board considers whether any of the material at issue in a reply brief that would not constitute legitimate amplification might be admissible under the criteria of section 2.309(c) or (f)(2); LBP-09-17, 70 NRC 324 (2009)
the Commission remanded to the licensing board a request to consider several previously rejected contentions under the late- and new-filing criteria of 10 C.F.R. 2.309(c), (f)(2), despite the fact that the petitioner had addressed such criteria for the first time only in its interlocutory appeal to the Commission; LBP-07-4, 65 NRC 301 (2007)
- Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-04-35, 60 NRC 619, 626-27 (2004)
a state may participate either as an interested governmental entity or as a party with its own contentions, but not both; CLI-07-13, 65 NRC 215 n.16 (2007)
an interested state that has not been admitted as a party will be afforded a reasonable opportunity to participate in a hearing; LBP-06-7, 63 NRC 227 n.37 (2006); LBP-06-20, 64 NRC 205 n.80 (2006)
excusing a discretionary intervenor from the contention requirement would leave that intervenor free to litigate issues it had not raised, giving that intervenor a participatory role much broader than that of an intervenor as of right, who may litigate only its own contentions or those of another intervenor that it has properly adopted; CLI-06-16, 63 NRC 719 (2006)
- Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-04-35, 60 NRC 619, 627 (2004)
a state that has been admitted as a party may be given the additional opportunity to participate on another party's contentions; LBP-06-20, 64 NRC 205 (2006)
- Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-05-5, 61 NRC 22, 34-35 (2005)
depleted uranium is a low-level radioactive waste, and therefore, transfer of depleted uranium to DOE is a plausible waste disposal strategy; CLI-06-15, 63 NRC 705 n.86 (2006)
depleted uranium is classified as a low-level waste; LBP-07-6, 65 NRC 474 n.210 (2007)
- Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-05-5, 61 NRC 22, 36 (2005)
an approach for disposition of depleted tails that is consistent with the USEC Privatization Act, such as transfer to DOE for disposal, constitutes a plausible strategy; CLI-09-15, 70 NRC 18 (2009); CLI-10-4, 71 NRC 72 (2010)
depleted uranium from an enrichment facility is appropriately classified as low-level radioactive waste; CLI-09-15, 70 NRC 18 (2009); CLI-10-4, 71 NRC 72 (2010)
this decision resolves a number of issues concerning uranium enrichment licensing and may be relied upon as precedent; CLI-09-15, 70 NRC 17 (2009); CLI-10-4, 71 NRC 71 (2010)
- Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-05-17, 62 NRC 5 (2005)
this decision resolves a number of issues concerning uranium enrichment licensing and may be relied upon as precedent; CLI-09-15, 70 NRC 17 (2009); CLI-10-4, 71 NRC 71 (2010)
- Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-05-20, 62 NRC 523, 536 (2005)
an agency can dispense with an examination of these less significant impacts because NEPA requires only an estimate of anticipated, but not unduly speculative, impacts; LBP-10-14, 72 NRC 110 (2010)
the agency's environmental review need only account for those impacts that have some likelihood of occurring or are reasonably foreseeable; LBP-09-26, 70 NRC 970 (2009)
with limited exceptions, no rule or regulation of the Commission is subject to attack in any adjudicatory proceeding; LBP-09-26, 70 NRC 956 n.68 (2009)
- Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-05-21, 62 NRC 538, 539 (2005)
routine rulings on contention admissibility are usually not occasions for the Commission to exercise its authority to step into ongoing licensing board proceedings and undertake interlocutory review; CLI-09-3, 69 NRC 72 (2009); CLI-09-6, 69 NRC 133 n.16 (2009)

LEGAL CITATIONS INDEX

CASES

- traditionally, the Commission has accepted board certifications or referrals; CLI-09-3, 69 NRC 72 (2009)
- Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-05-21, 62 NRC 538, 540 (2005) whether the National Environmental Policy Act requires NRC to consider potential health effects of consuming irradiated food raises the kind of broad legal question appropriate for Commission interlocutory review; CLI-08-4, 67 NRC 172 (2008); CLI-08-16, 68 NRC 222 (2008)
- Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-05-28, 62 NRC 721, 723 (2005) although the Commission has authority to make de novo findings of fact, it does not do so where a licensing board has issued a plausible decision that rests on carefully rendered findings of fact; CLI-09-7, 69 NRC 259 (2009); CLI-10-5, 71 NRC 98 (2010); CLI-10-18, 72 NRC 72-73 (2010) where a presiding officer has reviewed an extensive record in detail, with the assistance of a technical advisor, the Commission is generally disinclined to upset his findings and conclusions, particularly on matters involving fact-specific issues or where the affidavits or submissions of experts must be weighed; CLI-06-1, 63 NRC 2 (2006)
- Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-05-28, 62 NRC 721, 724 (2005) generalized concerns about national security and nonproliferation do not amount to an admissible contention; CLI-06-10, 63 NRC 470 (2006) nonproliferation goals and concerns span a host of factors far removed from the licensing actions; CLI-06-10, 63 NRC 463 (2006)
- Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-05-28, 62 NRC 721, 726 (2005) business strategies in the context of need for power and any challenges to them are outside the scope of a licensing proceeding; CLI-10-1, 71 NRC 22 (2010); LBP-10-10, 71 NRC 598 (2010) determination of economic benefits and costs that are tangential to environmental consequences are within a wide area of agency discretion; LBP-10-24, 72 NRC 771 (2010) NEPA imposes procedural requirements on the NRC to take a hard look at the environmental impacts of building and operating a nuclear reactor; LBP-10-14, 72 NRC 110 (2010) NRC is not in the business of regulating the market strategies of licensees and leaves to licensees the ongoing business decisions that relate to costs and profit; LBP-09-2, 69 NRC 111 (2009)
- Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-05-28, 62 NRC 721, 727 (2005) where any issue arises over the proper scope of a contention, NRC opinions have long referred back to the bases set forth in support of the contention; CLI-10-11, 71 NRC 309 (2010)
- Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-05-28, 62 NRC 721, 727-28 (2005) NRC adjudicatory proceedings would prove endless if parties were free to introduce entirely new claims that they either originally opted not to make or that simply did not occur to them at the outset; CLI-10-11, 71 NRC 311 (2010)
- Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-06-15, 63 NRC 687, 690 (2006) applicants' assertion that low-level radioactive waste could be transferred to another licensee or that some other arrangement might be established in the future is not sufficient to erase the requirement that reasonably foreseeable environmental impacts be assessed in an environmental report; CLI-09-20, 70 NRC 924 (2009)
- Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-06-15, 63 NRC 687, 697 (2006) licensing boards include two judges with technical expertise; CLI-10-17, 72 NRC 50 n.276 (2010)
- Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-06-15, 63 NRC 687, 707 n.91 (2006) any board merits litigation-based findings have the effect of amending or supplementing the final environmental impact statement; LBP-07-3, 65 NRC 277 (2007)
- Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-06-22, 64 NRC 37, 39 & n.8 (2006) the decommissioning funding required for the most costly component, disposition of depleted uranium tails, is predicated on transferring DU to DOE, which is a plausible strategy allowed by statute; LBP-07-6, 65 NRC 453 (2007)
- Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-06-22, 64 NRC 37, 40 (2006) although the Commission has discretion to review all underlying factual issues *de novo*, it is disinclined to do so where a board has weighed arguments presented by experts and rendered reasonable, record-based factual findings; CLI-10-5, 71 NRC 99 (2010); CLI-10-18, 72 NRC 73 (2010)

LEGAL CITATIONS INDEX

CASES

- on appeal, the Commission defers to a board's factual findings, correcting only clearly erroneous findings, i.e., findings not even plausible in light of the record viewed in its entirety; CLI-10-5, 71 NRC 99 (2010); CLI-10-18, 72 NRC 73 (2010)
- Louisiana Energy Services, L.P.* (National Enrichment Facility), LBP-04-14, 60 NRC 40, 55 (2004)
NRC's adjudicatory process is not the proper venue for the evaluation of a petitioner's own view regarding the direction that regulatory policy should take; LBP-09-26, 70 NRC 956, 981 (2009)
petitioner must present the factual information and expert opinions necessary to support its contention adequately; LBP-09-4, 69 NRC 216 (2009)
petitioner's issue will be ruled inadmissible if petitioner has offered no tangible information, no experts, no substantive affidavits, but instead only bare assertions and speculation; LBP-07-16, 66 NRC 288 (2007)
- Louisiana Energy Services, L.P.* (National Enrichment Facility), LBP-04-14, 60 NRC 40, 56 (2004)
a board may not make assumptions of fact that favor an intervention petitioner or supply information that is lacking in its petition; LBP-06-7, 63 NRC 232 (2006)
petitioners must show some significant link between the claimed deficiency and either the health and safety of the public or the environment; LBP-07-3, 65 NRC 267 (2007)
providing any material or document as a basis for a contention, without setting forth an explanation of its significance, is inadequate to support the admission of the contention; LBP-06-27, 64 NRC 457 (2006)
- Louisiana Energy Services, L.P.* (National Enrichment Facility), LBP-04-14, 60 NRC 40, 57 (2004)
a proposed contention that fails to directly controvert the application or that mistakenly asserts the application does not address a relevant issue is subject to dismissal; LBP-09-27, 70 NRC 1014 (2009)
the reach of a contention necessarily hinges upon its terms and its stated bases; LBP-09-26, 70 NRC 953 (2009); LBP-10-6, 71 NRC 366 n.49 (2010)
- Louisiana Energy Services, L.P.* (National Enrichment Facility), LBP-04-14, 60 NRC 40, 58 (2004)
although a licensing board will take into account any information from reply briefs that legitimately amplifies issues presented in the original petitions, it will not consider instances of what essentially constitute untimely attempts to amend the original petitions; LBP-09-17, 70 NRC 323 (2009)
because new or amended issues in reply briefs were not accompanied by any attempt to address the late- and new-filing factors of section 2.309(c), (f)(2), they were not considered in determining the admissibility of the contentions; LBP-07-4, 65 NRC 301 (2007)
reply briefs that raise new issues must address the nontimely filing and new-contention factors in section 2.309(c) or (f)(2); LBP-06-10, 63 NRC 329 (2006); LBP-09-17, 70 NRC 324 (2009)
- Louisiana Energy Services, L.P.* (National Enrichment Facility), LBP-04-14, 60 NRC 40, 58, *aff'd*, CLI-04-25, 60 NRC 223 (2004)
in its reply, petitioner may respond to and focus on any legal, logical, or factual arguments presented in the answers, and the amplification of statements provided in an initial petition is legitimate and permissible; LBP-06-20, 64 NRC 152 (2006); LBP-06-23, 64 NRC 359 (2005)
- Louisiana Energy Services, L.P.* (National Enrichment Facility), LBP-04-14, 60 NRC 40, 72 & n.18 (2004)
although the phrase "possession, custody, or control," is used, no relevant interpretation or construction of the phrase, or of the term control, is provided; LBP-12-23, 72 NRC 706 (2010)
- Louisiana Energy Services, L.P.* (National Enrichment Facility), LBP-04-14, 60 NRC 40, 77-80 (2004)
examples of admitted contentions that satisfied the requirement to provide a specific statement of the issue of law or fact to be raised or controverted are provided; LBP-08-5, 67 NRC 235 n.79 (2008)
- Louisiana Energy Services, L.P.* (National Enrichment Facility), LBP-05-13, 61 NRC 385, 395-96 (2005)
the merits hearing on environmental issues commenced based on the Staff's draft environmental documents; CLI-07-17, 65 NRC 396 (2007)
- Louisiana Energy Services, L.P.* (National Enrichment Facility), LBP-05-13, 61 NRC 385, 396 n.1 (2005)
the licensing board proceeded to litigate the merits of environmental contentions based on the draft environmental impact statement, instead of awaiting the final EIS; LBP-07-3, 65 NRC 277 (2007)

LEGAL CITATIONS INDEX

CASES

- Louisiana Energy Services, L.P.* (National Enrichment Facility), LBP-05-13, 61 NRC 385, 404 (2005), *aff'd*, CLI-06-22, 64 NRC 37 (2006), *petition for review denied sub nom., Nuclear Information and Resource Service v. NRC*, 509 F.3d 562 (D.C. Cir. 2007)
the board's ultimate NEPA judgments can be made on the basis of the entire adjudicatory record in addition to the Staff's final environmental impact statement; LBP-09-7, 69 NRC 632 (2009)
- Louisiana Energy Services, L.P.* (National Enrichment Facility), LBP-05-13, 61 NRC 385, 440, 444-45 (2005)
applicant may rely on public statements of market participants regarding plans to close old enrichment facilities or open new ones; LBP-06-15, 63 NRC 630 (2006)
- Louisiana Energy Services, L.P.* (National Enrichment Facility), LBP-06-8, 63 NRC 241, *aff'd*, CLI-06-15, 63 NRC 687 (2006)
disposal of large quantities of depleted uranium at the EnergySolutions site is consistent with the performance objectives in the NRC regulations, and environmental impacts will be small; LBP-07-6, 65 NRC 475 (2007)
- Louisiana Energy Services, L.P.* (National Enrichment Facility), LBP-06-8, 63 NRC 241, 257 n.14 (2006)
as an independent agency, NRC has the authority to promulgate its own regulations implementing NEPA and is only bound by Council on Environmental Quality regulations when the NRC expressly adopts them; LBP-10-16, 72 NRC 437 (2010)
- Louisiana Energy Services, L.P.* (National Enrichment Facility), LBP-06-8, 63 NRC 241, 258 (2006)
the hard look required by NEPA is subject to a rule of reason, such that it is not necessary to look at every conceivable alternative to the proposed licensing action, but only those that are feasible and reasonably related to the scope and goals of the proposed action; LBP-10-10, 71 NRC 581 (2010)
- Louisiana Energy Services, L.P.* (National Enrichment Facility), LBP-06-8, 63 NRC 241, 258-59 (2006)
NRC's NEPA responsibilities and, by extension, the applicant's responsibilities under 10 C.F.R. Part 51, are subject to a rule of reason; LBP-10-6, 71 NRC 362 (2010)
the NEPA hard-look doctrine is subject to a rule of reason that the Commission has interpreted as obligating the agency to consider all reasonable alternatives to the proposed action; LBP-09-4, 69 NRC 208 (2009); LBP-09-26, 70 NRC 963, 970 (2009); LBP-10-14, 72 NRC 110 (2010)
- Louisiana Energy Services, L.P.* (National Enrichment Facility), LBP-06-8, 63 NRC 241, 267, *aff'd*, CLI-06-15, 63 NRC 687 (2006)
depleted uranium is classified as Class A waste under current agency regulations; LBP-08-16, 68 NRC 423 n.20 (2008)
- Louisiana Energy Services, L.P.* (National Enrichment Facility), LBP-06-17, 63 NRC 747 (2006)
although each board must have the freedom to manage the proceedings before it, the approach used in this mandatory proceeding is informative; CLI-06-20, 64 NRC 19 (2006)
this proceeding, although contested, was completed within 30 months, including the mandatory hearing; CLI-07-5, 65 NRC 111 n.9 (2007)
- Louisiana Power & Light Co.* (Waterford Steam Electric Station, Unit 3), ALAB-121, 6 AEC 319, 320 (1973)
use of intemperate and disrespectful rhetoric has no place in filings before the Commission or its boards; CLI-06-6, 63 NRC 164 n.18 (2006)
- Louisiana Power & Light Co.* (Waterford Steam Electric Station, Unit 3), ALAB-125, 6 AEC 371, 372 n.6 (1973)
in construction permit and operating license proceedings for power reactors, petitioner is presumed to have standing to intervene if petitioner lives within, or otherwise has frequent contacts with, the zone of possible harm; CLI-09-20, 70 NRC 915 (2009)
- Louisiana Power and Light Co.* (Waterford Steam Electric Station, Unit 3), ALAB-732, 17 NRC 1076, 1087 n.12 (1983)
a board has a duty not only to resolve contested issues, but to articulate in reasonable detail the basis for the course of action chosen; CLI-09-14, 69 NRC 587 (2009)
the Commission is entitled to review the record itself and amplify the board's findings; CLI-09-14, 69 NRC 587 (2009)

LEGAL CITATIONS INDEX

CASES

- Louisiana Power and Light Co.* (Waterford Steam Electric Station, Unit 3), ALAB-732, 17 NRC 1076, 1093 (1983)
once a party has introduced sufficient evidence to establish a *prima facie* case, the burden of proof then shifts to the applicant who must provide sufficient rebuttal to satisfy the board that it should reject the contention as a basis for denial of the permit or license; CLI-09-7, 69 NRC 269 (2009)
- Louisiana Power and Light Co.* (Waterford Steam Electric Station, Unit 3), ALAB-732, 17 NRC 1076, 1096 (1983)
mere demonstration that a board erred is not sufficient to warrant appellate relief, but rather the complaining party must demonstrate actual prejudice, i.e., that the ruling had a substantial effect on the outcome of the proceeding; CLI-10-23, 72 NRC 245 n.175 (2010)
to prevail in a disqualification motion, petitioner first must demonstrate that the purported instances of bias had a substantial impact on the outcome of the proceeding; CLI-10-17, 72 NRC 46 (2010)
- Louisiana Power and Light Co.* (Waterford Steam Electric Station, Unit 3), ALAB-732, 17 NRC 1076, 1103 (1983)
key safety issues must be resolved in the hearing, not post-hearing by NRC Staff and applicant; LBP-08-25, 68 NRC 829 (2008)
- Louisiana Power and Light Co.* (Waterford Steam Electric Station, Unit 3), ALAB-732, 17 NRC 1076, 1107 (1983)
challenges to the implementing procedures for a 10 C.F.R. Part 50 reactor emergency plan are not material to licensing proceedings; LBP-06-12, 63 NRC 408 (2006)
- Louisiana Power and Light Co.* (Waterford Steam Electric Station, Unit 3), ALAB-812, 22 NRC 5, 48-51 (1985)
circumstances of the high-level waste repository proceeding are quite different from cases in which the NRC considers the character and competence of a private enterprise, not under the government's control; CLI-09-14, 69 NRC 605 (2009)
- Louisiana Power and Light Co.* (Waterford Steam Electric Station, Unit 3), CLI-86-1, 23 NRC 1 (1986)
the burden of satisfying the reopening requirements is on the movant; CLI-08-28, 68 NRC 675 (2008)
- Louisiana Power and Light Co.* (Waterford Steam Electric Station, Unit 3), CLI-86-1, 23 NRC 1, 5 (1986)
the burden of satisfying the reopening requirements is a heavy one; CLI-08-28, 68 NRC 669 (2008); CLI-09-7, 69 NRC 287 (2009)
- Louisiana Public Service Commission v. Federal Communications Commission*, 476 U.S. 355, 372 (1986)
technical terms of art should be interpreted by reference to the trade or industry to which they apply; CLI-06-14, 63 NRC 519 (2006)
- Louisiana Wildlife Federation, Inc. v. York*, 761 F.2d 1044, 1048 (5th Cir. 1985)
NRC need only consider a range of alternatives in its environmental impact statement that are technologically feasible and economically practicable alternatives for producing baseload power; LBP-10-10, 71 NRC 581 (2010)
- Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110 (2d Cir. 2006)
the First Amendment requires a presumption of openness in civil proceedings; LBP-10-2, 71 NRC 208 n.58 (2010)
- Lujan v. Defenders of Wildlife*, 504 U.S. 555, 559-61 (1992)
intervention petitioner must establish a concrete and particularized injury that is fairly traceable to the challenged action, is likely to be redressed by a favorable decision, and is arguably within the zone of interests protected by the governing statute; CLI-09-20, 70 NRC 915 (2009)
- Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)
injury-in-fact is defined as an invasion of a legally protected interest that is concrete and particularized and actual or imminent rather than conjectural or hypothetical; LBP-09-13, 70 NRC 176 (2009); LBP-10-16, 72 NRC 381 (2010)
to establish causation, petitioner must show that there is a causal connection between the injury and the conduct complained of, i.e., the injury must be fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court; LBP-09-13, 70 NRC 176 (2009); LBP-10-16, 72 NRC 382 (2010)
- Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 n.1 (1992)
an injury-in-fact must go beyond generalized grievances to affect a petitioner in a personal and individual way; LBP-09-13, 70 NRC 176 (2009); LBP-10-16, 72 NRC 381 (2010)

LEGAL CITATIONS INDEX

CASES

- Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992)
an intervention petitioner must demonstrate a concrete and particularized injury that is fairly traceable to the challenged action and is likely to be redressed by a favorable decision; LBP-06-4, 63 NRC 103 (2006); LBP-07-14, 66 NRC 182 (2007)
basic elements of constitutional standing are set forth; LBP-09-4, 69 NRC 182, 183 (2009)
in determining whether an individual or organization should be granted party status in a proceeding based on standing “as of right,” the agency has applied contemporaneous judicial standing concepts; LBP-08-26, 68 NRC 911 (2008)
the nontrivial increased risk to persons living within a 50-mile radius of a nuclear reactor constitutes injury-in-fact, is traceable to the challenged action, and is likely to be redressed by a favorable decision that either denies a license or mandates compliance with legal requirements that protect the interests of the petitioners; LBP-09-16, 70 NRC 242 (2009)
to establish standing in federal court, a party must show injury-in-fact, causation, and redressability; CLI-09-20, 70 NRC 916 (2009); LBP-09-13, 70 NRC 175-76 (2009); LBP-10-16, 72 NRC 380 (2010)
- Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992)
petitioners need not demonstrate a substantial likelihood of redressability, but rather need only show that redress is likely as opposed to speculative; LBP-06-4, 63 NRC 105 (2006); LBP-10-11, 71 NRC 636 n.101 (2010)
to establish standing petitioner must allege a concrete and particularized injury that is fairly traceable to the challenged action and is likely to be redressed by a favorable decision; LBP-07-5, 65 NRC 345 (2007); LBP-08-24, 68 NRC 701 (2008); LBP-09-16, 70 NRC 240 (2009)
to meet its burden, it is generally sufficient if petitioner provides plausible factual allegations that satisfy each element of standing; LBP-10-4, 71 NRC 229-30 (2010)
when assessing whether an individual or organization has set forth a sufficient interest, the Commission has applied contemporaneous judicial concepts of standing; LBP-09-16, 70 NRC 240 (2009)
where a facility will not be located within an Indian tribe’s boundaries, the tribe must meet the standing requirements imposed by 10 C.F.R. 2.309(d)(1); LBP-10-16, 72 NRC 390-91 (2010)
- Lujan v. Defenders of Wildlife*, 504 U.S. 555, 564 (1992)
even if a party seeking standing has some intent to return to an area, when such intentions are not supported by concrete plans or a specification of when future visits would take place, they do not support a finding of injury in the standing context; LBP-10-1, 71 NRC 179 (2010)
- Lujan v. Defenders of Wildlife*, 504 U.S. 555, 572 n.7 (1992)
a party claiming violations of their procedural right to protect their interests in cultural resources is to be accorded a special status when it comes to standing without meeting all the normal standards for redressability and immediacy; LBP-10-16, 72 NRC 393 (2010)
persons living adjacent to federally licensed facilities need not satisfy ordinary standing requirements to challenge the federal license; CLI-09-20, 70 NRC 916-17 (2009)
the person who has been accorded a procedural right to protect his concrete interests can assert that right without meeting all of the normal standards for redressability and immediacy; LBP-08-24, 68 NRC 714 (2008); LBP-10-11, 71 NRC 636 n.101 (2010)
- Lujan v. Defenders of Wildlife*, 504 U.S. 555, 572-73 nn.7-8 (1992)
to establish an injury in fact, a party merely has to show some threatened concrete interest personal to the party that the National Historic Preservation Act was designed to protect; LBP-08-24, 68 NRC 714 (2008); LBP-10-16, 72 NRC 393 (2010)
- Lujan v. Defenders of Wildlife*, 504 U.S. 555, 573 n.7 (1992)
because NEPA is a procedural statute, petitioners need not show that favorable rulings on their NEPA contentions will require denial of the license, but rather that favorable rulings will require that procedures intended for protection of their members’ concrete interests will be observed; LBP-09-16, 70 NRC 243 n.33 (2009)
someone living adjacent to the site for proposed construction of a federally licensed facility has standing to challenge the licensing agency’s failure to prepare an environmental impact statement, even though he cannot establish with any certainty that the statement will cause the license to be

LEGAL CITATIONS INDEX

CASES

- withheld or altered, and even though the facility will not be completed for many years; LBP-10-24, 72 NRC 763 n.87 (2010)
- Lujan v. Defenders of Wildlife*, 504 U.S. 555, 573 n.8 (1992)
petitioners may enforce procedural rights only if the procedures in question are designed to protect some threatened concrete interest of theirs that is the ultimate basis of their standing; LBP-10-11, 71 NRC 635 n.100 (2010)
- Luminant Generation Co., LLC* (Comanche Peak Nuclear Power Plant, Units 3 and 4), LBP-09-17, 70 NRC 311, 333-34 (2009)
“otherwise admissible” has been interpreted to mean a contention that meets the admissibility requirements of 10 C.F.R. 2.309(f)(1) but for the fact that it challenges a yet-to-be-certified reactor design; LBP-10-9, 71 NRC 527 (2010)
- Luminant Generation Co., LLC* (Comanche Peak Nuclear Power Plant, Units 3 and 4), LPB-10-10, 71 NRC 529, 588-89 (2010)
even if intervenor’s support is not optimal at this point, it is sufficient to permit further inquiry into the feasibility and reasonable availability under NEPA of the alternative of a combination of wind and solar energy with storage and natural gas supplementation to produce baseload power; LBP-10-24, 72 NRC 765 (2010)
- MacGillivray v. Consolidated Rail Corp.*, No. 91-0774, 1992 WL 57915, at *2-3 (E.D. Pa., Mar. 17, 1992)
in response to claims of attorney-client and attorney work product privilege, the identity of an expert retained by a party is discoverable; LBP-06-10, 63 NRC 335 n.68 (2006)
- Maine Yankee Atomic Power Co.* (Maine Yankee Atomic Power Station), ALAB-161, 6 AEC 1003, 1004 (1973), *aff’d sub nom. Citizens for Safe Power v. NRC*, 524 F.2d 1291 (D.C. Cir. 1975)
perfection in plant construction and the construction quality assurance program is not a precondition for a license, but rather what is required is reasonable assurance that the plant, as built, can and will be operated without endangering the public health and safety; LBP-10-9, 71 NRC 519 (2010)
- Maine Yankee Atomic Power Co.* (Maine Yankee Atomic Power Station), ALAB-161, 6 AEC 1003, 1007 (1973), *remanded on other grounds, CLI-74-2*, 7 AEC 2 (1974), *further statement of Appeal Board views, ALAB-175*, 7 AEC 62 (1974), *aff’d sub nom. Citizens for Safe Power v. NRC*, 524 F.2d 1291 (D.C. Cir. 1975)
the cost-benefit analysis involves the scrutiny of many factors, among them, offsetting benefits, available alternatives, and the possible means (and attendant costs) of reducing the environmental harm; LBP-10-24, 72 NRC 746 n.51 (2010)
- Maine Yankee Atomic Power Co.* (Maine Yankee Atomic Power Station), ALAB-161, 6 AEC 1003, 1009 (1973)
a touchstone for determining whether the reasonable assurance standard is satisfied is compliance with Commission regulations; LBP-07-17, 66 NRC 340 (2007)
reasonable assurance does not denote a specific statistical parameter, but the standard is a flexible one that does not require focus on extreme values or precise quantification of parameters to a high degree of confidence; LBP-08-22, 68 NRC 645 (2008)
the sine qua non of adequate protection to public health and safety is compliance with all applicable safety rules and regulations; LBP-08-25, 68 NRC 787 (2008)
- Maine Yankee Atomic Power Co.* (Maine Yankee Atomic Power Station), CLI-04-5, 59 NRC 52, 56-57 (2004)
the scope of a proceeding on a confirmatory order is exceedingly limited; LBP-08-14, 68 NRC 286 (2008)
- Maine Yankee Atomic Power Co.* (Maine Yankee Atomic Power Station), CLI-04-5, 59 NRC 52, 57 n.16 (2004)
to establish standing, petitioner must show an injury in fact fairly traceable to the challenged action and likely to be redressed by a favorable decision; LBP-07-16, 66 NRC 285, 300, 326 n.339 (2007)
- Maine Yankee Atomic Power Co.* (Maine Yankee Atomic Power Station), LBP-82-4, 15 NRC 199, 204 (1982)
proximity standing has been recognized where a petitioner has regular contact in the vicinity of the facility; CLI-07-21, 65 NRC 524 (2007)

LEGAL CITATIONS INDEX

CASES

- Maine Yankee Atomic Power Co.* (Maine Yankee Atomic Power Station), LBP-82-4, 15 NRC 199, 204 n.7 (1982)
proximity standing has been recognized at close distances where a petitioner frequently engages in substantial business and related activities in the vicinity of the facility; CLI-07-21, 65 NRC 524 (2007)
- Mapother v. Department of Justice*, 3 F.3d 1533, 1538 (D.C. Cir. 1993)
the test for whether material is factual or opinion is not infallible and must not be applied mechanically; LBP-06-25, 64 NRC 382 (2006)
- Mapother v. Department of Justice*, 3 F.3d 1533, 1539 (D.C. Cir. 1993)
deliberative process privilege protects summaries of information gathered to assist the agency in reaching a “complex” and “significant” policy decision, where the summaries reflect the judgment or opinion of their compiler; CLI-08-23, 68 NRC 483 n.103 (2008)
summaries are covered by deliberative process privilege when the disputed documents are factual summaries that were written to assist the making of a discretionary decision; LBP-06-25, 64 NRC 382, 389 (2006)
- Maritimes & Northeast Pipeline, LLC*, 115 FERC P 61,176, ¶¶ 67-81, 2006 WL 1315789 at **17-**22 (FERC) (May 15, 2006)
administrative agencies and their adjudicators routinely approve stipulations and settlements to which fewer than all the parties in a case subscribe; CLI-06-18, 64 NRC 7 (2006)
- Marriott International Resorts v. United States*, 437 F.3d 1302, 1306 (D.C. Cir. 2006)
an agency head may delegate the authority to invoke the deliberative process privilege to an appropriate supervisor; LBP-06-25, 64 NRC 383 (2006)
- Marsh v. Oregon Natural Resources Council*, 490 U.S. 360 (1989)
a contention that directly or indirectly challenges Table S-3 is inadmissible; LBP-09-4, 69 NRC 222 (2009)
NRC may not permit construction or operation of new reactors unless and until it has taken into account any changed circumstances and new and significant information; LBP-07-3, 65 NRC 267 (2007)
the environmental impact statement for a combined license must include new and significant information relevant to the environmental impacts of the proposed facility; LBP-09-4, 69 NRC 220 (2009)
- Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 371 (1989)
by focusing government and public attention on the environmental effects of proposed agency action, NEPA ensures that the agency will not act on incomplete information, only to regret its decision after it is too late to be corrected; LBP-06-23, 64 NRC 278 n.64 (2006); LBP-07-4, 65 NRC 310 n.125 (2007); LBP-07-11, 66 NRC 62 n.74 (2007)
NEPA requires federal agencies to consider the likely environmental impacts of the preferred course of action as well as reasonable alternatives; LBP-10-24, 72 NRC 729 n.16 (2010)
the required dissemination of information permits the public to react to the effects of a proposed action at a meaningful time; LBP-06-23, 64 NRC 298 n.169 (2006)
- Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 371-72 (1989)
if new and significant information arises between the issuance of the environmental impact statement and the agency decision, then the agency must revise its EIS and consider such information; LBP-08-11, 67 NRC 477 (2008); LBP-10-15, 72 NRC 304, 305-06 (2010)
when dealing with a request to waive an environmental regulation under 10 C.F.R. 2.335(b), NRC should use the significant new information criterion; LBP-10-15, 72 NRC 301 (2010)
- Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 373 (1989)
a supplemental environmental impact statement is required if new information presents a seriously different picture of the environmental impact of the proposed project from what was previously envisioned; LBP-06-19, 64 NRC 98 (2006)
- Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 373-74 (1989)
NRC Staff is obliged under NEPA to supplement its environmental review documents if there is new and significant information; CLI-10-29, 72 NRC 563 (2010)

LEGAL CITATIONS INDEX

CASES

- Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 374 (1989)
a licensee is prohibited from taking any action that could affect the quality of the human environment in a significant manner or to a significant extent not already considered; LBP-06-19, 64 NRC 99 (2006)
a supplemental environmental impact statement is needed where new information raises new concerns of sufficient gravity that another, formal in-depth look at the environmental consequences of the proposed action is necessary; CLI-06-3, 63 NRC 28 (2005)
agencies must take a hard look at the environmental effects of their planned actions, and update the environmental impact statement to reflect new information that is relevant to the environmental consequences of the proposed action; LBP-09-4, 69 NRC 228 n.192 (2009)
an environmental report must contain any new and significant information regarding the environmental impacts of license renewal of which the applicant is aware; LBP-06-20, 64 NRC 152 n.23 (2006)
- Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 376-77 (1989)
agencies are not required to list or analyze the effects of individual past actions unless such information is necessary to describe the cumulative effect of all past actions combined, and agencies retain substantial discretion as to the extent of such inquiry and the appropriate level of explanation; LBP-09-4, 69 NRC 203 (2009)
- Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 378 (1989)
an environmental impact statement need not be supplemented where new and accurate information contained in a study was not significant and significant information was not new and accurate; CLI-06-3, 63 NRC 29 (2005)
when specialists express conflicting views, an agency must have discretion to rely on the reasonable opinions of its own qualified experts; CLI-08-26, 68 NRC 518 (2008)
- Martin v. Malhoyt*, 830 F.2d 237, 264 (D.C. Cir. 1987)
care should be taken in dealing with judgments that are final, but still subject to direct review, so as to avoid the risks of denying relief on the basis of a judgment that is subsequently overturned; LBP-09-24, 70 NRC 713 (2009)
- Maryland v. Baltimore Radio Show*, 338 U.S. 912, 919 (1950)
denial of *certiorari* carries with it no implication whatever regarding the Court's views on the merits of a case that it has declined to review; LBP-07-11, 66 NRC 86-87 (2007)
- Massachusetts v. Mellon*, 262 U.S. 447, 486-87 (1923)
standing on the part of plaintiffs is found at a bare minimum as municipal taxpayers under case law in which the peculiar relation of the corporate taxpayer to the corporation distinguishes such a case from the general bar on taxpayer suits; LBP-09-1, 69 NRC 23 (2009)
- Massachusetts v. NRC*, 522 F.3d 115 (1st Cir. 2008)
a participant in an ongoing adjudicatory proceeding that has filed a rulemaking petition should be provided an opportunity to seek a stay of the adjudication pending a resolution of the rulemaking petition; LBP-08-16, 68 NRC 424 n.21 (2008)
- Massachusetts v. NRC*, 522 F.3d 115, 120-21, 125-27 (1st Cir. 2008)
NRC regulations provide procedural channels through which new and significant information may be brought to the Staff's attention for review to determine if a generic Category 1 finding warrants modification; CLI-10-14, 71 NRC 476 (2010)
- Massachusetts v. NRC*, 522 F.3d 115, 126-27 (1st Cir. 2008)
the Atomic Energy Act's regulatory scheme is virtually unique in the degree to which broad responsibility is reposed in the administering agency, free of close prescription in its charter as to how it shall proceed in achieving the statutory objective; CLI-10-6, 71 NRC 122 (2010)
- Massachusetts v. NRC*, 522 F.3d 115, 130 (1st Cir. 2008)
stay of the close of hearings in license renewal proceedings was ordered to afford the Commonwealth an opportunity to request participant status as an interested state; CLI-10-14, 71 NRC 468 n.105 (2010)
- Massachusetts v. NRC*, 924 F.2d 311, 321-22 (D.C. Cir. 1991)
any decision to indefinitely delay a hearing on the merits of an immediately effective order would be subject to judicial review as a final agency action; LBP-06-13, 63 NRC 561 n.129 (2006)

LEGAL CITATIONS INDEX

CASES

- Massachusetts v. United States*, 522 F.3d 115, 118 (1st Cir. 2008)
petitioner cannot raise spent fuel pool issues in a licensing proceeding while its petition for rulemaking concerning the same issue is pending; LBP-08-25, 68 NRC 783 n.13 (2008)
- Massachusetts v. United States*, 522 F.3d 115, 130 (1st Cir. 2008)
the purpose of obtaining “interested state” status was so that a state could request a suspension of the license renewal proceeding; LBP-08-25, 68 NRC 783 n.13 (2008)
- Massachusetts v. U.S. Environmental Protection Agency*, 549 U.S. 497 (2007)
carbon dioxide falls within the Clear Air Act’s definition of air pollutants subject to EPA’s regulatory authority; LBP-09-17, 70 NRC 363 (2009)
where the law is declared to require it, DOE and other agencies within the Executive Branch are often required to implement legislative directives with which they do not necessarily agree;
LBP-10-11, 71 NRC 628 n.71 (2010)
- Massachusetts v. U.S. Environmental Protection Agency*, 549 U.S. 497, 517-18 (2007)
all that is required in the case of a procedural injury is some possibility that the requested relief will prompt the injury-causing party to reconsider the decision that allegedly harmed the litigant;
CLI-09-9, 69 NRC 340 n.41 (2009)
an alleged injury to health and safety, shared equally by many, can form the basis for standing;
LBP-09-18, 70 NRC 399 (2009)
- Massachusetts Coalition of Citizens with Disabilities v. Civil Defense Agency*, 649 F.2d 71, 75 (1st Cir. 1981)
merely raising the specter of a nuclear accident does not demonstrate irreparable harm; CLI-06-8, 63 NRC 238 (2006)
- Massachusetts School of Law at Andover v. United States*, 118 F.3d 776 (D.C. Cir. 1997)
when evaluating whether a settlement in an enforcement proceeding is in the public interest, four factors are considered; LBP-06-18, 63 NRC 837 (2006)
- Matosantos Commercial Corp. v. Applebee’s International, Inc.*, 245 F.3d 1203, 1211 (10th Cir. 2001)
the argument that a party did not have a full and fair opportunity to litigate an issue in district court because the decision was made pursuant to a motion to dismiss for lack of jurisdiction is rejected;
LBP-08-23, 68 NRC 688 n.47 (2008)
- Matthews v. Eldridge*, 424 U.S. 319, 334-35 (1976)
the risk that an immediately effective order erroneously suspended a subject’s license or other vested interest is one factor used to determine whether procedural due process is met when a property interest is at stake; LBP-06-13, 63 NRC 544 (2006)
- Matthews v. Eldridge*, 424 U.S. 319, 335 (1976)
to ensure that a hearing delay comports with the requirements of due process, the decision to grant a delay requested by the government must take into consideration not only the interests of the government but of the persons affected by the order as well; LBP-06-13, 63 NRC 542 (2006)
- McGrath v. Nassau Health Care Corp.*, 204 F.R.D. 240, 247-48 (E.D.N.Y. 2001)
if a company claims that the internal investigation establishes that it has met its obligation, then the company has waived the attorney-client privilege associated with the internal investigation; CLI-08-6, 67 NRC 184 (2008)
- McKenna v. Nestle Purina PetCare Co.*, 2007 U.S. Dist. LEXIS 8876 (S.D. Ohio 2007)
if a company claims that the internal investigation establishes that it has met its obligation, then the company has waived the attorney-client privilege associated with the internal investigation; CLI-08-6, 67 NRC 184 (2008)
- McKnight v. Blanchard*, 667 F.2d 477, 479 (5th Cir. 1982)
discretionary stays will be reversed when they are immoderate or of an indefinite duration; LBP-06-13, 63 NRC 536 n.32 (2006)
- McSurely v. McClellan*, 426 F.2d 664, 672 (D.C. Cir. 1970)
an indefinite stay should not be entered unless no alternative is available; LBP-06-13, 63 NRC 536 n.32 (2006)
- Meat Cutters v. Jewel Tea Co.*, 381 U.S. 676, 723 (1965)
the purpose and effect of a labor union is to limit the power of an employer to use competition among workmen to drive down wage rates and enforce substandard conditions of employment;
CLI-08-19, 68 NRC 264 n.47 (2008)

LEGAL CITATIONS INDEX

CASES

- Medimmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 128 n.8 (2007)
it is appropriate to assess both the fitness of the issue for judicial decision and the hardship to the parties of withholding court consideration; LBP-09-1, 69 NRC 39 n.114 (2009)
- Merrell Dow Pharmaceuticals, Inc., v. Havner*, 953 S.W.2d 706, 715 (Tex. 1997)
how statistical evidence can play into proving causation is discussed; LBP-08-22, 68 NRC 646 (2008)
- Merrell Dow Pharmaceuticals, Inc., v. Havner*, 953 S.W.2d 706, 723-24 (Tex. 1997)
the term, “reasonable assurance,” is interpreted; LBP-08-22, 68 NRC 644 n.261 (2008)
- Methow Valley Citizens Council v. Regional Forester*, 833 F.2d 810, 815, 816 (9th Cir. 1987) *rev'd and remanded on other grounds, Robertson v. Methow Valley Citizens Council*, 490 U.S. 332 (1989), *aff'd on remand*, 879 F.2d 705, 706 (9th Cir. 1989)
although substantial weight is accorded to a license applicant’s preferences, if the identified purpose of a proposed project reasonably may be accomplished at locations other than the proposed site, the board may require consideration of those alternative sites; CLI-10-18, 72 NRC 81 n.145 (2010)
- Metropolitan Council of NAACP Branches v. Federal Communications Commission*, 46 F.3d 1154, 1164-65 (D.C. Cir. 1995)
the disqualification standard under 28 U.S.C. § 455 is not directed to administrative judges, but the Commission and its adjudicatory boards have applied it in assessing a motion for disqualification under 10 C.F.R. 2.313, and it provides a helpful framework for such an assessment; CLI-10-22, 72 NRC 203 (2010)
- Metropolitan Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766 (1983)
the National Environmental Policy Act does not require an agency to assess potential psychological impacts due to fear of radiological harm; CLI-10-11, 71 NRC 309 n.113 (2010)
- Metropolitan Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766, 771-72 (1983)
the National Environmental Policy Act encompasses effects on health only when they are linked to a change in the environment; CLI-08-16, 68 NRC 228 (2008)
- Metropolitan Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766, 772 (1983)
the National Environmental Policy Act does not require an agency to assess every impact or effect of its proposed action, but only effects on the environment; CLI-08-16, 68 NRC 228 (2008); LBP-09-2, 69 NRC 112 n.99 (2009)
- Metropolitan Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766, 772-75 (1983)
a reasonably close causal relationship between federal agency action and environmental consequences is necessary to trigger NEPA; CLI-07-8, 65 NRC 129 (2007)
the claimed impact of a terrorist attack is too attenuated to find the proposed federal action of a license renewal to be the proximate cause of that impact; CLI-07-8, 65 NRC 129 (2007)
- Metropolitan Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766, 773 (1983)
although the National Environmental Policy Act states its goals in sweeping terms of human health and welfare, these goals are ends that Congress has chosen to pursue by means of protecting the physical environment; CLI-08-16, 68 NRC 228 (2008)
- Metropolitan Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766, 773-74 (1983)
the effects that must be considered in an environmental impact statement are those that are caused by the action and there must be a reasonably close causal relationship between the proposed action and an alleged environmental effect or impact before that effect need be considered; LBP-07-4, 65 NRC 330 n.246 (2007)
- Metropolitan Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766, 774 (1983)
in the context of the National Environmental Policy Act, one must look at the underlying policies or legislative intent in order to draw a manageable line between those causal changes that make an actor responsible for an effect and those that do not; CLI-08-16, 68 NRC 229 (2008)
prior NRC precedent is consistent with Supreme Court NEPA doctrine, which requires a reasonably close causal relationship between federal agency action and environmental consequences before NEPA is triggered, a relationship similar to that of proximate cause in tort law; CLI-07-8, 65 NRC 130 (2007); LBP-07-14, 66 NRC 186 (2007)
to be encompassed by the National Environmental Policy Act, there needs to be a reasonably close causal relationship between a change in the physical environment and the effect at issue because otherwise, the words “adverse environmental effects” might embrace virtually any consequence of a proposed federal action that someone thought adverse; CLI-08-16, 68 NRC 228 (2008)

LEGAL CITATIONS INDEX

CASES

- Metropolitan Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766, 775 (1983)
the Food and Drug Administration's regulation generically authorizing fresh fruit and vegetable irradiation, issued in 1986 and still valid today, is the legally relevant or proximate cause of any potential effects of consuming irradiated fruits, lengthening the causal chain beyond the reach of the National Environmental Policy Act; CLI-08-16, 68 NRC 229 (2008)
- Metropolitan Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766, 776 (1983)
the scope of the agency's consideration of alternatives must remain manageable if NEPA's goal of ensuring a fully informed and well-considered decision is to be accomplished; LBP-07-9, 65 NRC 607 n.94 (2007)
- Metropolitan Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766, 776-78 (1983)
unsubstantiated fear of an effect is not a sufficient basis for an admissible contention; CLI-06-9, 63 NRC 444 n.57 (2006)
- Metropolitan Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766, 778 (1983)
if a harm does not have a sufficiently close connection to the physical environment, the National Environmental Policy Act does not apply, regardless of the gravity of the harm; CLI-08-16, 68 NRC 229 (2008)
- Metropolitan Edison Co.* (Three Mile Island Nuclear Station, Unit 1), ALAB-698, 16 NRC 1290, 1299 (1982), *rev'd in part on other grounds*, CLI-83-22, 18 NRC 299 (1983)
the adequacy of guidance may be litigated in individual licensing proceedings; CLI-10-17, 72 NRC 32-33 n.185 (2010)
- Metropolitan Edison Co.* (Three Mile Island Nuclear Station, Unit 1), ALAB-772, 19 NRC 1193, 1206-07 (1984)
lack of either technical competence or character qualifications on the part of licensee or applicant is sufficient grounds for the revocation of a license or the denial of a license application; LBP-09-6, 69 NRC 469 n.584 (2009)
- Metropolitan Edison Co.* (Three Mile Island Nuclear Station, Unit 1), ALAB-772, 19 NRC 1193, 1247 (1984)
fairness requires that all participants in NRC adjudicatory proceedings abide by its procedural rules, especially those who are cognizant of those rules and represented by counsel; CLI-10-12, 71 NRC 327 (2010)
- Metropolitan Edison Co.* (Three Mile Island Nuclear Station, Unit 1), ALAB-807, 21 NRC 1195, 1214 (1985)
protective orders and in camera proceedings are the customary and favored means of handling disputes that arise in which one party to a proceeding seeks purportedly proprietary information from another; CLI-10-24, 72 NRC 463 n.74 (2010)
- Metropolitan Edison Co.* (Three Mile Island Nuclear Station, Unit 1), CLI-83-25, 18 NRC 327, 332 (1983)
an organization's promotion of the public interest, environmental protection, and consumer protection are broad interests shared with many others and too general to constitute a protected interest under the Atomic Energy Act or the National Environmental Policy Act; CLI-07-18, 65 NRC 411 n.33 (2007)
interest in the promotion of economic use of energy falls outside the zone of interests protected by either the Atomic Energy Act or the National Environmental Policy Act; CLI-07-18, 65 NRC 411 n.32 (2007)
- Metropolitan Edison Co.* (Three Mile Island Nuclear Station, Unit 1), CLI-84-17, 20 NRC 801, 804 (1984)
expenses of any kind do not constitute irreparable injury; CLI-09-6, 69 NRC 135 n.25 (2009)
- Metropolitan Edison Co.* (Three Mile Island Nuclear Station, Unit 1), CLI-85-5, 21 NRC 566, 569 (1985)
a judge's use of strong language toward a party or in expressing his views on matters before him do not constitute evidence of personal bias; CLI-10-17, 72 NRC 47 (2010)
- Metropolitan Edison Co.* (Three Mile Island Nuclear Station, Unit 1), CLI-85-7, 21 NRC 1104, 1106 (1985)
discovery is not permitted for the purpose of developing a motion to reopen the record or to assist a petitioner in the framing of contentions; CLI-08-28, 68 NRC 676 n.73 (2008); LBP-08-12, 68 NRC 27 n.23 (2008)

LEGAL CITATIONS INDEX

CASES

- Metropolitan Edison Co.* (Three Mile Island Nuclear Station, Unit 1), CLI-85-9, 21 NRC 1118, 1136-40, *aff'd, In re Three Mile Island Alert, Inc.*, 771 F.2d 720 (3d Cir. 1985), *cert. denied*, 475 U.S. 1082 (1986)
circumstances of the high-level waste repository proceeding are quite different from cases in which NRC considers the character and competence of a private enterprise, not under the government's control; CLI-09-14, 69 NRC 605 (2009)
- Metropolitan Edison Co.* (Three Mile Island Nuclear Station, Unit 1), LBP-80-8, 11 NRC 297, 307 (1980)
petitioner contends that NRC's assertion that the risk of an attack is not quantifiable does not preclude further consideration under the National Environmental Policy Act; LBP-08-13, 68 NRC 214 (2008)
- Metropolitan Edison Co.* (Three Mile Island Nuclear Station, Unit 1), LBP-81-50, 14 NRC 888, 892 (1981)
boards have looked to FOIA cases and the balancing tests they employ for guidance on issues of public disclosure; LBP-06-25, 64 NRC 380 n.36, 390 (2006)
the "obtainable from another source" language was designed to provide for materials available through the licensee; LBP-06-25, 64 NRC 390 (2006)
- Metropolitan Edison Co.* (Three Mile Island Nuclear Station, Unit 1), LBP-83-76, 18 NRC 1266, 1273 (1983)
when a Commission regulation permits the use of a particular analysis, a contention asserting that a different analysis or technique should be utilized is inadmissible because it indirectly attacks the Commission's regulations; LBP-09-16, 70 NRC 255 (2009)
- Metropolitan Edison Co.* (Three Mile Island Nuclear Station, Unit 1), LBP-85-30, 22 NRC 332, 396 (1985)
a board's findings regarding a particular witness's knowledge or state of mind depend, as a general rule, largely on that witness's credibility; CLI-10-23, 72 NRC 226 n.65 (2010)
- Metropolitan Edison Co.* (Three Mile Island Nuclear Station, Unit 2), ALAB-384, 5 NRC 612, 614, 619 (1977)
traditionally, a crucial issue at the operating license stage was whether the facility had indeed been constructed in accordance with the permit; LBP-07-14, 66 NRC 203 n.83 (2007)
- Metropolitan Edison Co.* (Three Mile Island Nuclear Station, Unit 2), ALAB-474, 7 NRC 746, 748-49 (1978)
use of intemperate and disrespectful rhetoric has no place in filings before the Commission or its boards; CLI-06-6, 63 NRC 164 n.18 (2006)
- Metropolitan Edison Co.* (Three Mile Island Nuclear Station, Unit 2), ALAB-486, 8 NRC 9, 22 (1978)
requirements for reopening the record apply to each issue to be reopened; LBP-08-12, 68 NRC 14 (2008)
- Meyer v. Strouse*, 221 A.2d 191, 192 (Pa. 1966)
defendant's appeal of ouster from office of tax collector was dismissed as moot because during pendency of appeal, the term of office had expired; LBP-09-14, 70 NRC 196 n.15 (2009)
- Minier v. Central Intelligence Agency*, 88 F.3d 796 (9th Cir. 1996)
challenges in FOIA cases routinely are resolved on the basis of summary judgment pleadings; LBP-08-7, 67 NRC 371 (2008)
- Miscavige v. Internal Revenue Service*, 2 F.3d 366, 368 (11th Cir. 1993)
a relatively detailed index or affidavit should provide a sufficient basis for a decision as to the bases for withholding enumerated source documents; CLI-08-1, 67 NRC 25 n.118 (2008)
- Mississippi Power and Light Co.* (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-130, 6 AEC 423, 426 (1973)
at the admissibility stage, petitioner does not have to prove its contentions and boards do not adjudicate disputed facts; LBP-09-6, 69 NRC 401 (2009)
in passing upon the question as to whether an intervention petition should be granted, it is not the function of a licensing board to reach the merits of any contention contained therein; LBP-06-6, 63 NRC 177 (2006); LBP-06-7, 63 NRC 225 (2006); LBP-06-22, 64 NRC 244 (2006)
the contention admissibility decision should not examine, under the guise of materiality or scope, whether the environmental impacts that petitioners allege have been omitted from the environmental report are indeed reasonable or significant, or whether an alternative that petitioners propound is reasonable; LBP-09-10, 70 NRC 86 n.29 (2009)

LEGAL CITATIONS INDEX

CASES

- Mississippi Power and Light Co.* (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-704, 16 NRC 1725 (1982)
good cause to excuse the late-filing of a contention is the most important factor under the pre-2004 rules for late-filed contentions; CLI-08-1, 67 NRC 6 (2008); CLI-08-8, 67 NRC 197-98 n.26 (2008)
- Mississippi Power & Light Co.* (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-704, 16 NRC 1725, 1730 (1982)
petitioner must provide more than vague assertions that it will be able to assist in developing the record to satisfy a requirement for late filing; CLI-10-12, 71 NRC 326 (2010)
the Commission will defer to a board's rulings on threshold issues absent an error of law or abuse of discretion; CLI-10-12, 71 NRC 322 (2010)
- Missouri ex rel. Shorr v. U.S. Army Corps of Engineers*, 147 F.3d 708, 710-11 (8th Cir. 1998)
disclosure of documents under the National Environmental Policy Act is expressly governed by the Freedom of Information Act; CLI-08-5, 67 NRC 176 (2008)
- Missouri v. Army Corps of Engineers*, 147 F.3d 708, 711 (8th Cir. 1998)
even if a draft document for which deliberative process privilege is asserted is relevant and important, once the final version of the document becomes available, the need for the draft (or comments suggesting changes to a draft) may become moot or minimal; LBP-06-3, 63 NRC 92, 94 (2006)
- Mobley v. Continental Casualty*, 405 F. Supp. 2d 42, 47 (D.D.C. 2005)
although wholly conclusory statements for which no supporting evidence is offered need not be taken as true for summary judgment purposes, a court may not make credibility determinations or weigh the evidence at the summary judgment stage; LBP-07-12, 66 NRC 127 (2007); LBP-07-13, 66 NRC 131 (2007)
- Montrose Chemical Corp. of California v. Train*, 491 F.2d 63, 68 (D.C. Cir. 1974)
summaries are covered by deliberative process privilege when the disputed documents are factual summaries that were written to assist the making of a discretionary decision; LBP-06-25, 64 NRC 390 (2006)
- Montrose Chemical Corp. of California v. Train*, 491 F.2d 63, 68, 71 (D.C. Cir. 1974)
summaries of a hearing record prepared for the EPA Administrator were protected because to probe the summaries of record evidence would be the same as probing the decisionmaking process itself; LBP-06-25, 64 NRC 382 (2006)
- Montrose Chemical Corp. of California v. Train*, 491 F.2d 63, 69 (D.C. Cir. 1974)
federal courts have long recognized the sanctity of the decisionmaking process, absent discernible likely gross abuse; LBP-06-25, 64 NRC 381 (2006)
- Montrose Chemical Corp. of California v. Train*, 491 F.2d 63, 70 (D.C. Cir. 1974)
an investigator's summary of an interview, reflecting the investigator's judgment about which parts of the interview deserved mention and emphasis, are part of the deliberative process; LBP-06-25, 64 NRC 378 (2006)
the general purpose of the deliberative process privilege is to prevent injury to the quality of agency decisions and to do so by ensuring that the mental processes of decisionmakers are not subject to public scrutiny; CLI-08-23, 68 NRC 483 n.103 (2008); LBP-06-25, 64 NRC 380 (2006)
- Montrose Chemical Corp. of California v. Train*, 491 F.2d 63, 71 (D.C. Cir. 1974)
summaries of factual information may be protected in certain circumstances by deliberative process privilege; LBP-06-25, 64 NRC 382 n.55 (2006)
- More v. Snow*, 480 F. Supp. 2d 257, 274 (D.D.C. 2007)
although wholly conclusory statements for which no supporting evidence is offered need not be taken as true for summary judgment purposes, a court may not make credibility determinations or weigh the evidence at the summary judgment stage; LBP-07-12, 66 NRC 127 (2007); LBP-07-13, 66 NRC 131 (2007)
- Morgan Stanley Capital Group, Inc. v. Public Utility District No. 1 of Snohomish County, Washington*, 128 S. Ct. 2733, 2755 (2008)
the dangers of cherry-picking supporting data are discussed; LBP-08-24, 68 NRC 739 (2008)
- Morgan Stanley Capital Group, Inc. v. Public Utility District No. 1 of Snohomish County, Washington*, 128 S. Ct. 2733, 2758 (2008)
post hoc bases have no legal effect on the environmental report; LBP-10-13, 71 NRC 695 (2010)

LEGAL CITATIONS INDEX

CASES

- Morgan v. United States*, 304 U.S. 1, 18-19 (1938)
the right to a hearing embraces not only the right to present evidence, but also a reasonable opportunity to know the claims of the opposing party and to meet them; LBP-09-24, 70 NRC 793 n.176 (2009)
- Morongo Band of Mission Indians v. Federal Aviation Administration*, 161 F.3d 569, 576-77 (9th Cir. 1998)
petitioner did not properly challenge applicant's conclusion that no environmentally preferable alternative existed where the only alternative that petitioner mentions on appeal is the no-reactor option, and petitioner neither raised that option before the board nor supported its argument that it would always be environmentally preferable; LBP-10-6, 71 NRC 380 n.88 (2010)
- Motor Vehicle Manufacturers Association of the United States, Inc. v. State Farm Mutual Automobile Insurance Co.*, 463 U.S. 29, 57 (1983)
if NRC Staff finds any severe accident mitigation alternative conferring a substantial benefit compared to its cost of implementation, it must make such SAMA a license condition for the renewed operating license; LBP-10-13, 71 NRC 689 n.77 (2010)
- Muckleshoot Indian Tribe v. Hall*, 698 F. Supp. 1504, 1514 (W.D. Wash. 1988)
a trust duty in the NRC as a federal permitting agency arises out of 1851 and 1868 treaties with Indian tribes; LBP-08-6, 67 NRC 267 (2008)
- Muckleshoot Indian Tribe v. U.S. Forest Service*, 177 F.3d 800 (9th Cir. 1999)
by considering only a no-action alternative along with two virtually identical alternatives, the agency failed to consider a reasonable range of alternatives under NEPA; CLI-10-18, 72 NRC 84 n.162 (2010)
tribes that have addressed procedural violations of the National Historic Preservation Act have uniformly been granted standing under the relaxed standard and have proceeded directly to the merits of the NHPA claim; LBP-08-24, 68 NRC 715 (2008); LBP-10-16, 72 NRC 393 n.123 (2010)
- Mueller v. Walker*, 124 F.R.D. 654, 656-67 (D. Or. 1989)
a ten-point test for evaluating the law enforcement privilege under FOIA has been used; LBP-06-25, 64 NRC 385 (2006)
- Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314-15 (1950)
the procedural due process doctrine that governs the notification of absent parties essentially prescribes that where personal service cannot be made, one must use a form of legal notice that one would employ if one were really trying to reach the person; LBP-08-11, 67 NRC 508 (2008)
- Nader v. NRC*, 513 F.2d 1045, 1050 (1975)
neither the Atomic Energy Act nor the regulations require totally risk-free siting; LBP-08-22, 68 NRC 647 (2008)
- Nader v. NRC*, 513 F.2d 1045, 1051 (1975)
an agency or commission must articulate with clarity and precision its findings and the reasons for its decisions; LBP-08-22, 68 NRC 628 (2008)
- Nader v. Ray*, 363 F. Supp. 946, 954 (D.D.C. 1973)
"reasonable assurance" does not mean zero risk or absolute certainty; LBP-08-22, 68 NRC 645 n.264 (2008)
- Nakash v. Department of Justice*, 708 F. Supp. 1354, 1365-66 (S.D.N.Y. 1988)
government stays are requested because of concerns that broad disclosure of the essentials of prosecution's case may lead to perjury and manufactured evidence, revealing the identity of prospective witnesses may create the opportunity for intimidation, and criminal defendants may unfairly surprise the prosecution at trial with information developed through discovery, while the self-incrimination privilege would effectively block any attempts by the government to discover relevant evidence from the defendants; LBP-06-13, 63 NRC 539 n.48 (2006)
- Naragansett Indian Tribe v. Warwick Sewer Authority*, 334 F.3d 161 (1st Cir. 2003)
tribes that have addressed procedural violations of the National Historic Preservation Act have uniformly been granted standing under the relaxed standard and have proceeded directly to the merits of the NHPA claim; LBP-08-24, 68 NRC 715 (2008); LBP-10-16, 72 NRC 393 n.123 (2010)
- National Aeronautics and Space Administration v. Federal Labor Relations Authority*, 527 U.S. 229, 235 (1999)
a statutory phrase should ordinarily retain the same meaning wherever used in the same statute; LBP-08-15, 68 NRC 310 (2008)

LEGAL CITATIONS INDEX

CASES

- National Archives and Records Administration v. Favish*, 541 U.S. 157, 174 (2004)
there is a longstanding presumption of regularity, under which adjudicatory bodies presume, absent strong and concrete evidence otherwise, that government agencies and their employees will do their jobs honestly and properly; CLI-06-22, 64 NRC 49 n.48 (2006); CLI-09-14, 69 NRC 606 (2009)
- National Association of Home Builders v. Defenders of Wildlife*, 127 S. Ct. 2518, 2535 (2007)
an agency may be excused from complying with the National Environmental Policy Act where it has no discretion to prevent, or to refuse to take, the action involved; LBP-09-6, 69 NRC 405 (2009)
- National Committee for the New River, Inc. v. Federal Energy Regulatory Commission*, 373 F.3d 1323, 1330 (D.C. Cir. 2004)
to reopen a record, new information must paint a seriously different picture of the environmental landscape; CLI-06-3, 63 NRC 28 (2005)
- National Council of La Raza v. Department of Justice*, 411 F.3d 350, 356-57 (2d Cir. 2005)
if an agency has chosen expressly to adopt or incorporate by reference a memorandum previously covered by FOIA Exemption 5 in what would otherwise be a final opinion, that voluntary change of status would waive the exemption; LBP-06-25, 64 NRC 381 n.45 (2006)
- National Credit Union Administration v. First National Bank*, 522 U.S. 479, 492 (1998)
to determine whether an interest is in the zone of interests of a statute, it is necessary first to discern the interests arguably to be protected by the statutory provision at issue and then to inquire whether petitioner's interests affected by the agency action are among them; LBP-08-24, 68 NRC 702 n.33 (2008); LBP-09-13, 70 NRC 176 (2009); LBP-10-16, 72 NRC 381 (2010)
- National Labor Relations Board v. Bell Aerospace Co.*, 416 U.S. 267 (1974)
a Staff order that neither repudiates nor rescinds any NRC safety and security requirements, but rather imposes new, more stringent security requirements that supplement those already found in NRC regulations does not amount to unlawfully promulgated regulations; CLI-10-3, 71 NRC 54 n.24 (2010)
- National Labor Relations Board v. Sears, Roebuck & Co.*, 421 U.S. 132, 150 (1975)
deliberative process privilege protects documents reflecting advisory opinions, recommendations, and deliberations comprising part of a process by which governmental decisions and policies are formulated; LBP-06-3, 63 NRC 91 (2006)
- National Labor Relations Board v. Sears, Roebuck & Co.*, 421 U.S. 132, 151 (1975)
deliberative process protects several strong interests, including an agency's interest in preserving the integrity of its consultative functions and the public's interest in good government; LBP-06-25, 64 NRC 391 (2006)
the general purpose of the deliberative process privilege is to prevent injury to the quality of agency decisions; LBP-06-25, 64 NRC 380 (2006)
- National Labor Relations Board v. Sears, Roebuck & Co.*, 421 U.S. 132, 153 (1975)
FOIA Exemption 5, properly construed, calls for disclosure of all opinions and interpretations that embody the agency's effective law and policy, and the withholding of all papers that reflect the agency's group thinking in the process of working out its policy and determining what its law shall be; LBP-06-25, 64 NRC 381 (2006)
- National Maritime Union v. Commander, Military Sealift Command*, 824 F.2d 1228, 1231 (D.C. Cir. 1987)
a test for representational standing is applied to unions; CLI-08-19, 68 NRC 263 (2008)
- National Parks & Conservation Ass'n v. Department of Transportation*, 222 F.3d 677, 681 n.4 (9th Cir. 2000)
a mitigation plan need not be legally enforceable, funded, or even in final form to comply with NEPA's procedural requirements; CLI-06-29, 64 NRC 427 (2006)
- National Treasury Employees Union v. Seidman*, 786 F. Supp. 1041, 1045 (D.D.C. 1992)
a three-pronged test for associational standing is applied to unions; CLI-08-19, 68 NRC 264 (2008)
- National Whistleblower Center v. NRC*, 208 F.3d 256 (D.C. Cir. 2000), *cert. denied*, 531 U.S. 1070 (2001)
the Commission has authority to issue case-specific orders modifying procedural regulations, including milestone schedules; CLI-08-18, 68 NRC 249 n.19 (2008)
- National Whistleblower Center v. NRC*, 208 F.3d 256, 262-63 (2000); *City of West Chicago v. NRC*, 701 F.2d 632, 647 (1983)
the Commission has the authority to enter case-specific procedural orders to facilitate the efficient resolution of issues before the board; CLI-07-17, 65 NRC 397 (2007)

LEGAL CITATIONS INDEX

CASES

- National Whistleblower Center v. NRC*, 208 F.3d 256, 264-65 (D.C. Cir. 2000)
if a board erroneously rejected petitioner's motions, but the record does not suggest that petitioner suffered any prejudicial error, Commission review is not warranted; CLI-10-14, 71 NRC 471 (2010)
- National Wildlife Federation v. Andrus*, 440 F. Supp. 1245, 1254 (D.D.C. 1977)
where the information in the initial environmental impact statement is so incomplete or misleading that the decisionmaker and the public cannot make an informed comparison of the alternatives, revision of an EIS may be necessary to provide a reasonable, good-faith, and objective presentation of the subjects required by NEPA; LBP-10-24, 72 NRC 762 (2010)
- National Wildlife Federation v. U.S. Forest Service*, 861 F.2d 1114, 1119 (9th Cir. 1988)
whenever the unveiling of factual materials would be tantamount to the publication of the evaluation and analysis of the multitudinous facts conducted by the agency, the deliberative process privilege applies; LBP-06-25, 64 NRC 382 n.55 (2006)
- Nationwide Mutual Insurance Co. v. Home Insurance Co.*, 278 F.3d 621, 628-29 (6th Cir. 2002)
depositions of opposing trial or litigation counsel are permitted only if no other means exist to obtain the information, and the information sought is relevant and nonprivileged, and crucial to the preparation of the case; LBP-06-10, 63 NRC 335 (2006)
- Native Ecosystems Council v. U.S. Forest Service*, 428 F.3d 1233, 1245 (9th Cir. 2005)
it is not enough to consider only the proposed action and the no-action alternative in an environmental assessment; CLI-10-18, 72 NRC 84 (2010)
- Native Ecosystems Council v. U.S. Forest Service*, 428 F.3d 1233, 1246 (9th Cir. 2005)
adequacy of the NEPA alternatives analysis is judged on the substance of the alternatives rather than the sheer number of alternatives examined; CLI-10-18, 72 NRC 78 (2010)
as long as all reasonable alternatives have been considered and an appropriate explanation is provided as to why an alternative was eliminated, the regulatory requirement is satisfied; CLI-10-18, 72 NRC 78 (2010)
NRC regulations do not impose a numerical floor on alternatives to be considered; CLI-10-18, 72 NRC 78 (2010)
- Native Ecosystems Council v. U.S. Forest Service*, 428 F.3d 1233, 1247 (9th Cir. 2005)
alternatives that do not advance the purpose of the project will not be considered reasonable or appropriate; CLI-10-18, 72 NRC 78 (2010)
- Natural Resources Defense Council, Inc. v. Hodel*, 865 F.2d 288, 294 (D.C. Cir. 1988)
NEPA should be construed in the light of reason if it is not to demand virtually infinite study and resources; CLI-10-11, 71 NRC 315 (2010)
- Natural Resources Defense Council, Inc. v. Morton*, 458 F.2d 827, 834 (D.C. Cir. 1972)
low probability is the key to applying NEPA's rule of reason test to contentions regarding environmental impacts of specific accident scenarios; LBP-10-10, 71 NRC 557 (2010)
National Environmental Policy Act analyses are subject to a rule of reason; LBP-09-4, 69 NRC 208 (2009)
the issue of whether the level of detail in the Staff's alternative site analysis was so narrow as to render the results foreordained or, instead, whether the level of detail was reasonable under NEPA's rule of reason is considered; CLI-07-27, 66 NRC 229 (2007)
the NEPA requirement to consider alternatives to a proposed action is governed by the rule of reason applicable to all NEPA-required alternatives analyses; LBP-09-26, 70 NRC 970 (2009)
the rule of reason is implicit in NEPA's requirement that an agency consider reasonable alternatives to a proposed action; CLI-10-18, 72 NRC 75 (2010)
- Natural Resources Defense Council, Inc. v. Morton*, 458 F.2d 827, 834, 836 (D.C. Cir. 1972)
an otherwise reasonable alternative will not be excluded from discussion in an environmental impact statement solely on the ground that it is not within the jurisdiction of the NRC; LBP-10-10, 71 NRC 584 n.286 (2010)
- Natural Resources Defense Council, Inc. v. Morton*, 458 F.2d 827, 834, 837 (D.C. Cir. 1972)
the National Environmental Policy Act does not require consideration of every conceivable alternative but rather only consideration of feasible, nonspeculative, reasonable alternatives; LBP-08-13, 68 NRC 92, 95 (2008)

LEGAL CITATIONS INDEX

CASES

- Natural Resources Defense Council, Inc. v. Morton*, 458 F.2d 827, 834, 837-38 (D.C. Cir. 1972)
NEPA does not require detailed discussion of the environmental effects of alternatives put forward when these effects cannot be readily ascertained and the alternatives are deemed only remote and speculative possibilities; LBP-10-10, 71 NRC 595 (2010)
- Natural Resources Defense Council, Inc. v. Morton*, 458 F.2d 827, 834-36 (D.C. Cir. 1972)
in the context of NEPA, NRC is obligated to study matters that may be far afield of its primary mission, including the environmental impacts related to the permits and licenses issued by other governmental agencies; LBP-09-21, 70 NRC 594 n.36 (2009)
Staff and applicant must address matters such as the environmental impacts of unregulated seepage into adjacent groundwater in their environmental impact statement and environmental report; LBP-09-25, 70 NRC 889 (2009)
the fact that an agency other than NRC has jurisdiction to issue a permit concerning a certain environmental impact of the project does not mean that the subject may be excluded from the environmental report or environmental impact statement; LBP-09-10, 70 NRC 100 (2009); LBP-09-16, 70 NRC 278 (2009)
- Natural Resources Defense Council, Inc. v. Morton*, 458 F.2d 827, 837 (D.C. Cir. 1972)
all reasonable alternatives are to be rigorously explored and objectively evaluated, but for alternatives eliminated from detailed study, only a brief discussion of the reasons for their having been eliminated is required; LBP-10-10, 71 NRC 578 (2010)
alternative energy sources that will be dependent on future environmental safeguards and technological developments need not be considered in an environmental impact statement; LBP-09-7, 69 NRC 633 (2009)
an alternative need not be considered in detail if it is technologically unproven, unsafe, too costly, or otherwise impracticable; LBP-09-16, 70 NRC 299 n.211 (2009)
NRC need only consider a range of alternatives in its environmental impact statement that are technologically feasible and economically practicable for producing baseload power; LBP-10-10, 71 NRC 581 (2010)
the hard look required by NEPA is subject to a rule of reason, such that it is not necessary to look at every conceivable alternative to the proposed licensing action, but only those that are feasible and reasonably related to the scope and goals of the proposed action; LBP-10-10, 71 NRC 581 (2010)
- Natural Resources Defense Council, Inc. v. Morton*, 458 F.2d 827, 837-38 (D.C. Cir. 1972)
implicit in NEPA is a rule of reason, under which the agency may limit the alternatives discussion where there is no environmental effect or where an effect is simply not significant; LBP-10-10, 71 NRC 603 n.2 (2010)
- Natural Resources Defense Council, Inc. v. Morton*, 458 F.2d 827, 838 (1972)
NRC is required to take a hard look at the potential environmental impacts of a license renewal; CLI-07-16, 65 NRC 376 (2007)
- Natural Resources Defense Council, Inc. v. NRC*, 647 F.2d 1345, 1346 (D.C. Cir. 1981)
this case involves the issue of whether and to what extent effective control of nuclear exports requires the NRC to consider projected health and safety impacts associated with an exported reactor in the recipient foreign country, not whether foreign ownership itself may be relevant to common defense and security considerations in cases not involving exports per se; LBP-09-1, 69 NRC 30 n.74 (2009)
- Natural Resources Defense Council, Inc. v. NRC*, 647 F.2d 1345, 1349 (D.C. Cir. 1981)
in export license proceedings, there appear to be special considerations, including interaction with the Executive Branch and other agencies and time limits on decisions, that may distinguish them from other NRC adjudicatory proceedings; LBP-09-1, 69 NRC 39-40 (2009)
- Natural Resources Defense Council, Inc. v. NRC*, 647 F.2d 1345, 1363 (D.C. Cir. 1981)
in the absence of unusual circumstances, any proposed export meeting the nonproliferation safeguards criteria set forth in subsection 127a and subsection 128a of the Atomic Energy Act, would also satisfy the common defense and security standard; LBP-09-1, 69 NRC 30 n.74 (2009)
in the absence of unusual circumstances, the Commission need not look beyond the nonproliferation safeguards in determining whether the common defense and security standard is met; LBP-09-1, 69 NRC 30 n.74 (2009)

LEGAL CITATIONS INDEX

CASES

- Natural Resources Defense Council, Inc. v. U.S. Environmental Protection Agency*, 440 F.3d 476, 481 (D.C. Cir. 2006)
parties challenging an agency regulation fail to demonstrate standing if the risk of injury is miniscule; LBP-09-4, 69 NRC 183 (2009)
- Natural Resources Defense Council, Inc. v. U.S. Environmental Protection Agency*, 464 F.3d 1, 8 (D.C. Cir. 2006)
a fatality rate of 1 in 4.2 billion per person per year is “infinitesimal,” a 1 in 21 million chance of developing skin cancer is “similarly small,” but a 1 in 200,000 lifetime risk of developing skin cancer is sufficient to constitute a substantially probable injury-in-fact; LBP-09-4, 69 NRC 183 (2009)
- Natural Resources Defense Council, Inc. v. U.S. Environmental Protection Agency*, 822 F.2d 104, 129 n.25 (D.C. Cir. 1987)
the National Environmental Policy Act applies to agencies of the federal government, not to private parties such as applicants for NRC licenses; LBP-09-10, 70 NRC 87 (2009)
- Natural Resources Defense Council, Inc. v. U.S. Environmental Protection Agency*, 22 F.3d 1125, 1134 (D.C. Cir. 1994)
an agency is not authorized to grant conditional approval to plans that do nothing more than promise to do tomorrow what the statute requires today; LBP-10-20, 72 NRC 602 n.36 (2010)
- Natural Resources Defense Council, Inc. v. U.S. Forest Service*, 421 F.3d 797, 810-12 (9th Cir. 2005)
where the information in the initial environmental impact statement is so incomplete or misleading that the decisionmaker and the public cannot make an informed comparison of the alternatives, revision of an EIS may be necessary to provide a reasonable, good-faith, and objective presentation of the subjects required by NEPA; LBP-10-24, 72 NRC 762 (2010)
- Navajo Nation v. U.S. Forest Service*, 408 F. Supp. 2d 866, 880, 2006 WL 62565 at 11 (D. Ariz. Jan. 11, 2006)
the National Historic Preservation Act requirement for consideration of alternatives comes into play only if the project will have an adverse effect on historic properties, and only after that determination is made; CLI-06-9, 63 NRC 449 (2006)
- Neighbors of Cuddy Mountain v. U.S. Forest Service*, 137 F.3d 1372, 1380 (9th Cir. 1998)
mitigation must be discussed in sufficient detail in an environmental impact statement to ensure that environmental consequences have been fairly evaluated; LBP-06-19, 64 NRC 93 (2006)
under the National Environmental Policy Act, general statements about possible effects and some risk do not constitute a hard look absent a justification regarding why more definitive information could not be provided; CLI-10-18, 72 NRC 74 (2010)
- Nevada v. NRC*, No. 05-1350, 2006 WL 2828864, at 1 (D.C. Cir., Sept. 22, 2006)
ISL mining does not involve fuel rod waste and to the extent such waste is indirectly relevant, the Waste Confidence rule would prohibit consideration of a license amendment proceeding; LBP-08-6, 67 NRC 342 (2008)
- New England Coalition on Nuclear Pollution v. NRC*, 582 F.2d 87, 94 (1st Cir. 1978)
amendment of the final environmental impact statement by the adjudicatory hearing record and subsequent licensing board decision is entirely proper under NRC regulations and court precedent; CLI-07-27, 66 NRC 230 n.79 (2007)
- New England Coalition on Nuclear Pollution v. NRC*, 582 F.2d 87, 98 (1st Cir. 1978)
except for its overall NEPA balancing, NRC can limit its analysis of aquatic impacts to those determined by the Environmental Protection Agency; LBP-07-3, 65 NRC 260 (2007)
NRC can accept Environmental Protection Agency adjudicatory findings concerning thermal-discharge aquatic impacts as conclusive; LBP-09-7, 69 NRC 634 (2009)
NRC obeyed its Federal Water Pollution Control Act duties by deciding to accept as dispositive Environmental Protection Agency determinations concerning one aspect of the overall environmental impact; CLI-07-16, 65 NRC 388 (2007)
- New England Power Co. (NEP, Units 1 and 2)*, LBP-78-9, 7 NRC 271, 278-79 (1978)
boards do not direct the Staff in the performance of its administrative functions; LBP-10-17, 72 NRC 514 (2010)

LEGAL CITATIONS INDEX

CASES

- New England Power Co.* (NEP, Units 1 and 2), LBP-78-9, 7 NRC 271, 280-81 (1978)
the manner in which the NRC Staff conducts its sufficiency review and whether its decision to accept an application for review was correct are not matters within the purview of an adjudicatory proceeding; LBP-08-9, 67 NRC 444 (2008)
- New Jersey Department of Environmental Protection v. NRC*, 561 F.3d 132 (3d Cir. 2009)
denial of a contention challenging the failure to include in the environmental impact statement for the license renewal any consideration of the effects of an aircraft attack was upheld; LBP-10-10, 71 NRC 552 (2010)
NEPA does not require applicants or licensees to consider terrorist attacks as part of their environmental reviews; CLI-09-15, 70 NRC 5 (2009); LBP-09-26, 70 NRC , 981 n.229 (2009); LBP-10-15, 72 NRC 319 (2010)
the fact that an aircraft attack on a nuclear power plant requires at least two intervening events (the act of a third-party criminal and failure of government agencies specifically charged with preventing terrorist attacks) results in a chain of causation too attenuated to require NEPA review; CLI-10-1, 71 NRC 13-14 (2010)
- New Jersey Department of Environmental Protection v. NRC*, 561 F.3d 132, 136 (3d Cir. 2009)
where petitioner has not shown a reasonably close causal relationship between an aircraft attack and the relicensing proceeding, NEPA evaluation is not warranted; CLI-10-9, 71 NRC 257 n.71 (2010)
- New Jersey Department of Environmental Protection v. NRC*, 561 F.3d 132, 136-37 (3d Cir. 2009)
a state challenge to NRC's conclusion with regard to terrorist attacks failed to demonstrate that the NRC could undertake a more meaningful analysis of the specific risks associated with an aircraft attack on a nuclear plant; LBP-09-10, 70 NRC 116 (2009)
petitioner failed to provide any evidence to challenge NRC's conclusion that the environmental effects of a hypothetical terrorist attack on a nuclear plant would be no worse than those caused by a severe accident; LBP-10-10, 71 NRC 552 (2010)
- New Jersey Department of Environmental Protection v. NRC*, 561 F.3d 132, 137-44 (3d Cir. 2009)
an aircraft attack on a nuclear power plant does not warrant NEPA evaluation; CLI-10-14, 71 NRC 476 n.156 (2010)
- New Jersey Department of Environmental Protection v. NRC*, 561 F.3d 132, 139, 141 (3d Cir. 2009)
effects or impacts of risks that are too remote do not require a NEPA analysis; LBP-10-14, 72 NRC 117 n.91 (2010)
- New Jersey Department of Environmental Protection v. NRC*, 561 F.3d 132, 140 (3d Cir. 2009)
NEPA does not require NRC to consider the environmental consequences of hypothetical terrorist attacks at NRC-licensed facilities; LBP-09-18, 70 NRC 412-13 (2009)
- New Jersey Department of Environmental Protection v. NRC*, 561 F.3d 132, 143-44 (3d Cir. 2009)
even if NEPA required an assessment of the environmental effects of a hypothetical terrorist attack on a nuclear facility, NRC has already made this assessment in the generic environmental Impact statement and a site-specific supplemental environmental impact statement; LBP-10-15, 72 NRC 319 (2010)
- New Jersey Department of Environmental Protection v. NRC*, 561 F.3d 132, 144 (3d Cir. 2009)
NEPA requires NRC to provide a reasonable mitigation alternatives analysis, containing reasonable estimates, including full disclosures of any known shortcomings in methodology, incomplete or unavailable information, and significant uncertainties; CLI-10-22, 72 NRC 209 (2010)
- New Mexico ex rel. Richardson v. Bureau of Land Management*, 565 F.3d 683, 703 (10th Cir. 2009)
NEPA requires federal agencies to consider the likely environmental impacts of the preferred course of action as well as reasonable alternatives; LBP-10-24, 72 NRC 729 n.16 (2010)
- New Mexico Mining Commission v. United Nuclear Corp.*, 57 P.3d 862, 864 (N.M. Ct. App. 2002)
the argument by a mining company a state statute gave New Mexico no jurisdiction over its uranium mining because of the clause exempting NRC-regulated activities was rejected because the NRC has never asserted jurisdiction over conventional uranium mining; CLI-06-14, 63 NRC 513 (2006)
- New York v. Kleppe*, 429 U.S. 1307, 1311 (1974)
NEPA requires only a discussion of reasonably foreseeable impacts and its application is subject to the rule of reason; LBP-07-9, 65 NRC 603 (2007)

LEGAL CITATIONS INDEX

CASES

- New York v. NRC*, 589 F.3d 551 (2d Cir. 2009)
the Commission denied a petition for rulemaking asking it to reevaluate spent fuel storage impacts on a site-specific basis; LBP-10-15, 72 NRC 299 (2010)
- New York v. NRC*, 589 F.3d 551, 555 (2d Cir. 2009)
NRC required terrorism-related mitigation measures it studied to be implemented at all nuclear plants and site-specific studies demonstrated the effectiveness of those mitigation measures so that no additional plant-specific reviews were necessary; LBP-10-15, 72 NRC 314 (2010)
the standard of review of agency decisions in the Courts of Appeals is extremely deferential; LBP-10-15, 72 NRC 316 n.69 (2010)
- New York State Department of Social Services v. Dublino*, 413 U.S. 405, 419-20 (1973)
it is an elementary canon of construction that an agency cannot interpret federal statutes to negate its own stated purposes; LBP-06-1, 63 NRC 69 (2006)
- Newark Morning Ledger Co. v. United States*, 507 U.S. 546, 575 (1993)
Congress can be presumed to be aware of one specific agency rule only when that rule has been expressly discussed in the legislative history; LBP-10-11, 71 NRC 625 n.52 (2010)
- Niagara Mohawk Power Corp.* (Nine Mile Point Nuclear Station, Unit 2), ALAB-264, 1 NRC 347, 352-69 (1975)
the general rule applicable to cases involving differences or changes in demand forecasts is not whether applicant will need additional generating capacity but when; LBP-10-24, 72 NRC 749 (2010)
- Niagara Mohawk Power Corp.* (Nine Mile Point Nuclear Station, Unit 2), ALAB-264, 1 NRC 347, 354 (1975)
a board is free to decide the admissibility of a contention on a theory different from those argued by the litigants, but only if it explains the specific basis of its ruling and gives litigants a chance to present arguments and, where appropriate, evidence regarding the board's new theory; CLI-09-3, 69 NRC 73 n.24 (2009)
- Niagara Mohawk Power Corp.* (Nine Mile Point Nuclear Station, Unit 2), CLI-73-28, 6 AEC 995 (1973)
the Commission has used sua sponte review as a vehicle to address unappealed orders; CLI-07-1, 65 NRC 4 (2007)
- Niagara Mohawk Power Corp.* (Nine Mile Point Nuclear Station, Units 1 and 2), CLI-99-30, 50 NRC 333, 340-41 & n.5 (1999)
to demonstrate standing in a license transfer proceeding, the petitioner must identify an interest in the proceeding and specify the facts pertaining to that interest; CLI-07-18, 65 NRC 409 (2007); CLI-08-19, 68 NRC 258 (2008)
- Niagara Mohawk Power Corp.* (Nine Mile Point Nuclear Station, Units 1 and 2), CLI-99-30, 50 NRC 333, 342 (1999)
contentions must meet five admissibility standards in license transfer proceedings; CLI-07-18, 65 NRC 414 (2007)
- Niagara Mohawk Power Corp.* (Nine Mile Point Nuclear Station, Units 1 and 2), CLI-99-30, 59 NRC 333, 344 (1999)
the Commission has long recognized the benefits of participation in NRC proceedings by representatives of interested states; LBP-09-16, 70 NRC 291 (2009)
- Norfolk Southern Corp. v. Oberly*, 632 F. Supp. 1225, 1243 (D. Del. 1986), *aff'd*, 822 F.2d 388 (3d Cir. 1987)
summary judgment is not appropriate if it would require a judge to assess the correctness of facts and conclusions that are embodied in the competing, well-founded opinions of the parties' experts; LBP-07-12, 66 NRC 126 (2007); LBP-07-13, 66 NRC 131 (2007)
- North Anna Environmental Coalition v. NRC*, 533 F.2d 655, 665 (D.C. Cir. 1976)
neither the Atomic Energy Act nor the regulations require totally risk-free siting; LBP-08-22, 68 NRC 647 (2008)
- North Anna Environmental Coalition v. NRC*, 533 F.2d 655, 667 (D.C. Cir. 1976)
reasonable assurance does not require proof beyond a reasonable doubt and licensing boards have equated reasonable assurance with a clear preponderance of the evidence; LBP-08-22, 68 NRC 645 n.264, 647 (2008)

LEGAL CITATIONS INDEX

CASES

- whether the reasonable assurance standard is satisfied is based on sound technical judgment applied on a case-by-case basis; LBP-07-17, 66 NRC 340 (2007)
- North Anna Environmental Coalition v. NRC*, 533 F.2d 655, 667-68 (D.C. Cir. 1976)
neither the “reasonable assurance” standard nor a “clear preponderance of the evidence” standard is required; LBP-08-22, 68 NRC 647 (2008)
- North Atlantic Energy Service Corp.* (Seabrook Station, Unit 1), CLI-98-18, 48 NRC 129, 130 (1998)
the Commission has used sua sponte review as a vehicle to address unappealed orders or an issue of wide implication; CLI-07-1, 65 NRC 4 (2007)
the Commission may exercise its supervisory authority over proceedings to direct boards to certify novel legal or policy questions; CLI-08-4, 67 NRC 172 (2008)
- North Atlantic Energy Service Corp.* (Seabrook Station, Unit 1), CLI-99-6, 49 NRC 201, 219 (1999)
the contention rule is strict by design and does not permit the filing of a vague, unparticularized contention, unsupported by affidavit, expert, or documentary support; LBP-07-5, 65 NRC 352 (2007)
- North Atlantic Energy Service Corp.* (Seabrook Station, Unit 1), CLI-99-6, 49 NRC 201, 219-21 (1999)
the Commission and its boards regularly continue to admit for litigation and hearing contentions that are material and supported by reasonably specific factual and legal allegations; LBP-06-10, 63 NRC 380 n.52 (2006)
- North Atlantic Energy Service Corp.* (Seabrook Station, Unit 1), CLI-99-6, 49 NRC 201, 220-21 (1999)
a board’s analysis of decommissioning cost estimates should be tailored to the specifics of the proceeding; CLI-06-22, 64 NRC 42 (2006)
- North Atlantic Energy Service Corp.* (Seabrook Station, Unit 1), CLI-99-6, 49 NRC 201, 223 (1999)
petitioner’s failure to carefully read the governing procedural regulations does not constitute good cause for its late filing; CLI-06-21, 64 NRC 33 (2006); CLI-10-12, 71 NRC 324 n.28 (2010)
- North Atlantic Energy Service Corp.* (Seabrook Station, Unit 1), CLI-99-6, 49 NRC 201, 225 (1999)
if applicants and petitioners cannot agree on the terms of a confidentiality and nondisclosure agreement, then they shall inform the presiding officer, indicate specifically the areas where they disagree, and then move the presiding officer for issuance of a protective order; CLI-07-18, 65 NRC 416 (2007)
- North Atlantic Energy Service Corp.* (Seabrook Station, Unit 1), CLI-99-27, 50 NRC 257, 268 (1999)
if applicants and petitioners cannot agree on the terms of a confidentiality and nondisclosure agreement, then they shall inform the presiding officer, indicate specifically the areas where they disagree, and then move the presiding officer for issuance of a protective order; CLI-07-18, 65 NRC 416 (2007)
- North Carolina v. City of Virginia Beach*, 951 F.2d 596 (4th Cir. 1991)
the Commission seeks the parties’ views on whether in light of NEPA’s rule of reason, FDA’s comprehensive review and regulation of the safety of irradiated foods, including NEPA reviews, excuse NRC from considering food safety in its own NEPA reviews; CLI-08-4, 67 NRC 173 n.9 (2008)
- North Idaho Community Action Network v. U.S. Department of Transportation* 545 F.3d 1147, 1153 (9th Cir. 2008)
although analysis provided in an environmental assessment does not have to be as comprehensive as the analysis provided in an environmental impact statement, there must be at least a brief discussion of reasonable alternatives; CLI-10-18, 72 NRC 85 (2010)
the alternatives provision of NEPA § 102(2)(E) applies both when an agency prepares an environmental impact statement and when it prepares an environmental assessment; CLI-10-18, 72 NRC 75 (2010)
to pass legal muster, regardless of whether it was preparing an environmental assessment or an environmental impact statement, Staff had to give full and meaningful consideration to all reasonable alternatives; CLI-10-18, 72 NRC 83 (2010)
when preparing an environmental assessment, the agency only must include a brief discussion of reasonable alternatives; CLI-10-18, 72 NRC 75 (2010)
when preparing an environmental impact statement, the agency must rigorously explore and objectively evaluate all reasonable alternatives; CLI-10-18, 72 NRC 75 (2010)

LEGAL CITATIONS INDEX

CASES

- North Jersey Media Group, Inc. v. Ashcroft*, 308 F.3d 198, 209-20 (3d Cir. 2002)
to determine whether a tribunal should block public access to a judicial proceeding, a two-part experience and logic test is applied; LBP-10-2, 71 NRC 207 n.61 (2010)
- North Pacifica, LLC v. City of Pacifica*, 274 F. Supp. 2d 1118, 1124 (N.D. Cal. 2003)
the fact that the city government was accused of serious Constitutional violations made use of the deliberative process privilege inappropriate; LBP-06-25, 64 NRC 377 (2006)
- Northeast Nuclear Energy Co.* (Millstone Nuclear Power Station, Unit 3), CLI-00-25, 52 NRC 355, 357 (2000)
once there has been an appeal or petition to review a board order ruling on intervention petitions, jurisdiction passes to the Commission, including jurisdiction to consider any motion to reopen; CLI-09-5, 69 NRC 120 (2009)
- Northeast Nuclear Energy Co.* (Millstone Nuclear Power Station, Unit 3), CLI-01-3, 53 NRC 22 (2001)
a presiding officer's ruling that is without governing precedent is appropriate for review; CLI-06-7, 63 NRC 166 (2006)
- Northeast Nuclear Energy Co.* (Millstone Nuclear Power Station, Units 1, 2, and 3), CLI-00-18, 52 NRC 129 (2000)
in an indirect license transfer case involving no change in the facility, its operation, licensees, personnel, or financing, petitioners living within 5-10 miles of the plant do not qualify for proximity-based standing; CLI-08-19, 68 NRC 269 n.68 (2008)
- Northeast Nuclear Energy Co.* (Millstone Nuclear Power Station, Units 1, 2, and 3), CLI-00-18, 52 NRC 129, 132 (2000)
authorization affidavits for representational standing may not be filed with a reply; CLI-08-19, 68 NRC (2008)
cursory, unsupported arguments will not be considered; CLI-10-17, 72 NRC 30-31 n.172 (2010); CLI-10-23, 72 NRC 246 n.177 (2010)
the hallmark of NRC contention pleading rules is specificity; CLI-06-21, 64 NRC 34 (2006)
there is no obvious potential for offsite consequences from an ISFSI transfer sufficient to justify applying a presumption of standing based on proximity; CLI-07-19, 65 NRC 426 (2007)
- Northeast Nuclear Energy Co.* (Millstone Nuclear Power Station, Units 1, 2, and 3), CLI-00-18, 52 NRC 129, 132-33 (2000)
proximity-based standing in license transfer proceedings has been denied to petitioners residing within 5-10 miles; CLI-07-21, 65 NRC 523 (2007)
the Commission will not accept cursory arguments regarding standing; CLI-08-19, 68 NRC 265 (2008)
- Northeast Nuclear Energy Co.* (Millstone Nuclear Power Station, Units 2 and 3), LBP-01-10, 53 NRC 273, 286 (2001)
intervenor may not attack regulatory limits for effluent releases; LBP-10-9, 71 NRC 525 n.146 (2010)
- Northeast Nuclear Energy Co.* (Millstone Nuclear Power Station, Units 2 and 3), LBP-01-10, 53 NRC 273, 286 n.8 (2001)
licensing boards may not properly supply missing information to a proffered contention to make it admissible; LBP-08-9, 67 NRC 442 n.126 (2008)
the burden of coming forward with admissible contentions is on their proponent, not the licensing board; LBP-08-9, 67 NRC 442 n.126 (2008)
- Northeast Nuclear Energy Co.* (Millstone Nuclear Power Station, Units 2 and 3), LBP-01-10, 53 NRC 273, 286-87 (2001)
a contention that calls for requirements in excess of those imposed by Commission regulations must be rejected as a collateral attack on the regulations; LBP-08-9, 67 NRC 446 (2008)
no rule or regulation of the Commission concerning the licensing of production and utilization facilities is subject to attack by way of discovery, proof, argument, or other means in any adjudicatory proceeding; LBP-10-14, 72 NRC 119 n.108 (2010)
- Northeast Nuclear Energy Co.* (Millstone Nuclear Power Station, Units 2 and 3), LBP-01-10, 53 NRC 273, 287 (2001)
NRC does not presume that a licensee will violate its regulations; CLI-09-12, 69 NRC 569 (2009)

LEGAL CITATIONS INDEX

CASES

- Northern Alaska Environmental Center v. Kempthorne*, 457 F.3d 969, 979 (9th Cir. 2006)
as long as the potential adverse impacts from a proposed action have been adequately disclosed, it is not improper for an environmental impact statement to describe mitigating measures in general terms and rely on general processes; CLI-06-29, 64 NRC 427 (2006)
- Northern Indiana Public Service Co.* (Bailly Generating Station, Nuclear-1), ALAB-207, 7 AEC 957, 958 (1974)
the Commission has long declined to assume that licensees will refuse to meet their obligations under their licenses or NRC regulations; LBP-07-14, 66 NRC 209 n.94 (2007)
- Northern Indiana Public Service Co.* (Bailly Generating Station, Nuclear-1), ALAB-619, 12 NRC 558, 564-65 (1980)
in proceedings involving the possible construction or operation of a nuclear power reactor, including construction permit extension proceedings, proximity to the proposed facility has been considered sufficient to establish standing; LBP-10-7, 71 NRC 410 (2010)
- Northern Indiana Public Service Co.* (Bailly Generating Station, Nuclear-1), CLI-79-11, 10 NRC 733, 742-43 (1979)
if any aspect of a facility fails to pass muster at the operating license stage, applicant bears the risk that the plant will not be allowed to operate; LBP-10-7, 71 NRC 406 (2010)
possession of a construction permit is no guarantee that an operating license will be issued; LBP-10-7, 71 NRC 406 (2010)
- Northern Lines Merger Cases*, 396 U.S. 491, 521 (1970)
agencies need not reopen adjudicatory proceedings merely on a plea of new evidence; CLI-06-3, 63 NRC 25 (2005)
- Northern States Power Co. v. U.S. Department of Energy*, 128 F.3d 754 (D.C. Cir. 1997)
where the law is declared to require it, DOE and other agencies within the Executive Branch are often required to implement legislative directives with which they do not necessarily agree; LBP-10-11, 71 NRC 628 n.71 (2010)
- Northern States Power Co.* (Pathfinder Atomic Plant), LBP-89-30, 30 NRC 311, 316 (1989)
it would be detrimental to the process to have a person appear in a proceeding individually and to be represented by an organization; CLI-07-19, 65 NRC 426 n.17 (2007); LBP-10-16, 72 NRC 390 n.98 (2010)
- Northern States Power Co.* (Pathfinder Atomic Plant), LBP-90-3, 31 NRC 40, 44-45 (1990)
in a decommissioning proceeding, where the proximity presumption did not apply, a petitioner who commuted past the entrance of plant once or twice a week was found to have standing; CLI-10-7, 71 NRC 139 n.31 (2010)
- Northern States Power Co.* (Pathfinder Atomic Plant), LBP-90-3, 31 NRC 40, 45 (1990)
a regular commute that takes petitioner past a plant entrance once or twice a week is sufficient to establish standing; LBP-10-1, 71 NRC 179 n.5 (2010)
- Northern States Power Co.* (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-455, 7 NRC 41, 48, 49 (1978)
inherent in the National Environmental Policy Act and its implementing regulations is a rule of reason, which ensures that agencies determine whether and to what extent to prepare an environmental impact statement based on the usefulness of any potential new information to the decisionmaking process; LBP-09-4, 69 NRC 204 n.126 (2009)
- Northern States Power Co.* (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-455, 7 NRC 41, 54 (1978), *remanded on other grounds sub nom. Minnesota v. NRC*, 602 F.2d 412 (D.C. Cir. 1979)
although the Commission is not strictly bound by mootness doctrine, the agency's adjudicatory tribunals have generally adhered to the principle; LBP-09-15, 70 NRC 209 (2009)
because NRC is not subject to the jurisdictional limitations placed on the federal courts by the case or controversy provision in Article III of the Constitution, there is no insuperable barrier to its rendition of an advisory opinion on issues that have been indisputably mooted by events occurring subsequent to licensing board decision; LBP-09-15, 70 NRC 210 (2009)
- Northern States Power Co.* (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-455, 7 NRC 41, 55 (1978), *remanded on other grounds sub nom. Minnesota v. NRC*, 602 F.2d 412 (D.C. Cir. 1979)
given the expectation that the same issue will arise in other proceedings, the board decides a legal issue on the timing of applicant's financial assurance; LBP-09-15, 70 NRC 212 (2009)

LEGAL CITATIONS INDEX

CASES

- Northern States Power Co.* (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-455, 7 NRC 41, 55-56 (1978)
a board is free to decide the admissibility of a contention on a theory different from those argued by the litigants, but only if it explains the specific basis of its ruling and gives litigants a chance to present arguments and, where appropriate, evidence regarding the board's new theory; CLI-09-3, 69 NRC 73 n.24 (2009)
- Northern States Power Co.* (Prairie Island Nuclear Generating Plant, Units 1 and 2), LBP-08-26, 68 NRC 905, 917 (2008)
any supporting material provided by petitioner, including those portions of the material that are not relied upon, is subject to board scrutiny; LBP-09-26, 70 NRC 954 (2009)
- Northern States Power Co.* (Prairie Island Nuclear Generating Plant, Units 1 and 2), LBP-08-26, 68 NRC 905, 919 (2008)
it is proper for a reply to respond to the legal, logical, and factual arguments presented in answers, as long as new issues are not raised; LBP-09-1, 69 NRC 30 n.73 (2009)
- Northern States Power Co.* (Tyrone Energy Park, Unit 1), ALAB-464, 7 NRC 372, 375 (1978)
a contention that involves an issue of state law is outside the scope of a materials license renewal proceeding; LBP-08-24, 68 NRC 728 (2008)
- Northern States Power Co.* (Tyrone Energy Park, Unit 1), ALAB-492, 8 NRC 251, 252 (1978)
any appeal by petitioners of the admitted contentions must abide the end of the case, i.e., wait approximately 2 or 3 years until the Staff issues the FSER and FEIS and the final disposition of the evidentiary hearing on the three admitted contentions; CLI-06-13, 63 NRC 509 n.3 (2006); LBP-09-10, 70 NRC 147 n.89 (2009)
- Northwest Sea Farms Inc. v. U.S. Army Corps of Engineers*, 931 F. Supp. 1515, 1520 (W.D. Wash. 1996)
a trust duty in the NRC as a federal permitting agency arises out of 1851 and 1868 treaties with Indian tribes; LBP-08-6, 67 NRC 267 (2008)
- Novartis Corp. v. Ben Venue Laboratories, Inc.*, 271 F.3d 1043, 1054 (Fed. Cir. 2001)
without knowing the foundations of computer simulations, a court cannot evaluate whether the simulation is probative, and it would be unfair to render an expert's opinion immune to challenge because its methodology is hidden in an uncommented computer model; LBP-12-23, 72 NRC 704 n.16 (2010)
- Nuclear Energy Institute, Inc. v. Environmental Protection Agency*, 373 F.3d 1251 (D.C. Cir. 2004)
in deciding ripeness questions, it is appropriate to assess both the fitness of the issue for judicial decision and the hardship to the parties of withholding court consideration; LBP-09-1, 69 NRC 38-39 n.114 (2009)
- Nuclear Energy Institute, Inc. v. Environmental Protection Agency*, 373 F.3d 1251, 1258-62 (D.C. Cir. 2004)
an extensive discussion of the structure and legislative background of the Nuclear Waste Policy Act is provided; LBP-10-11, 71 NRC 621 n.34 (2010)
- Nuclear Energy Institute, Inc. v. Environmental Protection Agency*, 373 F.3d 1251, 1273 (D.C. Cir. 2004)
no protection standard has been promulgated for the postclosure period beyond 10,000 years following disposal of high-level waste; CLI-08-20, 68 NRC 276 (2008)
- Nuclear Energy Institute, Inc. v. Environmental Protection Agency*, 373 F.3d 1251, 1279 (D.C. Cir. 2004)
delaying the opening of the Yucca Mountain repository would inflict concrete harm on members of an organization who expend substantial sums to operate their own storage facilities; LBP-09-6, 69 NRC 432 (2009)
petitioner's use of litigation to speed the licensing of the Yucca Mountain repository is germane to its purpose and does not require the actual participation of any of its members individually; LBP-09-6, 69 NRC 432 (2009)
the test to demonstrate prudential standing is not meant to be especially demanding; LBP-09-6, 69 NRC 432 (2009)
- Nuclear Energy Institute, Inc. v. Environmental Protection Agency*, 373 F.3d 1251, 1279-80 (D.C. Cir. 2004)
under the test for prudential standing, a party's attempt to establish standing will fail only if the petitioner's interests are so marginally related to or inconsistent with the purposes implicit in the statute that it cannot reasonably be assumed that Congress intended to permit the suit; LBP-09-6, 69 NRC 432 (2009)

LEGAL CITATIONS INDEX

CASES

- Nuclear Energy Institute, Inc. v. Environmental Protection Agency*, 373 F.3d 1251, 1280 (D.C. Cir. 2004) while Congress did intend for section 801(a) of the Energy Policy Act to protect the public, Congress also intended that section to facilitate construction of a permanent nuclear waste repository; LBP-09-6, 69 NRC 432 (2009)
- Nuclear Energy Institute, Inc. v. Environmental Protection Agency*, 373 F.3d 1251, 1288 (D.C. Cir. 2004) that Congress may have authorized NRC to regulate DOE's disposal of radioactive waste before it enacted the Nuclear Waste Policy Act hardly negates the fact that in the NWPA, Congress specifically directed NRC to issue requirements and criteria for evaluating repository-related applications and how to do so; LBP-10-11, 71 NRC 623-24 (2010)
- Nuclear Energy Institute, Inc. v. Environmental Protection Agency*, 373 F.3d 1251, 1289 (D.C. Cir. 2004) the court deferred to NRC's interpretation of the Nuclear Waste Policy Act in promulgating regulations to be applied in administering the licensing stage for the high-level waste repository; LBP-10-11, 71 NRC 627 n.61 (2010)
- Nuclear Energy Institute, Inc. v. Environmental Protection Agency*, 373 F.3d 1251, 1295 (D.C. Cir. 2004) section 121 of the Nuclear Waste Policy Act does not require that each barrier provide either wholly independent protection or a specifically quantified amount of protection; LBP-10-22, 72 NRC 681 (2010)
- Nuclear Energy Institute, Inc. v. Environmental Protection Agency*, 373 F.3d 1251, 1295 (D.C. Cir. 2004) the Nuclear Waste Policy Act does not require that each barrier type of the nuclear waste repository engineered barrier system provide a quantified amount of protection or, indeed, independent protection; CLI-09-14, 69 NRC 609 (2009)
- Nuclear Energy Institute, Inc. v. Environmental Protection Agency*, 373 F.3d 1251, 1302 (D.C. Cir. 2004) any challenge to the environmental impact statement's support for the Yucca Mountain site is moot, and to the extent NRC might rely on the EIS, challenges were unripe because NRC had not reached a decision regarding adopting or relying upon the EIS in a way that could have yet harmed the parties; LBP-09-6, 69 NRC 396 (2009)
- Congress has settled the matter of Yucca Mountain's approval for development because Congress's enactment of the resolution was a final legislative action once it was signed into law by the President; LBP-10-11, 71 NRC 619 n.23 (2010)
- Nuclear Energy Institute, Inc. v. Environmental Protection Agency*, 373 F.3d 1251, 1304 (D.C. Cir. 2004) it is not for any court to examine the strength of the evidence upon which Congress based its judgment to approve the Yucca Mountain site; LBP-10-11, 71 NRC 622 (2010)
- Nuclear Energy Institute, Inc. v. Environmental Protection Agency*, 373 F.3d 1251, 1312-13 (D.C. Cir. 2004) in determining ripeness, boards are to consider both the fitness of the issue for judicial decision and the hardship to the parties of withholding court consideration; LBP-08-24, 68 NRC 721 (2008); LBP-09-1, 69 NRC 38-39 n.114 (2009)
- Nuclear Energy Institute, Inc. v. Environmental Protection Agency*, 373 F.3d 1251, 1313-14 (D.C. Cir. 2004) NEPA contention admissibility requirements should be applied in the high-level waste proceeding consistent with certain developments subsequent to this decision, and boards should treat as a cognizable new consideration an attack on the Yucca Mountain environmental impact statements based on significant and substantial information that, if true, would render the EISs inadequate; LBP-09-6, 69 NRC 392 (2009)
- the requirements of section 51.109 for contention admissibility should be applied consistent with this decision; CLI-08-25, 68 NRC 502 (2008)
- Nuclear Engineering Co. (Sheffield, Illinois, Low-Level Radioactive Waste Disposal Site)*, ALAB-473, 7 NRC 737, 743 (1978)
- intervention is allowable to those who wish to support a proposal that will affect their interests if the proceeding has one outcome rather than another; LBP-09-6, 69 NRC 432 (2009)
- Nuclear Fuel Services, Inc. (Erwin, Tennessee)*, CLI-03-3, 57 NRC 239, 246-50 (2003)
- an NRC license is unnecessary for construction activity on an independent spent fuel storage installation; CLI-06-23, 64 NRC 108 (2006); CLI-06-27, 64 NRC 402 n.9 (2006)
- Nuclear Fuel Services, Inc. (Erwin, Tennessee)*, CLI-04-13, 59 NRC 244, 248 (2004)
- burden is on petitioner to allege a specific and plausible means by which contaminants from mining activities may adversely affect him or her; LBP-10-16, 72 NRC 384 (2010)

LEGAL CITATIONS INDEX

CASES

- in a materials licensing case, in addition to showing proximity, petitioner must also satisfy the injury-in-fact component to show standing; LBP-09-4, 69 NRC 178 n.20 (2009)
to the extent contaminants can plausibly migrate to the aquifer from which a petitioner obtains his or her water, a petitioner would have a claim of a cognizable injury and could be accorded standing; LBP-08-24, 68 NRC 705 (2008)
- Nuclear Fuel Services, Inc.* (Erwin, Tennessee), LBP-04-2, 59 NRC 77, 80 (2004)
absent a showing of irreparable harm, a stay movant must show that success on the merits is a virtual certainty; CLI-08-13, 67 NRC 400 (2008)
- Nuclear Fuel Services, Inc.* (Erwin, Tennessee), LBP-04-5, 59 NRC 186, 193 n.10, 194 (2004), *aff'd on other grounds*, CLI-04-13, 59 NRC 244 (2004)
petitioner cannot base standing on the rights of third parties without the third parties' express authorization to represent them; LBP-08-18, 68 NRC 539 (2008)
petitioner does not have standing to assert rights of employees or caretakers on her land where caretakers are not minors or otherwise legally incapable of representing their own interests; LBP-08-18, 68 NRC 539 n.34 (2008)
- Nuclear Fuel Services, Inc.* (Erwin, Tennessee), LBP-04-5, 59 NRC 186, 196 n.11, *aff'd*, CLI-04-13, 59 NRC 244 (2004)
discretionary intervention is an extraordinary procedure that is rarely granted; CLI-06-16, 63 NRC 716 (2006)
- Nuclear Fuel Services, Inc.* (Erwin, Tennessee), CLI-04-13, 59 NRC 244, 248 (2004)
in applying the proximity plus presumption, the Commission found no obvious potential for harm at petitioner's property 20 miles from the uranium enrichment facility location and thus it became that petitioner's burden to show a specific and plausible means of how activities at the site would affect her; LBP-08-6, 67 NRC 273 (2008)
- Nuclear Fuel Services, Inc.* (Special Nuclear Facility), LBP-07-16, 66 NRC 277, 285 (2007)
contention admissibility standards in 10 C.F.R. 2.309(f)(1)(i)-(vi) are discussed; LBP-08-14, 68 NRC 287 (2008)
the issue of standing in an enforcement proceeding and whether a request for hearing raises allegations that are within the scope of the proceeding are closely related; LBP-08-14, 68 NRC 290 (2008)
- Nuclear Fuel Services, Inc.* (Special Nuclear Facility), LBP-07-16, 66 NRC 277, 326 n.339 (2007)
a board recommends that serious consideration should be given to revising the language of hearing notices in enforcement cases to go beyond the somewhat euphemistic reference to the scope of the proceeding as being whether the confirmatory order should be sustained; LBP-08-14, 68 NRC 292 n.74 (2008)
- Nuclear Fuel Services, Inc.* (West Valley Reprocessing Plant), CLI-75-4, 1 NRC 273 (1975)
absent a showing of good cause, petitioner's showing on the remaining factors must be highly persuasive; CLI-10-12, 71 NRC 323 (2010)
- Nuclear Information and Resource Service v. NRC*, 457 F.3d 941, 946 (9th Cir. 2006)
the average annual dose in the United States, with considerable variation, has been estimated to be around 300 mrem; CLI-08-1, 67 NRC 29 n.120 (2008)
- Nuclear Information and Resource Service v. NRC*, 509 F.3d 562, 571 (D.C. Cir. 2007)
an agency official should be disqualified only where a disinterested observer may conclude that the official has in some measure adjudged the facts as well as the law of a particular case in advance of hearing it; CLI-10-17, 72 NRC 46 n.252 (2010)
the disqualification standard under 28 U.S.C. §455 is not directed to administrative judges, but the Commission and its adjudicatory boards have applied it in assessing a motion for disqualification under 10 C.F.R. 2.313, and it provides a helpful framework for such an assessment; CLI-10-22, 72 NRC 203 (2010)
- Nuclear Management Co., LLC* (Monticello Nuclear Generating Plant), CLI-06-6, 63 NRC 161, 163 (2006)
judicial concepts of standing are generally followed in NRC proceedings; LBP-06-20, 64 NRC 143 (2006); LBP-09-10, 70 NRC 69 (2009); LBP-09-18, 70 NRC 395 (2009); LBP-10-15, 72 NRC 275 (2010)

LEGAL CITATIONS INDEX

CASES

- Nuclear Management Co., LLC* (Monticello Nuclear Generating Plant), CLI-06-6, 63 NRC 161, 164 (2006)
a request for additional information by NRC, in itself, does not constitute grounds for a contention;
LBP-09-10, 70 NRC 144 (2009)
the use of intemperate and disrespectful rhetoric has no place in filings before the Commission or its
Boards; LBP-06-10, 63 NRC 371, 377 n.41 (2006)
- Nuclear Management Co., LLC* (Monticello Nuclear Generating Plant), LBP-05-31, 62 NRC 735, 750 (2005)
at the contention admissibility stage, all that is required is that the petitioner provide an expert opinion
or some alleged fact, or facts, in support of its position; LBP-09-26, 70 NRC 955 n.65 (2009)
- Nuclear Management Co., LLC* (Monticello Nuclear Generating Plant), LBP-05-31, 62 NRC 735, 753 (2005)
applicant is required to analyze only discrete energy sources as alternatives; LBP-08-13, 68 NRC 96
(2008)
the National Environmental Policy Act does not require consideration of every conceivable alternative;
LBP-08-13, 68 NRC 92, 95 (2008)
when the goal of a proposed action is the renewal of the operating licenses that allow production of
approximately 2158 MWe of baseload power, the environmental report does not have to consider in
detail alternatives that do not meet this goal; LBP-08-13, 68 NRC 90 (2008)
- Nuclear Management Co., LLC* (Monticello Nuclear Generating Plant), LBP-05-31, 62 NRC 735, 753 n.83
(2005)
when a private entity and not a federal agency is sponsoring a project, significant weight should be
given to the preferences of the sponsor in the consideration of alternatives; LBP-08-13, 68 NRC 91
(2008)
- Nuclear Management Co., LLC* (Monticello Nuclear Generating Plant), LBP-05-31, 62 NRC 735, 754 (2005)
radiological monitoring is an operational program that is beyond the scope of license renewal;
LBP-07-4, 65 NRC 321 (2007)
- Nuclear Management Co., LLC* (Palisades Nuclear Plant), CLI-06-17, 63 NRC 727, 730 (2006)
information first submitted in petitioners' reply constitutes an untimely attempt to supplement a
contention; LBP-08-26, 68 NRC 919 (2008)
- Nuclear Management Co., LLC* (Palisades Nuclear Plant), CLI-06-17, 63 NRC 727, 732 (2006)
a reply cannot expand the scope of the arguments set forth in the original hearing request; CLI-09-12,
69 NRC 568 (2009)
allowing new claims in a reply would unfairly deprive other participants of an opportunity to rebut the
new claims supportive of contentions; CLI-08-19, 68 NRC 261 (2008); LBP-09-6, 69 NRC 424
n.283, 426 (2009)
it is proper for a reply to respond to the legal, logical, and factual arguments presented in answers, as
long as new issues are not raised; LBP-09-1, 69 NRC 33 n.88 (2009)
licensing boards and the Commission have considered the late-filing criteria even in cases where the
factors were not fully addressed by petitioners and/or the NRC Staff or were not addressed at all;
LBP-10-24, 72 NRC 743 (2010)
new bases for a contention cannot be introduced in a reply brief, or any other time after the date the
original contentions are due, unless the petitioner meets the late-filing criteria set forth in 10 C.F.R.
2.309(c), (f)(2); CLI-09-7, 69 NRC 262 (2009); CLI-09-12, 69 NRC 568 (2009)
once an initial intervention petition is filed, facility proponents routinely press within the adjudicatory
process to ensure that any attempt thereafter to cure any deficiencies is rejected as untimely;
LBP-08-11, 67 NRC 507 (2008)
replies must focus narrowly on the legal or factual arguments first presented in the original petition or
raised in the answers to it; CLI-08-19, 68 NRC 262 n.32 (2008); LBP-06-20, 64 NRC 152 (2006);
LBP-06-23, 64 NRC 359 n.47 (2005); LBP-07-4, 65 NRC 302 n.87 (2007); LBP-08-26, 68 NRC
919 (2008); LBP-10-19, 72 NRC 544 (2010)
the initial contention must meet the requirements of 10 C.F.R. 2.309(f)(1)(i)-(vi) and may not be
substantively supplemented in a reply; LBP-08-16, 68 NRC 407 (2008); LBP-08-18, 68 NRC 542
(2008); LBP-08-18, 68 NRC 540 (2008)
the "nontimely" filing standards in section 2.309(c) are generally applicable to new and amended
contentions; LBP-09-3, 69 NRC 158-59 n.12 (2009)
the proper purpose of a reply is to discuss alleged deficiencies in a petition, not to try to fix them;
LBP-08-17, 68 NRC 457 (2008)

LEGAL CITATIONS INDEX

CASES

- Nuclear Management Co., LLC* (Palisades Nuclear Plant), CLI-07-9, 65 NRC 139 (2007)
contentions requiring an evaluation of terrorist attacks under NEPA are inadmissible in the license renewal of a nuclear power plant; LBP-08-6, 67 NRC 332 n.513 (2008)
the Commission is not obliged to adhere, in all of its proceedings, to the first court of appeals decision to address a controversial question, and is not prevented from relitigating the issue in future cases; LBP-07-14, 66 NRC 186 (2007)
- Nuclear Management Co., LLC* (Palisades Nuclear Plant), CLI-07-9, 65 NRC 139, 140-41 (2007)
the Commission disagrees with the Ninth Circuit's view that NEPA demands a terrorism inquiry; CLI-08-1, 67 NRC 5 (2008)
- Nuclear Management Co., LLC* (Palisades Nuclear Plant), CLI-07-9, 65 NRC 139, 141 (2007)
NRC has no legal duty to consider the environmental impacts of terrorism at NRC licensed facilities; LBP-08-6, 67 NRC 331 (2008)
- Nuclear Management Co., LLC* (Palisades Nuclear Plant), CLI-07-9, 65 NRC 139, 141-42 (2007)
the National Environmental Policy Act does not require the analysis of potential terrorist attacks on a proposed nuclear facility outside the jurisdiction of the Ninth Circuit; CLI-10-1, 71 NRC 13 (2010); LBP-07-3, 65 NRC 269 (2007); LBP-08-21, 68 NRC 567-68 n.12 (2008); LBP-09-2, 69 NRC 103 (2009); LBP-09-18, 70 NRC 413 (2009)
- Nuclear Management Co., LLC* (Palisades Nuclear Plant), LBP-06-10, 63 NRC 314, 328, *aff'd*, CLI-06-17, 63 NRC 727 (2006)
replies may provide only legitimate amplifications of the original contentions or a logical/legal response to the answers of the Staff and applicant; LBP-09-17, 70 NRC 323 (2009)
- Nuclear Management Co., LLC* (Palisades Nuclear Plant), LBP-06-10, 63 NRC 314, 329 (2006)
boards will not consider anything in intervention petitioner's reply that does not focus on the matters raised in the applicant's and NRC Staff's answers; LBP-08-26, 68 NRC 919 (2008)
- Nuclear Management Co., LLC* (Palisades Nuclear Plant), LBP-06-10, 63 NRC 314, 336-42 (2006)
details of requirements a contention must meet are described; LBP-07-14, 66 NRC 184 (2007)
- Nuclear Management Co., LLC* (Palisades Nuclear Plant), LBP-06-10, 63 NRC 314, 351 (2006)
the most important showing that petitioners must make for admission of a late-filed contention is good cause, if any, for the failure to file on time; LBP-09-10, 70 NRC 144 (2009)
- Nuclear Management Co., LLC* (Palisades Nuclear Plant), LBP-06-10, 63 NRC 314, 351-63, *aff'd*, CLI-06-17, 63 NRC 727 (2006)
a reply may not be used as a vehicle to introduce new arguments or support, may not expand the scope of arguments set forth in the original petition, and may not attempt to cure an otherwise deficient contention; LBP-09-17, 70 NRC 323 (2009)
- Nuclear Management Co., LLC* (Palisades Nuclear Plant), LBP-06-10, 63 NRC 314, 362-363, *aff'd*, CLI-06-17, 63 NRC 727 (2006)
the issue that generally arises under 10 C.F.R. 2.309(f)(1)(i) is whether a contention is stated with sufficient specificity; LBP-09-17, 70 NRC 326 (2009)
- Nulankeyutmonen Nkihtagmikon v. Impson*, 530 F.3d 18 (1st Cir. 2007)
to establish an injury in fact, a party merely has to show some threatened concrete interest personal to the party that the National Historic Preservation Act was designed to protect; LBP-08-24, 68 NRC 714 (2008); LBP-10-16, 72 NRC 393 (2010)
where a party's procedural right has been violated, that party has standing to contest the procedural violation even where the underlying interest that the procedural right seeks to protect does not face an "immediate" threat; CLI-09-9, 69 NRC 339 n.35 (2009)
- Nulankeyutmonen Nkihtagmikon v. Impson*, 530 F.3d 18, 27 (1st Cir. 2007)
a person who has been accorded a procedural right to protect his concrete interests can assert that right without meeting all the normal standards for redressability and immediacy; CLI-09-9, 69 NRC 339 n.35 (2009)
- Nulankeyutmonen Nkihtagmikon v. Impson*, 530 F.3d 18, 28 (1st Cir. 2007)
all that is required in the case of a procedural injury is some possibility that the requested relief will prompt the injury-causing party to reconsider the decision that allegedly harmed the litigant; CLI-09-9, 69 NRC 340 n.41 (2009)

LEGAL CITATIONS INDEX

CASES

- Nunez v. Superior Oil Co.*, 572 F.2d 1119, 1123-24 (5th Cir. 1978)
in a case heard by a judge without a jury, a judge may be warranted in drawing inferences without resort to the expense of trial and may grant summary judgment if trial would not enhance its ability to draw inferences and conclusions, if there are no issues of witness credibility and a trial on the merits would reveal no additional data; LBP-07-12, 66 NRC 127 (2007); LBP-07-13, 66 NRC 131 (2007)
- Ocean Advocates v. U.S. Army Corps of Engineers*, 402 F.3d 846, 866 (9th Cir. 2005)
information that the environmental report provides must be accurate and up-to-date in order to support an agency's determination that a project will have no significant impact on the environment; LBP-09-16, 70 NRC 268 n.127 (2009)
- Oglala Sioux Tribe of the Pine Ridge Indian Reservation v. Homestake Mining Co.*, 722 F.2d 1407 (8th Cir. 1983)
the argument that the Oglala Sioux people continue to raise that the terms of the 1868 Fort Laramie Treaty are still effective has failed; LBP-08-24, 68 NRC 712 n.102 (2008)
- Oglala Sioux Tribe of the Pine Ridge Indian Reservation v. United States*, 650 F.2d 140 (8th Cir. 1981)
the argument that the Oglala Sioux people continue to raise that the terms of the 1868 Fort Laramie Treaty are still effective has failed; LBP-08-24, 68 NRC 712 n.102 (2008)
- Oglala Sioux Tribe v. Army Corps of Engineers*, 537 F. Supp. 2d 161 (D.D.C. 2008)
the argument that the Oglala Sioux people continue to raise that the terms of the 1868 Fort Laramie Treaty are still effective has failed; LBP-08-24, 68 NRC 712 n.102 (2008)
- Ohio Edison Co.*, 105 FERC ¶61,372, at 62,655 n.3 (2003), 2003 WL 23011904 (FERC)
a "control area" is a geographic area within which a single entity balances generation and load in real time in order to maintain reliable operations; CLI-06-2, 63 NRC 14 n.18 (2006)
- Ohio Edison Co.* (Perry Nuclear Power Plant, Unit 1), CLI-91-15, 34 NRC 269, 271 (1991), *reconsidered* denied, CLI-92-6, 35 NRC 86 (1992)
even in the absence of a petition for review, the Commission retains its supervisory power over adjudications to step in at any stage of a proceeding and decide a matter itself; CLI-09-3, 69 NRC 72 n.16 (2009)
- Ohio Edison Co.* (Perry Nuclear Power Plant, Unit 1), CLI-91-15, 34 NRC 269, 271 (1991), *reconsidered* denied, CLI-92-6, 35 NRC 86, 88 (1992)
the Commission has used sua sponte review as a vehicle to suspend a proceeding; CLI-07-1, 65 NRC 4 (2007)
- Ohio Edison Co.* (Perry Nuclear Power Plant, Unit 1), LBP-91-38, 34 NRC 229, 244-45 (1991)
economic interests of an organization representing nuclear utility members confer standing upon the organization; LBP-09-6, 69 NRC 433 (2009)
- Ohio Edison Co.* (Perry Nuclear Power Plant, Unit 1), LBP-91-38, 34 NRC 229, 248-49, 250-51 (1991)
discretionary intervention is allowed because petitioner's interests are within the zone of interests related to the proceeding and its extensive participation in similar proceedings in the past would provide valuable insight in developing a sound record; LBP-09-6, 69 NRC 437 (2009)
- Ohio Edison Co.* (Perry Nuclear Power Plant, Unit 1), LBP-91-38, 34 NRC 229, 250-51 (1991), *appeal denied*, CLI-92-11, 36 NRC 47 (1992), *petition for review denied*, *City of Cleveland v. NRC*, 68 F.3d 1361 (D.C. Cir. 1995)
all six discretionary intervention factors, regardless of the result on the critical first factor, typically are examined; CLI-06-16, 63 NRC 722 n.47 (2006)
only eight petitions for discretionary intervention have ever been granted during the 30 years NRC has applied the current six-factor test; CLI-06-16, 63 NRC 717 (2006)
- Ohio River Valley Environmental Coalition v. Kempthorne*, 473 F.2d 94, 102 (4th Cir. 2006)
omitting consideration of accident scenarios anticipated under 10 C.F.R. 50.150 and 50.54(hh) is contrary to the requirements of 42 U.S.C. § 2133(d); LBP-10-10, 71 NRC 542 (2010)
the Administrative Procedure Act directs review of agency action to determine if its decision is a product of consideration of relevant factors and whether a clear error of judgment has occurred; LBP-10-10, 71 NRC 548 n.53 (2010)
- Ohio Valley Environmental Coalition v. Hurst*, 604 F. Supp. 2d 860, 887 (S.D. W. Va. 2009)
NRC cannot either fail to perform an adequate evaluation or evade a NEPA responsibility by deferring to another agency; CLI-10-5, 71 NRC 110 n.107 (2010)

LEGAL CITATIONS INDEX

CASES

- Okanogan Highlands Alliance v. Williams*, 1999 WL 1029106, at *4-*5 (D. Or. Jan. 12, 1999), *aff'd on other grounds*, 236 F.3d 468 (9th Cir. 2000)
in assessing impacts, an agency may rely on other specialized agencies with jurisdiction to enforce related permits and measures; CLI-08-16, 68 NRC 227 n.32 (2008)
- Okanogan Highlands Alliance v. Williams*, 236 F.3d 468, 473 (9th Cir. 2000)
a mitigation plan need not be legally enforceable, funded, or even in final form to comply with NEPA's procedural requirements; CLI-06-29, 64 NRC 427 (2006)
- Olmsted Citizens for a Better Community v. United States*, 793 F.2d 201, 209 (8th Cir. 1986)
petitioner did not properly challenge applicant's conclusion that no environmentally preferable alternative existed where the only alternative that petitioner mentions on appeal is the no-reactor option, and petitioner neither raised that option before the board nor supported its argument that it would always be environmentally preferable; LBP-10-6, 71 NRC 380 n.88 (2010)
- Oncology Services Corp.*, CLI-93-13, 37 NRC 419, 420-21 (1993)
the question whether to hold an NRC enforcement proceeding in abeyance pending a related criminal prosecution is generally suitable for interlocutory Commission review because the abeyance issue cannot await the end of the proceeding; CLI-06-19, 64 NRC 11 (2006)
- Oncology Services Corp.*, CLI-93-13, 37 NRC 419, 421 (1993)
the Commission may consider the criteria listed in 10 C.F.R. 2.786(b)(4) when reviewing interlocutory matters on the merits, but when determining whether to undertake such review the standards in section 2.786(g) control the determination; CLI-10-29, 72 NRC 561 n.28 (2010)
- Oncology Services Corp.*, CLI-93-17, 38 NRC 44 (1993)
five factors need to be balanced when deciding whether to delay an enforcement proceeding;
CLI-06-12, 63 NRC 500 (2006)
- Oncology Services Corp.*, CLI-93-17, 38 NRC 44, 49, 53-57 (1993)
whether continuation of an NRC enforcement adjudication could at least arguably jeopardize a related criminal proceeding is a key factor in any abeyance ruling in an NRC enforcement proceeding;
CLI-06-19, 64 NRC 12 (2006)
- Oncology Services Corp.*, CLI-93-17, 38 NRC 44, 49-50 (1993)
when determining whether good cause exists for holding a proceeding in abeyance, the decisionmaker must consider both the public interest and the interests of the person subject to the immediately effective order, and the determination of whether a delay is reasonable depends on the facts of a particular case and requires a balancing of these competing interests; CLI-06-12, 63 NRC 505-06 (2006)
- Oncology Services Corp.*, CLI-93-17, 38 NRC 44, 49-50, 59-60 (1993)
harm from a delay of the enforcement proceeding is a key issue in any abeyance ruling; CLI-06-19, 64 NRC 12 (2006)
- Oncology Services Corp.*, CLI-93-17, 38 NRC 44, 50 (1993)
determination of whether a delay is reasonable depends on the facts of a particular case and requires a balancing of the competing interests; LBP-06-13, 63 NRC 535 (2006)
in deciding whether to delay a proceeding, an adjudicator can do little more than identify some of the factors that courts should assess in determining whether a particular defendant has been deprived of his right; LBP-06-13, 63 NRC 535 n.29 (2006)
- Oncology Services Corp.*, CLI-93-17, 38 NRC 44, 50-51 (1993)
five factors are weighed to determine whether there is good cause to delay a proceeding regarding an immediately effective license suspension order; LBP-06-13, 63 NRC 535 (2006)
- Oncology Services Corp.*, CLI-93-17, 38 NRC 44, 51 (1993)
the five factors that are weighed to determine whether there is good cause to delay a proceeding are guides in balancing the interests of the claimant and the government to assess whether the basic due process requirement of fairness has been satisfied in a particular case; LBP-06-13, 63 NRC 535 n.29 (2006)
- Oncology Services Corp.*, CLI-93-17, 38 NRC 44, 52 (1993)
there are several points of reference that are relevant when examining whether a delay is justified;
LBP-06-13, 63 NRC 536 (2006)

LEGAL CITATIONS INDEX

CASES

- Oncology Services Corp.*, CLI-93-17, 38 NRC 44, 52-53 (1993)
reasonableness of the length of a delay can be determined only in light of the relative harm thereby being inflicted and/or avoided; LBP-06-13, 63 NRC 545 (2006)
- Oncology Services Corp.*, CLI-93-17, 38 NRC 44, 53 (1993)
a licensing board's approval of a delay was granted because the premature release of witness interview transcripts and documentary information would interfere with an NRC ongoing investigation into possible incomplete or inaccurate statements by the licensee's employees and officials; LBP-06-13, 63 NRC 540 (2006)
delay may require strong justification in a proceeding to revoke a license, which depends to a great extent on the testimony of witnesses, but in a civil penalty proceeding where the penalty has not been paid and the proceeding depends less on witness testimony, a delay may need less justification; LBP-06-13, 63 NRC 536 (2006)
delay of a proceeding is particularly problematic in cases involving witness testimony; CLI-06-12, 63 NRC 501 (2006)
in witness-intensive cases, delay of a proceeding is tolerable only if the Staff can demonstrate an important government interest coupled with factors minimizing the risk of an erroneous deprivation; CLI-06-12, 63 NRC 502 (2006)
- Oncology Services Corp.*, CLI-93-17, 38 NRC 44, 53, 55 (1993)
in the question of upholding an indefinite delay, the Staff's mere assertion that it wishes to protect DOJ's pending criminal prosecution does not, without more, justify holding NRC's parallel administrative proceeding in abeyance; LBP-06-13, 63 NRC 538 (2006)
- Oncology Services Corp.*, CLI-93-17, 38 NRC 44, 53, 60 (1993)
when passing upon delay requests, licensing boards must evaluate whether there is an overriding public interest requiring a delay; LBP-06-13, 63 NRC 537 (2006)
- Oncology Services Corp.*, CLI-93-17, 38 NRC 44, 53-57 (1993)
in approving two lengthy stays of NRC proceedings, both the Commission and the Board were concerned that any information made available to the licensee in the enforcement proceeding might undermine a parallel NRC investigation and its potential referral to the Department of Justice for possible criminal prosecution, as well as a concurrent state criminal investigation; CLI-06-12, 63 NRC 503 n.25 (2006)
the party supporting abeyance of a proceeding carries the burden of proof and must make at least some showing of potential detrimental effect on the pending criminal case; CLI-06-12, 63 NRC 502 (2006)
- Oncology Services Corp.*, CLI-93-17, 38 NRC 44, 54-55 (1993)
a delay is granted because NRC's strong interest in ensuring truth and accuracy of information provided to the Commission would be undermined if the personnel were given the opportunity to tailor their testimony or statements in subsequent interviews so as to explain previous statements in order to avoid culpability or conform testimony with the testimony of others who have been interviewed; LBP-06-13, 63 NRC 540 (2006)
- Oncology Services Corp.*, CLI-93-17, 38 NRC 44, 54-56, 59 (1993)
both the proponent and opponent of a motion to delay a proceeding are expected to meet specificity requirements in their motions; LBP-06-13, 63 NRC 541 n.58 (2006)
- Oncology Services Corp.*, CLI-93-17, 38 NRC 44, 55 (1993)
the pendency of a criminal trial does not automatically toll the time for instituting a civil proceeding because it is necessary to look at the facts of a particular proceeding; LBP-06-13, 63 NRC 537 (2006)
- Oncology Services Corp.*, CLI-93-17, 38 NRC 44, 57 (1993)
because the subject of an enforcement order had been given the opportunity to challenge whether there was adequate evidence of the detailed allegations to justify the order's immediate effectiveness and chose not to exercise that opportunity, the risk of erroneous deprivation was reduced, such that this factor weighed in favor of the delay request; LBP-06-13, 63 NRC 544 (2006)
- Oncology Services Corp.*, CLI-93-17, 38 NRC 44, 58 (1993)
a challenge to an order's immediate effectiveness could be brought on the basis of the long delay between investigation and action; LBP-06-26, 64 NRC 434 n.5 (2006)

LEGAL CITATIONS INDEX

CASES

- failure, before the hearing on the merits, to challenge an order's immediate effectiveness is not necessarily crucial to the fourth stay factor because it could involve simply a strategic decision to avoid delaying the eventual resolution of the merits; LBP-06-13, 63 NRC 543 (2006)
- in an NRC enforcement proceeding, the vigorous opposition to any stay of the proceeding and a constant insistence on a prompt full adjudicatory hearing are entitled to strong weight and militate against the requested delay; LBP-06-13, 63 NRC 543 (2006)
- Oncology Services Corp.*, CLI-93-17, 38 NRC 44, 59 (1993)
- a party opposing a delay must make an affirmative showing that its ability to mount a defense will be compromised by the delay; LBP-06-13, 63 NRC 542 n.65 (2006)
- because enforcement cases are fact-specific and typically rely far more on witness testimony than do licensing adjudications, a long delay could result in the fading of witnesses' memories; CLI-06-12, 63 NRC 502 (2006)
- deprivation of the right to speedy trial does not per se prejudice the accused's ability to defend himself; LBP-06-13, 63 NRC 542 (2006)
- determining whether there is prejudice to private interests from delay of a proceeding requires an analysis of the impacts that the enforcement order has on the private interests of the subject of the order, including any financial and reputational harm; LBP-06-13, 63 NRC 542 (2006)
- in the case of an immediately effective enforcement order, the potential prejudice that a delay will cause to the subject of the order, including prejudice to the subject's ability to defend against the charge and prejudice to the subject's private interests as a result of the order, must be considered; LBP-06-13, 63 NRC 542 (2006)
- parties must provide some detail about the various factors that are to be considered in reaching a determination on an abeyance issue; LBP-06-13, 63 NRC 534 (2006)
- Oncology Services Corp.*, CLI-93-17, 38 NRC 44, 59-60 (1993)
- as with the prejudice to the ability to defend against an enforcement order because of delay of a proceeding, the harm to financial and reputational interests must be specifically established; LBP-06-13, 63 NRC 542 (2006)
- Oncology Services Corp.*, CLI-93-17, 38 NRC 44, 60 (1993)
- a perfunctory affidavit falls far short of making the particularized showing that is needed to delay an enforcement proceeding; LBP-06-13, 63 NRC 566 (2006)
- a proponent of a motion to hold an enforcement proceeding in abeyance has the burden of showing good cause in the form of an overriding government interest; LBP-06-13, 63 NRC 567 (2006)
- Oncology Services Corp.*, LBP-93-6, 37 NRC 207, 214 (1993)
- in approving two lengthy stays of NRC proceedings, both the Commission and the Board were concerned that any information made available to the licensee in the enforcement proceeding might undermine a parallel NRC investigation and its potential referral to the Department of Justice for possible criminal prosecution, as well as a concurrent state criminal investigation; CLI-06-12, 63 NRC 503 n.25 (2006)
- Oncology Services Corp.*, LBP-93-10, 37 NRC 455, 460-64 (1993)
- in approving two lengthy stays of NRC proceedings, both the Commission and the Board were concerned that any information made available to the licensee in the enforcement proceeding might undermine a parallel NRC investigation and its potential referral to the Department of Justice for possible criminal prosecution, as well as a concurrent state criminal investigation; CLI-06-12, 63 NRC 503 n.25 (2006)
- Oregon Natural Resources Council Fund v. Goodman*, 505 F.3d 884, 897 (9th Cir. 2007)
- NEPA requires NRC to provide a reasonable mitigation alternatives analysis, containing reasonable estimates, including full disclosures of any known shortcomings in methodology, incomplete or unavailable information and significant uncertainties; CLI-10-22, 72 NRC 209 (2010)
- Otherson v. Department of Justice, Immigration & Naturalization Service*, 711 F.2d 267, 274 (D.C. Cir. 1983)
- a challenge is easily overcome by the board conducting a realistic and rational examination of the record in the criminal case to determine whether a reasonable jury could have grounded its verdict on any basis other than that asserted by the Staff as having been the controlling issue; LBP-09-24, 70 NRC 723 n.96(2009)

LEGAL CITATIONS INDEX

CASES

- to determine whether to apply collateral estoppel to a general verdict, a trial judge is to examine the record of the prior trial in detail to see if the jury might have disbelieved some aspects of the acts charged; LBP-09-24, 70 NRC 723 n.96 (2009)
- Owner-Operator Independent Drivers Ass'n, Inc. v. Federal Motor Carrier Safety Administration*, 494 F.3d 188, 203 (D.C. Cir. 2007)
- to show that error was prejudicial, petitioner must indicate with reasonable specificity what portions of the documents it objects to and how it might have responded if given the opportunity and must show that on remand it can mount a credible challenge and was thus prejudiced by the absence of an opportunity to do so before the agency; CLI-08-28, 68 NRC 677 n.76 (2008)
- Pa'ina Hawaii, LLC*, CLI-06-18, 64 NRC 1, 5 (2006)
- extra expense, work, and procedural delays are normal accoutrements of any hearing process involving the National Environmental Policy Act, and license applicants at the NRC assume the risk of imposition of these additional burdens; CLI-09-6, 69 NRC 136 n.29 (2009)
- Pa'ina Hawaii, LLC*, CLI-06-18, 64 NRC 1, 7 (2006)
- although interested governmental entities would not have a formal role in a proceeding absent the admission of parties and contentions, boards expect that such entities would be kept appropriately apprised of the other participants' settlement efforts; LBP-09-23, 70 NRC 670 n.33 (2009)
- Pa'ina Hawaii, LLC*, CLI-08-3, 67 NRC 151, 168 n.73 (2008)
- a new contention will necessarily fail if it attacks the quality of the Staff's review rather than identifying a deficiency in the application; CLI-09-5, 69 NRC 123 (2009)
- the focus of a hearing on a proposed licensing action is the adequacy of the application to support the licensing action, not the nature of the NRC Staff's review; CLI-08-17, 68 NRC 237, 242 (2008)
- Pa'ina Hawaii, LLC*, CLI-08-4, 67 NRC 171 (2008)
- NEPA does not require the NRC to assess the potential health effects of consuming irradiated food; CLI-10-18, 72 NRC 65 (2010)
- Pa'ina Hawaii, LLC*, CLI-08-4, 67 NRC 171, 172 (2008)
- it is appropriate for the Commission to take sua sponte review of a claim that raises a threshold legal question going to the proper scope of this proceeding, and a matter with potential new significant National Environmental Policy Act implications for NRC; CLI-08-16, 68 NRC 222 (2008)
- whether the National Environmental Policy Act requires NRC to consider potential health effects of consuming irradiated food raises the kind of broad legal question appropriate for Commission interlocutory review; CLI-08-16, 68 NRC 222 (2008)
- Pa'ina Hawaii, LLC*, CLI-08-16, 68 NRC 221, 222-23, 230 (2008)
- NEPA does not require the NRC to assess the potential health effects of consuming irradiated food; CLI-10-18, 72 NRC 65 (2010)
- Pa'ina Hawaii, LLC*, LBP-06-12, 63 NRC 403, 407 (2006)
- the burden of setting forth a clear and coherent argument is on the petitioner; CLI-09-7, 69 NRC 277 n.230 (2009)
- Pa'ina Hawaii, LLC*, LBP-06-12, 63 NRC 403, 413 (2006), *petition for reconsideration denied*, CLI-06-25, 64 NRC 128 (2006)
- contention that provides a specific statement of the legal or factual issue sought to be raised by alleging, in relevant part, that the applicant's environmental report should have examined the environmental consequences of long-term onsite storage of low-level radioactive waste is admissible; LBP-09-4, 69 NRC 225 (2009)
- contentions of omission claim that the application fails to contain information on a relevant matter as required by law and provides supporting reasons for the petitioner's belief; LBP-08-15, 68 NRC 314 (2008); LBP-09-10, 70 NRC 123 (2009); LBP-09-16, 70 NRC 264 (2009); LBP-09-27, 70 NRC 995 (2009)
- Pa'ina Hawaii, LLC*, LBP-06-12, 63 NRC 403, 414 (2006), *petition for reconsideration denied*, CLI-06-25, 64 NRC 128 (2006)
- a contention of omission need only identify the regulatively required missing information and provide enough facts to show that the application is incomplete; LBP-09-3, 69 NRC 161 (2009)
- any contention that identifies deficiencies in an application and provides supporting reasons for its position presents a genuine dispute with the applicant on a material issue; LBP-08-15, 68 NRC 319 (2008)

LEGAL CITATIONS INDEX

CASES

- contentions that challenge the legal sufficiency of applicant's environmental report and final safety analysis report are within the scope of a combined license proceeding; LBP-08-15, 68 NRC 315 (2008); LBP-09-4, 69 NRC 225 (2009); LBP-09-10, 70 NRC 124 (2009)
- if petitioner makes a prima facie allegation that the application omits information required by law, it necessarily presents a genuine dispute with applicant on a material issue in compliance and raises an issue plainly material to an essential finding of regulatory compliance needed for license issuance; LBP-09-4, 69 NRC 190, 216 (2009); LBP-09-16, 70 NRC 245 (2009); LBP-10-16, 72 NRC 395 (2010)
- intervenor's characterize applicant's silence on the point that its reactor is not developed, proven, or available as a material omission, which should result in the contention being admitted for adjudication; LBP-10-10, 71 NRC 599 n.350 (2010)
- petitioner must show that information missing from a license application is required by the Commission's regulations; LBP-09-18, 70 NRC 431 (2009)
- pleading requirements calling for a recitation of facts or expert opinion supporting the issue raised are inapplicable to a contention of omission beyond identifying the legally required missing information; LBP-09-4, 69 NRC 190 (2009); LBP-09-16, 70 NRC 244 (2009); LBP-10-16, 72 NRC 395 (2010)
- the basis of a contention can be adequately explained by identifying the regulation that requires the applicant to satisfy a particular obligation; LBP-08-15, 68 NRC 314 (2008)
- the pleading requirements of 10 C.F.R. 2.309(f)(1)(v), calling for a recitation of facts or expert opinion supporting the issue raised, are inapplicable to a contention of omission beyond identifying the regulatively required missing information; LBP-08-15, 68 NRC 317 (2008); LBP-08-26, 68 NRC 932 n.183 (2008)
- Pacific Gas and Electric Co. v. Federal Power Commission*, 506 F.2d 33 (D.C. Cir. 1974)
- a policy statement is neither a rule nor an order, and therefore does not establish requirements that bind either the agency or the public; CLI-07-27, 66 NRC 240 (2007)
- Pacific Gas and Electric Co. v. Federal Power Commission*, 506 F.2d 33, 38 (D.C. Cir. 1974)
- policy statements announce what the Commission seeks to establish as policy and does not bind either the agency or the public; CLI-10-8, 71 NRC 148 n.30 (2010)
- Pacific Gas and Electric Co. v. United States*, 70 Fed. Cl. 128, 141 (2006)
- courts evaluate the strength of the particular interest protected by the deliberative process privilege, not a generalized agency interest in confidentiality; LBP-06-25, 64 NRC 391 (2006)
- Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-644, 13 NRC 903, 923 (1981)
- the mere fact of adverse findings and rulings on the merits does not imply a biased attitude on the board's part; CLI-10-17, 72 NRC 46 (2010)
- Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-653, 14 NRC 629 (1981)
- although Subpart I rules have been used in very few cases to disclose classified information in contested licensing proceedings, in those cases the information was necessary to evaluate challenges to the agency's compliance with security requirements in the Atomic Energy Act, not the National Environmental Policy Act; CLI-08-26, 68 NRC 523 (2008)
- Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-653, 16 NRC 55, 72 (1981)
- prima facie evidence must be legally sufficient to establish a fact or case unless disproved; LBP-10-15, 72 NRC 279-80, 303 (2010)
- "prima facie showing" means that the affidavits supporting a petition for rule waiver must present each element of the case for waiver in a persuasive manner with adequate supporting facts; LBP-10-12, 71 NRC 662 n.9 (2010)
- Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-756, 18 NRC 1340, 1344 (1983)
- proponents of motions seeking to reopen the record bear a heavy burden; CLI-09-2, 69 NRC 65-66 n.48 (2009); LBP-08-12, 68 NRC 15 (2008)

LEGAL CITATIONS INDEX

CASES

- Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-756, 18 NRC 1340, 1344-45 (1983)
a contention alleging a breakdown of applicant's quality assurance program must provide evidence that there is legitimate doubt as to whether the plant can be operated safely; LBP-10-9, 71 NRC 510 (2010)
- Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-756, 18 NRC 1340, 1345 (1983)
perfection in plant construction and the construction quality assurance program is not a precondition for a license, but rather what is required is reasonable assurance that the plant, as built, can and will be operated without endangering the public health and safety; LBP-10-9, 71 NRC 519 (2010)
- Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-763, 19 NRC 571, 576 (1984)
significant evidence that the design quality assurance program is faulty makes it uncertain whether any particular structure, system, or component has been designed in accordance with stated criteria and commitments; LBP-10-9, 71 NRC 512, 519 (2010)
- Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-763, 19 NRC 571, 576-78 (1984)
applicant, not petitioners, has the burden of proof to show reasonable assurance that the plant, as built, can and will be operated without endangering the public health and safety; LBP-10-9, 71 NRC 521 n.126 (2010)
- Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-763, 19 NRC 571, 577, *review declined*, CLI-84-14, 20 NRC 285 (1984)
the preponderance of the evidence standard applies in a license renewal proceeding; LBP-08-22, 68 NRC 646 (2008)
to prevail on factual issues, the position must be supported by a preponderance of the evidence; CLI-08-26, 68 NRC 521 n.64 (2008)
- Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-873, 26 NRC 154 (1987)
petitioners will have an opportunity to appeal a board's contention admissibility rulings at the end of the case; CLI-09-9, 69 NRC 365 (2009)
- Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-80-24, 11 NRC 775 (1980)
petitioners or intervenors may request and, where appropriate, obtain under protective order or other measures information withheld from the general public for proprietary or security reasons; CLI-06-10, 63 NRC 460 (2006)
- Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-84-5, 19 NRC 953, 964 (1984)
merely raising the specter of a nuclear accident does not demonstrate irreparable harm; CLI-06-8, 63 NRC 238 (2006)
- Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-85-14, 22 NRC 177, 178-80 (1985)
NRC has entertained requests for stays of final agency action in anticipation of judicial review; CLI-10-8, 71 NRC 147 n.25 (2010)
- Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-02-16, 55 NRC 317, 336-37 (2002)
not all organizations with governmental ties are entitled to participate in NRC proceedings as a local governmental body (county, municipality, or other subdivision); CLI-07-18, 65 NRC 413 (2007)
- Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-02-16, 55 NRC 317, 336-38 (2002)
to establish standing, economic interests must be linked to potential radiological or environmental risks; LBP-09-6, 69 NRC 431 (2009)

LEGAL CITATIONS INDEX

CASES

- Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-02-16, 55 NRC 317, 337 (2002)
cursory, unsupported arguments will not be considered on appeal; CLI-06-2, 63 NRC 16 n.30 (2006); CLI-08-19, 68 NRC 265 (2008); CLI-10-17, 72 NRC 30-31 n.172 (2010); CLI-10-23, 72 NRC 246 n.177 (2010)
- Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-02-16, 55 NRC 317, 343 n.53 (2002)
ratepayer impacts are outside the scope of a combined license proceeding because the state, not the NRC, is charged with protecting ratepayers' interests; LBP-09-10, 70 NRC 80 (2009)
- Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-02-16, 55 NRC 317, 346 (2002)
denial of a motion for discretionary intervention does not eliminate all possibility of petitioners' participation in the litigation; CLI-06-16, 63 NRC 722 (2006)
discretionary intervention is an extraordinary procedure that is rarely granted; CLI-06-16, 63 NRC 716 (2006)
petitioner should not be entitled to discretionary intervention without an issue of its own worthy of exploration in an adjudication; CLI-06-16, 63 NRC 719 (2006)
- Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-03-2, 57 NRC 19, 26-27 (2003)
economic interests of an organization representing nuclear utility members confer standing upon the organization; LBP-09-6, 69 NRC 433 (2009)
- Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-03-2, 57 NRC 19, 29 (2003)
the Commission has long declined to assume that licensees will refuse to meet their obligations under their licenses or NRC regulations; LBP-06-7, 63 NRC 207 n.14 (2006); LBP-07-14, 66 NRC 209 n.94 (2007)
- Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-03-2, 57 NRC 19, 30 (2003)
Commission policy is to resolve adjudications promptly; CLI-08-19, 68 NRC 262 (2008)
- Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), LBP-92-27, 36 NRC 196, 198 (1992)
merely because a petitioner might have had standing in an earlier proceeding does not automatically grant standing in subsequent proceedings; LBP-07-16, 66 NRC 300 n.135 (2007); LBP-09-18, 70 NRC 402 (2009)
- Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), LBP-93-1, 37 NRC 5, 29-30 (1993)
contentions that advocate stricter requirements than agency rules impose or that otherwise seek to litigate a generic determination established by a Commission rulemaking are inadmissible; LBP-07-3, 65 NRC 252 (2007); LBP-07-10, 66 NRC 22 (2007); LBP-08-16, 68 NRC 383 (2008); LBP-09-3, 69 NRC 152 (2009); LBP-10-7, 71 NRC 419 (2010); LBP-10-21, 72 NRC 651 (2010)
- Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), LBP-93-1, 37 NRC 5, 37 (1993)
nonparty interested state status has been granted to state utility commissions; LBP-08-15, 68 NRC 304 n.44 (2008); LBP-09-16, 70 NRC 291 n.190 (2009)
- Pacific Gas and Electric Co.* (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), CLI-02-23, 56 NRC 230, 237 (2002)
although a petition for review does not challenge anything the boards actually decided, the Commission addresses the merits of the request as an exercise of its ultimate supervisory control over our proceedings; CLI-09-10, 69 NRC 527 (2009)
some motions are best addressed by the Commission pursuant to its inherent supervisory authority over agency proceedings; CLI-08-23, 68 NRC 476 (2008)
- Pacific Gas and Electric Co.* (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), CLI-02-23, 56 NRC 230, 237-40 (2002)
the Commission generally declines to hold proceedings in abeyance pending the outcome of other Commission actions or adjudications; CLI-10-17, 72 NRC 10 n.36 (2010)

LEGAL CITATIONS INDEX

CASES

- Pacific Gas and Electric Co.* (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), CLI-02-23, 56 NRC 230, 238 (2002)
requests to suspend proceedings or hold them in abeyance in the exercise of the Commission's inherent supervisory powers over proceedings in the wake of the September 11 terrorist attacks pending completion of the Commission's comprehensive review of anti-terrorist measures at licensed facilities were rejected; CLI-08-23, 68 NRC 485 (2008)
- Pacific Gas and Electric Co.* (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), CLI-02-23, 56 NRC 230, 239 (2002)
if the post-9/11 security review had resulted in security enhancements for spent fuel storage facilities, those enhancements could be implemented even after the license issued; CLI-08-23, 68 NRC 485 (2008)
it is not sensible to postpone consideration and resolution of various issues having little or nothing to do with the Commission's ongoing review of security requirements following the September 11th attacks; CLI-10-17, 72 NRC 10 n.34 (2010)
- Pacific Gas and Electric Co.* (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), CLI-02-23, 56 NRC 230, 240 (2002)
Staff is expected over the period of license renewal to require, as appropriate, any modification to systems, structures, or components that is necessary to ensure adequate protection of the public health and safety, or to bring the facility into compliance with a license or with the rules and orders of the Commission; CLI-08-23, 68 NRC 485 (2008)
- Pacific Gas and Electric Co.* (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), CLI-03-1, 57 NRC 1 (2003)
terrorist attacks are not to be considered part of the NEPA analysis required for licensing actions; LBP-06-4, 63 NRC 113 (2006); LBP-07-14, 66 NRC 185 (2007)
- Pacific Gas and Electric Co.* (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), CLI-03-4, 57 NRC 273, 275-77 (2003)
the Commission generally declines to hold proceedings in abeyance pending the outcome of other Commission actions or adjudications; CLI-10-17, 72 NRC 10 n.36 (2010)
- Pacific Gas and Electric Co.* (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), CLI-03-12, 58 NRC 185, 191 (2003)
the materiality requirement dictates that any contention alleging deficiencies or errors in an application also indicates some significant link between the claimed deficiency and either the health and safety of the public or the environment; LBP-08-16, 68 NRC 385 (2008)
- Pacific Gas and Electric Co.* (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), CLI-06-23, 64 NRC 107, 108 (2006)
the Commission has maximum procedural leeway to address the terrorism issue; LBP-06-23, 64 NRC 289 (2006)
- Pacific Gas and Electric Co.* (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), CLI-06-27, 64 NRC 399, 400-01 (2006)
to succeed, a petition for reconsideration must demonstrate a compelling circumstance, such as the existence of a clear and material error in a decision, which could not have been reasonably anticipated, which renders the decision invalid; CLI-07-21, 65 NRC 521 (2007); CLI-07-22, 65 NRC 527 (2007)
- Pacific Gas and Electric Co.* (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), CLI-06-27, 64 NRC 399, 402 (2006)
new arguments may not be raised in a motion for reconsideration; CLI-07-22, 65 NRC 527 (2007)
- Pacific Gas and Electric Co.* (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), CLI-07-11, 65 NRC 148 (2007)
NRC Staff should base its environmental analysis of a potential terrorist attack on information available in agency records and other information on the design, mitigative, and security arrangements bearing on likely environmental consequences, consistent with the requirements of NEPA, the Ninth Circuit's decision, and the regulations for the protection of sensitive and safeguards information; CLI-09-15, 70 NRC 5-6 (2009)

LEGAL CITATIONS INDEX

CASES

- Pacific Gas and Electric Co.* (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), CLI-08-1, 67 NRC 1 (2008)
because Staff failed to disclose data underlying its terrorism analysis in the final environmental assessment, it failed to meet the NEPA-mandated hard-look standard; CLI-10-18, 72 NRC 65 (2010)
guidance on how NRC treats NEPA-terrorism contentions is provided; CLI-09-15, 70 NRC 6 (2009)
- Pacific Gas and Electric Co.* (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), CLI-08-1, 67 NRC 1, 5-8 (2008)
if good cause for a late filing is not shown, the board may still permit the late filing, but petitioner must make a strong showing on the other late-filing factors; LBP-10-24, 72 NRC 731 (2010)
opponents' arguments concerning other factors of the late-filing test did not outweigh petitioner's strong showing of good cause; CLI-09-12, 69 NRC 549 n.62 (2009)
- Pacific Gas and Electric Co.* (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), CLI-08-1, 67 NRC 1, 6 (2008)
a new contention is usually considered timely if filed within 30 days of publication of the draft environmental impact statement; CLI-09-9, 69 NRC 351 n.105 (2009); LBP-10-16, 72 NRC 422 n.308 (2010)
NRC pleading standards do not allow for mere notice pleading, or the filing of general, vague, or unsupported claims to be elaborated on at some later time; CLI-09-5, 69 NRC 120 n.21 (2009)
the most important of the late-filing factors is good cause for the failure to file on time; CLI-09-5, 69 NRC 125 (2009)
- Pacific Gas and Electric Co.* (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), CLI-08-8, 67 NRC 193, 197 & n.26 (2008)
good cause is the factor given the greatest weight when ruling on motions for leave to submit late-filed contentions; CLI-10-17, 72 NRC 53 n.304 (2010)
- Pacific Gas and Electric Co.* (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), CLI-08-26, 68 NRC 509 (2008); CLI-08-8, 67 NRC 193 (2008)
guidance on how NRC treats NEPA-terrorism contentions is provided; CLI-09-15, 70 NRC 6 (2009)
- Pacific Gas and Electric Co.* (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), CLI-08-26, 68 NRC 509, 526 & n.87 (2008)
there is no per se regulatory bar that precludes the Staff from using the hearing process to clarify the administrative record supporting its final EA, and that record, along with any adjudicatory decision, becomes, in effect, part of the final environmental document; CLI-10-18, 72 NRC 68 (2010)
- Pacific Gas and Electric Co.* (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), LBP-02-15, 56 NRC 42, 49 (2002)
expenses of any kind do not constitute irreparable injury; CLI-09-6, 69 NRC 135 n.25 (2009)
- Pacific Gas and Electric Co.* (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), LBP-02-23, 56 NRC 413, 426 (2002)
an organization that wishes to intervene in a proceeding may do so either in its own right by demonstrating harm to its organizational interests, or in a representational capacity by demonstrating harm to its members; LBP-09-2, 69 NRC 94 n.19 (2009)
- Pacific Gas and Electric Co.* (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), LBP-02-23, 56 NRC 413, 428, 429 (2002)
a 17-mile proximity presumption was adopted in a case involving an application to construct and operate an ISFSI where all parties agreed that 17 miles was an appropriate radius upon which to presume standing; LBP-09-20, 70 NRC 578 (2009)
- Pacific Gas and Electric Co.* (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), LBP-02-23, 56 NRC 413, 439-41 (2002)
intervention petitioners must show deficiencies or errors in the license renewal application and must establish a significant link between such claimed deficiencies and either the health and safety of the public or the environment; LBP-08-24, 68 NRC 725 (2008)
- Pacific Gas and Electric Co.* (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), LBP-02-23, 56 NRC 413, 439-41 (2002), *petition for review denied*, CLI-03-12, 58 NRC 185, 191 (2003)
the materiality requirement for contention admission often dictates that any contention alleging deficiencies or errors in an application also indicate some significant link between the claimed deficiency and either the health and safety of the public or the environment; LBP-07-3, 65 NRC 254

LEGAL CITATIONS INDEX

CASES

- (2007); LBP-07-10, 66 NRC 24 (2007); LBP-07-16, 66 NRC 287 (2007); LBP-09-3, 69 NRC 154 (2009); LBP-10-7, 71 NRC 421 (2010)
- Pacific Gas and Electric Co.* (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), LBP-03-11, 58 NRC 47, 66 (2003)
- the manner in which the Staff conducts its review is outside the scope of a proceeding; LBP-10-17, 72 NRC 512 (2010)
- Pacific Gas and Electric Co.* (Stanislaus Nuclear Project, Unit 1), LBP-83-2, 17 NRC 45, 51 (1983)
- the law on withdrawal of an application does not require a determination of whether applicant's decision to withdraw is sound where the applicant's filing was wholly voluntary in the first place; LBP-10-11, 71 NRC 627 (2010)
- Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 327-28, 331-32 (1979)
- the party to be prevented from relitigating an issue must have been a party to the prior action, but the party seeking to prevent relitigation through the application of collateral estoppel need not have been a party; CLI-10-23, 72 NRC 249-50 (2010)
- Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 331 (1979)
- where all factors are met, the application of collateral estoppel by the subsequent tribunal is to some degree a discretionary matter; LBP-09-24, 70 NRC 712 n.59 (2009)
- Pennekamp v. Florida*, 328 U.S. 331, 361 (1946) (Frankfurter, J., concurring)
- Anglo-American jurisprudence has long ensured that judicial proceedings will be open to the public; LBP-10-2, 71 NRC 206 n.54 (2010)
- Pennsylvania Power & Light Co.* (Susquehanna Steam Electric Station, Units 1 and 2), ALAB-641, 13 NRC 550, 552-53 (1981)
- expenses of any kind do not constitute irreparable injury; CLI-09-6, 69 NRC 135 n.25 (2009)
- Pennsylvania Power & Light Co.* (Susquehanna Steam Electric Station, Units 1 and 2), LBP-76-6, 9 NRC 291, 295-96 (1979)
- boards may reformulate contentions to eliminate extraneous issues or to consolidate issues for a more efficient proceeding; LBP-08-11, 67 NRC 482 (2008); LBP-09-4, 69 NRC 222 (2009); LBP-09-10, 70 NRC 121 n.56 (2009); LBP-09-16, 70 NRC 256 (2009); LBP-09-25, 70 NRC 875 n.37 (2009); LBP-10-9, 71 NRC 510 (2010)
- Perma Research & Development Co. v. Singer Co.*, 542 F.2d 111, 125 (2d Cir. 1976) (Van Graafeiland, J., dissenting)
- a computer model is valid only insofar as it enables one to make valid inferences about the real-world system being simulated; LBP-12-23, 72 NRC 704 n.16 (2010)
- Petition for Emergency and Remedial Action*, CLI-78-6, 7 NRC 400, 404 (1978)
- protection of the health and safety of the public is what the NRC's licensing procedure is devoted to ensuring; LBP-07-11, 66 NRC 81 (2007)
- the Commission generally interprets the Atomic Energy Act to require that it must have reasonable assurance that public health and safety are not endangered by its licensing actions; LBP-07-11, 66 NRC 69 (2007)
- Pharmacia & Upjohn Co. v. Mylan Pharmaceuticals, Inc.*, 170 F.3d 1373, 1381 (Fed. Cir. 1999)
- the pendency of an appeal has no effect on the finality or binding effect of a trial court's holding; LBP-09-24, 70 NRC 813 (2009)
- Philadelphia Electric Co.* (Fulton Generating Station, Units 1 and 2), ALAB-657, 14 NRC 967, 979 (1981)
- the prospect of a second lawsuit with its expenses and uncertainties or another application does not provide the requisite quantum of legal harm to warrant dismissal of an application with prejudice; LBP-10-11, 71 NRC 630 (2010)
- Philadelphia Electric Co.* (Limerick Generating Station, Units 1 and 2), ALAB-778, 20 NRC 42, 49 (1984)
- a licensing board erred in holding that it lacked authority to consider contentions based on recent revisions to a license application, but the error was harmless because the intervenor had never submitted any contentions on the revisions; CLI-10-23, 72 NRC 246 n.180 (2010)
- Philadelphia Electric Co.* (Limerick Generating Station, Units 1 and 2), ALAB-785, 20 NRC 848, 878 (1984)
- once an intervenor has been made aware that a missing analysis in an environmental report has been provided, it is incumbent upon the intervenor to take additional action either to seek to review the analysis and/or to amend its contention; CLI-06-10, 63 NRC 480 (2006)

LEGAL CITATIONS INDEX

CASES

- Philadelphia Electric Co.* (Limerick Generating Station, Units 1 and 2), ALAB-819, 22 NRC 681, 705 (1985), review denied, CLI-86-5, 23 NRC 125 (1986), *aff'd in part and denied in part on other grounds*, *Limerick Ecology Action, Inc. v. NRC*, 869 F.2d 719 (3rd Cir. 1989)
amendment of the final environmental impact statement by the adjudicatory hearing record and subsequent licensing board decision is entirely proper under NRC regulations and court precedent; CLI-07-27, 66 NRC 230 n.79 (2007)
- Philadelphia Electric Co.* (Limerick Generating Station, Units 1 and 2), ALAB-819, 22 NRC 681, 705-07 (1985)
the adjudicatory record, the board decision, and any Commission appellate decisions become, in effect, part of the final environmental impact statement; CLI-08-26, 68 NRC 527 n.87 (2008)
- Philadelphia Electric Co.* (Limerick Generating Station, Units 1 and 2), ALAB-819, 22 NRC 681, 711 n.40 (1985)
as guidance reached in a rulemaking following notice and comment, and endorsed by the Commission, the Statement of Considerations is entitled to special weight; CLI-08-3, 67 NRC 166 (2008)
- Philadelphia Electric Co.* (Limerick Generating Station, Units 1 and 2), ALAB-819, 22 NRC 681, 713 (1985)
it is not only the statistical improbability of a severe accident that bears on the determination whether, in a given circumstance, a severe accident should be anticipated and thereby considered in the context of a combined license application; LBP-10-10, 71 NRC 551 n.77 (2010)
- Philadelphia Electric Co.* (Limerick Generating Station, Units 1 and 2), ALAB-823, 22 NRC 773 (1985)
once there has been an appeal or petition to review a board order ruling on intervention petitions, jurisdiction passes to the Commission, including jurisdiction to consider any motion to reopen; CLI-09-5, 69 NRC 120 (2009)
- Philadelphia Electric Co.* (Limerick Generating Station, Units 1 and 2), ALAB-823, 22 NRC 773, 775 (1985)
after a licensing board dismisses a case, it no longer has jurisdiction over the matter; CLI-06-4, 63 NRC 35 (2006)
- Philadelphia Electric Co.* (Limerick Generating Station, Units 1 and 2), ALAB-828, 23 NRC 13, 21 (1986)
intervenor cannot establish good cause for filing a late contention when the information on which the contention is based was publicly available for some time prior to the filing of the contention; CLI-10-27, 72 NRC 496 n.69 (2010)
- Philadelphia Electric Co.* (Limerick Generating Station, Units 1 and 2), ALAB-834, 23 NRC 263, 264 (1986)
movants who seek to reopen the record must proffer a contention that raises a significant safety issue; LBP-08-12, 68 NRC 16 (2008)
- Philadelphia Electric Co.* (Limerick Generating Station, Units 1 and 2), ALAB-836, 23 NRC 479, 494 (1986)
key safety issues must be resolved in the hearing, not post-hearing by the Staff and applicant; LBP-08-25, 68 NRC 829 (2008)
- Philadelphia Electric Co.* (Limerick Generating Station, Units 1 and 2), ALAB-836, 23 NRC 479, 499 (1986)
licensing boards do not undertake review of whether another federal agency has complied with its own regulations; LBP-06-15, 63 NRC 629-30 (2006)
- Philadelphia Electric Co.* (Limerick Generating Station, Units 1 and 2), LBP-82-43A, 15 NRC 1423, 1434 (1982)
an alleged injury to health and safety, shared equally by many, can form the basis for standing; LBP-09-4, 69 NRC 180 (2009); LBP-09-18, 70 NRC 399 (2009)
- Philadelphia Electric Co.* (Limerick Generating Station, Units 1 and 2), LBP-82-43A, 15 NRC 1423, 1467-68 (1982)
Staff is able to adopt the underlying scientific data and inferences from the other agency's analysis without independent review, as long as it exercises independent judgment with respect to conclusions about the environmental impacts of the current proposed agency action; LBP-09-7, 69 NRC 634 (2009)

LEGAL CITATIONS INDEX

CASES

- Philadelphia Electric Co.* (Limerick Generating Station, Units 1 and 2), LBP-82-43A, 15 NRC 1423, 1479, 1483 (1982)
a board may reframe contentions, following a determination of their admissibility, for purposes of clarity, succinctness, and a more efficient proceeding; CLI-06-16, 63 NRC 720 (2006)
- Philadelphia Electric Co.* (Limerick Generating Station, Units 1 and 2), LBP-83-39, 18 NRC 67, 89 (1983)
compliance with quality assurance requirements is an important factor in the licensing decision; LBP-10-9, 71 NRC 508 (2010)
mere recitation of unrelated adverse findings in reports of inspections and audits performed by the Staff and applicant does not supply information on what specifically would be litigated; LBP-10-9, 71 NRC 518 (2010)
- Philadelphia Electric Co.* (Peach Bottom Atomic Power Station, Unit 3), ALAB-532, 9 NRC 279 (1979)
NRC may not undercut EPA by undertaking its own analyses and reaching its own conclusions on water quality issues already decided by EPA; CLI-07-16, 65 NRC 388 (2007)
- Philadelphia Electric Co.* (Peach Bottom Atomic Power Station, Unit 3), ALAB-532, 9 NRC 279, 283 (1979)
NRC abstinence from setting water quality standards is fully consistent with congressional general intent that the Clean Water Act is to be implemented in a way that will avoid needless duplication and unnecessary delays at all levels of government; CLI-07-16, 65 NRC 389 (2007)
- Philadelphia Electric Co.* (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20, *aff'd in part on other grounds*, CLI-74-32, 8 AEC 217 (1974)
adjudication is not the proper forum for challenging applicable statutory requirements or the basic structure of the agency's regulatory process; CLI-09-14, 69 NRC 605 (2009); LBP-07-3, 65 NRC 252 (2007); LBP-07-10, 66 NRC 22 (2007); LBP-08-9, 67 NRC 443 n.135 (2008); LBP-08-13, 68 NRC 64 (2008); LBP-08-16, 68 NRC 384 (2008); LBP-09-3, 69 NRC 152 (2009); LBP-10-7, 71 NRC 419 (2010); LBP-10-21, 72 NRC 651 (2010)
any contention that amounts to an attack on applicable statutory requirements must be rejected by a licensing board as outside the scope of the proceeding; LBP-06-20, 64 NRC 149 (2006); LBP-06-23, 64 NRC 354 (2005); LBP-07-4, 65 NRC 305 (2007); LBP-07-11, 66 NRC 58 (2007)
intervenor are precluded from challenging ASME inspection requirements in a combined license proceeding because NRC regulations directly incorporate ASME inspection requirements by reference; LBP-10-21, 72 NRC 656 (2010)
the purpose of the contention rule is to focus litigation on concrete issues and result in a clearer and more focused record for decision; LBP-07-16, 66 NRC 285 (2007); LBP-08-9, 67 NRC 429 (2008); LBP-08-13, 68 NRC 61 (2008); LBP-08-15, 68 NRC 312 n.77 (2008); LBP-08-26, 68 NRC 915 (2008); LBP-09-26, 70 NRC 952 (2009)
- Philadelphia Electric Co.* (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20-21 (1974)
a contention that attacks applicable statutory requirements or represents a challenge to the basic structure of the Commission's regulatory process must be rejected; LBP-07-16, 66 NRC 289 (2007); LBP-08-9, 67 NRC 431 (2008); LBP-08-13, 68 NRC 64 (2008); LBP-08-26, 68 NRC 916 (2008); LBP-09-26, 70 NRC 956 (2009)
at the contention admissibility stage, applicants must be sufficiently put on notice so that they will know at least generally what they will have to defend against or oppose, and that there has been sufficient foundation assigned to warrant further exploration of the contention; LBP-06-20, 64 NRC 190 (2006)
- Philadelphia Electric Co.* (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20-21 (1974), *rev'd in part*, CLI-74-32, 8 AEC 217 (1974), *rev'd in part*, *York Committee for a Safe Environment v. NRC*, 527 F.2d 812 (D.C. Cir. 1975)
threshold admissibility requirements for contentions should not be turned into a fortress to deny intervention; CLI-07-18, 65 NRC 414 (2007)
- Philadelphia Electric Co.* (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20-21 & n.33 (1974)
contentions that attack applicable statutory requirements, challenge the basic structure of the NRC's regulatory process, or merely express generalized policy grievances are not appropriate for a licensing board hearing; LBP-09-18, 70 NRC 403 (2009)

LEGAL CITATIONS INDEX

CASES

- Philadelphia Electric Co.* (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20-21 & n.33, *aff'd in part on other grounds*, CLI-74-32, 8 AEC 217 (1974)
a contention that simply states the petitioner's views about what regulatory policy should be does not present a litigable issue; CLI-07-25, 66 NRC 106 (2007); LBP-07-3, 65 NRC 253 (2007); LBP-07-10, 66 NRC 23 (2007); LBP-09-3, 69 NRC 153 (2009); LBP-10-7, 71 NRC 420 (2010); LBP-10-21, 72 NRC 651-52 (2010)
Commission regulations are not open to challenge in NRC adjudicatory proceedings; LBP-07-5, 65 NRC 361 (2007)
contentions that attack applicable statutory requirements, challenge the basic structure of the NRC's regulatory process, or merely express generalized policy grievances are not appropriate for a licensing board hearing; LBP-08-16, 68 NRC 384 (2008); LBP-08-17, 68 NRC 440 (2008); LBP-09-6, 69 NRC 390 (2009)
- Philadelphia Electric Co.* (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 21 (1974)
the contention requirements were never intended to be turned into a fortress to deny intervention; LBP-06-10, 63 NRC 380 n.52 (2006); LBP-09-6, 69 NRC 453 (2009); LBP-09-21, 70 NRC 602 n.94 (2009)
- Philadelphia Electric Co.* (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 21 n.33 (1974)
NRC's adjudicatory process is not the proper venue for the evaluation of a petitioner's own view regarding the direction that regulatory policy should take; LBP-07-16, 66 NRC 289 (2007); LBP-08-9, 67 NRC 431 (2008); LBP-08-26, 68 NRC 916 (2008); LBP-09-26, 70 NRC 956, 981 (2009)
- Phillips v. Cohen*, 400 F.3d 388, 399 (6th Cir. 2005)
when conflicting expert opinions are involved, summary disposition is rarely appropriate; CLI-06-5, 63 NRC 122 (2006)
- Piedmont Heights Civil Club, Inc. v. Moreland*, 637 F.2d 430, 436 (5th Cir. 1981)
NEPA requires consideration only of feasible, nonspeculative alternatives; LBP-10-10, 71 NRC 604 n.4 (2010)
- Pit River Tribe v. United States Forest Service*, 469 F.3d 768, 787 (9th Cir. 2006)
historic properties of religious and cultural significance are frequently located on ancestral, aboriginal, or ceded lands of Indian tribes, and federal agencies should consider that when complying with the procedures in 10 C.F.R. Part 800; LBP-08-24, 68 NRC 722 n.161 (2008)
- Pittsburgh & West Virginia Railway Co. v. United States*, 281 U.S. 479, 486 (1930)
because federal agencies are neither constrained by Article III nor governed by judicially created standing doctrines, the criteria for establishing administrative standing therefore may permissibly be less demanding than the criteria for judicial standing; LBP-08-24, 68 NRC 702 n.32 (2008)
- Playboy Enterprises, Inc. v. Department of Justice*, 677 F.2d 931, 935 (D.C. Cir. 1982)
opinion-containing analyses and conclusions are uniformly considered deliberative; LBP-06-25, 64 NRC 389 (2006)
summaries of factual information are covered by deliberative process privilege when they were written only to aid a superior in making a decision; LBP-06-25, 64 NRC 389 (2006)
- Playboy Enterprises, Inc. v. Department of Justice*, 677 F.2d 931, 936 (D.C. Cir. 1982)
summaries of factual information are not covered by deliberative process privilege when they were written only to inform or to prepare an official before a public appearance or briefing; LBP-06-25, 64 NRC 382 n.58 (2006)
- Playboy Enterprises, Inc. v. Department of Justice*, 677 F.2d 931, 937 (D.C. Cir. 1982)
conclusions, recommendations, opinions, or advice may properly be withheld from public disclosure; LBP-06-25, 64 NRC 381 (2006)
- Pollard v. Federal Bureau of Investigation*, 705 F.2d 1151, 1154-55 (9th Cir. 1983)
a relatively detailed index or affidavit should provide a sufficient basis for a decision as to the bases for withholding enumerated source documents; CLI-08-1, 67 NRC 25 n.118 (2008)

LEGAL CITATIONS INDEX

CASES

- Poller v. Columbia Broadcasting System, Inc.*, 368 U.S. 464, 467 (1962)
summary disposition may be a useful device to eliminate the need for the time and cost of a hearing if the truth on a contested issue is clear and there is no genuine issue on any material fact; LBP-07-12, 66 NRC 127 (2007)
summary disposition may be granted only if the truth is clear; CLI-06-5, 63 NRC 121 (2006); LBP-10-20, 72 NRC 579 (2010)
- Port Authority of the State of New York* (James A. FitzPatrick Nuclear Power Plant; Indian Point, Unit 3), CLI-00-22, 52 NRC 266, 292 (2000)
an intervention petitioner must also raise at least one admissible contention; CLI-07-18, 65 NRC 408 (2007)
applicants are directed to provide petitioners with access to the unredacted version of the license transfer application pursuant to a confidentiality agreement; CLI-07-18, 65 NRC 415 n.53 (2007)
- Port Authority of the State of New York* (James A. FitzPatrick Nuclear Power Plant; Indian Point, Unit 3), CLI-00-22, 52 NRC 266, 293 (2000)
any organization seeking representational standing must also show that at least one of its members may be affected by the Commission's approval of the transfer, must identify that member, and must demonstrate that the member has (preferably by affidavit) authorized the organization to represent him or her and to request a hearing on his or her behalf; CLI-07-18, 65 NRC 409 (2007)
to demonstrate standing in a license transfer proceeding, the petitioner must identify an interest in the proceeding and specify the facts pertaining to that interest; CLI-07-18, 65 NRC 409 (2007)
- Port Authority of the State of New York* (James A. FitzPatrick Nuclear Power Plant; Indian Point, Unit 3), CLI-00-22, 52 NRC 266, 295 (2000)
contentions must meet five admissibility standards in license transfer proceedings; CLI-07-18, 65 NRC 414 (2007)
NRC pleading standards do not allow for mere notice pleading, or the filing of general, vague, or unsupported claims to be elaborated on at some later time; CLI-07-18, 65 NRC 414 (2007); CLI-09-5, 69 NRC 120 n.21 (2009)
threshold admissibility requirements for contentions should not be turned into a fortress to deny intervention; CLI-07-18, 65 NRC 414 (2007)
- Port Authority of the State of New York* (James A. FitzPatrick Nuclear Power Plant; Indian Point, Unit 3), CLI-00-22, 52 NRC 266, 296-319 (2000)
the Commission may decide the admissibility of late-filed contentions based on previously unavailable information or defer ruling on them, considering the need for access to redacted information and other relevant factors; CLI-07-18, 65 NRC 414 n.46 (2007)
- Port Authority of the State of New York* (James A. FitzPatrick Nuclear Power Plant; Indian Point, Unit 3), CLI-00-22, 52 NRC 266, 300 (2000)
following release of sensitive information, petitioners must file revised contentions within 20 days; CLI-07-18, 65 NRC 416 (2007)
- Port Authority of the State of New York* (James A. FitzPatrick Nuclear Power Plant; Indian Point, Unit 3), CLI-00-22, 52 NRC 266, 300 n.23 (2000)
when critical information has been submitted to the NRC under a claim of confidentiality and was not available to petitioners when framing their issues, it is appropriate to defer ruling on the admissibility of an issue until the petitioner has had an opportunity to review this information and submit a properly documented issue; CLI-07-18, 65 NRC 413 n.46 (2007)
- Porter County Chapter of the Izaak Walton League of America, Inc. v. NRC*, 606 F.2d 1363, 1370 (D.C. Cir. 1979)
administrative regularity in the regulatory process is assumed, and review of the operating license application takes place independently of that associated with plant construction; CLI-10-29, 72 NRC 562 (2010)
- Portland Cement Association v. Ruckelshaus*, 486 F.2d 375, 394 (D.C. Cir. 1973), *cert. denied sub nom.*
Portland Cement Corp. v. Administrator, Environmental Protection Agency, 417 U.S. 921 (1974)
intervenors' comments must be significant enough to step over a threshold requirement of materiality, not merely state that a particular mistake was made, but show why the mistake was of possible significance; LBP-10-10, 71 NRC 583 (2010)

LEGAL CITATIONS INDEX

CASES

- “materiality” requires that petitioner show why the alleged error or omission is of possible significance to the result of the proceeding; LBP-08-13, 68 NRC 62 (2008); LBP-09-26, 70 NRC 953 (2009); LBP-10-6, 71 NRC 360 (2010)
- Portland General Electric Co.* (Pebble Springs Nuclear Plant, Units 1 and 2), ALAB-333, 3 NRC 804, 806 n.6 (1976)
- intervenor may not act as private attorneys-general and raise issues that are of concern to them but do not affect them directly; CLI-07-18, 65 NRC 411 (2007)
- Portland General Electric Co.* (Pebble Springs Nuclear Plant, Units 1 and 2), ALAB-362, 4 NRC 627, 629 (1976)
- only eight petitions for discretionary intervention have ever been granted during the 30 years NRC has applied the current six-factor test; CLI-06-16, 63 NRC 717 (2006)
- Portland General Electric Co.* (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 612 (1976)
- NRC applies traditional judicial concepts of standing when determining whether a petitioner has set forth a sufficient interest to intervene; LBP-06-4, 63 NRC 103 (2006); LBP-07-14, 66 NRC 182 (2007)
- Portland General Electric Co.* (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 613 (1976)
- standing requirements in the federal courts need not be the exclusive model for those applicable to administrative proceedings; CLI-08-19, 68 NRC 265 (2008)
- Portland General Electric Co.* (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 613-14 (1976)
- although Article III of the Constitution does not constrain the NRC hearing process, and NRC hearings therefore are not governed by judicially created standing doctrine, the Commission nonetheless has generally looked to judicial concepts of standing where appropriate to determine those interests affected within the meaning of section 189a of the Atomic Energy Act; LBP-09-1, 69 NRC 25 n.54 (2009)
- in assessing whether petitioner has standing, NRC has long applied contemporaneous judicial concepts of standing; CLI-09-20, 70 NRC 915 (2009); LBP-09-13, 70 NRC 175 (2009); LBP-10-16, 72 NRC 380 (2010)
- in determining whether a petitioner has alleged an interest that may be affected by the proceeding within the meaning of section 189a of the Atomic Energy Act and then-existing section 2.714(a) of NRC’s Rules of Practice, contemporaneous judicial concepts of standing should be used, including those regarding the zone-of-interests test; LBP-09-1, 69 NRC 17 (2009)
- Portland General Electric Co.* (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 614 (1976)
- economic impact of a proposed action on ratepayers is outside the scope of a NEPA analysis; LBP-10-14, 72 NRC 126 (2010)
- the source of the practice in NRC proceedings of referring to judicial standing concepts is a 1976 Commission decision in which it affirmed the Appeal Board’s determination that petitioners in the case did not meet the judicial standing test; LBP-09-1, 69 NRC 17 (2009)
- Portland General Electric Co.* (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 614-15 (1976)
- federal courts have long recognized the right of agencies to tailor their own standing requirements to fit their specific needs; CLI-08-19, 68 NRC 265 (2008)
- Portland General Electric Co.* (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 614-17 (1976)
- intervention can be allowed as a matter of discretion; LBP-07-10, 66 NRC 16 (2007)
- only eight petitions for discretionary intervention have ever been granted during the 30 years NRC has applied the current six-factor test; CLI-06-16, 63 NRC 717 (2006)
- Portland General Electric Co.* (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 616 (1976)
- because NRC resolves discretionary intervention motions largely on their facts, NRC legal precedent is less helpful than on most other adjudicatory issues; CLI-06-16, 63 NRC 717 (2006)

LEGAL CITATIONS INDEX

CASES

- in exercising their discretion to provide hearings or permit interventions, presiding officers and licensing boards traditionally consider the six factors; CLI-06-16, 63 NRC 716 (2006)
- Portland General Electric Co.* (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 617 (1976)
- in balancing the six factors for discretionary hearing, assistance in developing a sound record is the most important; CLI-06-16, 63 NRC 716 (2006)
- permission to intervene should prove more readily available where petitioners show significant ability to contribute on substantial issues of law or fact that will not otherwise be properly raised or presented; LBP-10-11, 71 NRC 644 n.148 (2010)
- the practice of granting or denying discretionary intervention should develop not through precedent, but through attention to the concrete facts of particular situations; CLI-06-16, 63 NRC 717 (2006)
- the relevant record includes legal issues and necessarily legal arguments; LBP-10-11, 71 NRC 644 n.148 (2010)
- Portland General Electric Co.* (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 629 (1976)
- the Appeal Board has taken the unusual step of declaring that the grant of discretionary intervention carries no precedential weight; CLI-06-16, 63 NRC 717 (2006)
- Portland General Electric Co.* (Trojan Nuclear Plant), ALAB-534, 9 NRC 287, 289 n.6 (1979)
- any contention that falls outside the specified scope of the proceeding must be rejected; LBP-07-3, 65 NRC 253 (2007); LBP-07-10, 66 NRC 23 (2007); LBP-07-16, 66 NRC 286 (2007); LBP-09-3, 69 NRC 153 (2009); LBP-10-7, 71 NRC 420 (2010)
- Portland General Electric Co.* (Trojan Nuclear Plant), ALAB-534, 9 NRC 287, 289-90 n.6 (1979)
- any contention that falls outside the specified scope of the proceeding is inadmissible; LBP-08-9, 67 NRC 431 (2008); LBP-08-13, 68 NRC 62 (2008); LBP-08-15, 68 NRC 314 (2008); LBP-08-16, 68 NRC 384 (2008); LBP-08-26, 68 NRC 916 (2008); LBP-09-26, 70 NRC 953 (2009); LBP-10-17, 72 NRC 511 (2010)
- Porto Rico Railway, Light & Power Co. v. Mor*, 253 U.S. 345, 348 (1920)
- because the regulatory words “source, byproduct, [and] special nuclear materials” in 10 C.F.R. 20.1003 are followed by a clause that is applicable as much to the first and other words as to the last, the natural construction of the language demands that the clause be read as applicable to all; LBP-06-1, 63 NRC 58 (2006)
- Potomac Alliance v. NRC*, 682 F.2d 1030, 1036-37 (D.C. Cir. 1982)
- petitioner contends that NRC’s assertion that the risk of an attack is not quantifiable does not preclude further consideration under the National Environmental Policy Act; LBP-08-13, 68 NRC 214 (2008)
- Potomac Electric Power Co.* (Douglas Point Nuclear Generating Station, Units 1 and 2), ALAB-218, 8 AEC 79, 85 (1974)
- contentions that attack a Commission rule, or seek to litigate a matter that is, or clearly is about to become, the subject of a rulemaking, are inadmissible; CLI-10-9, 71 NRC 273 (2010); LBP-09-18, 70 NRC 403 (2009); LBP-09-26, 70 NRC 978 (2009)
- licensing boards should not accept in individual license proceedings contentions that are (or are about to become) the subject of general rulemaking by the Commission; CLI-10-19, 72 NRC 100 (2010); LBP-06-7, 63 NRC 203 (2006); LBP-06-23, 64 NRC 312 n.255 (2006)
- Potomac Electric Power Co.* (Douglas Point Nuclear Generating Station, Units 1 and 2), ALAB-218, 8 AEC 79, 85, 89 (1974)
- a contention that attacks a Commission rule, or that seeks to litigate a matter that is, or clearly is about to become, the subject of a rulemaking, is inadmissible; LBP-07-3, 65 NRC 252 (2007); LBP-07-10, 66 NRC 22 (2007); LBP-08-16, 68 NRC 383 (2008); LBP-09-2, 69 NRC 97 n.37 (2009); LBP-09-3, 69 NRC 152 (2009); LBP-09-8, 69 NRC 739 n.13 (2009); LBP-10-7, 71 NRC 419 (2010); LBP-10-21, 72 NRC 651 (2010)
- Power Authority of the State of New York* (James A. FitzPatrick Nuclear Power Plant; Indian Point, Unit 3), CLI-00-22, 52 NRC 266, 286 n.1 (2000)
- license transfer applicants who have received Staff approval but are still awaiting the results of a Commission adjudication are free to act in reliance on the Staff’s order but do so at their peril in the event that the Commission later determines that intervenors have raised valid objections to the license transfer application; CLI-08-19, 68 NRC 257 (2008)

LEGAL CITATIONS INDEX

CASES

- Power Authority of the State of New York* (James A. FitzPatrick Nuclear Power Plant; Indian Point, Unit 3), CLI-00-22, 52 NRC 266, 293 (2000)
any organization seeking representational standing must show that at least one of its members may be affected by the Commission's approval of the transfer, must identify that member by name, and must demonstrate that the member has authorized the organization to represent him or her and to request a hearing on his or her behalf; CLI-08-19, 68 NRC 259 (2008)
petitioners in direct license transfer cases who qualified for proximity-based standing lived within a 5-1/2-mile radius of their plant; CLI-08-19, 68 NRC 269 (2008)
to demonstrate standing, petitioner must identify an interest in the proceeding and specify the facts pertaining to that interest; CLI-08-19, 68 NRC 258 (2008)
- Power Authority of the State of New York* (James A. FitzPatrick Nuclear Power Plant; Indian Point, Unit 3), CLI-00-22, 52 NRC 266, 293-94 (2000)
the principle regarding the representational standing of unions is also applicable to public interest groups, who also, in significant part, exist to represent the interests of their members; CLI-08-19, 68 NRC 265 n.48 (2008)
- Power Authority of the State of New York* (James A. FitzPatrick Nuclear Power Plant; Indian Point, Unit 3), CLI-00-22, 52 NRC 266, 294 (2000)
requirements for representational standing apply to labor unions; CLI-08-19, 68 NRC 263 (2008)
- Power Authority of the State of New York* (James A. Fitzpatrick Nuclear Power Plant; Indian Point, Unit 3), CLI-00-22, 52 NRC 266, 296 (2000)
unlike federal court practice, the Commission does not accept mere notice pleading in support of an admissible contention; LBP-08-24, 68 NRC 730 (2008)
- Power Authority of the State of New York* (James A. FitzPatrick Nuclear Power Plant; Indian Point, Unit 3), CLI-00-22, 52 NRC 266, 314, 316 (2000)
although the Commission is disinclined to step into the middle of a labor dispute or involve itself in the personnel decisions of licensees, it has recognized that there may be cases where employment-related contentions are closely tied to specific health-and-safety concerns or to potential violations of NRC rules that can be admitted for a hearing; CLI-06-21, 64 NRC 34 (2006)
- Power Authority of the State of New York* (James A. FitzPatrick Nuclear Power Plant; Indian Point, Unit 3), CLI-00-22, 52 NRC 266, 315 (2000)
general assertions, unsupported by specific facts or expert opinion, that personnel reductions may adversely affect health and safety are inadmissible in a license transfer proceeding; CLI-06-21, 64 NRC 34 (2006)
- Power Authority of the State of New York* (James A. FitzPatrick Nuclear Power Plant; Indian Point, Unit 3), CLI-01-14, 53 NRC 488, 508 (2001)
license transfer applicants who have received Staff approval but are still awaiting the results of a Commission adjudication are free to act in reliance on the Staff's order but do so at their peril in the event that the Commission later determines that intervenors have raised valid objections to the license transfer application; CLI-08-19, 68 NRC 257 (2008)
- Power Authority of the State of New York* (James A. FitzPatrick Nuclear Power Plant; Indian Point, Unit 3), LBP-00-34, 52 NRC 361, 363 (2000)
withdrawal of a party from a proceeding results in the removal of the withdrawing party's contentions from litigation; LBP-06-18, 63 NRC 840 (2006)
- Power Reactor Development Co. v. International Union of Electrical, Radio and Machine Workers*, AFL-CIO, 367 U.S. 396, 402 (1961)
the Commission generally interprets the Atomic Energy Act to require that it must have reasonable assurance that public health and safety are not endangered by its licensing actions; LBP-07-11, 66 NRC 69 (2007)
- Power Reactor Development Co. v. International Union of Electrical, Radio and Machine Workers*, AFL-CIO, 367 U.S. 396, 407 (1961)
perfection in plant construction and the facility construction quality assurance program is not a precondition for a license, but rather what is required is reasonable assurance that the plant, as built, can and will be operated without endangering the public health and safety; LBP-10-9, 71 NRC 519 (2010)

LEGAL CITATIONS INDEX

CASES

- Power Reactor Development Co. v. International Union of Electrical, Radio and Machine Workers*,
AFL-CIO, 367 U.S. 396, 414 (1961)
neither the Atomic Energy Act nor the regulations require totally risk-free siting; LBP-08-22, 68 NRC
647 (2008)
“reasonable assurance” should not require a “compelling reasons” standard; LBP-08-22, 68 NRC 647
(2008)
- Power Reactor Development Co. v. International Union of Electrical, Radio and Machine Workers*,
AFL-CIO, 367 U.S. 396, 415-16 (1961)
administrative regularity in the regulatory process is assumed, and review of the operating license
application takes place independently of that associated with plant construction; CLI-10-29, 72 NRC
562 (2010)
- Powertech (USA), Inc.* (Dewey-Burdock In Situ Uranium Recovery Facility), LBP-10-16, 72 NRC 361, 398
(2010)
in the case of unexplained material submitted in support of a contention, the board declines to hunt
for information that the agency’s procedural rules require be explicitly identified and fully explained;
LBP-10-21, 72 NRC 647 (2010)
- PPL Bell Bend, LLC* (Bell Bend Nuclear Power Plant), CLI-10-7, 71 NRC 133 (2010)
replies should be narrowly focused on the legal or logical arguments presented in the answers on a
request for hearing/petition to intervene; LBP-10-9, 71 NRC 515 n.100 (2010)
- PPL Bell Bend, LLC* (Bell Bend Nuclear Power Plant), CLI-10-7, 71 NRC 133, 138 (2010)
a proximity presumption applies when an individual or organization, or an individual authorizing an
organization to represent his or her interests resides within 50 miles of the proposed facility or has
frequent contacts with the area affected by the proposed facility; LBP-10-7, 71 NRC 410-11 (2010)
because petitioner’s circumstances may change from one proceeding to the next, it is important that
the presiding officer have up-to-date information regarding any standing claims; LBP-10-21, 72 NRC
641 (2010)
in proceedings involving construction permits and operating licenses for nuclear power plants, the
Commission recognizes a proximity presumption in favor of standing for petitioners who reside or
have frequent contacts within a 50-mile radius of a nuclear power plant; LBP-10-1, 71 NRC 176
(2010); LBP-10-4, 71 NRC 229 (2010); LBP-10-7, 71 NRC 410 (2010)
it is generally insufficient to seek to establish standing in a proceeding by merely cross-referencing the
showing made in another proceeding, rather than making a new presentation or at least providing a
submission that updates the factual information that was provided previously; LBP-10-21, 72 NRC
641 (2010)
petitioner must make a fresh standing demonstration in each individual proceeding in which
intervention is sought; LBP-10-21, 72 NRC 640 (2010)
the Commission generally defers to a board’s rulings on standing in the absence of clear error or an
abuse of discretion; CLI-10-20, 72 NRC 188 (2010)
- PPL Bell Bend, LLC* (Bell Bend Nuclear Power Plant), CLI-10-7, 71 NRC 133, 139 (2010)
although boards should afford greater latitude to a pleading submitted by a pro se petitioner, that
petitioner ultimately bears the burden to provide facts sufficient to show standing; CLI-10-20, 72
NRC 189 (2010)
in proceedings where petitioner’s factual assertions in support of standing are challenged, untenable,
conjectural, or conclusory, a board may be required to weigh the information and exercise judgment
to determine if a standing element has been satisfied; LBP-10-4, 71 NRC 230 n.14 (2010)
petitioner bears the burden to provide facts sufficient to establish standing; LBP-10-4, 71 NRC 229,
238-39 n.24 (2010)
petitioner’s lack of specificity concerning the nature, extent, and duration of his contacts with the area
surrounding the proposed site is sufficient basis to reject a claim of standing; LBP-10-1, 71 NRC
179 (2010)
the degree to which petitioner’s activities are sufficient to afford standing in a reactor licensing
proceeding, as a question that will require the board to weigh the information provided, is a matter
that benefits from more, rather than less, factual information; LBP-10-1, 71 NRC 179 n.5 (2010)

LEGAL CITATIONS INDEX

CASES

- to establish proximity-based standing, it is petitioner's responsibility to provide enough detail to allow the board to distinguish a casual interest from a substantial one; LBP-10-1, 71 NRC 177 (2010); LBP-10-7, 71 NRC 411 (2010)
- PPL Bell Bend, LLC* (Bell Bend Nuclear Power Plant), CLI-10-7, 71 NRC 133, 139-40 (2010)
petitioner's standing showing can be corrected or supplemented to cure deficiencies by means of its reply pleading; LBP-10-21, 72 NRC 640 (2010)
- PPL Bell Bend, LLC* (Bell Bend Nuclear Power Plant), CLI-10-7, 71 NRC 133, 140 (2010)
petitioner must show a pattern of regular, significant contacts within the vicinity of the site to satisfy standing requirements; LBP-10-4, 71 NRC 236 (2010)
petitioner's claim that he routinely pierces the 50-mile radius around a reactor site is too vague to support standing; LBP-10-1, 71 NRC 179 (2010)
- PPL Bell Bend, LLC* (Bell Bend Nuclear Power Plant), LBP-09-18, 70 NRC 385, 402 (2009), *aff'd*, CLI-10-7, 71 NRC 133, 139 (2010)
proximity-based standing is denied when petitioner fails to supply more specific information regarding the frequency, nature, and length of his contacts within the proximity zone; LBP-10-1, 71 NRC 176 (2010)
- PPL Bell Bend, LLC* (Bell Bend Nuclear Power Plant), LBP-09-18, 70 NRC 385, 408-11 (2009)
applicant's COLA discussion of LLRW management contained no omission where the applicant addressed the closure of the Barnwell LLRW disposal facility, discussed in detail additional waste minimization measures, and committed to build an additional storage facility in accordance with NRC guidelines if further additional storage became necessary; LBP-10-20, 72 NRC 614 (2010)
- PPL Bell Bend, LLC* (Bell Bend Nuclear Power Plant), LBP-09-18, 70 NRC 385, 410-11 (2009)
low-level radioactive waste contentions were not admissible because of technical defects in the pleadings such as failure to satisfy 10 C.F.R. 2.309(f)(1)(vi), (i), or (ii); LBP-10-20, 72 NRC 600 n.34 (2010)
- PPL Bell Bend, LLC* (Bell Bend Nuclear Power Plant), LBP-09-18, 70 NRC 385, 411 (2009)
where applicant provided a plan for storage of low-level radioactive waste, there is no litigable issue; LBP-09-27, 70 NRC 1015-16 (2009)
- PPL Bell Bend, LLC* (Bell Bend Nuclear Power Plant), LBP-09-18, 70 NRC 385, 411, 424 (2009)
regulations do not dictate the duration of onsite low-level radioactive waste storage capacity; LBP-10-20, 72 NRC 600 n.34 (2010)
- PPL Bell Bend, LLC* (Bell Bend Nuclear Power Plant), LBP-09-18, 70 NRC 385, 431 (2009)
the scope of an adjudicatory proceeding is specified by the notice of hearing; LBP-09-25, 70 NRC 889 (2009)
- PPL Susquehanna LLC* (Susquehanna Steam Electric Station, Units 1 and 2), CLI-07-25, 66 NRC 101 (2007)
although petitioner had shown sufficient business contacts within close proximity to the plant to demonstrate standing, his intervention petition was rejected for failure to propose an admissible contention; CLI-10-7, 71 NRC 135 (2010)
- PPL Susquehanna LLC* (Susquehanna Steam Electric Station, Units 1 and 2), CLI-07-25, 66 NRC 101, 104 (2007)
an appeal that merely recites earlier arguments without explaining how they demonstrate legal error or abuse of discretion on the board's part does not satisfy NRC pleading standards; CLI-10-21, 72 NRC 200 n.14 (2010)
on appeal, the Commission defers to the board's determinations on the admissibility of contentions unless it finds an error of law or abuse of discretion; CLI-08-17, 68 NRC 234 (2008); CLI-09-8, 69 NRC 324 (2009); CLI-09-9, 69 NRC 336 (2009); CLI-09-12, 69 NRC 543 (2009)
the board's judgment at the pleading stage is accorded substantial deference; CLI-09-5, 69 NRC 119 (2009)
- PPL Susquehanna LLC* (Susquehanna Steam Electric Station, Units 1 and 2), CLI-07-25, 66 NRC 101, 106 (2007)
a contention that simply states petitioner's views about what regulatory policy should be does not present a litigable issue; LBP-08-16, 68 NRC 384 (2008)

LEGAL CITATIONS INDEX

CASES

- PPL Susquehanna LLC* (Susquehanna Steam Electric Station, Units 1 and 2), CLI-07-25, 66 NRC 101, 106 n.26 (2007)
petitioners may not raise entirely new arguments in a reply brief unless the standards for late-filed contentions are met; CLI-09-7, 69 NRC 276 (2009)
- PPL Susquehanna LLC* (Susquehanna Steam Electric Station, Units 1 and 2), CLI-07-25, 66 NRC 101, 107 (2007)
whether other permits may be required from other agencies is outside the scope of NRC proceedings, and those concerns are properly raised before those respective permitting authorities; LBP-09-21, 70 NRC 594 (2009)
- PPL Susquehanna LLC* (Susquehanna Steam Electric Station, Units 1 and 2), LBP-07-4, 65 NRC 281, 293-96 (2007)
although petitioner had shown sufficient business contacts within close proximity to the plant to demonstrate standing, his intervention petition was rejected for failure to propose an admissible contention; CLI-10-7, 71 NRC 135 (2010)
- PPL Susquehanna LLC* (Susquehanna Steam Electric Station, Units 1 and 2), LBP-07-4, 65 NRC 281, 296 (2007)
a significant pattern of regular contacts within the 50-mile radius around the plant is sufficient to establish proximity-based standing; LBP-09-18, 70 NRC 401 (2009)
- PPL Susquehanna LLC* (Susquehanna Steam Electric Station, Units 1 and 2), LBP-07-4, 65 NRC 281, 302 (2007)
it is appropriate for a board to take into account any information from a reply that legitimately amplifies issues presented in the original petition; LBP-08-26, 68 NRC 919 (2008)
it is proper for a reply to respond to the legal, logical, and factual arguments presented in answers, as long as new issues are not raised; LBP-08-26, 68 NRC 919 (2008)
- PPL Susquehanna LLC* (Susquehanna Steam Electric Station, Units 1 and 2), LBP-07-4, 65 NRC 281, 302-12 (2007)
a detailed summary of relevant case law on contention admissibility is provided; LBP-09-17, 70 NRC 324 (2009)
to intervene in a proceeding, a petitioner must, in addition to demonstrating standing, submit at least one contention meeting the requirements of 10 C.F.R. 2.309(f)(1); LBP-07-11, 66 NRC 55 (2007); LBP-08-6, 67 NRC 289 (2008)
- PPL Susquehanna LLC* (Susquehanna Steam Electric Station, Units 1 and 2), LBP-07-10, 66 NRC 1, 9 (2007)
intervention petitioner must show an obvious potential for offsite consequences from the requested action that would justify recognizing any proximity presumption, much less one extending over 100 miles from the plant site; LBP-08-18, 68 NRC 537 (2008)
petitioner must show a plausible chain of events that would result in offsite radiological consequences posing a distinct new harm or threat from a purely administrative license amendment; LBP-08-18, 68 NRC 537 (2008)
- PPL Susquehanna LLC* (Susquehanna Steam Electric Station, Units 1 and 2), LBP-07-10, 66 NRC 1, 9-10 (2007)
contentions that fail to satisfy the pleading requirements of 10 C.F.R. 2.309(f)(1) are inadmissible; LBP-08-18, 68 NRC 538 (2008)
- PPL Susquehanna LLC* (Susquehanna Steam Electric Station, Units 1 and 2), LBP-07-10, 66 NRC 1, 14 (2007)
the proximity presumption extends to petitioners living in or having frequent contacts with an area within a 50-mile radius of a nuclear reactor; LBP-08-18, 68 NRC 539 (2008)
- PPL Susquehanna LLC* (Susquehanna Steam Electric Station, Units 1 and 2), LBP-07-10, 66 NRC 1, 14-15 (2007)
licensing boards have used a proximity presumption when resolving issues of standing for cases involving reactor licensing; LBP-08-14, 68 NRC 290 (2008)

LEGAL CITATIONS INDEX

CASES

- PPL Susquehanna LLC* (Susquehanna Steam Electric Station, Units 1 and 2), LBP-07-10, 66 NRC 1, 15 (2007)
petitioner's vague assertion that harm could result from operations at a nuclear power plant and failure to demonstrate that such injury would result from the challenged license amendment are insufficient to establish standing; LBP-08-18, 68 NRC 537 (2008)
- PPL Susquehanna LLC* (Susquehanna Steam Electric Station, Units 1 and 2), LBP-07-10, 66 NRC 1, 17 (2007)
although petitioner had shown sufficient business contacts within close proximity to the plant to demonstrate standing, his intervention petition was rejected for failure to propose an admissible contention; CLI-10-7, 71 NRC 135 (2010)
- PPL Susquehanna LLC* (Susquehanna Steam Electric Station, Units 1 and 2), LBP-07-10, 66 NRC 1, 18 (2007)
in an uprate proceeding, demonstrating proximity-based standing requires a determination that the proposed action involves a significant source of radioactivity producing an obvious potential for offsite consequences; LBP-08-9, 67 NRC 427, 428 (2008)
- PPL Susquehanna LLC* (Susquehanna Steam Electric Station, Units 1 and 2), LBP-07-10, 66 NRC 1, 19 (2007)
a standing ruling in one proceeding is not dispositive of a determination in another proceeding with the same petitioner because the ruling was not the subject of appellate review; LBP-09-18, 70 NRC 401 (2009)
the process of sifting and weighing participants' factual proffers often calls upon a board to make difficult choices, so that a petitioner who fails to provide specific information regarding the geographic proximity or the timing and duration of its visits only complicates matters for itself; CLI-10-7, 71 NRC 140 n.33 (2010); LBP-09-18, 70 NRC 401-02 (2009)
- PPL Susquehanna LLC* (Susquehanna Steam Electric Station, Units 1 and 2), LBP-07-10, 66 NRC 1, 19 n.9 (2007)
a petitioner awarded standing in one proceeding need not restate all of its case to establish standing in another proceeding related to the same facility; LBP-07-14, 66 NRC 189 (2007)
the better practice for a petitioner is to submit a fully developed showing regarding standing in each proceeding in which it seeks to intervene, regardless of whether it has previously been found to have standing relative to the facility that is the locus of the proceedings; LBP-07-14, 66 NRC 189 n.57 (2007); LBP-08-24, 68 NRC 703 (2008); LBP-09-18, 70 NRC 401 (2009)
- PPL Susquehanna LLC* (Susquehanna Steam Electric Station, Units 1 and 2), LBP-07-10, 66 NRC 1, 20 n.11, *appeal denied*, CLI-07-25, 66 NRC 101 (2007)
relative to individuals who provided affidavits in support of an organization's representational standing, the board used Google Earth to confirm the distance from the proposed reactor of the individual purportedly residing nearest to the facility; LBP-09-3, 69 NRC 150 n.3 (2009)
- PPL Susquehanna LLC* (Susquehanna Steam Electric Station, Units 1 and 2), LBP-07-10, 66 NRC 1, 21 (2007)
a significant pattern of regular contacts within the 50-mile radius around the plant is sufficient to establish proximity-based standing; LBP-09-18, 70 NRC 401 (2009)
- PPL Susquehanna LLC* (Susquehanna Steam Electric Station, Units 1 and 2), LBP-07-10, 66 NRC 1, 21 n.13 (2007)
in seeking to establish standing in a licensing adjudication based on regular activities within a proximity zone, petitioner is best served by accurately delineating in as much detail as practicable the particulars associated with the proximity, timing, and duration of those activities; LBP-09-18, 70 NRC 402 n.88 (2009)
- PPL Susquehanna LLC* (Susquehanna Steam Electric Station, Units 1 and 2), LBP-07-10, 66 NRC 1, 23 (2007)
a board's authority to recast contentions is circumscribed in that it may not, on its own initiative, provide basic, threshold information required for contention admissibility; LBP-08-11, 67 NRC 482 (2008)
a licensing board is not free to supply missing information or draw factual inferences on the petitioner's behalf; CLI-09-7, 69 NRC 260 n.132 (2009)

LEGAL CITATIONS INDEX

CASES

- PPL Susquehanna LLC* (Susquehanna Steam Electric Station, Units 1 and 2), LBP-07-10, 66 NRC 1, 24 (2007)
a contention should be dismissed if it does not directly controvert a position taken by the applicant in the license application; LBP-09-27, 70 NRC 1016 (2009)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-98-7, 47 NRC 307, 310, 311-12 (1998)
interlocutory review of a licensing board decision was authorized to avoid duplicative or unnecessary litigating steps and thereby fundamentally altering the nature of the proceeding; CLI-09-6, 69 NRC 136-137 (2009)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-98-8, 47 NRC 307, 320 & n.4 (1998)
mere legal error is not enough to warrant interlocutory review because interlocutory errors are correctable on appeal from final board decisions; CLI-08-2, 67 NRC 35 n.15 (2008)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-98-13, 48 NRC 26, 30-31 (1998), *petition for review held in abeyance, Ohngo Gaudadeh Devia v. NRC*, 492 F.3d 421 (D.C. Cir. 2007)
an organization's member seeking representation must qualify for standing in his or her own right, the interests must be germane to the organization's purpose, and neither the asserted claim nor the requested relief must require an individual member to participate in the organization's legal action; CLI-08-19, 68 NRC 259 (2008)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-98-13, 48 NRC 26, 31-32 (1998)
significant contacts with an affected area can be sufficient to establish standing, even when full-time residence within the 50-mile zone is not shown; LBP-07-4, 65 NRC 296 (2007)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-98-13, 48 NRC 26, 32 (1998), *petition for review docketed*, No. 05-1419 (D.C. Cir. Nov. 7, 2005)
proximity standing has been recognized where a petitioner has regular contact in an area near a licensed facility, or otherwise has visits of a length and nature showing an ongoing connection and presence; CLI-07-21, 65 NRC 524 (2007)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-98-13, 48 NRC 26, 32 & n.3 (1998)
intervention pleadings that address standing must provide evidence of the likelihood of an ongoing connection and presence; LBP-08-9, 67 NRC 428 (2008)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-98-13, 48 NRC 26, 34 (1998)
the Commission will reverse a licensing board's determination on discretionary intervention only if the board has abused its discretion; CLI-06-16, 63 NRC 715 (2006)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-98-13, 48 NRC 26, 34-35, *aff'g* LBP-98-7, 47 NRC 47 NRC 142, 177-78 (1998)
generalized expertise, even scientific eminence, is an insufficient substitute for particularized knowledge of the issues actually in dispute; CLI-06-16, 63 NRC 721 n.42 (2006)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-98-13, 48 NRC 26, 35, *aff'g* LBP-98-7, 47 NRC 47 NRC 142, 177-78 (1998)
denial of a motion for discretionary intervention does not eliminate all possibility of petitioners' participation in the litigation; CLI-06-16, 63 NRC 722 (2006)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 321 (1999)
under pre-2004 rules, admissibility of contentions based on environmental impact statement or environmental assessment information that differed significantly from data or conclusions in applicant's environmental report would, at a minimum, have been subject to review under what are now section 2.309(c)(1) factors (i) and (v) through (Viii); LBP-10-1, 71 NRC 186 (2010)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 323 (1999)
an organization's member seeking representation must qualify for standing in his or her own right, the interests must be germane to the organization's purpose, and neither the asserted claim nor the

LEGAL CITATIONS INDEX

CASES

- requested relief must require an individual member to participate in the organization's legal action; CLI-08-19, 68 NRC 259 (2008)
- Commission precedents describing the requirements for establishing representational and organizational standing are longstanding; LBP-09-5, 69 NRC 311 n.6 (2009)
- for an individual to establish standing, he or she must show injury in fact that can fairly be traced to the challenged action and that is likely to be redressed by a favorable decision; LBP-06-7, 63 NRC 195 (2006)
- neither the asserted claim nor the requested relief must require an individual member to participate in the organization's legal action; CLI-07-18, 65 NRC 409 (2007)
- petitioner's residence within a 50-mile radius of the proposed facility has established standing in his own right, and, accordingly, representational standing has been established through him; LBP-09-18, 70 NRC 399 (2009)
- representational standing requires a demonstration that one or more of an organization's members would otherwise have standing to intervene on their own, and that such a specifically identified member has authorized the organization to request a hearing on its behalf; LBP-06-4, 63 NRC 104 (2006); LBP-07-14, 66 NRC 183 (2007)
- the interests that the representative organization seeks to protect must be germane to its own purpose; CLI-07-18, 65 NRC 409 (2007)
- the member of a petitioning organization seeking representation must qualify for standing in his or her own right; CLI-07-18, 65 NRC 409 (2007)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 323-24 (1999)
- petitioner who had frequently visited an area allegedly affected by the proposed action for recreational purposes had shown injury in the standing context; LBP-10-1, 71 NRC 178 (2010)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 323-25 (1999)
- significant contacts with an affected area can be sufficient to establish standing, even when full-time residence within the 50-mile zone is not shown; LBP-07-4, 65 NRC 296 (2007)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 324 (1999)
- intervention pleadings that address standing must provide evidence of the likelihood of an ongoing connection and presence; LBP-08-9, 67 NRC 428 (2008)
- on appeal, the board's judgment on determinations of standing is given substantial deference absent a clear misapplication of facts or law; CLI-09-12, 69 NRC 543 (2009)
- petitioner's lack of specificity concerning the nature, extent, and duration of his contacts with the area surrounding the proposed site is a sufficient basis to reject a claim of standing; CLI-10-7, 71 NRC 139 (2010); LBP-09-18, 70 NRC 402 n.85 (2009)
- proximity standing has been recognized where a petitioner has regular contact in an area near a licensed facility, or otherwise has visits of a length and nature showing an ongoing connection and presence; CLI-07-21, 65 NRC 524 (2007)
- the board must make its finding on standing based on the factual circumstances presented by the information before the board regarding petitioner's activities, which may include consideration of the proximity, timing, and duration of those activities; LBP-07-10, 66 NRC 19 (2007)
- the Commission defers to a board's rulings on standing and contention admissibility unless the appeal points to an error of law or abuse of discretion; CLI-06-24, 64 NRC 121 (2006); CLI-09-16, 70 NRC 35 (2009); CLI-09-22, 70 NRC 933 (2009); CLI-10-1, 71 NRC 5 (2010); CLI-10-9, 71 NRC 253 (2010)
- the Commission routinely accords substantial deference to the board on matters involving standing and credibility determinations; CLI-06-16, 63 NRC 718 (2006)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 325 (1999)
- failure of a contention to meet any of the pleading requirements of 10 C.F.R. 2.309(f)(1)(i)-(vi) precludes its admission; LBP-06-7, 63 NRC 198 (2006); LBP-06-10, 63 NRC 336 (2006); LBP-06-20, 64 NRC 147 (2006); LBP-06-22, 64 NRC 235 (2006); LBP-06-23, 64 NRC 272, 351 (2006); LBP-06-27, 64 NRC 447 (2006); LBP-07-3, 65 NRC 252 (2007); LBP-07-4, 65 NRC 303

LEGAL CITATIONS INDEX

CASES

- (2007); LBP-07-7, 65 NRC 512 (2007); LBP-07-10, 66 NRC 22 (2007); LBP-07-16, 66 NRC 286 (2007); LBP-08-6, 67 NRC 290 (2008); LBP-08-9, 67 NRC 430 (2008); LBP-08-13, 68 NRC 61 (2008); LBP-08-14, 68 NRC 288 (2008); LBP-08-15, 68 NRC 312 (2008); LBP-08-16, 68 NRC 383 (2008); LBP-08-24, 68 NRC 716 (2008); LBP-08-26, 68 NRC 915 (2008); LBP-09-3, 69 NRC 152 (2009); LBP-09-17, 70 NRC 324 (2009); LBP-09-21, 70 NRC 592 (2009); LBP-09-26, 70 NRC 952 (2009); LBP-10-6, 71 NRC 358-59 (2010); LBP-10-7, 71 NRC 419 (2010); LBP-10-16, 72 NRC 416 (2010); LBP-10-21, 72 NRC 651 (2010)
- failure of a petitioner, even one found to have standing to proceed, to submit an admissible contention will result in dismissal of its petition and request for hearing; LBP-06-23, 64 NRC 351 (2005)
- full compliance with the Commission's Rules of Practice is a condition precedent to the grant of a request for hearing on a materials license amendment; LBP-07-5, 65 NRC 344 (2007)
- if petitioner believes that an application fails to contain information on a relevant matter as required by law, each failure must be identified and the supporting reasons for the petitioner's belief provided; LBP-07-11, 66 NRC 56 (2007)
- information in support of a contention must include references to the specific portions of the application (including the applicant's environmental report and safety report) that the petitioner disputes and the supporting reasons for each dispute; LBP-07-11, 66 NRC 56 (2007)
- intervention petitioner who fails to provide specific information regarding the geographic proximity or the timing and duration of its visits only complicates matters for itself in establishing standing; CLI-10-7, 71 NRC 140 n.33 (2010)
- petitioners bear the burden of providing sufficient relevant, specific information, whether by good-faith estimate or otherwise, to establish the basis for their standing claims; LBP-10-1, 71 NRC 178-79 (2010)
- the process of sifting and weighing participants' factual proffers often calls upon a board to make difficult choices, so that a petitioner who fails to provide specific information regarding the geographic proximity or the timing and duration of its visits only complicates matters for itself; LBP-07-10, 66 NRC 19 (2007)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-00-2, 51 NRC 77 (2000)
- a board's refusal to admit a late-filed contentions did not have a pervasive or unusual effect on the litigation; CLI-08-2, 67 NRC 35 n.17 (2008)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-00-2, 51 NRC 77, 79 (2000)
- good cause is the most significant of the late-filing factors of 10 C.F.R. 2.309(c)(1); LBP-10-9, 71 NRC 506 (2010)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-00-2, 51 NRC 77, 79-80 (2000)
- rejection or admission of a contention, where the petitioner has been admitted as a party and has other contentions pending, neither constitutes serious and irreparable impact nor affects the basic structure of the proceeding in a pervasive or unusual manner; CLI-08-7, 67 NRC 192 (2008); CLI-09-9, 69 NRC 365 (2009)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-00-2, 51 NRC 77, 80 (2000)
- any appeal by petitioners of the admitted contentions must abide the end of the case, i.e., wait approximately 2 or 3 years until the Staff issues the FSER and FEIS and the final disposition of the evidentiary hearing on the three admitted contentions; LBP-09-10, 70 NRC 147 n.89 (2009)
- incorrect interlocutory rulings may be reviewed, if necessary, on appeals from partial initial decisions or other final appealable orders; CLI-09-6, 69 NRC 137-38 n.38 (2009)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-00-13, 52 NRC 23, 29 (2000)
- on appeal, legal issues are reviewed de novo; CLI-10-17, 72 NRC 11 n.40 (2010)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-00-21, 52 NRC 261 (2000)
- the Commission will defer to a board's rulings on threshold issues absent an error of law or abuse of discretion; CLI-10-12, 71 NRC 322 (2010)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-00-21, 52 NRC 261, 264 (2000)
- raising new arguments in a motion for reconsideration is prohibited; CLI-06-27, 64 NRC 402 (2006)

LEGAL CITATIONS INDEX

CASES

- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-00-21, 52 NRC 261, 265 (2000)
the Commission affirms Board decisions on the admissibility of contentions where the appellant points to no error of law or abuse of discretion; CLI-06-9, 63 NRC 439 n.32 (2006); CLI-06-24, 64 NRC 121 (2006); CLI-07-20, 65 NRC 503 n.20 (2007)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-01-1, 53 NRC 1 (2001)
a board's refusal to admit late-filed contentions did not have a pervasive or unusual effect on the litigation; CLI-08-2, 67 NRC 35 n.17 (2008)
challenges to board rulings on late-filed contentions normally fall under the rules for interlocutory review; CLI-09-18, 70 NRC 862 (2009)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-01-1, 53 NRC 1, 4-7 (2001)
once a petition to intervene and request for hearing have been granted and contentions are admitted for hearing, appeals of board rulings on new or amended contentions are treated under section 2.341(f)(2), regardless of their subject matter; CLI-10-16, 71 NRC 490 (2010)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-01-1, 53 NRC 1, 5 (2001)
an exception to the Commission's longstanding general policy disfavoring interlocutory review occurs when the disputed ruling threatens the aggrieved party with serious, immediate, and irreparable harm or where it will have a pervasive or unusual effect on the proceedings below; CLI-06-24, 64 NRC 119 (2006)
refusal to admit a contention, where the intervenor's other contentions remain in litigation, does not constitute a pervasive effect on the litigation calling for interlocutory review; CLI-06-24, 64 NRC 126 (2006)
the Commission grants interlocutory review under the pervasive-and-unusual-effect standard only in extraordinary circumstances; CLI-06-24, 64 NRC 119 (2006); CLI-09-6, 69 NRC 133 (2009)
incorrect interlocutory rulings may be reviewed, if necessary, on appeals from partial initial decisions or other final appealable orders; CLI-09-6, 69 NRC 137-38 n.38 (2009)
the possibility that an interlocutory ruling may be wrong does not in itself justify interlocutory review; CLI-09-6, 69 NRC 137 n.38 (2009)
the mere potential for legal error in a contention admissibility decision is not a ground for interlocutory review; CLI-10-30, 72 NRC 568 (2010)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-01-1, 53 NRC 1, 7 (2001)
licensing boards have broad discretion to sanction willful, prejudicial, and bad-faith behavior; LBP-09-1, 69 NRC 43, 44-45 (2009)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-01-9, 53 NRC 232, 235 (2001)
in the absence of evidence to the contrary, NRC does not presume that a licensee will violate agency regulations wherever the opportunity arises; CLI-10-20, 72 NRC 194 n.48 (2010); LBP-10-20, 72 NRC 594 n.27, 608 n.1, 614 (2010)
petitioner cannot base standing or a contention on the possibility that the licensee will violate the terms of its license; CLI-10-20, 72 NRC 193 n.45 (2010)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-01-22, 54 NRC 255, 255 (2001)
events having a less than a one in one million probability of occurring are not credible events; LBP-09-4, 69 NRC 208 (2009)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-01-22, 54 NRC 255, 259 (2001)
the agency uses a threshold probability for design basis events of 1 in 10 million for nuclear power plants; LBP-09-26, 70 NRC 972 (2009)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-01-22, 54 NRC 255, 260 (2001)
the Standard Review Plan for reactors deems a threshold probability of one in a million to be acceptable where, when combined with reasonable qualitative arguments, the realistic probability can be shown to be lower; LBP-09-2, 69 NRC 104 n.72 (2009)

LEGAL CITATIONS INDEX

CASES

- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-01-22, 54 NRC 255, 264 (2001)
although NRC guidance documents are entitled to some weight, they do not have the force of a legally binding regulation and, like any guidance document, may be challenged in an adjudicatory proceeding such as this one; LBP-08-22, 68 NRC 614, 648 n.283 (2008)
as guidance reached in a rulemaking following notice and comment, and endorsed by the Commission, the Statement of Considerations is entitled to special weight; CLI-08-3, 67 NRC 166 (2008)
guidance documents cannot impose requirements; CLI-10-17, 72 NRC 39 (2010)
NUREGs are guidance documents, with no binding effect, but are entitled to special weight, such that it is appropriate to consider in evaluating contentions; LBP-09-17, 70 NRC 368 (2009)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-01-22, 54 NRC 255, 265 (2001)
ISFSI failure would not pose nearly the same radioactive consequences as a reactor failure; CLI-07-21, 65 NRC 523 (2007)
the threshold probability for design basis events should be set at one in a million; LBP-09-17, 70 NRC 369 n.349 (2009)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-01-26, 54 NRC 376 (2001)
requests to suspend proceedings or hold them in abeyance in the exercise of our inherent supervisory powers over proceedings in the wake of the September 11 terrorist attacks pending the Commission's comprehensive review of anti-terrorist measures at licensed facilities were rejected; CLI-08-23, 68 NRC 485 (2008)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-01-26, 54 NRC 376, 380-84 (2001)
the Commission generally declines to hold proceedings in abeyance pending the outcome of other Commission actions or adjudications; CLI-10-17, 72 NRC 10 n.36 (2010)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-01-26, 54 NRC 376, 381 (2001)
permitting litigation on the merits of environmental contentions to proceed following issuance of the draft EIS, rather than awaiting the final EIS, could promote the Commission's dual goals of public safety and timely adjudication; LBP-07-3, 65 NRC 277 (2007)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-02-8, 55 NRC 222, 224-25 (2002)
inquiry into internal financial affairs of an Indian Tribe was itself the harm threatened by a contested board order, necessitating immediate Commission review; CLI-08-2, 67 NRC 36 n.20 (2008)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-02-11, 55 NRC 260, 263 (2002)
expenses of any kind do not constitute irreparable injury; CLI-09-6, 69 NRC 135 n.25 (2009)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-02-20, 56 NRC 147 (2002)
treatment of environmental justice issues is described; CLI-07-27, 66 NRC 238 (2007)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-02-20, 56 NRC 147, 153 (2002)
the essence of an environmental justice claim arising under NEPA in an NRC proceeding is disproportionately high and adverse human health and environmental effects on minority and low-income populations that may be different from the impacts on the general population; LBP-06-10, 63 NRC 364 (2006); LBP-08-6, 67 NRC 341 n.564 (2008); LBP-08-13, 68 NRC 199 (2008)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-02-20, 56 NRC 147, 153-54 (2002)
failure to receive a benefit from a project is not an environmental impact; LBP-08-6, 67 NRC 340-41 n.564 (2008)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-02-20, 56 NRC 147, 153-55 (2002)
NRC has incorporated environmental justice goals into its reviews under NEPA and issued its own policy statement; LBP-07-9, 65 NRC 617 n.101 (2007)

LEGAL CITATIONS INDEX

CASES

- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-02-20, 56 NRC 147, 154 (2002)
in accord with the environmental justice executive order, the NRC has obligated itself to address only the disproportionate distribution of high and adverse effects in its NEPA analysis; LBP-07-3, 65 NRC 266 (2007)
nothing in NEPA suggests that a failure to receive an economic benefit should be considered tantamount to a disproportionate environmental impact; LBP-08-6, 67 NRC 341 n.564 (2008)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-02-25, 56 NRC 340 (2002)
the National Environmental Policy Act imposes no legal duty on NRC to consider intentional malevolent acts on a case-by-case basis in conjunction with commercial power reactor license renewal applications; CLI-07-8, 65 NRC 129 (2007); CLI-07-10, 65 NRC 146 (2007); LBP-07-14, 66 NRC 185, 195 (2007); LBP-08-6, 67 NRC 333 (2008); LBP-08-13, 68 NRC 142 (2008)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-02-25, 56 NRC 340, 343 (2002)
the Commission scrupulously examines terrorist-related security issues outside the NEPA context; LBP-06-7, 63 NRC 201 n.8 (2006)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-02-25, 56 NRC 340, 343-44 (2002)
a NEPA-driven review of the risks of terrorism would be largely superfluous in a license renewal proceeding, given that the NRC has undertaken extensive efforts to enhance security at nuclear facilities; CLI-07-8, 65 NRC 130 (2007)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-02-25, 56 NRC 340, 346-57 (2002)
a NEPA analysis is not the vehicle for exploring questions about the potential for a terrorist attack upon a proposed nuclear facility; LBP-07-3, 65 NRC 269 (2007)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-02-25, 56 NRC 340, 347 (2002)
terrorism is outside the scope of agency NEPA review; LBP-06-4, 63 NRC 113 (2006)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-02-25, 56 NRC 340, 347-48 (2002)
deciding against including terrorist attacks within NEPA reviews does not mean that NRC plans to rule out the possibility of a terrorist attack against NRC-regulated facilities, but that it saw no practical benefit in conducting that review, case-by-case, under the rubric of NEPA, nor did it consider that it had any legal duty to do this; LBP-10-10, 71 NRC 553 n.86 (2010)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-02-25, 56 NRC 340, 348 n.22 (2002)
although the Commission is not bound by Council on Environmental Quality regulations that it has not expressly adopted, it gives those regulations substantial deference; CLI-07-27, 66 NRC 222 n.21, 236 n.115 (2007); LBP-06-19, 64 NRC 62-63 n.3 (2006); LBP-10-16, 72 NRC 437 (2010)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-02-25, 56 NRC 340, 349 (2002)
NEPA excludes consideration in NRC license renewal proceedings of any intentional malevolent acts or actions of third-party miscreants; LBP-07-11, 66 NRC 87 (2007)
courts have excluded from NEPA-mandated review impacts with either a low probability of occurrence, or where the link between the agency action and the claimed impact is too attenuated to find the proposed federal action to be the proximate cause; LBP-06-7, 63 NRC 200 (2006)
NEPA does not call for examination of every conceivable aspect of federally licensed projects; LBP-07-3, 65 NRC 266 n.13 (2007)
the claimed impact of a terrorist attack is too attenuated to find the proposed federal action of a license renewal to be the proximate cause of that impact; CLI-07-8, 65 NRC 129 (2007); CLI-07-10, 65 NRC 147 (2007)
the environmental effect caused by third-party miscreants is simply too far removed from the natural or expected consequences of agency action to require a study under NEPA; CLI-07-10, 65 NRC 147 (2007); CLI-10-1, 71 NRC 13 (2010)

LEGAL CITATIONS INDEX

CASES

- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-02-25, 56 NRC 340, 350-51 (2002)
substantial practical difficulties impede meaningful NEPA-terrorism review; CLI-07-8, 65 NRC 131 (2007)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-02-25, 56 NRC 340, 352 (2002)
NEPA's dual purpose is to ensure that federal officials fully take into account the environmental consequences of a federal action before reaching major decisions and to inform the public, Congress, and other agencies of those consequences; LBP-07-9, 65 NRC 603 (2007)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-02-25, 56 NRC 340, 353 (2002)
under NEPA the Commission looks to the reasonably foreseeable impacts of simply licensing the facility, not the reasonably foreseeable effects of a successful terrorist attack; LBP-09-26, 70 NRC 971 (2009)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-02-25, 56 NRC 340, 354-57 (2002)
protecting sensitive security information in the quintessentially public NEPA and adjudicatory process presents obstacles to litigating terrorism-related issues; CLI-07-8, 65 NRC 131 (2007)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-02-25, 56 NRC 340, 357 (2002)
NEPA does not require applicants or licensees to consider terrorist attacks as part of their environmental reviews; LBP-09-26, 70 NRC 980 (2009)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-02-29, 56 NRC 390, 400 (2002)
rules of statutory construction must be employed to give each word Congress used a separate and distinct significance that is consistent with its ordinary meaning; LBP-09-30, 70 NRC 1049 n.11 (2009)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-03-5, 57 NRC 279, 284 (2003)
the Commission has used sua sponte review as a vehicle to address unappealed issues; CLI-07-1, 65 NRC 4 (2007)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-03-8, 58 NRC 11, 17 (2003)
Commission review of an initial decision is purely discretionary; CLI-06-11, 63 NRC 485 (2006)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-03-8, 58 NRC 11, 20 & n.25 (2003)
NRC Staff verification that a licensee complies with preapproved design or testing criteria is a highly technical inquiry not particularly suitable for hearing; CLI-06-1, 63 NRC 5 (2006)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-03-8, 58 NRC 11, 25-26 (2003)
although the Commission has authority to make de novo findings of fact, it does not do so where a licensing board has issued a plausible decision that rests on carefully rendered findings of fact; CLI-06-1, 63 NRC 2 (2006); CLI-06-15, 63 NRC 697 (2006); CLI-09-7, 69 NRC 259 (2009); CLI-10-5, 71 NRC 99 (2010); CLI-10-18, 72 NRC 72 (2010)
although the Commission has discretion to review all underlying factual issues de novo, it generally steps in only to correct clearly erroneous findings; CLI-06-22, 64 NRC 40 (2006); CLI-06-29, 64 NRC 423 (2006)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-03-8, 58 NRC 11, 25-27 (2003)
on appeal, the Commission is loath to address complaints concerning a board's skepticism of expert witness's testimony, given that the Commission lacks the board's ability to observe the demeanor of the parties' expert witnesses in general and petitioner's witness in particular; CLI-10-17, 72 NRC 46-47 (2010)
the Commission routinely accords substantial deference to the board on matters involving standing and credibility determinations; CLI-06-16, 63 NRC 719 (2006)

LEGAL CITATIONS INDEX

CASES

- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-03-8, 58 NRC 11, 26 (2003)
licensing board findings of fact that turn on witness credibility receive the Commission's highest deference on appeal; CLI-10-23, 72 NRC 225 n.64 (2010)
the Commission does not exercise its authority to make de novo findings of fact where a licensing board has issued a plausible decision that rests on carefully rendered findings of fact; CLI-10-5, 71 NRC 98 (2010)
the standard of clear error for overturning a board's factual findings is quite high; CLI-09-7, 69 NRC 259 (2009); CLI-10-18, 72 NRC 73 (2010)
to prevail on appeal, petitioners must show clear error; CLI-09-7, 69 NRC 264 (2009)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-03-16, 58 NRC 360, 361 (2003)
as long as one contention is admitted, dismissal of other contentions is deemed interlocutory in nature, and those dismissals are therefore not subject to appeal by petitioners until the proceeding is later terminated or unless the Commission directs otherwise; LBP-08-11, 67 NRC 495 (2008)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-04-4, 59 NRC 31, 46 (2004)
a 30-day time frame for filing new contentions has been established; LBP-06-14, 63 NRC 574 (2006)
computer models and associated documentation are within the scope of discovery under NRC regulations; LBP-12-23, 72 NRC 704 n.14 (2010)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-04-7, 59 NRC 111, 112 (2004)
if petitioner believes he is qualified to operate a nuclear storage or reprocessing facility, he must comply with prescribed licensing procedures; CLI-10-10, 71 NRC 285 (2010)
NRC proceedings are not an open forum for discussing the country's need for energy and spent fuel storage; CLI-10-10, 71 NRC 285 (2010)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-04-22, 60 NRC 125, 129 (2004)
NRC's contention admissibility standards are strict by design; CLI-06-10, 63 NRC 455 (2006)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-04-22, 60 NRC 125, 135-36 (2004)
any contention that fails directly to controvert the application or that mistakenly asserts the application does not address a relevant issue can be dismissed; LBP-09-26, 70 NRC 968 n.147 (2009)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-04-22, 60 NRC 125, 138-39 (2004)
although petitioner is not expected to prove its contention at the pleading stage, the contention must present a reasonable scenario of potential consequences; CLI-08-3, 67 NRC 168 (2008)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-04-22, 60 NRC 125, 139 (2004)
petitioner does not have to provide an exhaustive list of its experts or evidence or prove the merits of its contention at the admissibility stage; LBP-06-20, 64 NRC 150 (2006); LBP-06-23, 64 NRC 356 (2005); LBP-07-15, 66 NRC 271 (2007); LBP-07-16, 66 NRC 287 (2007); LBP-08-13, 68 NRC 63 (2008); LBP-08-9, 67 NRC 432 (2008); LBP-08-15, 68 NRC 335 (2008); LBP-08-17, 68 NRC 441 (2008); LBP-08-26, 68 NRC 917 (2008); LBP-09-4, 69 NRC 195 n.89 (2009); LBP-09-6, 69 NRC 390, 401 (2009); LBP-09-18, 70 NRC 404 (2009); LBP-09-26, 70 NRC 954 (2009); LBP-10-6, 71 NRC 361 (2010)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-04-22, 60 NRC 125, 139-40 (2004)
the Commission does not entertain on appeal arguments not raised before the board; CLI-09-12, 69 NRC 546 (2009)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-04-22, 60 NRC 125, 140 (2004)
absent extreme circumstances, the Commission will not consider on appeal either new arguments or new evidence supporting the contentions, which the Board never had the opportunity to consider; CLI-06-10, 63 NRC 458 (2006)
rewriting a contention on appeal is not permitted; CLI-06-24, 64 NRC 122 (2006)

LEGAL CITATIONS INDEX

CASES

- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-04-22, 60 NRC 125, 145 (2004)
determination of economic benefits and costs that are tangential to environmental consequences are within a wide area of agency discretion; CLI-06-10, 63 NRC 467 n.92 (2006); LBP-10-24, 72 NRC 771 (2010)
quibbling over the details of an economic analysis amounts to standing the National Environmental Policy Act on its head by asking that the license be rejected not due to environmental costs, but because the economic benefits are not as great as estimated; LBP-09-2, 69 NRC 108 n.81 (2009)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-04-22, 60 NRC 125, 146 (2004)
in considering alternatives under NEPA, an agency must take into account the needs and goals of the parties involved in the application; LBP-07-9, 65 NRC 608 (2007); LBP-09-10, 70 NRC 127 (2009); LBP-09-17, 70 NRC 379 (2009); LBP-10-10, 71 NRC 598 n.345 (2010)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-05-12, 61 NRC 345, 350 (2005)
a board's review of the expert opinion provided by NRC Staff supports the board's conclusion that a significant safety issue is not presented on the record; LBP-08-12, 68 NRC 20 n.12 (2008)
a party seeking to reopen a closed record to raise a new matter faces an elevated burden to lay a proper foundation for its claim; LBP-08-12, 68 NRC 16 (2008)
in evaluating a motion to reopen the record, a licensing board properly considers the movant's new allegations and the nonmovant's contrary evidence in determining whether there was a real issue at stake warranting a reopened hearing; LBP-08-12, 68 NRC 16 (2008)
the standard for admitting a new contention after the record is closed is higher than for an ordinary late-filed contention; CLI-08-28, 68 NRC 668 (2008)
to justify reopening the record to admit a new contention, the moving papers must be strong enough, in the light of any opposing filings, to avoid summary disposition, and the new information must be significant and plausible enough to require reasonable minds to inquire further; CLI-08-28, 68 NRC 668 (2008); LBP-10-21, 72 NRC 643-44 (2010)
to reopen a closed record to introduce a new issue, the movant has the burden of showing that the new information will likely trigger a different result; LBP-08-12, 68 NRC 22, 23 (2008)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-05-12, 61 NRC 345, 350 n.18 (2005)
if standards for reopening were not strict and demanding, there would be little hope of completing administrative proceedings if each newly arising allegation required an agency to reopen its hearings; CLI-08-28, 68 NRC 668 n.38 (2008); LBP-08-12, 68 NRC 15 (2008)
rationale for the requirement that motions to reopen must address at least nineteen different regulatory factors is provided; LBP-10-19, 72 NRC 534 (2010)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-05-12, 61 NRC 345, 355 (2005)
a motion to reopen is denied because the new contention is much too thinly supported to conclude that taking it to a hearing would likely cause a different result; LBP-08-12, 68 NRC 23 (2008)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-05-19, 62 NRC 403, 411 (2005)
in the NRC adjudicatory process, the licensing board's principal role is to carefully review all of the evidence, including testimony and exhibits, and to resolve any factual disputes; CLI-09-7, 69 NRC 259 (2009); CLI-10-5, 71 NRC 98 (2010); CLI-10-18, 72 NRC 72 (2010)
on appeal, the Commission defers to a board's factual findings, correcting only clearly erroneous findings where the Commission has strong reason to believe that a board has overlooked or misunderstood important evidence; CLI-09-7, 69 NRC 259 (2009); CLI-10-5, 71 NRC 99 (2010); CLI-10-18, 72 NRC 73 (2010)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-05-22, 62 NRC 542, 544 (2005)
licensing board rulings are not precedential; CLI-10-2, 71 NRC 48 (2010)
unreviewed board decisions have no binding effect on a later board; CLI-10-7, 71 NRC 138 (2010)

LEGAL CITATIONS INDEX

CASES

- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-06-3, 63 NRC 19 (2006)
until the license has actually been issued, the Commission itself, as opposed to the licensing board, retains jurisdiction to reopen a closed case; CLI-06-4, 63 NRC 36 (2006)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-06-3, 63 NRC 19, 21-23 (2006)
where newly discovered evidence relates to a contention that already has been decided adversely to the movant, the movant must demonstrate that the outcome of the adjudication would likely have been materially different had the tribunal considered the new evidence in the first instance; LBP-08-12, 68 NRC 22 (2008)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-06-3, 63 NRC 19, 24 (2006)
after final agency decision, the Commission retains jurisdiction to consider a reopening motion, as opposed to a section 2.206 action, because the license has not yet issued; CLI-09-5, 69 NRC 121 n.27 (2009)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-98-7, 47 NRC 142 (1998), *aff'd in part*, CLI-98-13, 48 NRC 26 (1998)
the Commission and its boards regularly continue to admit for litigation and hearing contentions that are material and supported by reasonably specific factual and legal allegations; LBP-06-10, 63 NRC 380 n.52 (2006)
the purpose of NRC adjudicatory hearings is to consider claims of deficiencies in a license application, and such contentions are commonplace at the outset of NRC adjudications; CLI-08-15, 68 NRC 3 (2008); CLI-08-20, 68 NRC 274 (2008)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-98-7, 47 NRC 142, 160, *aff'd*, CLI-98-13, 48 NRC 26 (1998)
petitioners or intervenors may request and, where appropriate, obtain under protective order or other measures information withheld from the general public for proprietary or security reasons; CLI-06-10, 63 NRC 460 (2006)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-98-7, 47 NRC 142, 177 (1998)
although discretionary intervenors are not expected to show the same kind of injury-in-fact necessary for standing as of right, something more specific than merely a general policy interest in issues surrounding nuclear power is required; CLI-06-16, 63 NRC 724 (2006)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-98-7, 47 NRC 142, 177-78, *aff'd*, CLI-98-13, 48 NRC 26, 34 (1998)
discretionary intervention is an extraordinary procedure that is rarely granted; CLI-06-16, 63 NRC 716 (2006)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-98-7, 47 NRC 142, 179 (1998), *aff'd in part*, CLI-98-13, 48 NRC 26 (1998)
contentions that advocate more or less stringent requirements than the NRC rules impose, otherwise seek to litigate a generic determination that the Commission has established by rulemaking, or raise a matter that is or is about to become the subject of rulemaking are barred; LBP-08-17, 68 NRC 441 (2008); LBP-09-6, 69 NRC 390 (2009)
in establishing materiality of a contention, petitioner must show why the alleged error or omission is of possible significance to the result of the proceeding; LBP-08-9, 67 NRC 431 (2008); LBP-08-15, 68 NRC 315 (2008); LBP-08-26, 68 NRC 916 (2008)
licensing boards should not accept in individual license proceedings contentions that are (or are about to become) the subject of general rulemaking by the Commission; LBP-06-23, 64 NRC 312 n.255 (2006)
petitioner does not need to prove its contention at the admission stage; LBP-08-13, 68 NRC 127 (2008)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-98-7, 47 NRC 142, 179, *aff'd as to other matters*, CLI-98-13, 48 NRC 26 (1998)
"materiality" requires petitioner to show why the alleged error or omission is of possible significance to the result of the proceeding; LBP-09-27, 70 NRC 1006 (2009)

LEGAL CITATIONS INDEX

CASES

- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-98-7, 47 NRC 142, 179-80 (1998)
- adequacy of the aging management program as it relates to underground pipes and tanks has health and safety significance and is material to whether the license renewal may be granted; LBP-06-23, 64 NRC 311 (2006)
 - “materiality” requires that petitioner show why the alleged error or omission is of possible significance to the result of the proceeding; LBP-07-16, 66 NRC 287 (2007)
 - the subject matter of a contention must impact the grant or denial of a pending license application; LBP-08-15, 68 NRC 315 (2008); LBP-08-26, 68 NRC 916 (2008); LBP-09-27, 70 NRC 1006 (2009); LBP-10-17, 72 NRC 514 (2010)
 - to be admissible, a contention must assert an issue of law or fact that is material to the findings the NRC must make to support the action that is involved in the proceeding; LBP-08-9, 67 NRC 431 (2008)
 - there must be some significant link between the deficiency claimed in a contention and the agency’s ultimate determination whether the license applicant will adequately protect the health and safety of the public and the environment; LBP-09-27, 70 NRC 1006 (2009)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-98-7, 47 NRC 142, 180, *aff’d*, CLI-98-13, 48 NRC 26 (1998)
- applicant argues that petitioners have not asserted that an alleged noncompliance with fire protection regulations described in a 2.206 petition (and rejected by the acting director) constitutes a genuine dispute of fact in regard to whether a license should be renewed; LBP-07-11, 66 NRC 71 (2007)
 - petitioner must provide documents or other factual information or expert opinion that set forth the necessary technical analysis to show why the proffered bases support its contention; LBP-06-10, 63 NRC 340 (2006); LBP-06-23, 64 NRC 355 (2005); LBP-09-4, 69 NRC 204 n.129 (2009)
 - there must be some significant link between the deficiency claimed in a contention and the agency’s ultimate determination whether the license applicant will adequately protect the health and safety of the public and the environment; LBP-08-9, 67 NRC 431 (2008); LBP-08-15, 68 NRC 315 (2008); LBP-08-26, 68 NRC 916 (2008)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-98-7, 47 NRC 142, 181, *aff’d*, CLI-98-13, 48 NRC 26 (1998)
- expert opinion that merely states a conclusion that the application is deficient, inadequate, or wrong without providing a reasoned basis or explanation for that conclusion is inadequate because it deprives the board of the ability to make the necessary reflective assessment of the opinion; CLI-06-10, 63 NRC 472 (2006); LBP-09-6, 69 NRC 411 (2009); LBP-10-6, 71 NRC 360-61, 368 n.54 (2010)
 - the standard of clear error for overturning a board’s factual finding is quite high; CLI-10-5, 71 NRC 99 (2010)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-98-7, 47 NRC 142, 244 (1998)
- although the phrase “possession, custody, or control,” is used, no relevant interpretation or construction of the phrase, or of the term control, is provided; LBP-12-23, 72 NRC 706 (2010)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-99-3, 49 NRC 40, 47-48, *aff’d*, CLI-99-10, 49 NRC 318 (1999)
- under pre-2004 rules, the fact that a petition or new/amended contention was filed after the hearing opportunity notice deadline because the document or other item relied upon as the submission trigger was not available is considered good cause for the late filing; LBP-10-1, 71 NRC 188 n.4 (2010)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-99-23, 49 NRC 485, 491 (1999)
- summary disposition may be a useful device to eliminate the need for the time and cost of a hearing if the truth on a contested issue is clear and there is no genuine issue on any material fact; LBP-07-12, 66 NRC 128 (2007)

LEGAL CITATIONS INDEX

CASES

- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-99-33, 50 NRC 161, 165 (1999)
where the evidentiary matter in support of a summary disposition motion does not establish the absence of a genuine issue, summary judgment must be denied even if no opposing evidentiary matter is presented; LBP-08-7, 67 NRC 372 (2008)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-00-23, 52 NRC 114, 124 n.6, *aff'd*, CLI-00-21, 52 NRC 261 (2000)
discretionary intervention is an extraordinary procedure that is rarely granted; CLI-06-16, 63 NRC 716 (2006)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-00-27, 52 NRC 216, 223 (2000)
by defining significantly different information in the draft environmental impact statement as a permissible basis for filing a new contention, the Commission has in effect concluded that such new information is good cause for filing a new contention; LBP-10-24, 72 NRC 743 (2010)
intervenor that has sufficient information to file a NEPA contention but delays that filing until publication of the environmental impact statement does so at its peril; LBP-10-24, 72 NRC 732 (2010)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-00-27, 52 NRC 216, 223-24 (2000)
even if a petitioner is unable to show that the NRC Staff's NEPA document differs significantly from the environmental report, it may still be able to meet the late-filed contention requirements; LBP-10-24, 72 NRC 731 n.18 (2010)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-00-28, 52 NRC 226, 231 (2000)
for filing new contentions, boards have generally established a deadline of 30 days to be timely after the receipt of new information; LBP-08-12, 68 NRC 33 n.2 (2008)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-01-3, 53 NRC 84, 97 (2001)
with respect to safety-related matters, the adequacy of the application, not the adequacy of the Staff's review or evaluation, is the proper focus for a safety contention; LBP-06-27, 64 NRC 455 (2006)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-01-3, 53 NRC 84, 99 (2001)
although NRC may reasonably accommodate pro se petitioners who are not technically perfect in their pleading, such parties must still meet the basic requirements of the contention admissibility rules, and if these are not met, boards may not fill in any missing support, but rather are legally required to deny the contention; LBP-07-4, 65 NRC 340 n.286 (2007)
technical perfection is not an essential element of contention pleading; LBP-06-10, 63 NRC 329, 340 (2006); LBP-06-23, 64 NRC 358 (2005); LBP-08-6, 67 NRC 291 (2008); LBP-09-17, 70 NRC 326 (2009)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-01-23, 54 NRC 163, 171 (2001)
it may be necessary to examine the language of the bases to determine a contention's scope; LBP-06-16, 63 NRC 742 (2006)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-01-23, 54 NRC 163, 171-72 (2001), *petition for review denied*, CLI-04-4, 59 NRC 31, 40-41 (2004)
contentions may be divided into a challenge to the application's adequacy based on the validity of the information that is in the application, a challenge to the application's adequacy based on its alleged omission of relevant information, or some combination of these two challenges; LBP-08-2, 67 NRC 64 (2008); LBP-08-3, 67 NRC 95 (2008)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-01-23, 54 NRC 163, 172 n.3 (2001), *petition for review denied*, CLI-04-4, 59 NRC 31, 40-41 (2004)
a board may consider environmental contentions made against an applicant's environmental report as challenges to an agency's subsequent draft environmental impact statement; LBP-08-2, 67 NRC 63 (2008); LBP-08-3, 67 NRC 95 (2008)

LEGAL CITATIONS INDEX

CASES

- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-01-37, 54 NRC 476, 483 (2001), *review declined*, CLI-02-3, 55 NRC 155, 156 n.9 (2002)
decisions on nontimely filings require a balancing of the eight factors set forth in 10 C.F.R. 2.309(c)(1), the first of which, good cause for failure to file on time, is the most important; CLI-09-7, 69 NRC 262 (2009)
good cause to excuse the late-filing of a contention is the most important factor under the pre-2004 rules for late-filed contentions; CLI-08-1, 67 NRC 6 (2008); CLI-08-8, 67 NRC 197-98 n.26 (2008)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-01-39, 54 NRC 497, 509 (2001)
differences among experts may occur either about disputed baseline observations or about the ultimate facts or inferences to be drawn even where baseline facts may be uncontested; CLI-06-5, 63 NRC 122 (2006)
summary disposition is not a tool for trying to convince a licensing board to decide, on the basis of written submissions, genuine issues of material fact that warrant resolution at a hearing; CLI-06-5, 63 NRC 121 (2006); LBP-07-12, 66 NRC 126 (2007); LBP-07-13, 66 NRC 131 (2007); LBP-10-20, 72 NRC 579 (2010)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-01-39, 54 NRC 497, 509-10 (2001)
it is inappropriate at the summary disposition stage for a board to attempt to untangle the expert affidavits and decide which experts are more correct; LBP-07-12, 66 NRC 127 (2007)
summary judgment is not appropriate if it would require a judge to assess the correctness of facts and conclusions that are embodied in the competing, well-founded opinions of the parties' experts; LBP-07-12, 66 NRC 126 (2007); LBP-07-13, 66 NRC 131 (2007)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-01-39, 54 NRC 497, 510 (2001)
regardless of the level of the dispute, at the summary disposition stage, it is not proper for a board to untangle the expert affidavits and decide which experts are more correct; CLI-06-5, 63 NRC 122, 124-25 (2006); CLI-08-2, 67 NRC 34 n.10 (2008); LBP-07-13, 66 NRC 131 (2007)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-02-20, 56 NRC 169, 173 (2002)
in applying collateral estoppel principles, the question is not whether the subsequent tribunal believes that the prior tribunal correctly decided the issue at hand, but rather, if all factors of the doctrine are met, collateral estoppel comes into play; LBP-09-24, 70 NRC 711-12 n.58 (2009)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-02-20, 56 NRC 169, 180 (2002)
a party opposing summary disposition must counter each adequately supported material fact with its own statement of material facts in dispute and supporting materials, or the movant's facts will be deemed admitted; LBP-06-9, 63 NRC 307 (2006)
a summary disposition movant bears the initial burden of making the requisite showing that there is no genuine issue as to any material fact, which it attempts to do by means of a required statement of material facts not at issue and any supporting materials (including affidavits, discovery responses, and documents) that accompany its dispositive motion; LBP-06-9, 63 NRC 307 (2006)
summary disposition may be entered with respect to any matter (or all of the matters) in a proceeding if the motion, along with any appropriate supporting material, shows that there is no genuine issue as to any material fact and that the moving party is entitled to a decision as a matter of law; LBP-06-9, 63 NRC 307 (2006)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-02-20, 56 NRC 169, 182 (2002)
an exception to the application of collateral estoppel occurs when broad public policy considerations or special public interest factors are involved such that an agency's need for flexibility outweighs the reasons underlying this repose doctrine so as to favor relitigation of a particular issue; LBP-09-24, 70 NRC 712 n.60 (2009)
correctness of a prior decision is not a public policy factor upon which the application of the doctrine of collateral estoppel depends; CLI-10-23, 72 NRC 252 n.217 (2010)

LEGAL CITATIONS INDEX

CASES

- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-03-30, 58 NRC 454, 479 (2003)
an agency's consideration of alternatives is sufficient if it considers an appropriate range of alternatives, even if it does not consider every available alternative; LBP-10-24, 72 NRC 764 (2010) reasonable alternatives discussed in an environmental impact statement do not include alternatives that are impractical, that present unique problems, or that cause extraordinary costs; LBP-09-7, 69 NRC 633 (2009); LBP-09-16, 70 NRC 298 (2009)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-05-29, 62 NRC 635, 656 n.33 (2005)
licensing boards are bound to comply with Commission adjudicatory decisions whether they agree with them or not; LBP-07-14, 66 NRC 194 (2007)
the Commission addresses the problem of terrorist attacks at nuclear facilities in cooperation with other agencies, including the military, and outside the hearing process; LBP-07-14, 66 NRC 185 (2007)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-05-29, 62 NRC 635, 666 n.62 (2005)
computer models and associated documentation are within the scope of discovery under NRC regulations; LBP-12-23, 72 NRC 704 n.14 (2010)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-05-29, 62 NRC 635, 708-14 (Feb. 24, 2005, as redacted Oct. 28, 2005), *affirmed as to merits*, CLI-05-19, 62 NRC 403 (2005), *appeal pending sub nom. Utah v. NRC* (D.C. Cir. No. 05-1420)
to protect the probative value of underlying fact-based evidence, delaying the full discovery and presentation of that evidence in an already long-drawn-out proceeding should be avoided where possible; LBP-06-13, 63 NRC 548 n.92 (2006)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-05-29, 62 NRC 635, 710 & n.12 (2005)
it serves the public interest in safety for a facility application to be as good as it can be; LBP-08-11, 67 NRC 507 (2008)
- Professional Reactor Operator Society v. NRC*, 939 F.2d 1047, 1051-52 (D.C. Cir. 1991)
NRC may not disqualify attorneys representing multiple witnesses, unless it has concrete evidence that the attorney will obstruct and impede the investigation; CLI-08-11, 67 NRC 385 (2008)
- Progress Energy Carolinas, Inc.* (Shearon Harris Nuclear Power Plant, Units 1 and 2), CLI-09-8, 69 NRC 317, 329 (2009)
the design certification rulemaking and individual COL adjudicatory proceedings may proceed simultaneously, and issues raised in an adjudicatory proceeding that are appropriately addressed in the generic design certification rulemaking are to be referred to the rulemaking for resolution; LBP-10-17, 72 NRC 512 (2010)
- Progress Energy Carolinas, Inc.* (Shearon Harris Nuclear Power Plant, Units 2 and 3), CLI-08-15, 68 NRC 1 (2008)
a combined license applicant is authorized to reference an application for a design certification; LBP-09-10, 70 NRC 75-76 (2009)
an Atomic Safety and Licensing Board should hold any contentions on the reactor design filed in a combined license adjudication in abeyance, pending the results of the rulemaking proceeding on the design certification; CLI-09-4, 69 NRC 85 (2009)
challenges to the Commission regulations regarding the design certification process are inadmissible; LBP-09-18, 70 NRC 414 (2009)
the purpose of NRC adjudicatory hearings is to consider claims of deficiencies in a license application, and such contentions are commonplace at the outset of NRC adjudications; CLI-08-20, 68 NRC 274 (2008)
- Progress Energy Carolinas, Inc.* (Shearon Harris Nuclear Power Plant, Units 2 and 3), CLI-08-15, 68 NRC 1, 3-4 (2008)
a license application will not be held in abeyance until the design certification rulemaking is completed; LBP-09-16, 70 NRC 269 (2009); LBP-09-18, 70 NRC 415 (2009)

LEGAL CITATIONS INDEX

CASES

- applicant for a construction permit or a combined license may, at its own risk, reference in its application a design for which a design certification application has been docketed but not granted; LBP-09-17, 70 NRC 334 (2009)
- Progress Energy Carolinas, Inc.* (Shearon Harris Nuclear Power Plant, Units 2 and 3), CLI-08-15, 68 NRC 1, 3-4 & nn.5, 8 (2008)
- argument that combined license hearing notice should be delayed until completion of the certified design rulemaking fails to recognize the Commission direction that a contention raised in COL hearing challenging information in a design certification rulemaking, if otherwise admissible, should be referred to the Staff for consideration in the rulemaking, and held in abeyance by licensing board pending outcome of rulemaking; LBP-09-3, 69 NRC 157 n.9 (2009)
- Progress Energy Carolinas, Inc.* (Shearon Harris Nuclear Power Plant, Units 2 and 3), CLI-08-15, 68 NRC 1, 4 (2008)
- a board could refer a contention relating to a certified design to the Staff for consideration in the design certification rulemaking and hold that contention in abeyance if the contention is otherwise admissible; LBP-09-2, 69 NRC 97 n.37 (2009); LBP-10-21, 72 NRC 655 n.25 (2010)
- a contention asserting omissions from the combined license application that is not admissible need not be referred to the Staff and held in abeyance; LBP-09-10, 70 NRC 78 n.19 (2009)
- an attack upon the design certification process that is being conducted by rulemaking is outside the scope of a combined license proceeding; LBP-09-2, 69 NRC 97 n.35, 98 n.37 (2009)
- applicant may reference a design certification that the Commission has docketed but not granted; LBP-10-9, 71 NRC 525 n.144 (2010)
- applicant may, at its own risk, submit a combined license application that does not reference a certified design; CLI-10-1, 71 NRC 9 (2010)
- if applicant later decides not to reference a certified design, and instead proceeds with a site-specific design, any admissible issues would have to be addressed in the licensing adjudication; LBP-09-2, 69 NRC 100 (2009)
- in making the findings required for issuance of a combined license, the Commission shall treat as resolved those matters resolved in connection with the issuance or renewal of a design certification rule; LBP-10-21, 72 NRC 653, 654 (2010)
- issues concerning a design certification application are to be resolved in the design certification rulemaking, not in an adjudication on the combined license; LBP-10-10, 71 NRC 600 (2010)
- the revision process for reactor design is contemplated by NRC regulations and is currently being carried out through the design certification rulemaking; LBP-09-2, 69 NRC 98 (2009)
- Progress Energy Carolinas, Inc.* (Shearon Harris Nuclear Power Plant, Units 2 and 3), CLI-09-8, 69 NRC 317 (2009)
- a board erred in referring a contention to the Staff for consideration in conjunction with the design certification rulemaking without first assessing its admissibility; CLI-10-1, 71 NRC 10 (2010)
- Progress Energy Carolinas, Inc.* (Shearon Harris Nuclear Power Plant, Units 2 and 3), CLI-09-8, 69 NRC 317, 322 (2009)
- for a contention to be held in abeyance, it must otherwise be admissible; LBP-09-18, 70 NRC 407 (2009)
- Progress Energy Carolinas, Inc.* (Shearon Harris Nuclear Power Plant, Units 2 and 3), CLI-09-8, 69 NRC 317, 324 (2009)
- a contention may be held in abeyance by a licensing board pending completion of a rulemaking, but the contention must be otherwise admissible; CLI-10-1, 71 NRC 10 (2010); LBP-10-9, 71 NRC 527 (2010)
- the Commission generally defers to board decisions regarding standing and contention admissibility in the absence of clear error or an abuse of discretion; CLI-09-14, 69 NRC 584 (2009); CLI-10-2, 71 NRC 29 (2010); CLI-10-7, 71 NRC 138 (2010); CLI-10-20, 72 NRC 188 (2010)
- Progress Energy Carolinas, Inc.* (Shearon Harris Nuclear Power Plant, Units 2 and 3), CLI-09-8, 69 NRC 317, 324, 327 (2009)
- a contention asserting omissions from the combined license application that is not admissible need not be referred to the Staff and held in abeyance; LBP-09-10, 70 NRC 78 n.19 (2009)

LEGAL CITATIONS INDEX

CASES

- Progress Energy Carolinas, Inc.* (Shearon Harris Nuclear Power Plant, Units 2 and 3), CLI-09-8, 69 NRC 317, 327 (2009), *remanding* LBP-08-21, 68 NRC 554, 561-64 (2008)
the Commission directed the board to determine whether a contention concerning a certification application has been docketed but not granted was otherwise admissible under 10 C.F.R. 2.309(f)(1), in which case it might be held in abeyance and referred to the Staff; LBP-09-17, 70 NRC 334 (2009)
- Progress Energy Carolinas, Inc.* (Shearon Harris Nuclear Power Plant, Units 2 and 3), CLI-10-9, 71 NRC 245, 252 (2010)
petitioners must seek leave to request reconsideration of a decision and set forth compelling circumstances that petitioners could not reasonably have anticipated and that would render the decision invalid; CLI-10-21, 72 NRC 201 n.15 (2010)
- Progress Energy Carolinas, Inc.* (Shearon Harris Nuclear Power Plant, Units 2 and 3), CLI-10-9, 71 NRC 245, 253 (2010)
conditions for admission of a contention are strict by design; LBP-10-6, 71 NRC 358 (2010)
- Progress Energy Carolinas, Inc.* (Shearon Harris Nuclear Power Plant, Units 2 and 3), CLI-10-9, 71 NRC 245, 257-58 (2010)
NRC will conduct environmental analyses of terrorist scenarios only for facilities within the Ninth Circuit; CLI-10-14, 71 NRC 476 (2010)
- Progress Energy Carolinas, Inc.* (Shearon Harris Nuclear Power Plant, Units 2 and 3), CLI-10-9, 71 NRC 245, 261-62 (2010)
information, alleged facts, and expert opinions provided by a petitioner will be examined by the board to confirm that the petitioner does indeed supply adequate support for its contention; LBP-10-6, 71 NRC 361 (2010)
- Progress Energy Carolinas, Inc.* (Shearon Harris Nuclear Power Plant, Units 2 and 3), CLI-10-9, 71 NRC 245, 264 (2010)
regarding consideration of specific combination alternatives, the burden rests upon a petitioner to propose a particular alternative, and bare generalizations will not support an admissible contention; LBP-10-6, 71 NRC 380 n.88 (2010)
- Progress Energy Carolinas, Inc.* (Shearon Harris Nuclear Power Plant, Units 2 and 3), CLI-10-9, 71 NRC 245, 264-65 (2010)
petitioner did not properly challenge applicant's conclusion that no environmentally preferable alternative existed where the only alternative that petitioner mentions on appeal is the no-reactor option, and petitioner neither raised that option before the board nor supported its argument that it would always be environmentally preferable; LBP-10-6, 71 NRC 380 n.88 (2010)
- Progress Energy Carolinas, Inc.* (Shearon Harris Nuclear Power Plant, Units 2 and 3), CLI-10-9, 71 NRC 245, 272 (2010)
challenges to regulations are not litigable; LBP-10-16, 72 NRC 438 (2010)
- Progress Energy Carolinas, Inc.* (Shearon Harris Nuclear Power Plant, Units 2 and 3), CLI-10-9, 71 NRC 245, 278 n.205 (2010)
the Commission disapproves of incorporation by reference in petitions for review, where it has the effect of bypassing the page limits set forth in NRC regulations; CLI-10-17, 72 NRC 45-46 n.247 (2010)
- Progress Energy Carolinas, Inc.* (Shearon Harris Nuclear Power Plant, Units 2 and 3), LBP-08-21, 68 NRC 554, 561-64 (2008)
"otherwise admissible" has been interpreted to mean a contention that meets the contention admissibility requirements of 10 C.F.R. 2.309(f)(1) but for the fact that it challenges a yet-to-be-certified reactor design; LBP-10-9, 71 NRC 527 (2010)
- Progress Energy Carolinas, Inc.* (Shearon Harris Nuclear Power Plant, Units 2 and 3), LBP-08-21, 68 NRC 554, 566-69 (2008)
NEPA does not require applicants or licensees to consider terrorist attacks as part of their environmental reviews outside the Ninth Circuit; LBP-09-26, 70 NRC 981 (2009)
- Progress Energy Carolinas, Inc.* (Shearon Harris Nuclear Power Plant, Units 2 and 3), LBP-08-21, 68 NRC 554, 576 (2008)
accuracy of an applicant's cost estimate is not material to the findings the NRC must make under NEPA; LBP-09-16, 70 NRC 298 (2009)

LEGAL CITATIONS INDEX

CASES

- the National Environmental Policy Act requires applicant to present a cost-benefit analysis only where applicant's alternatives analysis indicates that there is an environmentally preferable alternative; LBP-09-2, 69 NRC 112 n.102 (2009)
- Progress Energy Carolinas, Inc.* (Shearon Harris Nuclear Power Plant, Units 2 and 3), LBP-08-21, 68 NRC 554, 576-77 (2008)
- it is inappropriate for the agency to consider economic costs when no environmentally preferable alternative has been identified; CLI-10-1, 71 NRC 23 n.118 (2010)
- Progress Energy Carolinas, Inc.* (Shearon Harris Nuclear Power Plant, Units 2 and 3), LBP-08-21, 68 NRC 554, 586-87 (2008)
- contentions challenging the Waste Confidence Rule are inadmissible; LBP-09-17, 70 NRC 337 (2009)
- Progress Energy Carolinas, Inc.* (Shearon Harris Nuclear Power Plant, Units 2 and 3), LBP-08-21, 68 NRC 554, 587 (2008)
- challenges to the Waste Confidence Rule are prohibited; LBP-09-10, 70 NRC 114 (2009)
- contentions on the environmental impacts of spent fuel storage are inadmissible; LBP-09-18, 70 NRC 406 (2009)
- Progress Energy Carolinas, Inc.* (Shearon Harris Nuclear Power Plant, Units 2 and 3), LBP-08-21, 68 NRC 554, 587 n.35 (2008)
- licensing boards may not admit a contention that directly or indirectly challenges 10 C.F.R. 51.51, Table S-3; LBP-09-10, 70 NRC 114 (2009)
- Progress Energy Carolinas, Inc.* (Shearon Harris Nuclear Power Plant, Units 2 and 3), LBP-09-8, 69 NRC 736 (2009)
- a contention was found to be inadmissible because the combined license application contained petitioner's asserted omissions; CLI-10-1, 71 NRC 10 n.44 (2010)
- Progress Energy Carolinas, Inc.* (Shearon Harris Nuclear Power Plant, Units 2 and 3), LBP-09-8, 69 NRC 736, 745 (2009)
- until the reactor design is certified and the rulemaking proceeding concluded, the design continues to change, creating potentially new safety and environmental concerns; LBP-09-18, 70 NRC 414 (2009)
- Progress Energy Florida, Inc.* (Levy County Nuclear Power Plant, Units 1 and 2), CLI-10-2, 71 NRC 27 (2010)
- petitioners offered sufficient expert support in the form of a declaration from their expert that explained the reasons for the expert's conclusions and cited or attached supporting documents; LBP-10-6, 71 NRC 368 n.54 (2010)
- Progress Energy Florida, Inc.* (Levy County Nuclear Power Plant, Units 1 and 2), CLI-10-2, 71 NRC 27, 29 & n.4 (2010)
- a successful challenge to a contention admissibility ruling must demonstrate that the ruling either constitutes clear error or reflects an abuse of discretion; CLI-10-17, 72 NRC 53 (2010)
- when the Commission reviews board rulings on contention admissibility, it employs the clear error and abuse of discretion standards of review; CLI-10-17, 72 NRC 11 (2010)
- Progress Energy Florida, Inc.* (Levy County Nuclear Power Plant, Units 1 and 2), CLI-10-2, 71 NRC 27, 33 (2010)
- although the duty to comply with NEPA falls upon the agency and not upon the applicant or licensee, the requirements of Part 51 must be met by the applicant; LBP-10-16, 72 NRC 418, 440 (2010)
- to ensure a more efficient proceeding, the board merges two contentions; LBP-10-16, 72 NRC 406 (2010)
- Progress Energy Florida, Inc.* (Levy County Nuclear Power Plant, Units 1 and 2), CLI-10-2, 71 NRC 27, 33 & n.21, 35-36 (2010)
- NRC's contention pleading standards, while strict, are not so strict as to require a board to abandon a commonsense approach to consideration of contentions; LBP-10-10, 71 NRC 591 n.312 (2010)
- Progress Energy Florida, Inc.* (Levy County Nuclear Power Plant, Units 1 and 2), CLI-10-2, 71 NRC 27, 34 (2010)
- applicant is not bound by NEPA, but by NRC regulations in Part 51; LBP-10-16, 72 NRC 435 (2010)
- Progress Energy Florida, Inc.* (Levy County Nuclear Power Plant, Units 1 and 2), CLI-10-2, 71 NRC 27, 36 (2010)
- using an atomizing approach, no single basis would be admissible as a contention; LBP-10-16, 72 NRC 413 (2010)

LEGAL CITATIONS INDEX

CASES

- common sense is a relevant consideration in determining whether to reformulate contentions;
LBP-10-10, 71 NRC 591 (2010)
- Progress Energy Florida, Inc.* (Levy County Nuclear Power Plant, Units 1 and 2), LBP-09-10, 70 NRC 51, 71-72 (2009)
the six criteria that govern the admissibility of contentions are summarized; LBP-09-21, 70 NRC 592 (2009)
- Progress Energy Florida, Inc.* (Levy County Nuclear Power Plant, Units 1 and 2), LBP-09-10, 70 NRC 51, 86 (2009)
Staff and applicant must address matters such as the environmental impacts of unregulated seepage into adjacent groundwater in their environmental impact statement and environmental report;
LBP-09-25, 70 NRC 889 (2009)
- Progress Energy Florida, Inc.* (Levy County Nuclear Power Plant, Units 1 and 2), LBP-09-10, 70 NRC 51, 87-88 (2009)
NEPA has only a limited role to play in interpreting Part 51's requirements for the environmental report; LBP-09-16, 70 NRC 259 n.103 (2009)
- Progress Energy Florida, Inc.* (Levy County Nuclear Power Plant, Units 1 and 2), LBP-09-10, 70 NRC 51, 88 (2009)
because the environmental report is the only environmental document available when NRC issues its notice of opportunity to request a hearing, initial contentions necessarily focus on the adequacy of the applicant's ER under Part 51; LBP-09-25, 70 NRC 890 (2009)
when NRC issues the environmental impact statement, petitioners have the opportunity to file a second wave of environmental contentions, which focus on the adequacy of the NRC Staff's EIS (or EA) under NEPA; LBP-09-25, 70 NRC 896 n.182 (2009)
- Progress Energy Florida, Inc.* (Levy County Nuclear Power Plant, Units 1 and 2), LBP-09-10, 70 NRC 51, 106-07 (2009)
although the terms "severe accident," "severe accident mitigation alternatives," and "SAMA" are not defined in NRC's NEPA regulations, the NRC policy documents that originated these terms clearly limit them to nuclear reactors, and do not include spent fuel pools or storage; LBP-10-15, 72 NRC 307 (2010)
- Progress Energy Florida, Inc.* (Levy County Nuclear Power Plant, Units 1 and 2), LBP-09-10, 70 NRC 51, 107-08 (2009)
NEPA implicitly requires agencies to consider measures to mitigate environmental impacts; LBP-09-19, 70 NRC 536 (2009)
- Progress Energy Florida, Inc.* (Levy County Nuclear Power Plant, Units 1 and 2), LBP-09-10, 70 NRC 51, 112 (2009)
the board recommends that the issue of waste disposal from in situ leach mining be considered when the mandatory review and hearing are conducted; LBP-10-16, 72 NRC 435 (2010)
- Progress Energy Florida, Inc.* (Levy County Nuclear Power Plant, Units 1 and 2), LBP-09-10, 70 NRC 51, 121 (2009)
boards have authority to narrow low-level radioactive waste contentions; LBP-09-16, 70 NRC 253 (2009)
- Progress Energy Florida, Inc.* (Levy County Nuclear Power Plant, Units 1 and 2), LBP-09-10, 70 NRC 51, 121-25 (2009)
contentions that concern greater-than-Class-C waste, seek to require a change to the decommissioning cost estimate, or constitute a challenge to Table S-3 of 10 C.F.R. 51.51 are inadmissible; LBP-09-16, 70 NRC 253 (2009)
- Progress Energy Florida, Inc.* (Levy County Nuclear Power Plant, Units 1 and 2), LBP-09-10, 70 NRC 51, 123 (2009)
because a contention focuses on the safety- rather than environmental-related aspects of a COL application, it is not apparent that the issue resolved in the board's admissibility ruling has any particular implications for a contention challenging the environmental impacts of long-term onsite low-level radioactive waste storage admitted and pending in another proceeding; LBP-10-8, 71 NRC 445 n.7 (2010)

LEGAL CITATIONS INDEX

CASES

- Progress Energy Florida, Inc.* (Levy County Nuclear Power Plant, Units 1 and 2), LBP-09-10, 70 NRC 51, 126-28 (2009)
although NRC does not consider Council on Environmental Quality pronouncements to be binding, they are entitled to substantial deference; LBP-09-17, 70 NRC 380 (2009)
the NEPA alternatives analysis is the heart of the environmental impact statement and all reasonable alternatives must be identified and discussed in such analysis, under a rule of reason; LBP-10-10, 71 NRC 583 n.274 (2010)
- Progress Energy Florida, Inc.* (Levy County Nuclear Power Plant, Units 1 and 2), LBP-09-10, 70 NRC 51, 127 (2009)
although NEPA requires that the environmental impact statement identify and address all reasonable alternatives, this does not mean that every conceivable alternative must be included; LBP-10-10, 71 NRC 567, 581 (2010)
- Progress Energy Florida, Inc.* (Levy County Nuclear Power Plant, Units 1 and 2), LBP-09-10, 70 NRC 51, 135 (2009)
a contention is not admissible if it is not plausibly explained or supported by alleged facts; LBP-09-21, 70 NRC 634 (2009)
because petitioners fail to create a genuine issue, the board need not resolve whether applicant's purpose is unreasonably narrow or whether a proposed alternative is so far beyond the realm of reason that it must be rejected out of hand; LBP-09-21, 70 NRC 625 (2009)
- Progress Energy Florida, Inc.* (Levy County Nuclear Power Plant, Units 1 and 2), LBP-09-10, 70 NRC 51, 138-40 (2009), *aff'd in part and rev'd in part as to other matters*, CLI-10-2, 71 NRC 27 (2010)
a new or amended contention that is found to be timely in accord with section 2.309(f)(2) need not be assessed under the section 2.309(c) factors, which are considered to apply only to otherwise nontimely submissions; LBP-10-1, 71 NRC 187 (2010)
- Progress Energy Florida, Inc.* (Levy County Nuclear Power Plant, Units 1 and 2), LBP-09-10, 70 NRC 51, 145 (2009)
a party is entitled to conduct such cross-examination as may be required for a full and true disclosure of the facts; LBP-09-22, 70 NRC 656 n.34 (2009)
- Progress Energy Florida, Inc.* (Levy County Nuclear Power Plant, Units 1 and 2), LBP-09-22, 70 NRC 640, 647 (2009)
submission of a new contention within 30 days of the event giving rise to that contention is timely; LBP-10-17, 72 NRC 509 n.25 (2010)
- Prokosch v. Catalina Lighting, Inc.*, 193 F.R.D. 633, 636 (D. Minn. 2000)
"control" does not require that the party have legal ownership or actual physical possession of the documents at issue, but rather, documents are considered to be under a party's control when that party has the right, authority, or practical ability to obtain the documents from a nonparty to the action; LBP-12-23, 72 NRC 707 n.20 (2010)
- Public Citizen v. Carlin*, 184 F.3d 900, 911 (D.C. Cir. 1999)
the Commission regularly relies upon the preamble in the Statement of Considerations in interpreting agency rules, given that the purpose of the preamble, after all, is to explain what follows; CLI-08-3, 67 NRC 163 n.46 (2008)
- Public Citizen v. Foreman*, 631 F.2d 969, 972 (D.C. Cir. 1980)
a food additive is presumed to be unsafe until demonstrated otherwise; CLI-08-16, 68 NRC 224 (2008)
- Public Citizen v. NRC*, 573 F.3d 916 (9th Cir. 2009)
NRC already addresses a spectrum of terrorist acts under its design basis threat programs, which have been found acceptable in the Ninth Circuit; LBP-10-15, 72 NRC 323 (2010)
- Public Citizen v. NRC*, 573 F.3d 916, 918 (9th Cir. 2009)
determination of what constitutes adequate protection under the Atomic Energy Act, absent specific guidance from Congress, is just such a situation where the Commission should be permitted to have discretion to make case-by-case judgments based on its technical expertise and on all the relevant information; CLI-10-14, 71 NRC 466 n.89 (2010)
- Public Citizen v. NRC*, 573 F.3d 916, 925-26 (9th Cir. 2009)
the agency decided not to include the threat of air attacks in the 2007 revision to the design basis threat rule, a decision upheld by the Ninth Circuit; CLI-10-9, 71 NRC 258 (2010)

LEGAL CITATIONS INDEX

CASES

- with respect to aircraft crash as an element of the design basis threat, the court held that the agency reasonably concluded that adequate protection against the air threat was assured by the active defenses provided by other federal agencies, together with what reasonably could be expected of licensees; CLI-10-1, 71 NRC 11 (2010)
- Public Citizen v. Traffic Safety Administration*, 848 F.2d 256, 268 (D.C. Cir. 1988)
- an agency can presume that increases in emissions that still fall within Clean Air Act limits will be insignificant; CLI-08-16, 68 NRC 227 n.32 (2008)
- Public Citizen Health Research Group v. Food and Drug Administration*, 997 F. Supp. 56, 72 (D.D.C. 1998)
- in his discretion and only if absolutely necessary to ensure a complete record and a fair decision, the presiding officer may allow limited discovery, but that discovery is sparingly granted in FOIA litigation; CLI-08-5, 67 NRC 177 (2008)
- Public Service Co. of Indiana* (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-316, 3 NRC 167, 170-71 (1976)
- contentions are not cognizable unless they are material to matters that fall within the scope of the proceeding for which the licensing board has been delegated jurisdiction as set forth in the Commission's notice of opportunity for hearing and order referring the proceeding to the Board; LBP-06-10, 63 NRC 338 (2006); LBP-06-23, 64 NRC 354 (2005); LBP-07-4, 65 NRC 304 (2007); LBP-07-11, 66 NRC 57 (2007)
- scope of an adjudicatory proceeding is specified by the notice of hearing, and contentions that raise matters outside that defined scope must be rejected; LBP-09-18, 70 NRC 431 (2009); LBP-09-25, 70 NRC 889 (2009)
- the scope of a proceeding generally is defined by the Commission's notice of opportunity for hearing; LBP-06-12, 63 NRC 420 (2006)
- Public Service Co. of Indiana* (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-459, 7 NRC 179, 182 (1978)
- joint ventures are common within the nuclear industry and thus merit consideration in the alternatives analysis; LBP-07-9, 65 NRC 634 (2007)
- Public Service Co. of Indiana* (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-461, 7 NRC 313, 318 (1978)
- key safety issues must be resolved in the hearing, not post-hearing by NRC Staff and applicant; LBP-08-25, 68 NRC 829 (2008)
- Public Service Co. of Indiana* (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-493, 8 NRC 253, 270 (1978)
- four factors should be considered in ruling on any request for stay; LBP-07-11, 66 NRC 98 (2007)
- Public Service Co. of Indiana* (Marble Hill Nuclear Generating Station, Units 1 and 2), CLI-80-10, 11 NRC 438, 441-43 (1980)
- policy reasons for limiting the scope of enforcement proceedings are described; CLI-10-3, 71 NRC 54 n.28 (2010)
- Public Service Co. of Indiana* (Marble Hill Nuclear Generating Station, Units 1 and 2), CLI-80-10, 11 NRC 438, 442 (1980), *aff'd*, *Save the Valley v. NRC*, 714 F.2d 142 (6th Cir. 1983) (Table)
- NRC has broad discretion to provide hearings or permit intervention in cases where these avenues of public participation would not be available as a matter of right; CLI-06-16, 63 NRC 715 (2006)
- Public Service Co. of New Hampshire v. NRC*, 582 F.2d 77, 82 (1st Cir. 1978)
- the Atomic Energy Act's regulatory scheme is virtually unique in the degree to which broad responsibility is reposed in the administering agency, free of close prescription in its charter as to how it shall proceed in achieving the statutory objective; CLI-10-6, 71 NRC 122 (2010)
- Public Service Co. of New Hampshire* (Seabrook Station, Unit 1), CLI-91-14, 34 NRC 261, 266-67 (1991)
- an intervention petitioner must demonstrate a concrete and particularized injury that is fairly traceable to the challenged action and is likely to be redressed by a favorable decision; LBP-06-4, 63 NRC 103 (2006); LBP-07-14, 66 NRC 182 (2007)
- in determining whether an individual or organization should be granted party status in a proceeding based on standing "as of right," the agency has applied contemporaneous judicial standing concepts; LBP-08-26, 68 NRC 911 (2008)

LEGAL CITATIONS INDEX

CASES

- Public Service Co. of New Hampshire* (Seabrook Station, Unit 2), CLI-84-6, 19 NRC 975, 978 (1984)
an admissible contention under the good cause standard must allege that a permit holder's reasons for past delay failed to constitute good cause for a CP extension and be supported by a showing that construction delay is traceable to permit holder action that was intentional and without a valid business purpose; LBP-10-7, 71 NRC 416 (2010)
- Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), ALAB-366, 5 NRC 39, 48, *aff'd*, CLI-77-8, 5 NRC 503, 508 (1977), *aff'd*, *New England Coalition on Nuclear Pollution v. NRC*, 582 F.2d 87 (1st Cir.), *cert. denied*, 439 U.S. 1046 (1978)
to discharge heated water into the ocean from a nuclear facility, the licensee needs an NPDES permit from the water supply and pollution control commission; CLI-07-16, 65 NRC 377 n.17 (2007)
- Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), ALAB-366, 5 NRC 39, 49, *aff'd*, CLI-77-8, 5 NRC 503, 508 (1977), *aff'd*, *New England Coalition on Nuclear Pollution v. NRC*, 582 F.2d 87 (1st Cir.), *cert. denied*, 439 U.S. 1046 (1978)
the issue of state NPDES permits is not properly before an appeal board; CLI-07-16, 65 NRC 388 (2007)
- Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), ALAB-366, 5 NRC 39, 52 (1977)
NRC must consider any adverse environmental impact that would accrue from the operation of the facility in compliance with EPA-imposed Federal Water Pollution Control Act standards, but it cannot go behind either those standards or the determination by EPA or the state that the facility would comply with them; LBP-06-20, 64 NRC 180 (2006)
- Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), ALAB-366, 5 NRC 39, 61-62 (1977)
a licensing board may disapprove a site for a new reactor only upon one of two findings; LBP-10-24, 72 NRC 746 n.51 (2010)
under NEPA, the NRC must balance the benefits of the project against its environmental costs; LBP-10-24, 72 NRC 746 (2010)
- Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), ALAB-366, 5 NRC 39, 62 (1977)
the cost-benefit analysis involves the scrutiny of many factors, among them, offsetting benefits, available alternatives, and the possible means (and attendant costs) of reducing the environmental harm; LBP-10-24, 72 NRC 746 n.51 (2010)
the purpose of the cost-benefit analysis called for by NEPA is to identify each significant environmental cost and to determine whether, all other factors considered, on balance the incurring of that cost is warranted; LBP-10-24, 72 NRC 746 n.51 (2010)
- Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), ALAB-422, 6 NRC 33, 41 (1977) *aff'd*, CLI-78-1, 7 NRC 1 (1978)
a board has a duty not only to resolve contested issues, but to articulate in reasonable detail the basis for the course of action chosen; CLI-09-14, 69 NRC 587 (2009)
- Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), ALAB-422, 6 NRC 33, 70 (1977)
for purposes of its NEPA evaluation, NRC must accept the cooling system approved by EPA; CLI-07-16, 65 NRC 388 (2007)
- Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), ALAB-471, 7 NRC 477, 489 n.8 (1978), *rev'd on other grounds*, CLI-97-15, 46 NRC 294 (1997)
because the Staff, as a practical matter, relies heavily upon the applicant's environmental report in preparing the environmental impact statement, should the applicant become a proponent of a particular challenged position set forth in the EIS, the applicant also has the burden of proof on that matter; LBP-09-7, 69 NRC 635 (2009)
- Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), ALAB-731, 17 NRC 1073, 1074 (1983)
a licensing board order is final for appellate purposes where it either disposes of at least a major segment of the case or terminates a party's right to participate, and rulings that do neither are interlocutory; CLI-06-18, 64 NRC 4 (2006)

LEGAL CITATIONS INDEX

CASES

- Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), ALAB-731, 17 NRC 1073, 1074-75 (1983)
according to the Commission's longstanding practice, a board order is considered appealable where it disposes of a major segment of the case or terminates a party's right to participate; CLI-08-2, 67 NRC 34 n.14 (2008)
- Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), ALAB-731, 17 NRC 1073, 1075 (1983)
grant of summary disposition on finding no material factual issue did not affect the structure of the proceeding in a pervasive or unusual manner; CLI-08-2, 67 NRC 35 n.17 (2008)
- Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), ALAB-737, 18 NRC 168, 176 (1983)
expenses of any kind do not constitute irreparable injury; CLI-09-6, 69 NRC 135 n.25 (2009)
- Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), ALAB-748, 18 NRC 1184, 1187 (1983)
friction between the court and counsel, including intemperate and impatient remarks by the judge, does not constitute evidence of personal bias; CLI-10-17, 72 NRC 47 (2010)
- Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), ALAB-749, 18 NRC 1195, 1200 (1983)
to prevail on a disqualification motion, petitioner must show either a bias against petitioner or its counsel based on matters outside the record or a pervasive bias against petitioner based upon matters in the record; CLI-10-17, 72 NRC 46 n.252 (2010)
- Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), ALAB-862, 25 NRC 144, 150 (1987)
although NRC rules do not explicitly authorize amicus briefs at the licensing board level, such briefs might still be granted in appropriate circumstances; LBP-08-6, 67 NRC 266 (2008)
- Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), ALAB-862, 25 NRC 144, 150 & n.18 (1987)
the Commission's decision not to entertain a state's integrity and competence contentions in the high-level waste repository proceeding is consistent with its practice of extending comity to other governmental entities; CLI-09-14, 69 NRC 606 n.150 (2009)
- Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), ALAB-886, 27 NRC 74, 78 (1988)
an untimely motion to reopen must demonstrate that the issue raised is not merely significant but exceptionally grave; LBP-10-21, 72 NRC 643 (2010)
when a reopening motion is untimely, the section 3.326(a)(1) "exceptionally grave circumstances" test supplants the "significant" issue standard under section 2.326(a)(2); LBP-10-21, 72 NRC 646 n.16 (2010)
- Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), ALAB-895, 28 NRC 7, 16 (1988), *aff'd*, CLI-88-10, 28 NRC 573 (1988), *reconsideration denied*, CLI-89-3, 29 NRC 234 (1989)
waiver of a rule or regulation can be granted only in unusual and compelling circumstances; LBP-08-17, 68 NRC 440 n.34 (2008); LBP-09-6, 69 NRC 389 n.80 (2009); LBP-10-22, 72 NRC 688 (2010)
- Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), ALAB-895, 28 NRC 7, 22 (1988)
a prima facie showing within the meaning of 10 C.F.R. 2.758(d) is one that is legally sufficient to establish a fact or case unless disproved; LBP-10-15, 72 NRC 280 n.20, 303 (2010)
"prima facie showing" means that the affidavits supporting a petition for rule waiver must present each element of the case for waiver in a persuasive manner with adequate supporting facts; LBP-10-12, 71 NRC 662 n.9 (2010)
- Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), ALAB-899, 28 NRC 93, 95 (1988)
where the language of a contention mentioned neither blockage nor corrosion of the cooling system, but the contention's heading and its assigned basis mentioned blockage, clearly showed that the contention was intended to embrace only cooling system blockage; LBP-08-2, 67 NRC 72 n.13 (2008)

LEGAL CITATIONS INDEX

CASES

- Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), ALAB-899, 28 NRC 93, 97 (1988), *aff'd sub nom. Massachusetts v. NRC*, 924 F.2d 311 (D.C. Cir.), *cert. denied*, 502 U.S. 899 (1991)
- a purpose of the bases of a contention is to put the other parties on notice as to what issues they will have to defend against or oppose; LBP-08-2, 67 NRC 78 (2008)
 - although licensing boards generally are to litigate a "contention" rather than the "basis" that provides the issue statement's foundational support, the reach of a contention necessarily hinges upon its terms coupled with its stated basis; LBP-07-3, 65 NRC 255 (2007); LBP-08-13, 68 NRC 61 (2008); LBP-08-16, 68 NRC 386 (2008)
 - it may be necessary to examine the language of the bases to determine a contention's scope; LBP-06-16, 63 NRC 742 (2006)
 - the brief explanation of the basis that is required by section 2.309(f)(1)(ii) helps define the scope of a contention, the reach of the contention necessarily hinging upon its terms coupled with its stated bases; LBP-08-6, 67 NRC 293 (2008)
 - the reach of a contention necessarily hinges upon its terms coupled with its stated bases; CLI-10-11, 71 NRC 309 (2010); LBP-06-20, 64 NRC 147 (2006); LBP-06-23, 64 NRC 353 (2005); LBP-08-9, 67 NRC 430 (2008); LBP-10-6, 71 NRC 366 n.49 (2010)
 - the scope of a contention is limited to issues of law and fact pleaded with particularity in the intervention petition, including its stated bases, unless the contention is satisfactorily amended in accordance with NRC rules; CLI-10-5, 71 NRC 101 (2010)
 - the support for a contention, as reflected in its stated bases and any accompanying affidavits or documentary information, should be set forth with reasonable specificity; LBP-08-2, 67 NRC 73 (2008)
 - where a question arises as to the admissibility of a contention, boards look to both the contention and its stated bases; LBP-08-9, 67 NRC 430 (2008)
- Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), ALAB-899, 28 NRC 93, 97 (1988), *aff'd sub nom. Massachusetts v. NRC*, 924 F.2d 311 (D.C. Cir. 1991), *cert. denied*, 502 U.S. 899 (1991)
- the brief explanation of the basis for the contention helps define the scope of a contention; LBP-07-16, 66 NRC 286 (2007)
- Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), ALAB-915, 29 NRC 427, 431-32 (1989)
- boards review the education, experience, and qualifications of the individuals offering expert opinions on behalf of the litigants to conclude that these individuals qualify as experts; LBP-08-12, 68 NRC 17 n.10 (2008)
- Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), ALAB-915, 29 NRC 427, 432 (1989)
- the Commission expects its adjudicatory boards to enforce reopening requirements rigorously; LBP-08-12, 68 NRC 28 (2008)
- Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), ALAB-915, 29 NRC 427, 432-33 (1989)
- discovery is not permitted for the purpose of developing a motion to reopen the record or to assist a petitioner in the framing of contentions; LBP-08-12, 68 NRC 27 n.23 (2008)
- Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), ALAB-915, 29 NRC 427, 433 (1989)
- the burden of satisfying the reopening requirements is on the movant; CLI-08-28, 68 NRC 675 (2008)
- Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), ALAB-940, 32 NRC 225, 243 (1990)
- movants who seek to reopen the record must proffer a contention that raises a significant safety issue; LBP-08-12, 68 NRC 16 (2008)
- Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), ALAB-942, 32 NRC 395, 414 (1990)
- arguments made before the board that are abandoned on appeal are deemed to be waived; CLI-10-9, 71 NRC 257 n.70 (2010)

LEGAL CITATIONS INDEX

CASES

- Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), ALAB-942, 32 NRC 395, 416-17 (1990)
it is not the responsibility of the licensing board to supply the basis information necessary to sustain a contention; LBP-08-24, 68 NRC 742 (2008)
- Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), ALAB-942, 32 NRC 395, 428 (1990)
a contention must demonstrate that there has been sufficient foundation assigned for it to warrant further exploration; LBP-06-10, 63 NRC 338 (2006); LBP-06-23, 64 NRC 353 (2005); LBP-08-6, 67 NRC 292 n.269 (2008); LBP-09-17, 70 NRC 329 (2009)
- Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), CLI-77-8, 5 NRC 503, 516-17 (1977), *aff'd sub nom. New England Coalition on Nuclear Pollution v. NRC*, 582 F.2d 87, 95-96 (1st Cir. 1978)
the Commission has used sua sponte review as a vehicle to address an issue of wide implication; CLI-07-1, 65 NRC 4 (2007)
- Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), CLI-77-8, 5 NRC 503, 521 n.20 (1977), *aff'd, New England Coalition on Nuclear Pollution v. NRC*, 582 F.2d 87 (1st Cir.), *cert. denied*, 439 U.S. 1046 (1978)
EPA's determinations on aquatic impacts were accepted as dispositive, despite the fact that the EPA decision was under judicial review at the time; CLI-07-16, 65 NRC 384 (2007)
- Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), CLI-77-8, 5 NRC 503, 528 (1977)
NEPA is only procedural in nature and, after requiring that an agency consider all reasonable alternatives, does not require that the most environmentally benign site be chosen; LBP-07-9, 65 NRC 591 (2007)
once an adequate alternatives analysis is done, the applicant's proposed site will be rejected only when an alternative site is obviously superior; LBP-07-9, 65 NRC 591 (2007)
- Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), CLI-77-8, 5 NRC 503, 536 (1977)
Staff's duty to consider other companies' sites in its alternative site review is questioned; CLI-07-27, 66 NRC 228 (2007)
under the NEPA rule of reason, consideration of eighteen alternatives in a small region of interest is enough; LBP-07-9, 65 NRC 590 (2007)
- Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), CLI-77-8, 5 NRC 503, 540 (1977)
the fact that a possible alternative is beyond the Commission's power to implement, does not absolve the Commission of any duty to consider it; LBP-07-9, 65 NRC 637 (2007)
there are numerous factors to consider in conducting the alternative site analysis under NEPA, including possible institutional and legal obstacles associated with construction at an alternate site; LBP-07-9, 65 NRC 633, 639 (2007)
- Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), CLI-77-25, 6 NRC 535, 537 (1977)
the Commission's decision not to entertain a state's integrity and competence contentions in the high-level waste repository proceeding is consistent with its practice of extending comity to other governmental entities; CLI-09-14, 69 NRC 606 n.150 (2009)
- Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), CLI-78-1, 7 NRC 1, 24 (1978)
NRC abstinence from setting water quality standards is fully consistent with congressional general intent that the Clean Water Act is to be implemented in a way that will avoid needless duplication and unnecessary delays at all levels of government; CLI-07-16, 65 NRC 389 (2007)
- Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), CLI-78-1, 7 NRC 1, 24-25 (1978)
to discharge heated water into the ocean from a nuclear facility, the licensee needs an NPDES permit from the water supply and pollution control commission; CLI-07-16, 65 NRC 377 n.17 (2007)
- Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), CLI-78-1, 7 NRC 1, 26 (1978)
the relationship between EPA and NRC is such that EPA determines what cooling system a nuclear power facility may use and NRC factors the impacts resulting from the use of that system into the NEPA cost-benefit analysis; CLI-07-16, 65 NRC 389 (2007); LBP-06-20, 64 NRC 180 (2006)
when enacting section 511(c)(2) of the Clean Water Act, Congress specifically intended to deprive the NRC's predecessor agency (the Atomic Energy Commission) of authority over pollutant discharges; CLI-07-16, 65 NRC 377 n.20 (2007)

LEGAL CITATIONS INDEX

CASES

- Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), CLI-78-1, 7 NRC 1, 26-27 (1978)
NRC abstinence from setting water quality standards is fully consistent with congressional general intent that the Clean Water Act is to be implemented in a way that will avoid unnecessary delays at all levels of government in the form of relitigation of the same issues; CLI-07-16, 65 NRC 389 (2007)
- Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), CLI-78-1, 7 NRC 1, 27 n.41 (1978)
EPA's determinations on aquatic impacts were accepted as dispositive, despite the fact that the EPA decision was under judicial review at the time; CLI-07-16, 65 NRC 384 (2007)
- Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), CLI-78-1, 7 NRC 1, 28 (1978)
the permitting agency for the Clean Water Act determines the cooling system required at a facility, and the NRC Staff factors the impacts that result from the use of that system into its National Environmental Policy Act analysis; LBP-08-13, 68 NRC 157 n.708 (2008)
- Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), CLI-78-1, 7 NRC 1, 29 n.43 (1978)
the final environmental impact statement may be modified by subsequent decisions of NRC adjudicatory tribunals; CLI-07-27, 66 NRC 230 n.79 (2007)
- Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), CLI-78-17, 8 NRC 179, 181 (1978)
EPA's determinations on aquatic impacts were accepted as dispositive, despite the fact that the EPA decision was under judicial review at the time; CLI-07-16, 65 NRC 384 (2007)
- Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), CLI-83-23, 18 NRC 311, 312 (1983)
the applicability of the section 2.309(c)(1) standards to post-hearing opportunity notice petitions and new/amended contentions could have procedural significance in a particular instance and has been the subject of controversy in Commission rulings; LBP-10-1, 71 NRC 189 n.5 (2010)
- Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), CLI-88-10, 28 NRC 573, 586 (1988)
a board's analysis of decommissioning cost estimates should be tailored to the specifics of the proceeding; CLI-06-22, 64 NRC 42 (2006)
- Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), CLI-88-10, 28 NRC 573, 596, 597 (1988)
rule waivers are not granted where the circumstances on which the waiver's proponent relies are common to a large class of applicants or facilities; CLI-09-3, 69 NRC 75 n.38 (2009)
- Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), CLI-89-3, 29 NRC 234, 240-41 (1989)
it is not the Board's duty to forage through a petition in order to find statements or other support that may be located in various portions of the petition but not referenced in the contention; LBP-10-16, 72 NRC 398 n.153 (2010)
petitioner may not simply incorporate massive documents by reference as the basis for or as a statement of his contentions; LBP-08-21, 68 NRC 570 n.15 (2008); LBP-09-10, 70 NRC 130 (2009)
the Commission expects parties to bear their burden and to clearly identify the matters on which they intend to rely with reference to a specific point; LBP-08-24, 68 NRC 730 (2008)
- Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), CLI-89-3, 29 NRC 234, 241 (1989)
when a contention is based on a factual underpinning in a document that has been essentially repudiated by the source of that document, the contention may be dismissed unless petitioner offers another independent source; LBP-10-9, 71 NRC 516 (2010)
- Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), CLI-89-7, 29 NRC 395, 398 n.8 (1989)
motions for reconsideration that have not asserted changed circumstances that could not previously have been brought to the Commission are denied; CLI-09-8, 69 NRC 329 n.48 (2009); CLI-10-9, 71 NRC 252 n.39 (2010)

LEGAL CITATIONS INDEX

CASES

- Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), CLI-89-20, 30 NRC 231, 245 (1989)
to certify a waiver petition to the Commission, the board must find that petitioner has met extremely high standards showing the existence of compelling circumstances in which the rationale of the regulation is undercut; LBP-10-12, 71 NRC 662 (2010)
- Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), CLI-90-3, 31 NRC 219, 229 (1990)
as an exercise of the Commission's inherent supervisory authority over adjudicatory proceedings, the Commission directs the board to provide the Commission with a status report outlining the board's timetable for resolving all pending matters; CLI-10-18, 72 NRC 96 (2010)
the Commission has inherent supervisory authority over licensing proceedings; CLI-09-7, 69 NRC 284 (2009)
- Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), CLI-90-3, 31 NRC 219, 257 (1990)
although technically not applicable to a request for a stay of NRC Staff action, the section 2.342(e) standards simply restate commonplace principles of equity universally followed when judicial (or quasi-judicial) bodies consider stays or other forms of temporary injunctive relief; CLI-06-8, 63 NRC 237 n.4 (2006)
- Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), CLI-90-3, 31 NRC 219, 259 (1990)
merely raising the specter of a nuclear accident does not demonstrate irreparable harm; CLI-06-8, 63 NRC 238 (2006)
- Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), CLI-90-6, 31 NRC 483 (1990)
timeliness as measured under NRC regulations is from the point at which new information is discovered relevant to the question; LBP-08-12, 68 NRC 32 (2008)
- Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), CLI-90-6, 31 NRC 483, 487 (1990)
a movant who seeks to reopen the record does not show the existence of a significant safety issue merely by showing that a plant component performs safety functions and thus has safety significance; CLI-08-28, 68 NRC 672 (2008); LBP-08-12, 68 NRC 18, 35 (2008)
- Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), CLI-90-10, 32 NRC 218, 221 (1990)
proponents of a reopening motion bear the burden of meeting all the requirements for reopening as well as the requirements for late-filed contentions set out in section 2.309(c); CLI-08-28, 68 NRC 669 (2008); CLI-09-7, 69 NRC 287 (2009)
- Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), CLI-90-10, 32 NRC 218, 222 (1990)
a board's review of the expert opinion provided by NRC Staff supports the board's conclusion that a significant safety issue is not presented on the record; LBP-08-12, 68 NRC 20 n.12 (2008)
the Commission weighs the competing evidence in concluding that a motion to reopen does not present a question of safety significance; LBP-08-12, 68 NRC 16 (2008)
- Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), CLI-90-10, 32 NRC 218, 223 (1990)
where a matter as presented is devoid of safety significance, there is no likelihood whatsoever that a materially different result would have been likely had the newly proffered evidence been considered initially; LBP-08-12, 68 NRC 23 n.17 (2008)
- Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), LBP-74-36, 7 AEC 877, 879 (1974)
amendments to license applications are not limited to minor details, but may include significant changes; LBP-10-17, 72 NRC 514 (2010)
- Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), LBP-82-76, 16 NRC 1029, 1035 (1982)
any contention that amounts to an attack on applicable statutory requirements or represents a challenge to the basic structure of the Commission's regulatory process must be rejected; LBP-07-16, 66 NRC

LEGAL CITATIONS INDEX

CASES

- 289 (2007); LBP-08-9, 67 NRC 431 (2008); LBP-08-13, 68 NRC 64 (2008); LBP-08-26, 68 NRC 916 (2008); LBP-09-26, 70 NRC 956 (2009)
- Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), LBP-82-106, 16 NRC 1649, 1654 (1982)
- determining whether a contention is adequately supported by a concise allegation of the facts or expert opinion is not a hearing on the merits; LBP-07-16, 66 NRC 287 (2007); LBP-08-13, 68 NRC 63 (2008); LBP-09-26, 70 NRC 954 (2009)
- Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), LBP-82-106, 16 NRC 1649, 1656 (1982)
- contentions that advocate stricter requirements than agency rules impose or that otherwise seek to litigate a generic determination established by a Commission rulemaking are inadmissible; LBP-07-3, 65 NRC 252 (2007); LBP-07-10, 66 NRC 22 (2007); LBP-08-16, 68 NRC 383 (2008); LBP-09-3, 69 NRC 152 (2009); LBP-10-7, 71 NRC 419 (2010); LBP-10-21, 72 NRC 651 (2010)
- in the absence of a regulatory gap, an attempt to advocate stricter requirements than those imposed by the regulations will result in a rejection of the contention, the latter as an impermissible collateral attack on the Commission's rules; LBP-06-10, 63 NRC 348 (2006); LBP-07-3, 65 NRC 266 n.12 (2007); LBP-08-9, 67 NRC 446 (2008)
- Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), LBP-89-4, 29 NRC 62, 73 (1989)
- absent clear evidence to the contrary, it is presumed that public officers will properly discharge their official duties; CLI-08-11, 67 NRC 384 (2008)
- Public Service Co. of Oklahoma* (Black Fox Station, Units 1 and 2), ALAB-397, 5 NRC 1143, 1148-49, *reconsideration denied*, ALAB-402, 5 NRC 1182 (1977)
- discretionary intervention is granted to an intervenor who raised unique contentions and provided expert support; LBP-09-6, 69 NRC 438 n.386 (2009)
- only eight petitions for discretionary intervention have ever been granted during the 30 years NRC has applied the current six-factor test; CLI-06-16, 63 NRC 717 (2006)
- the Commission will reverse a licensing board's determination on discretionary intervention only if the board has abused its discretion; CLI-06-16, 63 NRC 715 (2006)
- Public Service Co. of Oklahoma* (Black Fox Station, Units 1 and 2), ALAB-573, 10 NRC 775, 804 (1979)
- the benefits described by a project's purpose and need in the final environmental impact statement are among the factors that are weighed against the project's costs in striking the cost-benefit balance required by NEPA; LBP-06-19, 64 NRC 84 (2006)
- Public Service Co. of Oklahoma* (Black Fox Station, Units 1 and 2), LBP-78-28, 8 NRC 281, 282 (1978)
- in conducting its environmental review, an agency may, in its discretion, rely on data, analyses, or reports prepared by persons or entities other than agency staff, including competent and responsible state authorities, provided that the Staff independently evaluates and takes responsibility for the pertinent information before relying on it in an EIS; LBP-06-8, 63 NRC 259 (2006)
- Public Service Electric and Gas Co.* (Salem Nuclear Generating Station, Units 1 and 2), ALAB-136, 6 AEC 487 (1973)
- petitioners that are not represented by counsel will be held to less rigid standards for pleading, although a totally deficient petition will not be admitted; LBP-08-15, 68 NRC 320 (2008)
- pro se petitioners are held to less rigid pleading standards, so that parties with a clear but imperfectly stated interest in the proceeding are not excluded; CLI-10-20, 72 NRC 192 (2010); LBP-07-14, 66 NRC 188 (2007); LBP-08-6, 67 NRC 278 (2008)
- Public Service Electric and Gas Co.* (Salem Nuclear Generating Station, Units 1 and 2), ALAB-136, 6 AEC 487, 489 (1973)
- even if petitioners later retain counsel, it would not be appropriate to hold the petition itself to those standards of clarity and precision to which a lawyer might reasonably be expected to adhere; LBP-08-6, 67 NRC 318 n.433 (2008)
- pleadings submitted by a petitioner acting pro se are not always expected to meet the same standards as pleadings drafted by lawyers, but late filing of documents is not condoned; LBP-06-14, 63 NRC 581 (2006)
- pro se petitioners are not held to those standards of clarity and precision to which a lawyer might reasonably be expected to adhere; LBP-07-10, 66 NRC 21 (2007); LBP-08-11, 67 NRC 482 n.57 (2008); LBP-10-4, 71 NRC 227, 230 (2010)

LEGAL CITATIONS INDEX

CASES

- the Commission's longstanding policy is for boards to provide latitude to pro se participants in their pleadings; LBP-08-16, 68 NRC 400 (2008)
- Publicker Industries, Inc. v. Cohen*, 733 F.2d 1059 (3d Cir. 1984)
- the First Amendment requires a presumption of openness in civil proceedings; LBP-10-2, 71 NRC 208 n.58 (2010)
- Pueblo of Sandia v. United States*, 50 F.3d 856, 860 (10th Cir. 1995)
- a mere request for information is not necessarily sufficient to constitute the reasonable effort that section 106 of the National Historic Preservation Act requires; LBP-08-6, 67 NRC 329 n.499 (2008)
- Pueblo of Tesuque v. Acting Southwest Regional Director*, 40 IBIA 273, 2005 I.D. LEXIS 27, at 4 (Bureau of Indian Affairs, Dep't of Interior, Mar. 7, 2005)
- the executive branch is not bound by the same constitutional constraints as Article III courts, but it has consistently followed the same principles of declining to consider moot cases, in the interest of administrative economy; LBP-09-14, 70 NRC 196 n.15 (2009)
- Puerto Rico Aqueduct & Sewer Authority v. Environmental Protection Agency*, 35 F.3d 600, 607 (1st Cir. 1994)
- when an adjudicating agency retroactively applies a new legal standard that significantly alters the rules of the game, the agency is obliged to give litigants proper notice and a meaningful opportunity to adjust; CLI-10-23, 72 NRC 224 (2010)
- Puerto Rico Electric Power Authority* (North Coast Nuclear Plant, Unit 1), ALAB-662, 14 NRC 1125, 1132 (1981)
- the public interest would best be served by leaving the option open to the applicant should changed conditions warrant pursuit of a withdrawn application; LBP-10-11, 71 NRC 630 (2010)
- Puerto Rico Electric Power Authority* (North Coast Nuclear Plant, Unit 1), ALAB-662, 14 NRC 1125, 1133 (1981)
- it is highly unusual to dispose of a proceeding on the merits, i.e., with prejudice, when in fact the health, safety, and environmental merits of an application have not been reached; LBP-10-11, 71 NRC 630 (2010)
- Puget Sound Power & Light Co.* (Skagit/Hanford Nuclear Power Project, Units 1 and 2), LBP-82-26, 15 NRC 742, 744 (1982)
- economic impact of a proposed action on ratepayers is outside the scope of a NEPA analysis; LBP-10-14, 72 NRC 126 (2010)
- Quivira Mining Co.* (Ambrosia Lake Facility, Grants, New Mexico), CLI-98-11, 48 NRC 1, 5-6 (1998)
- in determining whether intervention petitioner has established the necessary interest, licensing boards follow guidance found in judicial concepts of standing, as stated in federal court case law; LBP-06-10, 63 NRC 327 (2006); LBP-06-23, 64 NRC 270 (2006); LBP-07-4, 65 NRC 293 (2007); LBP-07-11, 66 NRC 52 (2007); LBP-08-6, 67 NRC 271 (2008); LBP-09-13, 70 NRC 175 (2009); LBP-09-17, 70 NRC 321-22 n.30 (2009); LBP-10-16, 72 NRC 380 (2010)
- Quivira Mining Co.* (Ambrosia Lake Facility, Grants, New Mexico), CLI-98-11, 48 NRC 1, 6 (1998), *petition for review denied, Envirocare of Utah, Inc. v. NRC*, 194 F.3d 72 (D.C. Cir. 1999)
- intervention petitioner's injury must arguably lie within the zone of interests protected by the Atomic Energy Act or the National Environmental Policy Act; LBP-06-10, 63 NRC 327 (2006); LBP-06-23, 64 NRC 270 (2006); LBP-07-4, 65 NRC 294 (2007); LBP-07-11, 66 NRC 52 (2007); LBP-08-6, 67 NRC 271 (2008)
- standing requires that a petitioner allege a particularized injury that is fairly traceable to the challenged action and is likely to be redressed by a favorable decision; LBP-09-13, 70 NRC 176 (2009); LBP-10-16, 72 NRC 380 (2010)
- the breadth of the applicable zone of interests will vary according to the particular statutory provisions at issue; LBP-08-24, 68 NRC 702 n.33 (2008)
- Quivira Mining Co.* (Ambrosia Lake Facility, Grants, New Mexico), CLI-98-11, 48 NRC 1, 6 n.2 (1998), *petition for review denied, Envirocare of Utah, Inc. v. NRC*, 194 F.3d 72 (D.C. Cir. 1999)
- although the Commission customarily follows judicial concepts of standing, it is not bound to do so given that it is not an Article III court; LBP-08-24, 68 NRC 701-02 n.32 (2008); LBP-09-15, 70 NRC 210 (2009)

LEGAL CITATIONS INDEX

CASES

- Radiation Technology, Inc.* (Lake Denmark Road, Rockaway, New Jersey 07866), ALAB-567, 10 NRC 533, 536 (1979)
licensing boards review NRC Staff's enforcement order de novo to determine on the basis of the hearing record whether the charges are sustained and the sanction imposed is warranted; LBP-09-24, 70 NRC 706 (2009)
- Radiation Technology, Inc.* (Lake Denmark Road, Rockaway, New Jersey 07866), ALAB-567, 10 NRC 533, 536-37 (1979)
NRC Staff's role at a hearing in an enforcement proceeding is akin to that of a prosecutor, and it has the burden to prove its allegations by a preponderance of the reliable, probative, and substantial evidence; LBP-09-24, 70 NRC 706 (2009)
- Radiology Center, S.C. v. Stifel, Nicolaus & Co.*, 919 F.2d 1216, 1222-23 (7th Cir. 1990)
district court erred in using constructive knowledge because the law required actual knowledge; LBP-09-24, 70 NRC 708 n.46 (2009)
- Rainbow Magazine, Inc. v. Unified Capital Corp.*, 77 F.3d 278, 281 (9th Cir. 1996)
a prior decision should be followed unless it is clearly erroneous and its enforcement would work a manifest injustice, intervening controlling authority makes reconsideration appropriate, or substantially different evidence was adduced at a subsequent trial; CLI-06-11, 63 NRC 489 (2006)
legal determinations made on appeal in a case are controlling precedent, becoming the "law of the case," for all later decisions in the same case; CLI-06-11, 63 NRC 488 (2006)
- Ranchers Cattlemen Action Legal Fund United Stockgrowers of America v. U.S. Department of Agriculture*, 415 F.3d 1078, 1103 (9th Cir. 2005)
although the National Environmental Policy Act states its goals in sweeping terms of human health and welfare, these goals are ends that Congress has chosen to pursue by means of protecting the physical environment; CLI-08-16, 68 NRC 228 (2008)
if a harm does not have a sufficiently close connection to the physical environment, the National Environmental Policy Act does not apply, regardless of the gravity of the harm; CLI-08-16, 68 NRC 229 (2008)
the National Environmental Policy Act encompasses effects on health only when they are linked to a change in the environment; CLI-08-16, 68 NRC 228 (2008)
the National Environmental Policy Act zone of interests does not encompass potential increased risk of "mad cow" disease from resumed importation of Canadian beef because asserted injury was not connected to injury to the physical environment; CLI-08-16, 68 NRC 228 (2008)
- Ranchers Cattlemen Action Legal Fund United Stockgrowers of America v. U.S. Department of Agriculture*, 415 F.3d 1078, 1103-04 (9th Cir. 2005)
to be encompassed by the National Environmental Policy Act, there needs to be a reasonably close causal relationship between a change in the physical environment and the effect at issue; CLI-08-16, 68 NRC 228 (2008)
- Redland Soccer Club v. Department of the Army*, 55 F.3d 827, 854 (3d Cir. 1995), cert. denied, 516 U.S. 1071 (1996)
to overcome deliberative process privilege, petitioners have to show that their need for the information outweighs potential harm to the agency from that disclosure; CLI-08-23, 68 NRC 483 n.103 (2008)
- Reich v. John Alden Life Insurance Co.*, 126 F.3d 1, 6 (1st Cir. 1997)
a district court judge in a nonjury case may weigh the evidence and draw inferences only where parties cross-move for summary disposition on stipulated facts and have in effect submitted their case as a case stated; LBP-07-12, 66 NRC 127 n.71 (2007); LBP-07-13, 66 NRC 131 (2007)
- Renegotiation Board v. Grumman Aircraft Engineering Corp.*, 421 U.S. 168, 186 (1975)
a document must be predecisional and deliberative to be categorized as deliberative process; LBP-06-25, 64 NRC 381 (2006)
- Resolution Trust Corp. v. Diamond*, 773 F. Supp. 597, 604 (S.D.N.Y. 1991)
courts evaluate the strength of the particular interest protected by the deliberative process privilege, not a generalized agency interest in confidentiality; LBP-06-25, 64 NRC 391 (2006)
NRC Staff must show with specificity that the agency has a strong interest in protecting deliberative process materials; LBP-06-25, 64 NRC 391 (2006)
privileges are looked upon more favorably when asserted narrowly and when specific information is given about what is being protected and why; LBP-06-25, 64 NRC 377 (2006)

LEGAL CITATIONS INDEX

CASES

- Reyes-Gaona v. North Carolina Growers Association*, 250 F.3d 851, 865 (4th Cir. 2001)
the doctrine of *expressio unis est exclusio alterius* instructs that where a law expressly describes a particular situation to which it shall apply, what was omitted or excluded was intended to be omitted or excluded; LBP-08-24, 68 NRC 759 (2008)
- Rice v. Kempker*, 374 F.3d 675 (8th Cir. 2004)
the First Amendment requires a presumption of openness in civil proceedings; LBP-10-2, 71 NRC 208 n.58 (2010)
- Richmond Newspapers v. Virginia*, 448 U.S. 555, 573 (1980)
there is a presumption of openness in administrative proceedings; LBP-10-2, 71 NRC (2010)
- Richmond Newspapers v. Virginia*, 448 U.S. 555, 576 (1980)
public access to courts is grounded in the First Amendment and free speech carries with it some freedom to listen; LBP-10-2, 71 NRC 206 (2010)
- River Road Alliance, Inc. v. Corps of Engineers of U.S. Army*, 764 F.2d 445, 452-53 (7th Cir. 1985)
agencies are not obliged to create alternatives to a project in an EIS and may instead rely upon the applicant's list of alternatives; LBP-07-9, 65 NRC 609, 611 (2007)
- RKO General, Inc. v. Federal Communications Commission*, 670 F.2d 215, 232 (D.C. Cir. 1981)
counsel's duty of candor is an affirmative duty to inform the Commission of the facts it needs in order to fulfill its statutory mandate and is basic, and well known; LBP-06-10, 63 NRC 370 (2006)
- Robertson v. Methow Valley Citizens Council*, 490 U.S. 87, 97 (1983)
NEPA's dual purpose is to ensure that federal officials fully take into account the environmental consequences of a federal action before reaching major decisions and to inform the public, Congress, and other agencies of those consequences; LBP-07-9, 65 NRC 603 (2007)
- Robertson v. Methow Valley Citizens Council*, 490 U.S. 332 (1989)
NEPA is a procedural statute that does not require an agency to select any particular options; CLI-06-10, 63 NRC 467 (2006)
- Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 333 (1989)
the environmental impact statement requirement and NEPA's other action-forcing procedures implement that statute's sweeping policy goals by ensuring that agencies will take a hard look at environmental consequences; CLI-07-27, 66 NRC 229 (2007)
- Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 334, 350 (1989)
NEPA requires federal agencies to take a hard look at the environmental consequences of their actions; LBP-09-16, 70 NRC 287 (2009)
- Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 334, 355-56 (1989)
although the Council on Environmental Quality's regulations do not bind NRC, they are entitled to substantial deference; CLI-07-27, 66 NRC 222 n.21 (2007); LBP-09-16, 70 NRC 260 n.104 (2009)
- Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 339 (1989)
the goals of the National Environmental Policy Act are to inform federal agencies and the public about the environmental effects of proposed projects; LBP-08-13, 68 NRC 199 (2008)
- Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 344-47 (1989)
the SAMA analysis requires no different level of consideration or evaluation than that employed for analyzing mitigation generally under NEPA; LBP-06-23, 64 NRC 329 (2006)
- Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 348 (1989)
an agency is to include in every recommendation or report on major federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on the environmental impact of the proposed action; LBP-06-23, 64 NRC 277 (2006); LBP-07-4, 65 NRC 309 (2007); LBP-07-11, 66 NRC 62 (2007); LBP-08-6, 67 NRC 321 (2008)
- Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989)
it is inappropriate, perhaps even impossible, for intervenor to prove at the contention admissibility stage that correcting an error or omission in the environmental report or environmental impact statement would, in fact, change the NRC's ultimate decision; LBP-10-14, 72 NRC 129 n.182 (2010)
preparation of an environmental impact statement ensures that a federal agency, in reaching its decision, will have available, and will carefully consider, detailed information concerning significant environmental impacts, and also guarantees that the relevant information will be made available to the larger audience that may also play a role in both the decisionmaking process and the implementation of that decision; LBP-06-23, 64 NRC 277 (2006)

LEGAL CITATIONS INDEX

CASES

- the public participation aspect of NEPA arises from the informational role played by the environmental impact statement in giving the public the assurance that the agency has indeed considered environmental concerns in its decisionmaking process and, perhaps more significantly, providing a springboard for public comment; LBP-06-23, 64 NRC 298 n.169 (2006); LBP-10-24, 72 NRC 763 (2010)
- the statutory requirement that a federal agency contemplating a major action prepare an environmental impact statement serves NEPA's action-forcing purpose in two important respects; LBP-07-4, 65 NRC 309-10 (2007); LBP-07-11, 66 NRC 62 (2007)
- Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349-50 (1989)
- the principal goals of an environmental impact statement are to force agencies to take a hard look at the environmental consequences of a proposed project, and, by making relevant analyses openly available, to permit the public a role in the agency's decisionmaking process; LBP-10-24, 72 NRC 763 n.86 (2010)
- Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989)
- if the adverse environmental effects of a proposed action are adequately identified and evaluated, the agency is not constrained by NEPA from deciding that other values outweigh the environmental costs; LBP-06-19, 64 NRC 63 (2006); LBP-06-23, 64 NRC 277 n.64 (2006); LBP-07-4, 65 NRC 310 (2007); LBP-07-11, 66 NRC 62 n.74 (2007)
- the National Environmental Policy Act does not mandate particular results, but simply prescribes the necessary process; LBP-06-19, 64 NRC 63 (2006); LBP-07-4, 65 NRC 310 (2007); LBP-09-6, 69 NRC 401 n.151 (2009); LBP-09-25, 70 NRC 895 (2009); LBP-10-24, 72 NRC 763 n.87 (2010)
- the National Environmental Policy Act imposes no obligation to select the most environmentally benign alternative; LBP-06-19, 64 NRC 90 (2006)
- Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 n.13 (1989)
- Council on Environmental Quality regulations require agencies to request and consider comments from other federal agencies, appropriate state and local agencies, affected Indian tribes, any relevant applicant, the public generally, and, in particular, interested or affected persons or organizations; LBP-06-23, 64 NRC 298 n.169 (2006)
- Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 351 (1989)
- once the adverse environmental effects of the proposed action are adequately identified and evaluated, the agency is not constrained by the National Environmental Policy Act from deciding that other values outweigh the environmental costs; LBP-09-7, 69 NRC 697 n.42 (2009)
- Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 351-52 (1989)
- NEPA implicitly requires that the environmental impact statement disclose mitigation measures; LBP-09-4, 69 NRC 227-28 (2009); LBP-09-16, 70 NRC 259 (2009)
- the EIS will discuss the extent to which adverse effects can be avoided because without such a discussion, neither the agency nor other interested groups or individuals can properly evaluate the severity of the adverse effects; LBP-06-23, 64 NRC 279 n.78 (2006); LBP-07-4, 65 NRC 312 n.139 (2007); LBP-07-11, 66 NRC 64 n.88 (2007)
- Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 352 (1989)
- a litigable NEPA issue is one that concerns whether the NRC Staff has taken the requisite hard look at mitigation in sufficient detail to ensure that environmental consequences of the proposed project have been fairly evaluated; LBP-10-13, 71 NRC 679 (2010)
- an environmental impact statement must address mitigation measures in sufficient detail to ensure that environmental consequences have been fairly evaluated, but the EIS need not contain a complete mitigation plan; CLI-06-29, 64 NRC 426 (2006)
- neither the agency nor other interested groups or individuals can properly evaluate the severity of the adverse effects; LBP-07-11, 66 NRC 64 n.88 (2007)
- the basis for the requirement that an EIS discuss the extent to which adverse effects can be avoided is that omission of a reasonably complete discussion of possible mitigation measures would undermine the action-forcing function of NEPA; LBP-06-23, 64 NRC 279 n.78 (2006)
- the purpose of addressing possible mitigation measures in a final environmental impact statement is to ensure that the agency has taken a hard look at the potential environmental impacts of a proposed action; CLI-06-29, 64 NRC 426 (2006)

LEGAL CITATIONS INDEX

CASES

- without a discussion in the EIS of the extent to which adverse effects can be avoided, neither an agency nor other interested groups or individuals can properly evaluate the severity of the adverse effects; LBP-06-23, 64 NRC 279 n.78 (2006)
- Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 353 (1989)
for a mitigation analysis, the National Environmental Policy Act demands no fully developed plan or detailed examination of specific measures that will be employed to mitigate adverse environmental effects; CLI-06-29, 64 NRC 427 (2006); CLI-10-11, 71 NRC 316 (2010); LBP-10-13, 71 NRC 691 (2010)
- Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 355-56 (1989)
Council on Environmental Quality regulations receive substantial deference from the federal courts; LBP-10-24, 72 NRC 755 n.74 (2010)
- Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 359 (1989)
an agency's interpretation of its own regulation is controlling provided it is not plainly erroneous or inconsistent with the regulation; CLI-10-13, 71 NRC 389 n.10 (2010)
- Rochester Gas & Electric Corp.* (R.E. Ginna Nuclear Plant, Unit 1), LBP-83-73, 18 NRC 1231, 1233 (1983)
licensing boards might have authority to order the renoticing of a licensing proceeding pending before it; LBP-09-23, 70 NRC 668 n.27 (2009)
- Rochester Gas & Electric Corp.* (Sterling Power Project Nuclear Unit No. 1), ALAB-507, 8 NRC 551, 554 n.7 (1978)
NRC authority over uranium ore and other source material attaches only after removal from its place of deposit in nature, and not when the ore is mined; CLI-06-14, 63 NRC 512 (2006)
- Rockford League of Women Voters v. NRC*, 679 F.2d 1218, 1222-23 (7th Cir. 1982)
administrative regularity in the regulatory process is assumed, and review of the operating license application takes place independently of that associated with plant construction; CLI-10-29, 72 NRC 562 (2010)
- Rockwell International Corp.* (Rockeydyne Division), CLI-90-5, 31 NRC 337 (1990)
there was no mention of settlement judges or alternative dispute resolution in the old rules prior to 2004, because the Commission's endorsement of such forms of conflict resolution was found in case law rather than the regulations; LBP-06-18, 63 NRC 840 (2006)
- Rodriguez v. City of Fresno*, No. 1:05CV1017, 2006 WL 1530251 at 1 (E.D. Cal. May 30, 2006)
because a protective order limiting the disclosure of documents is already in place, the court will not withhold the documents from the other party; LBP-06-25, 64 NRC 388 n.85 (2006)
- Roedler v. U.S. Department of Energy*, 255 F.3d 1347, 1353 (Fed. Cir. 2001)
ratepayers are not third-party beneficiaries of the Standard Contract and therefore cannot sue for breach of contract when DOE fails to dispose of nuclear waste by the statutory deadline; LBP-10-11, 71 NRC 638 n.112 (2010)
- Rosen v. Tennessee Commissioner of Finance and Administration*, 288 F.3d 918 (6th Cir. 2002)
a class of plaintiffs challenging one provision of a program would not have standing to challenge a different provision unless they could show that one of the named plaintiffs would be adversely affected by that provision; CLI-09-9, 69 NRC 341 (2009)
plaintiff in federal court must demonstrate standing separately for each separate claim; LBP-09-1, 69 NRC 19 (2009)
- Rosen v. Tennessee Commissioner of Finance and Administration*, 288 F.3d 918, 927-31 (6th Cir. 2002)
standing is a claim-by-claim issue; LBP-09-1, 69 NRC 19 (2009)
- Rulemaking Hearing: Acceptance Criteria for Emergency Core Cooling Systems for Light-Water-Cooled Nuclear Power Reactors*, CLI-73-39, 6 AEC 1085, 1091 (1973)
protection against a highly unlikely loss-of-coolant accident has long been an essential part of the defense-in-depth concept used by the nuclear power industry and the AEC to ensure the safety of nuclear power plants; LBP-08-12, 68 NRC 40 (2008)
- Russell v. Department of the Air Force*, 682 F.2d 1045, 1047 (D.C. Cir. 1982)
in the context of deliberative process privilege, policy and lawmaking can be viewed as including most decisions of government agencies; LBP-06-25, 64 NRC 382 (2006)

LEGAL CITATIONS INDEX

CASES

- Russell v. Department of the Air Force*, 682 F.2d 1045, 1049 (D.C. Cir. 1982)
draft versions of histories have been protected in certain circumstances by deliberative process privilege; LBP-06-25, 64 NRC 382 n.55 (2006)
- S.D. Warren Co. v. Maine Board of Environmental Protection*, 126 S. Ct. 1843, 1853 n.8 (2006)
the Federal Water Pollution Control Act does not relieve NRC of its basic NEPA duty to do an environmental impact statement covering all environmental effects, including water quality, but NRC cannot second-guess or impose its own effluent limitations, or other water quality requirements that EPA or the state may impose under the statute; LBP-06-20, 64 NRC 180 (2006)
- Sacramento Municipal Utility District* (Rancho Seco Nuclear Generating Station), CLI-92-2, 35 NRC 47, 56 (1992)
NRC generally follows judicial concepts of standing in its own proceedings; CLI-06-6, 63 NRC 163 (2006)
- Sacramento Municipal Utility District* (Rancho Seco Nuclear Generating Station), CLI-93-3, 37 NRC 135, *reconsid'n denied*, CLI-93-12, 37 NRC 355, 358-59, *clarified on other issues*, CLI-93-19, 38 NRC 81 (1993)
only eight petitions for discretionary intervention have ever been granted during the 30 years NRC has applied the current six-factor test; CLI-06-16, 63 NRC 717 (2006)
- Sacramento Municipal Utility District* (Rancho Seco Nuclear Generating Station), CLI-93-3, 37 NRC 135, 141 *reconsid'n denied*, CLI-93-12, 37 NRC 355, 358-59, *clarified on other issues*, CLI-93-19, 38 NRC 81 (1993)
the Commission has taken the unusual step of declaring that the grant of discretionary intervention carries no precedential weight; CLI-06-16, 63 NRC 717 (2006)
- Sacramento Municipal Utility District* (Rancho Seco Nuclear Generating Station), CLI-93-3, 37 NRC 135, 144-45 (1993)
applicant in its environmental report need only consider the range of alternatives that are capable of achieving the goal of the proposed action; LBP-08-13, 68 NRC 92, 95, 204 (2008)
- Sacramento Municipal Utility District* (Rancho Seco Nuclear Generating Station), CLI-93-3, 37 NRC 135, 146-47 (1993)
a petitioner may not ground a contention on the Staff's request for additional information, when the request shows only an ongoing Staff dialogue with the applicant, not any ultimate Staff determinations; LBP-06-11, 63 NRC 399 (2006)
- Sacramento Municipal Utility District* (Rancho Seco Nuclear Generating Station), CLI-93-3, 37 NRC 135, 147 (1993)
petitioner has an iron-clad obligation to examine the publicly available documentary material with sufficient care to enable it to uncover any information that could serve as the foundation for a specific contention; CLI-10-27, 72 NRC 496 (2010)
- Sacramento Municipal Utility District* (Rancho Seco Nuclear Generating Station), CLI-93-12, 37 NRC 355, 358 (1993)
the practice of granting or denying discretionary intervention should develop not through precedent, but through attention to the concrete facts of particular situations; CLI-06-16, 63 NRC 717 (2006)
- Sacramento Municipal Utility District* (Rancho Seco Nuclear Generating Station), CLI-93-12, 37 NRC 355, 363 (1993)
even if petitioner is unable to show that the NRC Staff's NEPA document differs significantly from the environmental report, it may still be able to meet the late-filed contention requirements; LBP-10-24, 72 NRC 731 (2010)
- Sacramento Municipal Utility District* (Rancho Seco Nuclear Generating Station), CLI-94-2, 39 NRC 91, 93-94 (1994)
if litigants were permitted to successfully invoke interlocutory review based merely on an assertion that the licensing board erred in admitting (or excluding) a contention, the floodgates would be opened to a potential deluge of interlocutory appeals from any number of participants who lose admissibility rulings; CLI-09-6, 69 NRC 137 (2009)
increased litigation burden of one contention, where other contentions were pending in proceeding, did not have a pervasive effect on the structure of the litigation; CLI-08-2, 67 NRC 35 n.19 (2008)

LEGAL CITATIONS INDEX

CASES

- the mere expansion of issues rarely, if ever, has been found to affect the basic structure of a proceeding in a pervasive or unusual manner so as to warrant interlocutory review; CLI-09-6, 69 NRC 133 n.16 (2009)
- Sacramento Municipal Utility District* (Rancho Seco Nuclear Generating Station), LBP-91-17, 33 NRC 379, 391 (1991)
- even minor radiological exposures resulting from a proposed license activity can be enough to create the requisite injury-in-fact for standing to intervene; LBP-09-4, 69 NRC 181 (2009)
- Sacramento Municipal Utility District* (Rancho Seco Nuclear Generating Station), LBP-93-23, 38 NRC 200, 246 (1993)
- a bald and conclusory assertion is inadequate to support a contention; LBP-07-11, 66 NRC 93 (2007)
- a conclusory assertion that is little more than a claim that the evacuation plan ought to be studied is not an adequate basis for a contention; LBP-07-11, 66 NRC 93 (2007)
- Sacramento Municipal Utility District* (Rancho Seco Nuclear Generating Station), LBP-93-23, 38 NRC 200, 247-48 (1993), *review declined*, CLI-94-2, 39 NRC 91 (1994)
- any contention that fails to controvert the application directly, or that mistakenly asserts the application fails to address an issue that the application does address, is defective; LBP-07-3, 65 NRC 254 (2007); LBP-07-10, 66 NRC 24 (2007); LBP-07-16, 66 NRC 289 (2007); LBP-08-9, 67 NRC 433 (2008); LBP-08-13, 68 NRC 64 (2008); LBP-08-16, 68 NRC 386 (2008); LBP-08-17, 68 NRC 441 (2008); LBP-08-26, 68 NRC 918 (2008); LBP-09-3, 69 NRC 154 (2009); LBP-09-18, 70 NRC 404 (2009); LBP-09-26, 70 NRC 955, 968 n.147 (2009); LBP-09-27, 70 NRC 1016 (2009); LBP-10-7, 71 NRC 421 (2010)
- claims that are not a challenge to the adequacy of the application are insufficient to establish an admissible contention; LBP-08-6, 67 NRC 301 (2008)
- Sacramento Municipal Utility District* (Rancho Seco Nuclear Generating Station), LBP-93-23, 38 NRC 200, 249 (1993), *petition for review denied*, CLI-94-2, 39 NRC 91 (1994)
- the standing requirement for showing injury in fact has always been significantly less than for demonstrating an acceptable contention; LBP-08-6, 67 NRC 280 (2008); LBP-08-24, 68 NRC 705 (2008)
- SafeCard Services, Inc. v. Securities and Exchange Commission*, 926 F.2d 1197, 1200-02 (D.C. Cir. 1991)
- a relatively detailed index or affidavit should provide a sufficient basis for a decision as to the bases for withholding enumerated source documents; CLI-08-1, 67 NRC 25 n.118 (2008)
- SafeCard Services, Inc. v. Securities and Exchange Commission*, 926 F.2d 1197, 1205 (D.C. Cir. 1991)
- given all the different circumstances that can lead to an individual being an innocent victim of unsubstantiated allegations, the law recognizes a personal privacy interest not to have such allegations publicly disseminated after they have been shown to be insubstantial; LBP-06-25, 64 NRC 393 (2006)
- with regard to names and addresses, FOIA Exemption 7(C) affords broad privacy rights to suspects, witnesses, and investigators; LBP-06-25, 64 NRC 386 (2006)
- Safety Light Corp.* (Bloomsburg, Pennsylvania Site), as described in LBP-05-2, 61 NRC 53, 56-59 (2005)
- Staff may make an enforcement order immediately effect on the basis of public health and safety or a "willful violation" aspect of 10 C.F.R. 2.202(a)(5); LBP-06-26, 64 NRC 433 n.3 (2006)
- Safety Light Corp.* (Bloomsburg Site Decontamination), CLI-92-9, 35 NRC 156, 158 (1992)
- petitions for interlocutory review are granted only under extraordinary circumstances; CLI-09-6, 69 NRC 133 (2009)
- Safety Light Corp.* (Bloomsburg Site Decontamination), CLI-92-9, 35 NRC 156, 159-60 & n.5 (1992)
- legal determinations made on appeal in a case are controlling precedent, becoming the "law of the case," for all later decisions in the same case; CLI-06-11, 63 NRC 488 (2006)
- pursuant to the law of the case doctrine, the decision of an appellate tribunal should ordinarily be followed in all subsequent phases of that case, provided that the particular question in issue was actually decided or decided by necessary implication; LBP-06-1, 63 NRC 58 (2006)
- Safety Light Corp.* (Bloomsburg Site Decontamination and License Renewal Denials), CLI-92-13, 36 NRC 79, 85 (1992)
- even in the absence of a petition for review, the Commission retains its supervisory power over adjudications to step in at any stage of a proceeding and decide a matter itself; CLI-09-3, 69 NRC 72 n.16 (2009)

LEGAL CITATIONS INDEX

CASES

- Safety Light Corp.* (Bloomsburg Site Decontamination and License Renewal Denials), CLI-92-13, 36 NRC 79, 85-86 (1994)
a board's order consolidating an informal Subpart L proceeding with a formal Subpart G proceeding affects the basic structure of the proceeding in a pervasive and unusual manner; CLI-08-2, 67 NRC 35 n.16 (2008)
- Salmon River Concerned Citizens v. Robertson*, 32 F.3d 1346, 1358-60 (9th Cir. 1994)
NEPA requires NRC to provide a reasonable mitigation alternatives analysis, containing reasonable estimates, including full disclosures of any known shortcomings in methodology, incomplete or unavailable information and significant uncertainties; CLI-10-22, 72 NRC 209 (2010)
- San Carlos Apache Tribe v. United States*, 272 F. Supp. 2d 860, 880 (D. Ariz. 2003)
although wholly conclusory statements for which no supporting evidence is offered need not be taken as true for summary judgment purposes, a court may not make credibility determinations or weigh the evidence at the summary judgment stage; LBP-07-12, 66 NRC 127 (2007); LBP-07-13, 66 NRC 131 (2007)
- San Francisco Baykeeper v. Cargill Salt Division*, 481 F.3d 700, 709 (9th Cir. 2009)
the Clean Water Act does not authorize regulation of discharges to groundwater even if such groundwater is adjacent to navigable water; LBP-09-25, 70 NRC 890 n.145 (2009)
- San Francisco Baykeeper v. U.S. Army Corps of Engineers*, 219 F. Supp. 2d 1001, 1013-16 (N.D. Calif. 2002)
NEPA requires NRC to provide a reasonable mitigation alternatives analysis, containing reasonable estimates, including full disclosures of any known shortcomings in methodology, incomplete or unavailable information and significant uncertainties; CLI-10-22, 72 NRC 209 (2010)
- San Luis Obispo Mothers for Peace v. NRC*, 449 F.3d 1016 (9th Cir. 2006), *cert. denied*, 549 U.S. 1166 (2007)
NRC and its licensees are required to address the environmental impacts of a successful terrorist attack on a nuclear plant; LBP-09-17, 70 NRC 381 (2009); LBP-09-18, 70 NRC 412 (2009)
NRC cannot, under NEPA, categorically refuse to consider the consequences of a terrorist attack against a spent fuel storage facility; CLI-10-1, 71 NRC 11 (2010); CLI-10-14, 71 NRC 476 n.156 (2010); LBP-08-6, 67 NRC 331 (2008)
NRC has declined to require the agency to consider terrorist threats outside the Ninth Circuit as part of the NEPA review process; LBP-09-10, 70 NRC 116 (2009)
NRC's categorical refusal to consider the environmental effects of a terrorist attack is found to be unreasonable under the National Environmental Policy Act; LBP-06-28, 64 NRC 405 (2006)
NRC's position that passive measures already in place are appropriate for protecting nuclear facilities from an aerial attack is found to be unreasonable and NRC is required to investigate aviation threats; LBP-09-2, 69 NRC 102 (2009)
- San Luis Obispo Mothers for Peace v. NRC*, 449 F.3d 1016 (9th Cir. 2006), *cert. denied sub nom., Pacific Gas and Electric Co. v. San Luis Obispo Mothers for Peace*, 127 S. Ct. 1124 (2007)
NRC cannot, under NEPA, categorically refuse to consider the consequences of a terrorist attack against a spent fuel storage facility; CLI-07-9, 65 NRC 141 (2007); CLI-07-10, 65 NRC 145 (2007); LBP-07-11, 66 NRC 83 (2007)
NRC is required to consider aircraft attacks by terrorists; LBP-08-21, 68 NRC 567 (2008)
NRC precedent that a NEPA analysis is not the vehicle for exploring questions about the potential for a terrorist attack upon a proposed nuclear facility is not applicable to independent spent fuel storage installation licensing proceedings in the Ninth Circuit; LBP-07-3, 65 NRC 269 (2007)
the possibility of a terrorist attack at a nuclear facility cannot be dismissed as unquantifiable or remote and highly speculative and NEPA therefore requires the agency to consider the environmental effects of terrorist attacks in its NEPA review; LBP-07-14, 66 NRC 185 (2007); LBP-08-13, 68 NRC 141 (2008)
this decision nowhere says or implies that the NRC cannot consider spent fuel pool or other environmental issues generically; CLI-07-3, 65 NRC 21 n.31 (2007)
- San Luis Obispo Mothers for Peace v. NRC*, 449 F.3d 1016, 1027, 1028 (2006)
NRC's reliance on its own prior opinions in its decision does not violate the Administrative Procedure Act's notice-and-comment provisions, and the agency has the discretion to use adjudication to establish a binding legal norm; LBP-06-23, 64 NRC 284 n.105 (2006)

LEGAL CITATIONS INDEX

CASES

- section 51.53(c)(3)(iv) creates an exception to section 51.53(c)(3)(i) in the context of the requirements for ERs and EISs but not with regard to the scope of issues permitted to be raised in contentions in a license renewal adjudication context, absent a waiver; LBP-06-23, 64 NRC 299 n.170 (2006)
- San Luis Obispo Mothers for Peace v. NRC*, 449 F.3d 1016, 1028 (9th Cir. 2006), *cert. denied*, 127 S. Ct. 1124 (2007)
- NEPA analysis performed as a result of an NRC licensing decision should consider the potential environmental consequences of a terrorist attack on the facility under review; CLI-09-15, 70 NRC 5 (2009)
- NRC's categorical refusal to consider the environmental effects of a terrorist attack is found to be unreasonable under the National Environmental Policy Act; CLI-06-23, 64 NRC 107-08 (2006); CLI-07-11, 65 NRC 148 (2007); LBP-10-15, 72 NRC 320-21 n.73 (2010)
- San Luis Obispo Mothers for Peace v. NRC*, 449 F.3d 1016, 1028 (9th Cir. 2006), *cert. denied*, 127 S. Ct. 1124, 1035 (2007)
- identification of the inadequacies in the NRC's NEPA analysis should not be construed as constraining the NRC's consideration of the merits on remand, or circumscribing the procedures that the NRC must employ in conducting its analysis; CLI-08-1, 67 NRC 5 n.17 (2008)
- NRC has maximum procedural leeway in how it addresses the NEPA impacts of terrorism; CLI-06-27, 64 NRC 402 (2006)
- NRC's categorical refusal to consider the environmental effects of a terrorist attack in an independent spent fuel storage installation licensing proceeding is unreasonable under the National Environmental Policy Act; CLI-08-1, 67 NRC 4 (2008)
- San Luis Obispo Mothers for Peace v. NRC*, 449 F.3d 1016, 1028, 1035 (9th Cir. 2006), *cert. denied*, 127 S. Ct. 1124 (2007)
- the Commission's refusal to consider the environmental effects of a terrorist attack is inconsistent with the requirements of NEPA; LBP-08-7, 67 NRC 366 (2008)
- San Luis Obispo Mothers for Peace v. NRC*, 449 F.3d 1016, 1030 (9th Cir. 2006)
- NRC must address the environmental impacts of a terrorist attack on nuclear facilities located in the Ninth Circuit; LBP-10-15, 72 NRC 317-18 (2010)
- San Luis Obispo Mothers for Peace v. NRC*, 449 F.3d 1016, 1031 (9th Cir. 2006)
- it is possible to conduct a low-probability, high-consequence analysis without quantifying the precise probability of risk; LBP-10-15, 72 NRC 324 n.78 (2010)
- San Luis Obispo Mothers for Peace v. NRC*, 449 F.3d 1016, 1031-32 (9th Cir. 2006)
- in its terrorism review, NRC Staff may rely, where appropriate, on qualitative rather than quantitative considerations; CLI-07-11, 65 NRC 150 (2007)
- San Luis Obispo Mothers for Peace v. NRC*, 449 F.3d 1016, 1031-32, 1034-35 (9th Cir. 2006)
- the value of qualitative analysis and the importance of protecting sensitive, security-related information has been recognized; CLI-08-26, 68 NRC 525 (2008)
- San Luis Obispo Mothers for Peace v. NRC*, 449 F.3d 1016, 1032-33 (9th Cir. 2006), *cert. denied*, 549 U.S. 1166 (2007)
- Council on Environmental Quality regulations are entitled to substantial deference by NRC; LBP-10-15, 72 NRC 288 n.33 (2010)
- San Luis Obispo Mothers for Peace v. NRC*, 449 F.3d 1016, 1033 (9th Cir. 2006), *cert. denied sub nom. Pacific Gas and Electric Co. v. San Luis Obispo Mothers for Peace*, 549 U.S. 1166 (2007)
- impacts that are reasonably foreseeable under NEPA must be analyzed publicly, even if their probability of occurrence is low; CLI-10-18, 72 NRC 90 (2010)
- NEPA requires dealing with uncertainties by inclusion in an environmental impact statement of a summary of existing credible scientific evidence relevant to evaluating the reasonably foreseeable significant adverse impacts regarding those events with potential catastrophic consequences, even if their probability is low; LBP-09-26, 70 NRC 971 (2009)
- the analysis of reasonably foreseeable significant adverse impacts regarding those events with potential catastrophic consequences must be supported by credible scientific evidence, must not be based on pure conjecture, and must be within the rule of reason; LBP-09-26, 70 NRC 971 (2009)
- San Luis Obispo Mothers for Peace v. NRC*, 449 F.3d 1016, 1035 (9th Cir. 2006)
- given NRC's substantial consideration of terrorist attack scenarios under the Atomic Energy Act, NRC is not entitled to refuse categorically to consider the environmental effects of a terrorist attack on a

LEGAL CITATIONS INDEX

CASES

- nuclear facility under NEPA; CLI-06-27, 64 NRC 400 (2006); LBP-06-20, 64 NRC 173 (2006); LBP-06-23, 64 NRC 283-84 n.105 (2006)
- San Luis Obispo Mothers for Peace v. NRC*, 751 F.2d 1287, 1300-01 (D.C. Cir. 1984)
under NEPA's well-established probabilistic rule of reason, an agency need not address remote and speculative environmental consequences, nor must it discuss in detail events it believes have an inconsequentially small probability of occurring; LBP-10-14, 72 NRC 117 n.91 (2010)
- Sao Paulo State of the Federative Republic of Brazil v. American Tobacco Co., Inc.*, 535 U.S. 232-33 (2002)
the proper inquiry under 28 U.S.C. § 455 is made from the perspective of a reasonable person, knowing all the circumstances; CLI-10-22, 72 NRC 206 (2010)
- Save Our Sonoran, Inc. v. Flowers*, 408 F.3d 1113, 1122 (9th Cir. 2005)
NEPA obligates federal agencies to evaluate all of the environmental effects of their actions, not only those regulated under their own statutes; CLI-08-1, 67 NRC 22 (2008)
- Save the Bay, Inc. v. U.S. Army Corps of Engineers*, 610 F.2d 322, 326 (5th Cir. 1980)
the National Environmental Policy Act applies to agencies of the federal government, not to private parties such as applicants for NRC licenses; LBP-09-10, 70 NRC 87 (2009)
- Scott v. Arex, Inc.*, 124 F.R.D. 39, 41 (D. Conn. 1989)
a party controls a document if it has right, authority, or ability to obtain the document on demand; LBP-12-23, 72 NRC 707 n.21 (2010)
- Seacoast Anti-Pollution League v. Costle*, 572 F.2d 872, 880 (1st Cir. 1978)
there is no absolute right to cross-examination; LBP-09-10, 70 NRC 145 (2009); LBP-10-15, 72 NRC 344 (2010)
- Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 29 (1984)
although 10 C.F.R. 2.709 deals with special procedural norms for discovery against the Staff, there is no reason to believe, as to substantive content, that its repeated use of the relevance concept was not intended to embrace the universal understanding of that concept that shapes the scope and definition of discoverable evidence in both the federal courts and NRC adjudications; LBP-06-25, 64 NRC 390 n.102 (2006)
- Securities & Exchange Commission v. Chenery Corp.*, 332 U.S. 194 (1947)
a Staff order that neither repudiates nor rescinds any NRC safety and security requirements, but rather imposes new, more stringent security requirements that supplement those already found in NRC regulations does not amount to unlawfully promulgated regulations; CLI-10-3, 71 NRC 54 n.24 (2010)
- Securities & Exchange Commission v. Chenery Corp.*, 332 U.S. 194, 203 (1947)
the Commission may choose, in its informed discretion, to proceed by general rule or by individual, ad hoc litigation; LBP-06-23, 64 NRC 299 n.170 (2006)
- Securities & Exchange Commission v. Doody*, 186 F. Supp. 2d 379 (S.D.N.Y. 2002)
remedies short of complete abeyance of a proceeding are sometimes appropriate; LBP-06-13, 63 NRC 538 n.43 (2006)
- Securities & Exchange Commission v. Dresser Industries*, 628 F.2d 1368 (D.C. Cir. 1980)
a noncriminal proceeding, if not deferred, might undermine a party's Fifth Amendment privilege against self-incrimination; LBP-06-13, 63 NRC 538 n.45 (2006)
- Securities & Exchange Commission v. Dresser Industries*, 628 F.2d 1368, 1375 (D.C. Cir. 1980)
a stay of a noncriminal proceeding would be justified when there is agency bad faith or malicious government tactics; LBP-06-13, 63 NRC 539 n.46 (2006)
- Securities & Exchange Commission v. Dresser Industries*, 628 F.2d 1368, 1384 (D.C. Cir. 1980)
an enforcement subpoena does not inappropriately interfere with the criminal process because the only alleged prejudice caused by the parallel nature of the proceedings is speculative and undefined; LBP-06-13, 63 NRC 541 n.56 (2006)
- Securities & Exchange Commission v. Oakford Corp.*, 181 F.R.D. 269, 272-73 (S.D.N.Y. 1998)
if, in defending themselves against the serious civil charges that another government agency has chosen to file against them, defendants obtain certain ordinary discovery that will also be helpful in the defense of their criminal case, there is no cognizable harm to the government in providing such discovery beyond its desire to maintain a tactical advantage; LBP-06-13, 63 NRC 541 n.56 (2006)

LEGAL CITATIONS INDEX

CASES

- Securities & Exchange Commission v. Saad*, 229 F.R.D. 90 (S.D.N.Y. 2005)
sometimes the pendency of a criminal prosecution does not necessitate delaying a parallel civil or administrative proceeding; LBP-06-13, 63 NRC 538 n.42 (2006)
- Seminole Nation v. United States*, 316 U.S. 286, 296-97 (1942)
the trust responsibility imposes a fiduciary duty on NRC, as a federal agency, to the Tribe and its members; LBP-08-24, 68 NRC 742 (2008)
- Sequoyah Fuels Corp.*, CLI-95-2, 41 NRC 179, 190 (1995)
licensing board decisions have no precedential effect beyond the immediate proceeding in which they were issued; LBP-06-1, 63 NRC 59 (2006); LBP-09-15, 70 NRC 212 (2009)
unreviewed licensing board decisions carry no precedential weight; CLI-08-19, 68 NRC 263 (2008)
- Sequoyah Fuels Corp.* (Gore, Oklahoma Site Decommissioning), CLI-01-2, 53 NRC 9, 13 (2001)
an intervention petitioner must demonstrate that its injury arguably falls within the zone of interests protected by the statutes governing NRC proceedings; LBP-06-4, 63 NRC 103 (2006); LBP-07-14, 66 NRC 182 (2007)
judicial concepts of standing require a petitioner to allege an actual or threatened, concrete and particularized injury that is fairly traceable to the challenged action, falls among the general interests protected by the Atomic Energy Act or other applicable statute, and is likely to be redressed by a favorable decision; LBP-10-4, 71 NRC 228 (2010)
- Sequoyah Fuels Corp.* (Gore, Oklahoma Site Decommissioning), CLI-01-2, 53 NRC 9, 13-14 (2001)
redressability requires petitioner to show that its alleged injury-in-fact could be cured or alleviated by some action of the tribunal; LBP-09-13, 70 NRC 177 (2009); LBP-10-16, 72 NRC 382 (2010)
- Sequoyah Fuels Corp.* (Gore, Oklahoma Site Decommissioning), CLI-01-2, 53 NRC 9, 14 (2001)
on appeal, the board's judgment on determinations of standing is given substantial deference absent a clear misapplication of facts or law; CLI-09-12, 69 NRC 543 (2009)
- Sequoyah Fuels Corp.* (Gore, Oklahoma Site Decommissioning), CLI-01-2, 53 NRC 9, 19-20 (2001)
the Commission declined to exercise pendent jurisdiction where the challenged interlocutory issues were not inextricably intertwined with the two immediately appealable issues; CLI-08-27, 68 NRC 657 (2008)
- Sequoyah Fuels Corp.* (Gore, Oklahoma Site Decontamination and Decommissioning Funding), LBP-94-5, 39 NRC 54 (1994)
a licensing board's review of a petition for standing is to avoid the familiar trap of confusing the standing determination with the assessment of a petitioner's case on the merits; LBP-08-24, 68 NRC 708 (2008)
- Sequoyah Fuels Corp.* (Gore, Oklahoma Site Decontamination and Decommissioning Funding), LBP-94-8, 39 NRC 116, 118 (1994)
pleading niceties should not be used to exclude parties who have a clear, albeit imperfectly stated, interest; LBP-08-6, 67 NRC 277 n.159 (2008)
- Sequoyah Fuels Corp.* (Sequoyah UF₆ to UF₄ Facility), CLI-86-17, 24 NRC 489, 491 (1986)
an overfilled uranium hexafluoride transportation cylinder was heated to remove the excess material, causing the cylinder to rupture and release uranium hexafluoride, which, when combined with atmospheric moisture, created hydrofluoric acid and resulted in the death of one worker and injuries to several other employees; LBP-06-17, 63 NRC 823 (2006)
- Sequoyah Fuels Corp. and General Atomics* (Gore, Oklahoma Site Decontamination and Decommissioning Funding), LBP-94-5, 39 NRC 54 (1994)
a board's standing analysis must avoid the familiar trap of confusing the standing determination with the assessment of a petitioner's case on the merits; LBP-10-16, 72 NRC 388 (2010)
- Sequoyah Fuels Corp. and General Atomics* (Gore, Oklahoma Site Decontamination and Decommissioning Funding), LBP-94-5, 39 NRC 54, 68 (1994)
boards must avoid the familiar trap of confusing the standing determination with the assessment of petitioner's case on the merits; LBP-08-6, 67 NRC 279 (2008)
- Sequoyah Fuels Corp. and General Atomics* (Gore, Oklahoma Site Decontamination and Decommissioning Funding), LBP-94-8, 39 NRC 116, 120 (1994)
the benefit of the doubt should be given to the potential intervenor in order to prevent the dismissal of a petition due to inarticulate draftsmanship or procedural or pleading defects; LBP-09-18, 70 NRC 396 (2009)

LEGAL CITATIONS INDEX

CASES

- Sequoyah Fuels Corp. and General Atomics* (Gore, Oklahoma Site), CLI-94-9, 40 NRC 1, 6 (1994)
expenses of any kind do not constitute irreparable injury; CLI-09-6, 69 NRC 135 n.25 (2009)
- Sequoyah Fuels Corp. and General Atomics* (Gore, Oklahoma Site), CLI-94-9, 40 NRC 1, 6-8 (1994)
likelihood of success on the merits and irreparable harm are the most important factors in determining stay motions; CLI-08-13, 67 NRC 399 (2008)
- Sequoyah Fuels Corp. and General Atomics* (Gore, Oklahoma Site), CLI-94-9, 40 NRC 1, 7 (1994)
a party seeking to demonstrate irreparable injury must provide factual substantiation for that claim; CLI-09-6, 69 NRC 136 n.26 (2009)
absent a showing of irreparable harm, a stay movant must show that success on the merits is a virtual certainty; CLI-08-13, 67 NRC 400 (2008); CLI-09-23, 70 NRC 937 (2009); CLI-10-8, 71 NRC 154 (2010)
to the extent applicant may be subject to unreasonable or burdensome discovery requests in the future, it is free to seek relief from the board, which has ample authority to prevent or modify unreasonable discovery demands; CLI-09-6, 69 NRC 136 (2009)
- Sequoyah Fuels Corp. and General Atomics* (Gore, Oklahoma Site), CLI-94-9, 40 NRC 1, 7 n.1 (1994)
even in the absence of a petition for review, the Commission retains its supervisory power over adjudications to step in at any stage of a proceeding and decide a matter itself; CLI-09-3, 69 NRC 72 n.16 (2009)
- Sequoyah Fuels Corp. and General Atomics* (Gore, Oklahoma Site), CLI-94-11, 40 NRC 55, 59 n.2 (1994)
although the Commission abolished the Atomic Safety and Licensing Appeal Board in 1991, its decisions still carry precedential weight; CLI-08-19, 68 NRC 260 n.23 (2008)
- Sequoyah Fuels Corp. and General Atomics* (Gore, Oklahoma Site), CLI-94-11, 40 NRC 55, 61 (1994)
a party may not obtain interlocutory review merely by asserting potential delay and increased expense attributable to an allegedly erroneous ruling by the licensing board; CLI-09-6, 69 NRC 133 n.15 (2009)
mere commitment of resources to a hearing that may later prove to have been unnecessary does not constitute sufficient grounds for an interlocutory review of a licensing board order; CLI-09-6, 69 NRC 133 n.15 (2009)
the possibility that an interlocutory ruling may be wrong does not in itself justify interlocutory review; CLI-09-6, 69 NRC 137 n.38 (2009)
- Sequoyah Fuels Corp. and General Atomics* (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 69 (1994)
intervention is allowable to those who wish to support a proposal that will affect their interests if the proceeding has one outcome rather than another; LBP-09-6, 69 NRC 432 (2009)
- Sequoyah Fuels Corp. and General Atomics* (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 71 (1994)
settlement agreements must comply with agency regulations and be in the public interest; LBP-06-26, 64 NRC 432 (2006)
settlement shall be subject to approval by a board, which may order such adjudication of the issues as it may deem to be required in the public interest; LBP-06-21, 64 NRC 220 (2006)
- Sequoyah Fuels Corp. and General Atomics* (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 71 n.10 (1994)
opponents of a settlement may not simply object to settlement in order to block it, but must show some substantial basis for disapproving the settlement or the existence of some material issue that requires resolution; LBP-06-18, 63 NRC 837 (2006)
- Sequoyah Fuels Corp. and General Atomics* (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 71-72 (1994)
to establish standing, petitioner must show an injury in fact fairly traceable to the challenged action and likely to be redressed by a favorable decision; LBP-07-16, 66 NRC 285, 300, 326 n.339 (2007)
- Sequoyah Fuels Corp. and General Atomics* (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 71-77 (1994)
petitioner is not required to provide expert testimony in support of his plausible scenario for injury; CLI-09-12, 69 NRC 546 n.39 (2009)
- Sequoyah Fuels Corp. and General Atomics* (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 72 (1994)
an organization seeking to establish representational standing must demonstrate that at least one of its members would be affected by the proposed action and identify that member by name and address and show that the member would have standing to intervene in its own right and that the identified member has authorized the organization to request a hearing on its behalf; LBP-09-4, 69 NRC 178 n.22 (2009); LBP-09-16, 70 NRC 240 n.22 (2009); LBP-09-20, 70 NRC 574 (2009)

LEGAL CITATIONS INDEX

CASES

because petitioner fails to establish his own standing as an individual, the board is precluded from granting representational standing on behalf of an organization; LBP-10-4, 71 NRC 224 n.8 (2010)

petitioners are not required to demonstrate their asserted injury with certainty, or to provide extensive technical studies in support of their standing argument; LBP-08-24, 68 NRC 708 (2008)

the Commission is not inclined to disturb the licensing board's judgment on standing, absent a gross misapplication of the facts or applicable law; CLI-09-12, 69 NRC 547 (2009)

the requisite injury to establish standing may be either actual or threatened but must nonetheless be concrete and particularized, not conjectural or hypothetical; LBP-08-6, 67 NRC 271 (2008); LBP-09-28, 70 NRC 1024 (2009); LBP-10-4, 71 NRC 228 (2010)

vague assertions of possible harm do not amount to a showing of concrete and particularized injury to petitioner's interests that is actual or imminent, not conjectural or hypothetical; LBP-08-18, 68 NRC 537 (2008)

Sequoyah Fuels Corp. and General Atomics (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 74 (1994)

it is enough that petitioner has demonstrated a realistic threat of sustaining a direct injury as a result of contaminated groundwater flowing from the site at issue to his property to establish standing; LBP-08-24, 68 NRC 709 n.73 (2008); LBP-10-16, 72 NRC 388 n.85 (2010)

once a board has found that petitioners have presented a plausible injury, the board is not required to weigh the evidence to determine whether the harm to petitioners is beyond doubt; CLI-09-9, 69 NRC 346 (2009)

petitioners are not required to demonstrate their asserted injury with certainty at the contention admission stage, or to provide extensive technical studies in support of their standing argument; LBP-10-16, 72 NRC 388 (2010)

Sequoyah Fuels Corp. and General Atomics (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 75 (1994)

a board's determination of standing does not depend on whether the cause of the injury flows directly from the challenged action, but whether the chain of causation is plausible; CLI-09-12, 69 NRC 547 (2009); LBP-06-4, 63 NRC 105 (2006); LBP-08-6, 67 NRC 280 (2008); LBP-08-24, 68 NRC 709 (2008); LBP-09-13, 70 NRC 177 (2009); LBP-10-4, 71 NRC 228 (2010); LBP-10-16, 72 NRC 382, 388 (2010)

any potential harm associated with petitioner's use of water from a water source connecting to a mining site is fairly traceable to the proposed action; LBP-10-16, 72 NRC 385 (2010)

Sequoyah Fuels Corp. and General Atomics (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 75 n.22 (1994)

although a proximity presumption has been invoked when resolving issues of standing for cases involving reactor licensing, in a case involving an enforcement order, the standing requirement is also based on the confirmatory order itself and the adverse effect of the confirmatory order; LBP-07-16, 66 NRC 296, 303, 311, 317, 324 (2007)

boards apply a proximity-plus test to establish standing in materials cases, where petitioner must show that the proposed licensing action involves a significant source of radiation that has an obvious potential for offsite consequences; CLI-10-20, 72 NRC 189 (2010)

for proximity-based standing, frequency of contact must reflect regular interaction with the zone of harm, not merely occasional contact; CLI-07-21, 65 NRC 524 (2007)

how close to the source a petitioner must live or work to invoke the proximity-plus presumption depends on the danger posed by the source at issue; LBP-08-6, 67 NRC 272 (2008)

in nuclear power reactor construction permit and operating license proceedings, showing proximity within 50 miles of a plant is often enough on its own to demonstrate standing; LBP-08-6, 67 NRC 272 (2008)

licensing boards have used a proximity presumption when resolving issues of standing for cases involving materials licenses; LBP-08-14, 68 NRC 290 (2008)

petitioner's proximity to the proposed source of radioactivity must also be judged on a case-by-case basis, taking into account the nature of the proposed action and the significance of the radioactive source; LBP-06-4, 63 NRC 105, 106 (2006); LBP-06-7, 63 NRC 197 (2006); LBP-08-9, 67 NRC 427 (2008)

presumption of standing based on geographical proximity may be applied in nuclear materials licensing cases only when the activity at issue involves a significant source of radioactivity producing an obvious potential for offsite consequences; LBP-08-6, 67 NRC 272 (2008)

LEGAL CITATIONS INDEX

CASES

- pursuant to the proximity-plus approach, a presumption based on geographical proximity (albeit at distances much closer than 50 miles) may be applied where there is a determination that the proposed action involves a significant source of radioactivity producing an obvious potential for offsite consequences; LBP-10-4, 71 NRC 229 (2010)
- the Commission has accepted a proximity presumption granting standing to residents within 50 miles of a reactor, but has not accepted any such presumption in nonreactor cases; LBP-07-14, 66 NRC 178 (2007)
- the Commission's rule of thumb in reactor licensing proceedings is that persons who reside within a 50-mile radius of a reactor plant are presumed to have standing; LBP-06-7, 63 NRC 196 (2006); LBP-08-18, 68 NRC 539 (2008); LBP-08-24, 68 NRC 703 (2008); LBP-09-4, 69 NRC 181 (2009); LBP-09-17, 70 NRC 322 (2009)
- the radioactive source posing the danger in a reactor license renewal case is the identical source giving rise to the 50-mile proximity presumption rule for reactor construction permit and operating license proceedings; LBP-06-7, 63 NRC 197 (2006)
- Sequoyah Fuels Corp. and General Atomics* (Gore, Oklahoma Site), CLI-97-13, 46 NRC 195, 205 (1997)
- the Commission's longstanding policy of encouraging settlements adds further support to its decision to uphold a board's acceptance of the joint stipulation stemming from the parties' negotiations; CLI-06-18, 64 NRC 7 (2006)
- Sequoyah Fuels Corp. and General Atomics* (Gore, Oklahoma Site), CLI-97-13, 46 NRC 195, 207-11 (1997)
- settlements that are presumably based on an analysis of litigation risk and optimum use of the NRC Staff's scarce resources are commonplace in litigation and have, in the past, received Commission approval; CLI-06-18, 64 NRC 7 (2006)
- Sequoyah Fuels Corp. and General Atomics* (Gore, Oklahoma Site), CLI-97-13, 46 NRC 195, 208 (1997)
- only if the settlements' opponents show some substantial public-interest reason to overcome that presumption will the Commission undo the settlements; LBP-06-18, 63 NRC 837 (2006)
- Sequoyah Fuels Corp. and General Atomics* (Gore, Oklahoma Site), CLI-97-13, 46 NRC 195, 209-23 (1997)
- when evaluating whether a settlement in an enforcement proceeding is in the public interest, four factors are considered; LBP-06-18, 63 NRC 837 (2006)
- Sequoyah Fuels Corp. and General Atomics* (Gore, Oklahoma Site), CLI-97-13, 46 NRC 195, 222-23 (1997)
- NRC has routinely approved stipulations and settlements in the enforcement context to which fewer than all the parties in a case subscribe; CLI-06-18, 64 NRC 7 (2006)
- Sequoyah Fuels Corp. and General Atomics* (Gore, Oklahoma Site), CLI-04-2, 59 NRC 5, 8 n.18 (2004)
- absent extreme circumstances, the Commission will not consider on appeal either new arguments or new evidence supporting the contentions, which the board never had the opportunity to consider; CLI-06-10, 63 NRC 458 (2006)
- rewriting a contention on appeal is not permitted; CLI-06-24, 64 NRC 122 (2006)
- Sequoyah Fuels Corp. and General Atomics* (Gore, Oklahoma Site), LBP-94-5, 39 NRC 54, 74, *aff'd*, CLI-94-12, 40 NRC 64 (1994)
- even in the absence of constructive notice, the possibility remains that a petitioner had actual notice of the right to request a hearing; LBP-09-20, 70 NRC 572 (2009)
- where petitioner lacked constructive notice of the opportunity to request a hearing, the board ruled that petitioner acted reasonably when it filed its hearing request within 10 days of its receipt of actual notice; LBP-09-20, 70 NRC 572 (2009)
- Sequoyah Fuels Corp. and General Atomics* (Gore, Oklahoma Site), LBP-94-5, 39 NRC 54, 75-76 n.23, *aff'd*, CLI-94-12, 40 NRC 64 (1994)
- petitioner made a sufficient showing for grant of discretionary intervention; CLI-06-16, 63 NRC 717 (2006)
- Shain v. Veneman*, 376 F.3d 815, 818 (8th Cir. 2004)
- federal courts of appeal have failed to reach a consensus on the question whether a risk of future injury must exceed a numerical threshold; LBP-09-4, 69 NRC 184 (2009)
- Shaw AREVA MOX Services, LLC* (Mixed Oxide Fuel Fabrication Facility), CLI-09-2, 69 NRC 55, 59 n.8 (2009)
- the peculiar procedural circumstances and the unusual nature of the equities favoring Intervenors may combine to render a decision *sui generis*, and as such, it should not be considered precedential; CLI-09-13, 69 NRC 578 n.13 (2009)

LEGAL CITATIONS INDEX

CASES

- Shaw AREVA MOX Services, LLC* (Mixed Oxide Fuel Fabrication Facility), CLI-09-2, 69 NRC 55, 62-63 (2009)
a petition would qualify for interlocutory review where it challenges a board decision that affects the basic structure of the proceeding in a pervasive and unusual manner; CLI-10-13, 71 NRC 388 n.6 (2010)
- Shaw AREVA MOX Services, LLC* (Mixed Oxide Fuel Fabrication Facility), CLI-09-2, 69 NRC 55, 63-66 (2009)
the contention admissibility standards are not always applicable in the context of new or amended contentions, at least so long as the new or amended contention is “timely” filed relative to the event that provides the triggering basis for that contention; LBP-09-3, 69 NRC 159 n.12 (2009)
when the unique circumstances of a case could result in the compromise of a participant’s hearing rights, the Commission has taken action to ensure that hearings are fair and accommodate the rights of participants; CLI-09-13, 69 NRC 578 (2009)
- Shaw AREVA MOX Services, LLC* (Mixed Oxide Fuel Fabrication Facility), CLI-09-2, 69 NRC 55, 65 n.47 (2009)
petitioner has an iron-clad obligation to examine the publicly available documentary material with sufficient care to enable it to uncover any information that could serve as the foundation for a specific contention; CLI-10-27, 72 NRC (2010)
the “nontimely” filing standards in section 2.309(c) are generally applicable to new and amended contentions; LBP-09-3, 69 NRC 159 n.12 (2009)
- Shaw AREVA MOX Services, LLC* (Mixed Oxide Fuel Fabrication Facility), LBP-07-14, 66 NRC 169, 181 (2007)
although pro se intervenors must be afforded some latitude in their pleadings, the board expects that an organization that has appeared several times previously will have a heightened awareness of the agency’s pleading rules; LBP-08-16, 68 NRC 405-06 (2008)
- Shaw AREVA MOX Services, LLC* (Mixed Oxide Fuel Fabrication Facility), LBP-07-14, 66 NRC 169, 182 (2007)
judicial concepts of standing are applied in NRC proceedings; LBP-09-28, 70 NRC 1024 (2009)
- Shaw AREVA MOX Services, LLC* (Mixed Oxide Fuel Fabrication Facility), LBP-07-14, 66 NRC 169, 183 (2007)
if an organization seeks to establish representational standing, it must demonstrate that at least one of its members would be affected by the proceeding and identify that member by name and address, show that the member would have standing to intervene in his/her own right, and show that the identified member has authorized the organization to request a hearing on his/her behalf; LBP-08-15, 68 NRC 303 (2008); LBP-09-4, 69 NRC 178 (2009); LBP-09-16, 70 NRC 240 (2009)
to demonstrate organizational standing, petitioner must show an injury in fact to the interests of the organization itself; LBP-08-15, 68 NRC 302-303 (2008); LBP-09-4, 69 NRC 178 (2009); LBP-09-16, 70 NRC 240 (2009); LBP-09-20, 70 NRC 574 (2009)
- Shaw AREVA MOX Services, LLC* (Mixed Oxide Fuel Fabrication Facility), LBP-07-14, 66 NRC 169, 188 (2007)
although petitioner’s reply cannot be used to remedy a deficient petition, because opposing parties have no opportunity to respond, petitioner asks the board to apply a standard of “fundamental fairness,” because petitioner filed its initial petition without the assistance of counsel; LBP-09-6, 69 NRC 426 (2009)
pro se petitioners are not held to the same standard of pleading as those represented by counsel; LBP-08-6, 67 NRC 278 (2008)
- Shaw AREVA MOX Services, LLC* (Mixed Oxide Fuel Fabrication Facility), LBP-07-14, 66 NRC 169, 192-93 (2007)
the first step in assessing the admissibility of a new contention is to determine if it is timely under 10 C.F.R. 2.309(f)(2)(iii) or nontimely under section 2.309(c); LBP-09-10, 70 NRC 138 (2009)
- Shaw AREVA MOX Services, LLC* (Mixed Oxide Fuel fabrication Facility), LBP-07-14, 66 NRC 169, 205-06 (2007)
a defect in an application can give rise to a valid contention of omission that is not subject to rejection as speculative; LBP-08-13, 68 NRC 87 n.194 (2008); LBP-08-24, 68 NRC 720 n.148 (2008)

LEGAL CITATIONS INDEX

CASES

- Shaw AREVA MOX Services, LLC* (Mixed Oxide Fuel Fabrication Facility), LBP-07-14, 66 NRC 169, 210 n.95 (2007)
- if a contention satisfies the timeliness requirement of 10 C.F.R. 2.309(f)(2)(iii), then, by definition, it is not subject to 10 C.F.R. 2.309(c) which specifically applies to nontimely filings; LBP-09-27, 70 NRC 998-99 (2009); LBP-10-14, 72 NRC 108 (2010)
 - intervenor with contentions rooted in new material information need not make the same showing as intervenors who have simply delayed filing their contentions until after expiration of the regulatory deadline; LBP-10-9, 71 NRC 505 n.46 (2010)
 - thirty days is a reasonable limit for fulfilling the timing requirement of 10 C.F.R. 2.309(f)(2)(iii) because of the significant effort involved in identifying new information, assembling the required expertise, and then drafting a contention that satisfies 10 C.F.R. 2.309(f)(1); LBP-09-27, 70 NRC 1003 (2009)
 - when new contentions are based on breaking developments of information, they are to be treated as new or amended, not as nontimely; LBP-08-27, 68 NRC 955 (2008)
- Shaw AREVA MOX Services, LLC* (Mixed Oxide Fuel Fabrication Facility), LBP-08-11, 67 NRC 460, 481-83 (2008)
- boards have legal authority to reformulate contentions; CLI-09-12, 69 NRC 552 (2009); CLI-10-2, 71 NRC 33 (2010); LBP-10-16, 72 NRC 403 (2010)
- Shaw AREVA MOX Services, LLC* (Mixed Oxide Fuel Fabrication Facility), LBP-08-11, 67 NRC 460, 482 (2008)
- boards may reformulate contentions to eliminate extraneous issues or to consolidate issues for a more efficient proceeding; CLI-09-12, 69 NRC 552 (2009); CLI-10-2, 71 NRC 33 (2010); LBP-09-16, 70 NRC 256 (2009); LBP-10-9, 71 NRC 510 (2010); LBP-10-14, 72 NRC 127 n.171 (2010)
 - intervenor's representational status is one factor in determining whether reformulation is appropriate, and pro se status may provide additional cause for reformulation; LBP-10-10, 71 NRC 591 (2010)
- Shaw AREVA MOX Services, LLC* (Mixed Oxide Fuel fabrication Facility), LBP-08-11, 67 NRC 460, 502-03 (2008)
- a defect in an application can give rise to a valid contention of omission that is not subject to rejection as speculative; LBP-08-13, 68 NRC 87 n.194 (2008)
- Shelton v. American Motors Corp.*, 805 F.2d 1323, 1327 (8th Cir. 1986)
- depositions of opposing trial or litigation counsel are permitted only if no other means exist to obtain the information, and the information sought is relevant and nonprivileged, and crucial to the preparation of the case; LBP-06-10, 63 NRC 335 (2006)
- Sheppard v. Maxwell*, 384 U.S. 333, 349 (1966)
- the principle that justice cannot survive behind walls of silence has long been reflected in the Anglo-American distrust for secret trials; LBP-10-2, 71 NRC 206 n.54 (2010)
- Shieldalloy Metallurgical Corp.* (Cambridge, Ohio Facility), CLI-99-12, 49 NRC 347, 354 (1999)
- parties represented by counsel are generally held to a higher standard than pro se litigants; CLI-10-20, 72 NRC 189 n.15, 192 n.37 (2010); LBP-10-10, 71 NRC 608 n.15 (2010)
 - petitioners that are not represented by counsel will be held to less rigid standards for pleading, although a totally deficient petition will not be admitted; LBP-08-15, 68 NRC 320 (2008); LBP-08-16, 68 NRC 400 (2008)
 - the Commission generally extends some latitude to pro se litigants, but they still are expected to comply with NRC procedural rules, including contention pleading requirements; CLI-10-1, 71 NRC 6 (2010)
- Shieldalloy Metallurgical Corp.* (Cambridge, Ohio Facility), CLI-99-12, 49 NRC 347, 354-55 (1999)
- petitioner's lack of specificity concerning the nature, extent, and duration of his contacts with the area surrounding the proposed site is a sufficient basis to reject a claim of standing; CLI-10-7, 71 NRC 139 (2010); LBP-09-18, 70 NRC 402 n.85 (2009)
- Shieldalloy Metallurgical Corp.* (Cambridge, Ohio Facility), LBP-99-12, 49 NRC 155, 159 n.4, *aff'd*, CLI-99-12, 49 NRC 347 (1999)
- discretionary intervention is an extraordinary procedure that is rarely granted; CLI-06-16, 63 NRC 716-17 (2006)

LEGAL CITATIONS INDEX

CASES

- Shieldalloy Metallurgical Corp.* (Decommissioning of the Newfield, New Jersey Site), CLI-10-8, 71 NRC 142, 147 (2010)
although a request for suspension of a proceeding does not fit cleanly into NRC procedural rules for stays, the Commission exercises discretion and consider petitioner's request; CLI-10-17, 72 NRC 10 n.32 (2010)
- Shieldalloy Metallurgical Corp.* (License Amendment Request for Decommissioning of the Newfield, New Jersey Facility), CLI-07-20, 65 NRC 499, 501 (2007)
it is appropriate for a licensing board to defer the consideration of all but one contention in some limited and exceptional circumstances; LBP-10-11, 71 NRC 647 n.169 (2010)
- Shieldalloy Metallurgical Corp.* (License Amendment Request for Decommissioning of the Newfield, New Jersey Facility), LBP-07-5, 65 NRC 341, 352 (2007), *appeal denied*, CLI-07-20, 65 NRC 499 (2007)
the issue that generally arises under 10 C.F.R. 2.309(f)(1)(i) is whether a contention is stated with sufficient specificity; LBP-09-17, 70 NRC 326 (2009)
- Shieldalloy Metallurgical Corp.* (License Amendment Request for Decommissioning of the Newfield, New Jersey Facility), LBP-07-5, 65 NRC 341, 357-58 (2007)
examples of admitted contentions that satisfied the requirement to provide a specific statement of the issue of law or fact to be raised or controverted are provided; LBP-08-5, 67 NRC 235 n.79 (2008)
- Shoreham-Wading River Central School District v. NRC*, 931 F.2d 102, 105 (D.C. Cir. 1991)
any decision to indefinitely delay a hearing on the merits of an immediately effective order would be subject to judicial review as a final agency action; LBP-06-13, 63 NRC 561 n.129 (2006)
- Siegel v. AEC*, 400 F.2d 778 (D.C. Cir. 1968)
terrorist attacks are not to be considered part of the NEPA analysis required for licensing actions; LBP-07-14, 66 NRC 185 (2007)
- Siegel v. AEC*, 400 F.2d 778, 783 (D.C. Cir. 1968)
the Atomic Energy Act's statutory scheme is virtually unique in the degree to which broad responsibility is reposed in the administering agency, free of close prescription in its charter as to how it shall proceed in achieving the statutory objective; CLI-10-6, 71 NRC 122 (2010); LBP-10-11, 71 NRC 623 n.43 (2010)
- Siegel v. AEC*, 400 F.2d 778, 784 (D.C. Cir. 1968)
congressional intent for the phrase "common defense and security," is analyzed in the context of foreign ownership prohibitions; LBP-08-6, 67 NRC 339 (2008)
congressional intent in limiting foreign control of nuclear materials is to keep such materials in private hands secure against loss or diversion and of denying such materials and classified information to persons whose loyalties are not to the United States; LBP-08-24, 68 NRC 752 n.345 (2008)
guidance on what the term "common defense and security" encompasses is provided; LBP-09-4, 69 NRC 193 (2009)
not allowing new industrial needs for nuclear materials to preempt requirements of the military, keeping such materials in private hands secure against loss or diversion, and denying such materials and classified information to persons whose loyalties are not to the United States are encompassed in the "common defense and security" standard; LBP-09-1, 69 NRC 30 n.74 (2009); LBP-09-4, 69 NRC 193 (2009)
- Sierra Club v. Adams*, 578 F.2d 389, 392 (C.A.D.C. 1978)
once a litigant has standing to request invalidation of a particular agency action, it may do so by identifying all grounds on which the agency may have failed to comply with its statutory mandate; LBP-09-1, 69 NRC 24 n.52 (2009)
- Sierra Club v. Froehlke*, 816 F.2d 205, 210 (5th Cir. 1987)
a supplemental environmental impact statement is required only if new information presents a seriously different picture of the environmental impact of the proposed project from what was previously envisioned; CLI-06-29, 64 NRC 419 (2006); LBP-06-19, 64 NRC 98 (2006); LBP-07-14, 66 NRC 192 (2007)
- Sierra Club v. Marsh*, 976 F.2d 763 (1st Cir. 1992)
Staff's environmental impact statement for a combined license must discuss the reasonably foreseeable environmental impacts of the proposed project; CLI-10-2, 71 NRC 46 (2010)

LEGAL CITATIONS INDEX

CASES

- Sierra Club v. Morton*, 405 U.S. 727 (1972)
for an organizational petitioner to establish standing, it must show either immediate or threatened injury to its organizational interests or to the interests of identified members; LBP-08-6, 67 NRC 271 (2008); LBP-08-24, 68 NRC 702 (2008)
to establish organizational standing, an organization must demonstrate that the action at issue will cause an injury-in-fact to the organization's interests or the interests of its members and that the injury is within the zone of interests protected by the National Environmental Policy Act or the Atomic Energy Act; LBP-09-13, 70 NRC 178 (2009)
- Sierra Club v. Morton*, 405 U.S. 727, 734-35 (1972)
an organization's promotion of the public interest, environmental protection, and consumer protection are broad interests shared with many others and too general to constitute a protected interest under the Atomic Energy Act or the National Environmental Policy Act; CLI-07-18, 65 NRC 411 (2007)
injury-in-fact to establish standing requires more than a general interest in preserving the environment; LBP-09-28, 70 NRC 1025 n.31 (2009)
to establish organizational standing, petitioner must allege more than an injury to a cognizable interest; LBP-09-13, 70 NRC 191 (2009)
- Sierra Club v. Morton*, 405 U.S. 727, 737 (1972)
once a litigant has standing to request invalidation of a particular agency action, it may do so by identifying all grounds on which the agency may have failed to comply with its statutory mandate; LBP-09-1, 69 NRC 24 n.52 (2009)
- Sierra Club v. Morton*, 405 U.S. 727, 739 (1972)
a broadly stated interest in a problem is not sufficient by itself to render the organization adversely affected or aggrieved; LBP-09-13, 70 NRC 178 (2009)
a generalized concern about the destruction of scenery and wildlife in a national forest was insufficient to confer standing upon a national environmental group; LBP-10-11, 71 NRC 635 n.98 (2010)
an Indian tribe whose reservation is adjacent to facilities where spent nuclear fuel is currently stored, the nearest of which resides just 600 yards from an ISFSI, has more than a mere interest in a problem; LBP-10-11, 71 NRC 635 n.98 (2010)
the injury-in-fact necessary to establish organizational standing must be more than a mere interest in a problem, no matter how longstanding the interest and no matter how qualified the organization is in evaluating the problem; LBP-09-13, 70 NRC 178 (2009); LBP-10-16, 72 NRC 383 (2010)
to establish organizational standing, an organization must demonstrate that the action at issue will cause an injury-in-fact to the organization's interests and the injury is within the zone of interests protected by NEPA or the AEA; LBP-10-16, 72 NRC 383 (2010)
- Sierra Club v. Morton*, 405 U.S. 727, 739-40 (1972)
if an organization does not identify the members it purportedly represents, the Commission cannot determine whether the organization actually does represent members who consider that they will be affected by the licensing action or, rather, is simply seeking the vindication of its own value preference; CLI-07-18, 65 NRC 410 (2007)
- Sierra Club v. Sigler*, 695 F.2d 957, 970 (5th Cir. 1983)
the unavailability of information does not halt all government action under the National Environmental Policy Act, particularly when information may become available at a later time and can still be used to influence the agency's decision; LBP-09-7, 69 NRC 732-33 (2009)
- Sierra Club v. U.S. Department of Transportation*, 310 F. Supp. 2d 1168, 1188 (D. Nev. 2004)
NEPA requires NRC to provide a reasonable mitigation alternatives analysis, containing reasonable estimates, including full disclosures of any known shortcomings in methodology, incomplete or unavailable information, and significant uncertainties; CLI-10-22, 72 NRC 209 (2010)
- Sierra Club v. U.S. Department of Transportation*, 962 F. Supp. 1037, 1045 (N.D. Ill. 1997)
if federal agencies were free to ignore related environmental effects that they do not directly regulate, the National Environmental Policy Act would be meaningless; LBP-09-6, 69 NRC 404 (2009)
- Sierra Club v. U.S. Environmental Protection Agency*, 995 F.2d 1478, 1485 (9th Cir. 1993)
the National Environmental Policy Act applies to agencies of the federal government, not to private parties such as applicants for NRC licenses; LBP-09-10, 70 NRC 87 (2009)

LEGAL CITATIONS INDEX

CASES

- Sierra Club v. U.S. Environmental Protection Agency*, 356 F.3d 296, 298 (D.C. Cir. 2004)
an agency is not authorized to grant conditional approval to plans that do nothing more than promise to do tomorrow what the statute requires today; LBP-10-20, 72 NRC 602 n.36 (2010)
- Sierra Club, Lone Star Chapter v. Cedar Point Oil Co., Inc.*, 73 F.3d 546, 556 (5th Cir. 1996)
affiants' concern that discharges would impair water quality is sufficient to establish injury-in-fact; LBP-09-4, 69 NRC 185 n.44 (2009)
- Sierra Nevada Forest Protection Campaign v. Weingardt*, 376 F. Supp. 2d 984, 990 (E.D. Cal. 2005)
an environmental assessment is generally a shorter, less detailed document than an environmental impact statement; LBP-08-15, 68 NRC 309 (2008)
- Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F.3d 28, 31 (3d Cir. 1995)
a basic tenet of statutory construction, equally applicable to regulatory construction, is that a text should be construed so that effect is given to all of its provisions, so no part will be inoperative or superfluous, void or insignificant; CLI-06-11, 63 NRC 491 (2006); LBP-10-22, 72 NRC 671 n.25 (2010)
a text should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant, and so that one section will not destroy another unless the provision is the result of obvious mistake or error; LBP-09-16, 70 NRC 264 n.118 (2009)
- Simmons v. U.S. Army Corps of Engineers*, 120 F.3d 664, 668 (7th Cir. 1997)
in considering alternatives under NEPA, an agency is required to address the purpose of the proposed project, reasonable alternatives to the project, to what extent the agency should explore each particular reasonable alternative; CLI-10-18, 72 NRC 77-78 n.119 (2010)
- Simmons v. U.S. Army Corps of Engineers*, 120 F.3d 664, 669 (7th Cir. 1997)
blindly adopting applicant's goals is a losing proposition because it does not allow for the full range of alternatives required by NEPA; LBP-07-9, 65 NRC 637 (2007); LBP-09-10, 70 NRC 128 (2009); LBP-09-17, 70 NRC 379 (2009)
NEPA requires an agency to exercise a degree of skepticism in dealing with the self-serving statements from the prime beneficiary of a project and to look at the general goal of the project, rather than only those alternatives by which a particular applicant can reach its own specific goals; LBP-09-10, 70 NRC 128 (2009); LBP-09-17, 70 NRC 379 (2009)
- Simmons v. U.S. Department of Justice*, 796 F.2d 709, 711-12 (4th Cir. 1986)
the district court has discretion to limit discovery in FOIA cases and to enter summary judgment on the basis of agency affidavits in a proper case; CLI-08-5, 67 NRC 177 (2008)
- Simon v. Eastern Kentucky Welfare Rights Organization*, 426 U.S. 26, 41-42 (1976)
to establish causation, petitioner must show that there is a causal connection between the injury and the conduct complained of, i.e., the injury must be fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court; LBP-09-13, 70 NRC 176 (2009); LBP-10-16, 72 NRC 382 (2010)
- Smith v. Federal Trade Commission*, 403 F. Supp. 1000, 1016 (D. Del. 1975)
once the requesting party meets its burden of demonstrating a need for a document, the burden is upon the claimant of executive privilege to demonstrate a proper entitlement to exemption from disclosure; LBP-10-2, 71 NRC 204 n.48 (2010)
- Smith v. Goord*, 222 F.R.D. 238, 239 (N.D.N.Y. 2004)
with an appropriate protective order in place, parties in federal court must carry a heavy burden to show they are still entitled to a privacy-based withholding of otherwise-discoverable documents, because there is an assumption that disclosure only to the other parties will only minimally, if at all, harm that interest; LBP-06-25, 64 NRC 387 n.85 (2006)
- Smith v. United States*, 508 U.S. 223 (1993)
a layperson's reading of a regulation, uninformed by context, is not decisive; CLI-06-14, 63 NRC 519 (2006)
- Smith v. United States*, 508 U.S. 223, 228 (1993)
because the term "naturally occurring radioactive material" lacks a statutory or regulatory definition, the presiding officer construes it in accord with its ordinary or natural meaning, which is informed by regulatory and industry usage and practice; LBP-06-1, 63 NRC 66 n.24 (2006)
in the absence of a statutory definition, courts normally define a term by its ordinary meaning; LBP-10-24, 72 NRC 736 (2010)

LEGAL CITATIONS INDEX

CASES

- Snoqualmie Indian Tribe v. Federal Energy Regulatory Commission*, 2008 WL 4478591 (9th Cir. 2008)
procedural violations of the National Historic Preservation Act have resulted in a grant of standing to tribes; LBP-08-24, 68 NRC 715 (2008)
- Snoqualmie Indian Tribe v. Federal Energy Regulatory Commission*, 45 F.3d 1207 (9th Cir. 2008)
tribes that have addressed procedural violations of the National Historic Preservation Act have uniformly been granted standing under the relaxed standard and have proceeded directly to the merits of the NHPA claim; LBP-10-16, 72 NRC 393 n.123 (2010)
- Society for the Protection of New Hampshire Forests v. Site Evaluation Committee*, 115 N.H. 163, 171, 337 A.2d 778, 785 (1975)
to discharge heated water into the ocean from a nuclear facility, the licensee needs an NPDES permit from the water supply and pollution control commission; CLI-07-16, 65 NRC 377 n.17 (2007)
- Society of Professional Journalists v. Secretary of Labor*, 616 F. Supp. 569, 574 (D. Utah 1985), *vacated as moot*, 832 F. 2d 1180 (10th Cir. 1987)
as long as the administrative proceedings walk, talk, and squawk very much like an Article III judicial proceeding, they should be open to the public; LBP-10-2, 71 NRC 208 n.59 (2010)
- Solid Waste Agency of Northern Cook County v. United States Army Corps of Engineers*, 531 U.S. 159 (2001)
the reach of 33 U.S.C. § 1371(c)(2) is confined to navigable waters, which do not even encompass all surface waters; LBP-09-25, 70 NRC 890 n.145 (2009)
- South Carolina Electric & Gas Co.* (Virgil C. Summer Nuclear Station, Unit 1), ALAB-710, 17 NRC 25, 28 (1983)
licensing boards are bound to comply with Commission adjudicatory decisions, whether they agree with them or not; LBP-07-11, 66 NRC 74 (2007); LBP-07-14, 66 NRC 194 (2007)
- South Carolina Electric & Gas Co.* (Virgil C. Summer Nuclear Station, Units 2 and 3), CLI-10-1, 71 NRC 1, 3, 15 (2010)
need-for-power contention is dismissed because it calls for a more detailed analysis than NRC requires; LBP-10-24, 72 NRC 749 (2010)
- South Carolina Electric & Gas Co.* (Virgil C. Summer Nuclear Station, Units 2 and 3), CLI-10-1, 71 NRC 1, 7 (2010)
petitioner's standing showing can be corrected or supplemented to cure deficiencies by means of its reply pleading; LBP-10-21, 72 NRC 640 (2010)
- South Carolina Electric & Gas Co.* (Virgil C. Summer Nuclear Station, Units 2 and 3), CLI-10-1, 70 NRC 1, 7 n.32 (2010)
replies should be narrowly focused on the legal or logical arguments presented in the answers on a request for hearing/petition to intervene; LBP-10-9, 71 NRC 515 n.100 (2010)
- South Carolina Electric & Gas Co.* (Virgil C. Summer Nuclear Station, Units 2 and 3), CLI-10-1, 71 NRC 1, 13-14 (2010)
NRC will conduct environmental analyses of terrorist scenarios only for facilities within the Ninth Circuit; CLI-10-14, 71 NRC 476 (2010)
- South Carolina Electric & Gas Co.* (Virgil C. Summer Nuclear Station, Units 2 and 3), CLI-10-1, 71 NRC 1, 14 (2010)
although the Commission has complied with the Ninth Circuit's ruling for facilities within the Ninth Circuit, that experience is very limited and does not demonstrate that conducting environmental analyses of terrorist scenarios for the licensing of all major facilities would be practicable or lead to meaningful additional information; CLI-10-9, 71 NRC 257 (2010)
NRC regulations permit an applicant to reference a docketed, but not yet certified, design; CLI-10-9, 71 NRC 260 (2010)
- South Carolina Electric & Gas Co.* (Virgil C. Summer Nuclear Station, Units 2 and 3), CLI-10-1, 71 NRC 1, 17 (2010)
a need-for-power analysis should not involve burdensome attempts to precisely identify future conditions, but rather should be sufficient to reasonably characterize the costs and benefits associated with proposed licensing actions; LBP-10-24, 72 NRC 776 (2010)

LEGAL CITATIONS INDEX

CASES

- South Carolina Electric & Gas Co.* (Virgil C. Summer Nuclear Station, Units 2 and 3), CLI-10-1, 71 NRC 1, 23-24 (2010)
if petitioner has proffered an admissible contention asserting an environmentally preferable alternative to the proposed reactors, this also would trigger the requirement that the environmental report contain cost estimates; CLI-10-9, 71 NRC 264 (2010)
issues related to costs only become relevant if an intervenor identifies an environmentally preferable, reasonable alternative; LBP-10-10, 71 NRC 571 (2010)
monetary considerations come into play only if an alternative to applicant's proposal is environmentally preferable, and then boards must determine whether the environmental benefits conferred by that alternative are worthwhile enough to outweigh any additional cost needed to achieve them; LBP-10-10, 71 NRC 573 (2010)
- South Carolina Electric & Gas Co.* (Virgil C. Summer Nuclear Station, Units 2 and 3), LBP-09-2, 69 NRC 87, 100 (2009)
in the overall COLA/DCD process, petitioners will have an opportunity to file new contentions related to material new information regarding site-specific plant design issues; LBP-09-8, 69 NRC 745 (2009)
- South Carolina Electric & Gas Co.* (Virgil C. Summer Nuclear Station, Units 2 and 3), LBP-09-2, 69 NRC 87, 100-05 (2009)
NEPA does not require applicants or licensees to consider terrorist attacks as part of their environmental reviews outside the Ninth Circuit; LBP-09-26, 70 NRC 981 (2009)
- South Carolina Electric & Gas Co.* (Virgil C. Summer Nuclear Station, Units 2 and 3), LBP-09-2, 69 NRC 87, 108-10 (2009)
the reasonableness of energy conservation as an alternative in light of the need for a large amount of baseload electric power is questioned; LBP-09-10, 70 NRC 132 (2009)
- South Carolina Electric & Gas Co.* (Virgil C. Summer Nuclear Station, Units 2 and 3), LBP-09-2, 69 NRC 87, 110 (2009)
failure to provide facts or expert opinion sufficient to show that the environmental report disregarded a feasible alternative based on either wind power, solar power, or some combination of the two renders the contention inadmissible; LBP-09-16, 70 NRC 304 (2009)
- South Carolina Electric & Gas Co.* (Virgil C. Summer Nuclear Station, Units 2 and 3), LBP-09-2, 69 NRC 87, 110-11 (2009)
applicant is not required to examine all possible alternatives, but only those that can reasonably accomplish the applicant's purpose; LBP-09-10, 70 NRC 129 (2009)
- South Louisiana Environmental Council v. Sand*, 629 F.2d 1005, 1011-12 (5th Cir. 1980)
a hidden and unjustified assumption in Staff's environmental assessment is asserted to violate NEPA by impairing the agency's consideration of the adverse environmental effects of a proposed project; CLI-08-1, 67 NRC 17 (2008)
- South Texas Project Nuclear Operating Co.* (South Texas Project, Units 3 and 4), LBP-09-5, 69 NRC 303, 308, 312-13 (2009)
to demonstrate a need for SUNSI, intervenors must discuss the basis for a proffered contention and describe why the information available to the intervenors is not sufficient to provide the basis and specificity for a proffered contention; LBP-10-5, 71 NRC 343 (2010)
- South Texas Project Nuclear Operating Co.* (South Texas Project, Units 3 and 4), LBP-09-25, 70 NRC 867, 895 (2009)
section 2.309(f)(1)(vi) is not a second hurdle of materiality that an intervenor must meet, but rather requires that intervenor identify the specific parts of the combined license application that it disputes and show that resolution of those disputes is material to the licensing decision; LBP-09-27, 70 NRC 1011 (2009)
- Southern California Edison Co.* (San Onofre Nuclear Generating Station, Units 2 and 3), ALAB-673, 15 NRC 688, 695 (1982)
collateral estoppel doctrine has long been recognized as part of NRC adjudicatory practice; CLI-10-23, 72 NRC 249 (2010)
- Southern Nuclear Operating Co.* (Early Site Permit for Vogtle ESP Site), CLI-07-17, 65 NRC 392 (2007)
licensing boards have authority to apply designations to contentions; LBP-07-10, 66 NRC 25 n.15 (2007)

LEGAL CITATIONS INDEX

CASES

- Southern Nuclear Operating Co.* (Early Site Permit for Vogtle ESP Site), CLI-07-24, 66 NRC 38, 38 & n.2 (2007)
a decision dismissing the contested adjudication relating to a combined license has no impact on the subsequent need to conduct a mandatory hearing relating to a combined license application, over which the Commission would preside; LBP-09-23, 70 NRC 671 n.38 (2009)
- Southern Nuclear Operating Co.* (Early Site Permit for Vogtle ESP Site), CLI-10-5, 70 NRC 90, 100-01 (2010)
parties and licensing boards must be on notice of the issues being litigated, so that parties and boards may prepare for summary disposition or for hearing; CLI-10-15, 71 NRC 482 (2010)
procedural rules on contentions are designed to ensure focused and fair proceedings; CLI-10-15, 71 NRC 482 (2010)
the scope of a contention is limited to issues of law and fact pleaded with particularity in the intervention petition, including its stated bases, unless the contention is satisfactorily amended in accordance with NRC rules; CLI-10-15, 71 NRC 482 (2010)
- Southern Nuclear Operating Co.* (Early Site Permit for Vogtle ESP Site), LBP-07-3, 65 NRC 237, 253 (2007)
for purposes of summary disposition, mere allegations, including speculative or bare conclusory statements by an expert, are insufficient; LBP-07-13, 66 NRC 144 (2007)
neither mere speculation nor bare or conclusory assertions, even by an expert, alleging that a matter should be considered will suffice to allow the admission of a proffered contention; LBP-08-13, 68 NRC 20 (2008); LBP-10-6, 71 NRC 368 n.54 (2010)
petitioner is obliged to present the factual and expert support for its contention, and failure to provide it requires that the contention be rejected; LBP-09-26, 70 NRC 954 (2009); LBP-10-6, 71 NRC 360 (2010)
- Southern Nuclear Operating Co.* (Early Site Permit for Vogtle ESP Site), LBP-07-3, 65 NRC 237, 254 (2007)
any contention that fails to directly controvert the application, or that mistakenly asserts that the application does not address a relevant issue, may be dismissed; LBP-09-26, 70 NRC 955, 968 n.147 (2009)
under section 2.309(f)(1)(vi), a properly formulated contention must focus on the license application in question, and challenge specific portions of, or alleged omissions from, the application, and thereby establish that a genuine dispute exists with the applicant on a material issue of law or fact; LBP-09-4, 69 NRC 195 (2009)
- Southern Nuclear Operating Co.* (Early Site Permit for Vogtle ESP Site), LBP-07-3, 65 NRC 237, 257 (2007)
in its environmental report, applicant must provide enough information and in sufficient detail to allow for an evaluation of important impacts; LBP-08-16, 68 NRC 400 (2008)
- Southern Nuclear Operating Co.* (Early Site Permit for Vogtle ESP Site), LBP-07-3, 65 NRC 237, 262 (2007)
to be admissible in a license renewal proceeding, an environmental justice contention must point to significant, adverse, environmental impacts that may result from the relicensing of a facility that will fall disproportionately on disadvantaged minority and low-income populations; LBP-08-13, 68 NRC 199 (2008)
- Southern Nuclear Operating Co.* (Early Site Permit for Vogtle ESP Site), LBP-07-3, 65 NRC 237, 266 (2007)
a contention that alleges that increases in radioactive releases create higher doses, but does not provide information or expert opinion to dispute the conclusion that the higher doses would still be under NRC regulatory limits or that the higher levels will cause harm will not be admitted; LBP-08-9, 67 NRC 446 (2008)
- Southern Nuclear Operating Co.* (Early Site Permit for Vogtle ESP Site), LBP-07-3, 65 NRC 237, 267-68 (2007)
challenges to NRC regulations are inadmissible; LBP-08-21, 68 NRC 587 (2008)
contentions challenging the Waste Confidence Rule are inadmissible; LBP-08-17, 68 NRC 456 (2008); LBP-09-4, 69 NRC 217 (2009); LBP-09-10, 70 NRC 114 (2009); LBP-09-17, 70 NRC 337 (2009)

LEGAL CITATIONS INDEX

CASES

- contentions on the environmental impacts of spent fuel storage are inadmissible; LBP-09-18, 70 NRC 406 (2009)
- licensing boards may not admit a contention that directly or indirectly challenges 10 C.F.R. 51.51, Table S-3; LBP-09-10, 70 NRC 114-15 (2009)
- Southern Nuclear Operating Co.* (Early Site Permit for Vogtle ESP Site), LBP-07-3, 65 NRC 237, 268 (2007)
- ISL mining does not involve fuel rod waste and to the extent such waste is indirectly relevant, the Waste Confidence rule would prohibit consideration in a license amendment proceeding; LBP-08-6, 67 NRC 342 (2008)
- Southern Nuclear Operating Co.* (Early Site Permit for Vogtle ESP Site), LBP-07-3, 65 NRC 237, 269 & n.16 (2007)
- a National Environmental Policy Act analysis is not the vehicle for exploring questions about the potential for a terrorist attack upon a proposed nuclear facility; LBP-08-16, 68 NRC 394 (2008)
- NEPA does not require applicants or licensees to consider terrorist attacks as part of their environmental reviews outside the Ninth Circuit; LBP-09-26, 70 NRC 981 (2009)
- Southern Nuclear Operating Co.* (Early Site Permit for Vogtle ESP Site), LBP-07-3, 65 NRC 237, 271-72 (2007)
- petitioners' concerns about possible impacts of applicant's as-yet-to-be-completed strategic plan or a still-to-be-developed state energy plan are inappropriate bases for admitting a contention; LBP-08-16, 68 NRC 410-11 (2008)
- Southern Nuclear Operating Co.* (Early Site Permit for Vogtle ESP Site), LBP-07-3, 65 NRC 237, 272 (2007)
- the fact that an Integrated Resource Plan revision process has been instituted does not support a claim that the final supplemental environmental impact statement is inadequate because of its reliance on earlier studies; LBP-09-26, 70 NRC 973 (2009)
- Southern Nuclear Operating Co.* (Early Site Permit for Vogtle ESP Site), LBP-08-2, 67 NRC 54, 63-64 (2008)
- where intervenors have not sought to amend their contention as admitted, to the degree the contention is one of omission, it is subject to dismissal in connection with those aspects for which it is appropriately established that the Staff draft environmental impact statement provides any purported missing analysis or discussion; LBP-10-14, 72 NRC 109 n.31 (2010)
- Southern Nuclear Operating Co.* (Vogtle Electric Generating Plant, Units 2 and 3), CLI-09-13, 69 NRC 575 (2009)
- applicant may, at its own risk, submit a combined license application that does not reference a certified design; CLI-10-1, 71 NRC 9 (2010)
- Southern Nuclear Operating Co.* (Vogtle Electric Generating Plant, Units 3 and 4), CLI-09-13, 69 NRC 575, 577 (2009)
- a contention asserting omissions from the combined license application that is not admissible need not be referred to the Staff and held in abeyance; LBP-09-10, 70 NRC 78 n.19 (2009)
- Southern Nuclear Operating Co.* (Vogtle Electric Generating Plant, Units 3 and 4), CLI-09-16, 70 NRC 33 (2009)
- a safety-related contention on the potential impact of the lack of disposal options for low-level radioactive waste at a proposed facility is admissible; CLI-10-2, 71 NRC 44 (2010)
- contentions that concern greater-than-Class-C waste, seek to require a change to the decommissioning cost estimate, or constitute a challenge to Table S-3 of 10 C.F.R. 51.51 are inadmissible; LBP-09-16, 70 NRC 253 (2009)
- Southern Nuclear Operating Co.* (Vogtle Electric Generating Plant, Units 3 and 4), CLI-09-16, 70 NRC 33, 36 (2009)
- section 52.79(a)(3) sets no quantity or time restrictions relative to onsite storage of low-level radioactive waste; LBP-09-27, 70 NRC 1014 (2009)
- Southern Nuclear Operating Co.* (Vogtle Electric Generating Plant, Units 3 and 4), CLI-09-16, 70 NRC 33, 37 (2009)
- applicant must explain how it intends, through its design, operational organization, and procedures, to comply with relevant substantive radiation protection requirements in 10 C.F.R. Part 20, including,

LEGAL CITATIONS INDEX

CASES

- but not limited to, low-level radioactive waste handling and storage; LBP-09-27, 70 NRC 1001 (2009)
- from a safety standpoint, the required low-level radioactive waste storage information is tied to the COL applicant's particular plans for compliance through design, operational organization, and procedures; CLI-10-2, 71 NRC 44, 46 (2010)
- section 52.79(a)(3) pertains to how the COL applicant intends, through its design, operational organization, and procedures, to comply with relevant substantive radiation protection requirements in 10 C.F.R. Part 20; LBP-10-20, 72 NRC 601 (2010)
- the information required in a combined license application by section 52.79(a)(3) is largely dependent on the individual applicant's plans; LBP-09-27, 70 NRC 1014 (2009)
- Southern Nuclear Operating Co.* (Vogtle Electric Generating Plant, Units 3 and 4), CLI-09-16, 70 NRC 33, 38 (2009)
- the licensing board did not commit reversible error by admitting a contention based on low-level radioactive waste storage duration because the NRC Staff itself had issued a Request for Additional Information on this very issue and thus this conflicted with Staff's argument that the issue is immaterial to the findings that must be made on the application; LBP-09-27, 70 NRC 1015 n.123 (2009)
- Southern Nuclear Operating Co.* (Vogtle Electric Generating Plant, Units 3 and 4), LBP-09-3, 69 NRC 139, 149, *appeals denied*, CLI-09-16, 70 NRC 33 (2009)
- in assessing intervention petitions, licensing boards must determine whether standing elements are met even though there are no objections to petitioner's standing; LBP-09-23, 70 NRC 669 n.32 (2009)
- Southern Nuclear Operating Co.* (Vogtle Electric Generating Plant, Units 3 and 4), LBP-09-3, 69 NRC 139, 153-54 (2009)
- petitioner has an obligation to explain why cited testimony provides a basis for its contention; LBP-10-17, 72 NRC 510 n.26 (2010)
- Southern Nuclear Operating Co.* (Vogtle Electric Generating Plant, Units 3 and 4), LBP-09-3, 69 NRC 139, 159-64 (2009)
- contentions that concern greater-than-Class-C waste, seek to require a change to the decommissioning cost estimate, or constitute a challenge to Table S-3 of 10 C.F.R. 51.51 are inadmissible; LBP-09-16, 70 NRC 253 (2009)
- Southern Nuclear Operating Co.* (Vogtle Electric Generating Plant, Units 3 and 4), LBP-09-3, 69 NRC 139, 164 (2009)
- petitioners raise a genuine dispute as to whether information on applicant's extended low-level radioactive waste storage plan should have been included in the combined license application; LBP-09-4, 69 NRC 230 (2009)
- Southern Nuclear Operating Co.* (Vogtle Electric Generating Plant, Units 3 and 4), LBP-10-8, 71 NRC 433, 443-44 (2010)
- the language of 10 C.F.R. 52.79(a)(4) is contrasted with the "means" language of 10 C.F.R. 52.79(a)(3); LBP-10-20, 72 NRC 610 n.7 (2010)
- Southern Nuclear Operating Co.* (Vogtle Electric Generating Plant, Units 3 and 4), LBP-10-8, 71 NRC 433, 444 (2010)
- detailed design, location, and health impacts information on low-level radioactive waste storage is not required in the combined license application; LBP-10-20, 72 NRC 583 (2010)
- there is no prohibition on an applicant using a plan for compliance with section 52.79(a)(3) that includes contingent plans should future low-level radioactive waste storage become necessary; LBP-10-20, 72 NRC 585 (2010)
- Southern Nuclear Operating Co.* (Vogtle Electric Generating Plant, Units 3 and 4), LBP-10-8, 71 NRC 433, 445 (2010)
- there is no requirement in section 52.79(a)(3) for applicant's FSAR to include details regarding building materials and high-integrity containers, exact location, or health impacts on employees for the contingent onsite long-term LLRW storage facility; LBP-10-20, 72 NRC 603 (2010)
- Southern Pacific Communication Co. v. American Telephone & Telegraph Co.*, 740 F.2d 1011, 1018 (D.C. Cir. 1984)
- pendency of an appeal need not preclude reliance on the lower court's decision being appealed to estop relitigation of the same matter in another forum; LBP-09-24, 70 NRC 713 n.62 (2009)

LEGAL CITATIONS INDEX

CASES

- Southwest Marine, Inc. v. Triple A Machine Shop, Inc.*, 720 F. Supp. 805, 809 (N.D. Cal. 1989)
the impact on a subject's ability to mount a defense in an enforcement proceeding is relevant to the grant of a motion for abeyance because, during the delay, witnesses may forget details or relocate and documents may be moved, stored, transferred, lost, or destroyed; LBP-06-13, 63 NRC 542 n.62 (2006)
- Spell v. McDaniel*, 591 F. Supp. 1090, 1116 (E.D.N.C. 1984), *aff'd in part and vacated and remanded in part, both on unrelated grounds*, 824 F.2d 1380 (4th Cir. 1987)
a ten-point test for evaluating the law enforcement privilege under FOIA has been used; LBP-06-25, 64 NRC 385 (2006)
- Spirit of the Sage Council v. Norton*, 411 F.3d 225, 230 (D.C. Cir. 2005) (citations omitted)
the doctrines of standing, ripeness, and mootness all derive from the case or controversy requirement of Article III; LBP-09-15, 70 NRC 210 n.29 (2009)
when a federal court dismisses a claim as moot and avoids any further consideration of the merits of that claim, it does so because the claim no longer satisfies the case or controversy requirement of Article III; LBP-09-15, 70 NRC 210 (2009)
- SSIH Equipment S.A. v. U.S. International Trade Commission*, 718 F.2d 365, 370 (Fed. Cir. 1983)
the pendency of an appeal has no effect on the finality or binding effect of a trial court's holding; LBP-09-24, 70 NRC 813 (2009)
- St. Paul Fire & Marine Insurance Co. v. United States*, 24 Cl. Ct. 513 (1991)
sometimes the pendency of a criminal prosecution necessitates delaying a parallel civil or administrative proceeding; LBP-06-13, 63 NRC 537 (2006)
- State of Alaska Department of Transportation and Public Facilities*, CLI-04-26, 60 NRC 399 (2004)
the scope of an enforcement adjudication is limited to the question of whether the order should be sustained; CLI-10-3, 71 NRC 53 (2010)
- State of Alaska Department of Transportation and Public Facilities*, CLI-04-26, 60 NRC 399, 404 (2004)
a challenge to an enforcement order in which the petitioner contends that the order needs strengthening is prohibited; LBP-06-12, 63 NRC 422 (2006)
- State of Alaska Department of Transportation and Public Facilities*, CLI-04-26, 60 NRC 399, 404-06 (2004)
the scope of a hearing in an adjudication on an enforcement order is limited to whether the order should be sustained; CLI-10-3, 71 NRC 54 (2010)
- State of Alaska Department of Transportation and Public Facilities*, CLI-04-26, 60 NRC 399, 406 (2004)
petitioners must provide factual support for their claim that an enforcement-related injury could be redressed by a favorable board ruling; CLI-10-3, 71 NRC 53 n.20 (2010)
- State of Illinois*, CLI-90-11, 32 NRC 333, 334 (1990)
failure of a motion to address the four stay factors is reason enough to deny it; CLI-08-13, 67 NRC 399 (2008)
- State of New Jersey* (Department of Law and Public Safety), CLI-93-25, 38 NRC 289, 296 (1993)
determinations on any nontimely filing of a petition must be based on a balancing of factors under 10 C.F.R. 2.309(c), the most important of which is good cause, if any, for the failure to file on time; LBP-08-6, 67 NRC 257 (2008)
whether good cause exists for failure to file a contention on time is given the most weight; LBP-06-14, 63 NRC 575 (2006)
- State of Utah* (Agreement Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended), DD-95-1, 41 NRC 43, 43-44 (1995)
challenges to an Agreement State's program may be raised in a section 2.206 petition; CLI-10-8, 71 NRC 153 n.57 (2010)
- Statement of Policy on Conduct of Adjudicatory Proceedings*, CLI-98-12, 48 NRC 18 (1998)
in all proceedings the stakeholders have an interest in efficient and expeditious resolution; CLI-08-23, 68 NRC 485 (2008)
in the appropriate circumstances, allowing discovery or an evidentiary hearing with respect to safety-related issues to proceed before the final safety evaluation report is issued will serve to further the Commission's objective to ensure a fair, prompt, and efficient resolution of contested issues; CLI-09-15, 70 NRC 13 n.2 (2009); CLI-10-4, 71 NRC 67 n.1 (2010)
licensing boards are expected to use the applicable techniques to ensure prompt and efficient resolution of contested issues; CLI-10-4, 71 NRC 67-68 (2010)

LEGAL CITATIONS INDEX

CASES

- the Commission expects that the licensing board, NRC Staff, the applicant, and other parties will follow the applicable guidance; CLI-09-15, 70 NRC 12 (2009)
- the purpose of strict contention pleading rules is to make adjudicatory proceedings more effective and efficient, while maintaining fundamental fairness; LBP-08-11, 67 NRC 501 (2008)
- this guidance is intended to improve the management and timely completion of the proceeding and addresses hearing schedules, parties' obligations, contentions, and discovery management; CLI-09-15, 70 NRC 13 (2009); CLI-10-4, 71 NRC 66-67 (2010)
- Statement of Policy on Conduct of Adjudicatory Proceedings*, CLI-98-12, 48 NRC 18, 18-19 (1998)
- in establishing and enforcing schedule deadlines, boards must take care not to compromise the Commission's fundamental commitment to a fair and thorough hearing process; LBP-10-21, 72 NRC 635 (2010)
- Statement of Policy on Conduct of Adjudicatory Proceedings*, CLI-98-12, 48 NRC 18, 18-20 (1998)
- in the interest of efficient case management and prompt resolution of adjudications, the Commission has generally enforced the 10-day deadline for appeals strictly, excusing it only in unavoidable and extreme circumstances; CLI-10-26, 72 NRC 476 (2010)
- Statement of Policy on Conduct of Adjudicatory Proceedings*, CLI-98-12, 48 NRC 18, 19 (1998)
- licensing boards have substantial authority to regulate hearing procedures; LBP-10-21, 72 NRC 635 (2010)
- the Commission has long endorsed a balanced approach to hearings that both expedites the hearing process and ensures fairness in order to produce a record that leads to high-quality decisions that adequately protect the public health and safety, the common defense and security, and the environment; LBP-06-18, 63 NRC 835 (2006); LBP-10-21, 72 NRC 635-36 (2010)
- the Commission's general policy is to avoid unnecessary delays in adjudicatory proceedings; LBP-10-9, 71 NRC 522 (2010)
- Statement of Policy on Conduct of Adjudicatory Proceedings*, CLI-98-12, 48 NRC 18, 21 (1998)
- although participants generally must comply with the schedule established by the presiding officer, they might sometimes be unable to meet established deadlines; LBP-10-21, 72 NRC 635 (2010)
- only in truly unavoidable and extreme circumstances are late filings to be accepted; LBP-10-21, 72 NRC 636 (2010)
- prior to NRC's 2004 revision of Part 2, it had approved early hearings on safety issues but not on environmental issues; CLI-07-17, 65 NRC 394 (2007)
- Statement of Policy on Conduct of Adjudicatory Proceedings*, CLI-98-12, 48 NRC 18, 22 (1998)
- a contention's proponent, not the licensing board, is responsible for formulating the contention and providing the necessary information to satisfy the basis requirement for the admission of contentions; CLI-06-10, 63 NRC 457 (2006); LBP-08-17, 68 NRC 447 (2008); LBP-10-24, 72 NRC 775 (2010)
- dismissal of a party is an appropriate sanction in extreme cases where the party fails to provide legal and factual support for its arguments and assertions; CLI-08-29, 68 NRC 900 (2008)
- Statement of Policy on Conduct of Adjudicatory Proceedings*, CLI-98-12, 48 NRC 18, 22 n.1 (1998)
- the requirement of a "concise statement of the alleged facts or expert opinions" in support an intervention petitioner's position does not require the submission of an expert opinion, nor does it require that an expert opinion be submitted in the form of admissible evidence; LBP-06-7, 63 NRC 221 n.33 (2006)
- Statement of Policy on Conduct of Adjudicatory Proceedings*, CLI-98-12, 48 NRC 18, 23 (1998)
- a party is allowed to appeal a ruling on contentions only if the order wholly denies a petition for leave to intervene or a party other than the petitioner alleges that a petition for leave to intervene or a request for a hearing should have been wholly denied; CLI-09-18, 70 NRC 861 (2009)
- boards are encouraged to certify novel legal or policy questions related to admitted issues to the Commission as early as possible in the proceeding; CLI-08-4, 67 NRC 172 (2008)
- Commission will take early review as to matters involving novel legal or policy questions; CLI-10-24, 72 NRC 465 n.82 (2010)
- in its supervisory capacity, the Commission provides guidance on the "need for SUNSI" analysis, for use in those instances when an access order applies; CLI-10-24, 72 NRC 465 (2010)
- the Commission's general policy is to minimize interlocutory review; CLI-09-9, 69 NRC 365 (2009)
- where appropriate, the Commission will exercise its authority to instruct the board to certify novel license renewal issues to it; CLI-07-1, 65 NRC 5 (2007)

LEGAL CITATIONS INDEX

CASES

- Statement of Policy on Conduct of Adjudicatory Proceedings*, CLI-98-12, 48 NRC 18, 24 (1998)
Commission policy is to resolve adjudications promptly; CLI-08-19, 68 NRC 262 (2008)
- Statement of Policy on Conduct of Licensing Proceedings*, CLI-81-8, 13 NRC 452 (1981)
the licensing board is required to use the applicable techniques specified in this guidance to ensure prompt and efficient resolution of contested issues; CLI-09-15, 70 NRC 13 (2009); CLI-10-4, 71 NRC 67-68 (2010)
the purpose of strict contention pleading rules is to make adjudicatory proceedings more effective and efficient, while maintaining fundamental fairness; LBP-08-11, 67 NRC 501 (2008)
- Statement of Policy on Conduct of Licensing Proceedings*, CLI-81-8, 13 NRC 452, 453 (1981)
in establishing and enforcing schedule deadlines, boards must take care not to compromise the Commission's fundamental commitment to a fair and thorough hearing process; LBP-10-21, 72 NRC 635 (2010)
licensing board authority to sanction parties that violate NRC rules does not have the purpose of relieving intervenors of their adjudicatory expenses, but would merely have an incidental effect, as part of an overall effort to ensure that the licensing process moves along at an expeditious pace; LBP-09-1, 69 NRC 44 (2009)
the Commission has long endorsed a balanced approach to hearings that both expedites the hearing process and ensures fairness in order to produce a record that leads to high-quality decisions that adequately protect the public health and safety, the common defense and security, and the environment; LBP-10-21, 72 NRC 635-36 (2010)
the Commission regards good sense, judgment, and managerial skills as the proper guideposts for conducting an efficient hearing; LBP-10-21, 72 NRC 636 (2010)
- Statement of Policy on Conduct of Licensing Proceedings*, CLI-81-8, 13 NRC 452, 453-54 (1981)
licensing boards have substantial authority to regulate hearing procedures; LBP-10-21, 72 NRC 635 (2010)
requests for an extension of time should generally be in writing and should be received by the board well before the time specified expires; LBP-10-21, 72 NRC 635 (2010)
- Statement of Policy on Conduct of Licensing Proceedings*, CLI-81-8, 13 NRC 452, 454 (1981)
a spectrum of sanctions from minor to severe may be employed by a board to assist in the management of a proceeding; LBP-10-21, 72 NRC 636 (2010)
counsel's alleged unfamiliarity with the agency's rules of practice or counsel's asserted busy schedule are not satisfactory explanations for late filings; LBP-10-21, 72 NRC 637 (2010)
dismissal of a party falls within the spectrum of sanctions available to boards to assist in the management of proceedings, although dismissal should be reserved for severe cases; CLI-08-29, 68 NRC 900 (2008)
examples of sanctions include warning a party that offending conduct will not be tolerated in the future, refusing to consider a filing, denying the right to cross-examine or present evidence, dismissing contentions, imposing sanctions on counsel, or dismissing the party from the proceeding; LBP-10-21, 72 NRC 636 n.3 (2010)
factors considered in selecting an appropriate sanction include relative importance of the unmet obligation, its potential for harm to other parties or the orderly conduct of the proceeding, whether its occurrence is an isolated incident or a part of a pattern of behavior, the importance of the safety or environmental concerns raised by the party, and all of the circumstances; LBP-10-21, 72 NRC 636 n.4 (2010)
fairness to all involved in NRC's adjudicatory procedures requires that every participant fulfill the obligations imposed by and in accordance with applicable law and Commission regulations; CLI-10-12, 71 NRC 327 (2010)
in assessing a penalty, boards are to consider, among other things, whether a participant's failure to meet an obligation is an isolated incident or a part of a pattern of behavior; CLI-08-29, 68 NRC 901 (2008)
the fact that a party may have other obligations does not relieve that party of its hearing obligations; CLI-10-26, 72 NRC 476 (2010)
when a participant fails to meet its obligations, a board should consider the imposition of sanctions against the offending party; LBP-09-1, 69 NRC 43 (2009)

LEGAL CITATIONS INDEX

CASES

- with an eye toward mitigating prejudice to nonbreaching participants, boards must tailor sanctions to bring about improved future compliance; LBP-10-21, 72 NRC 636 (2010)
- Statement of Policy on Conduct of Licensing Proceedings*, CLI-81-8, 13 NRC 452, 455 (1981)
- a party at risk of filing out of time arguably never needs to file out of time because the party can first request an extension, doing so well before the time specified expires; LBP-10-21, 72 NRC 637 (2010)
- parties are expected to file motions for extensions of time so that they are received by NRC well before the time specified expires; CLI-10-26, 72 NRC 477 n.17 (2010)
- Statement of Policy on Conduct of Licensing Proceedings*, CLI-81-8, 13 NRC 452, 455-56 (1981)
- NRC has a longstanding policy of encouraging the fair and reasonable settlement of contested licensing proceedings; LBP-06-18, 63 NRC 835 (2006)
- Statement of Policy on Conduct of Licensing Proceedings*, CLI-81-8, 13 NRC 452, 457 (1981)
- failure of parties to raise matters in their findings submissions seemingly waives these items as grounds for a challenge to the final environmental impact statement; LBP-09-7, 69 NRC 651 n.12 (2009)
- Steamboaters v. Federal Energy Regulatory Commission*, 759 F.2d 1382 (9th Cir. 1985)
- an explanation of the applicability of a categorical exclusion is required where special circumstances necessitating an environmental review have been alleged; LBP-06-4, 63 NRC 109 n.36 (2006)
- Steamboaters v. Federal Energy Regulatory Commission*, 759 F.2d 1382, 1392 (9th Cir. 1985)
- for a petitioner to raise an admissible contention with respect to a Staff finding of no significant impact, it need not demonstrate that there will in fact be a significant environmental impact as a consequence of the proposed action, but it must allege facts which, if true, show that the proposed project may significantly degrade some human environmental factor; LBP-06-27, 64 NRC 458 (2006)
- Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 101 (1998)
- the case or controversy requirement of Article III is rooted in the separation of powers; LBP-09-15, 70 NRC 210 n.30 (2009)
- Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 101-02 (1998)
- when a claim becomes moot in federal court, the court loses jurisdiction to decide the merits of that claim; LBP-09-15, 70 NRC 210 (2009)
- Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 102-04 (1998)
- under judicial concepts of standing, a board considers whether a petitioner has alleged a concrete and particularized injury that is fairly traceable to the challenged action and likely to be redressed by a favorable decision; LBP-06-10, 63 NRC 327 (2006); LBP-06-23, 64 NRC 270 (2006); LBP-07-4, 65 NRC 294 (2007); LBP-07-11, 66 NRC 52 (2007); LBP-08-6, 67 NRC 271 (2008); LBP-08-13, 68 NRC 59 (2008); LBP-08-14, 68 NRC 286 (2008); LBP-09-17, 70 NRC 321-22 n.30 (2009); LBP-09-20, 70 NRC 574 (2009); LBP-09-26, 70 NRC 947 (2009)
- Strycker's Bay Neighborhood Council, Inc. v. Karlen*, 444 U.S. 223, 227 (1980)
- if the adverse environmental impacts of the proposed action are adequately identified and evaluated, the agency is not constrained by NEPA from deciding that other values outweigh the environmental costs; LBP-09-16, 70 NRC 287 n.180 (2009)
- NEPA does not require agencies to elevate environmental concerns over other appropriate considerations; LBP-10-24, 72 NRC 729 n.16 (2010)
- Summers v. Earth Island Institute*, 129 S. Ct. 1142, 1150 (2009)
- organizations seeking to challenge regulations of a government agency failed to demonstrate standing where they did not demonstrate a concrete application of the regulations that threatened imminent harm to their interests; CLI-09-20, 70 NRC 917 n.27 (2009)
- Summers v. Earth Island Institute*, 129 S. Ct. 1142, 1151 (2009)
- even if a party seeking standing has some intent to return to an area, when such intentions are not supported by concrete plans or a specification of when future visits would take place, they do not support a finding of injury in the standing context; LBP-10-1, 71 NRC 179 (2010)
- Summers v. Earth Island Institute*, 129 S. Ct. 1142, 1152 (2009)
- boards have an independent obligation to make a standing determination regardless of whether there is a challenge to a petitioner's standing; LBP-10-1, 71 NRC 177 n.3 (2010); LBP-10-7, 71 NRC 411 n.4 (2010)

LEGAL CITATIONS INDEX

CASES

- Sun Oil Co. v. Pierce*, 224 F.2d 580, 585 (5th Cir. 1955)
the civil law concept of “assumption of risk” requires not merely general knowledge of a risk but also that the risk assumed be specifically known, understood, and appreciated; CLI-10-23, 72 NRC 223 (2010)
- Sunderland v. United States*, 266 U.S. 226, 233 (1924)
the Trust Responsibility requires federal agencies to take actions or refrain from taking actions in fulfillment of Congress’s duty to protect the Indians; LBP-09-13, 70 NRC 189 (2009)
- Sweezy v. New Hampshire*, 354 U.S. 234, 245 (1957)
it is particularly important that the exercise of the power of compulsory process be carefully circumscribed when the investigative process tends to impinge upon such highly sensitive areas as freedom of speech or press, freedom of political association, and freedom of communication of ideas; LBP-09-24, 70 NRC 798 n.5 (2009)
- System Energy Resources, Inc.* (Early Site Permit for Grand Gulf ESP Site), CLI-05-4, 61 NRC 10, 13 (2005)
a dispute is not material unless it involves a significant inaccuracy or omission and resolution of the dispute could affect the outcome of the licensing proceeding; LBP-10-14, 72 NRC 117 n.93 (2010)
although boards should not “flyspeck” environmental documents, petitioners may raise contentions seeking correction of significant inaccuracies and omissions in the environmental report; LBP-08-13, 68 NRC 199 (2008); LBP-10-24, 72 NRC 762 (2010)
applicant’s environmental report is deficient because it does not supply sufficient information from which the Commission may properly consider, and publicly disclose, environmental factors that may cause harm to minority and low-income populations that would be disproportionate to that suffered by the general population; LBP-08-13, 68 NRC 201 (2008)
significant inaccuracies and omissions from the environmental report are proper subjects of contentions but details or nuances are not, nor are boards to flyspeck environmental documents; LBP-10-10, 71 NRC 581, 607 n.14 (2010); LBP-10-14, 72 NRC 117 n.93 (2010)
the National Environmental Policy Act does not require that a federal agency take any particular action but it does require that the federal agency take a hard look at the environmental impact its proposed action could have before the action is taken, and to document what it has done; LBP-08-13, 68 NRC (2008)
the purpose of an environmental justice review is to ensure that the Commission considers and publicly discloses environmental factors peculiar to minority or low-income populations that may cause them to suffer harm disproportionate to that suffered by the general population; LBP-08-13, 68 NRC 199 (2008)
- System Energy Resources, Inc.* (Early Site Permit for Grand Gulf ESP Site), CLI-05-4, 61 NRC 10, 15 (2005)
the Commission explains why board decisions on contention admissibility are permissibly and customarily terse; LBP-10-16, 72 NRC 413 n.247 (2010)
- System Energy Resources, Inc.* (Early Site Permit for Grand Gulf ESP Site), CLI-05-4, 61 NRC 10, 19 (2005)
petitioner’s mere demand for more precision does not justify an NRC adjudicatory hearing; CLI-06-10, 63 NRC 477 (2006)
- System Energy Resources, Inc.* (Early Site Permit for Grand Gulf ESP Site), CLI-07-7, 65 NRC 122 (2007)
before an early site permit can be made effective, the Commission must review and approve the licensing board’s initial decision authorizing its issuance; CLI-07-23, 66 NRC 35 (2007); CLI-07-27, 66 NRC 220 (2007)
- System Energy Resources, Inc.* (Early Site Permit for Grand Gulf ESP Site), CLI-07-10, 65 NRC 144 (2007)
the Commission is not obliged to adhere, in all of its proceedings, to the first court of appeals decision to address a controversial question, and is not prevented from relitigating the issue in future cases; LBP-07-14, 66 NRC 186 (2007)
the National Environmental Policy Act is not an appropriate vehicle for exploring questions about the potential for a terrorist attack upon a proposed nuclear facility; CLI-10-1, 71 NRC 13 (2010); LBP-09-2, 69 NRC 103 (2009)

LEGAL CITATIONS INDEX

CASES

- System Energy Resources, Inc.* (Early Site Permit for Grand Gulf ESP Site), CLI-07-10, 65 NRC 144, 145 (2007)
the Commission disagrees with the Ninth Circuit's view that NEPA demands a terrorism inquiry; CLI-08-1, 67 NRC 5 (2008)
- System Energy Resources, Inc.* (Early Site Permit for Grand Gulf ESP Site), CLI-07-10, 65 NRC 144, 146 (2007)
an appeals court ruling does not constitute new information on which a party can file a new contention; CLI-07-9, 65 NRC 142 (2007)
any new contention on the subject of terrorism in this proceeding would be inexcusably late; CLI-07-9, 65 NRC 142 (2007)
outside the Ninth Circuit, NEPA does not require NRC to consider the environmental consequences of hypothetical terrorist attacks at NRC-licensed facilities; LBP-09-18, 70 NRC 412 (2009)
- System Energy Resources, Inc.* (Early Site Permit for Grand Gulf ESP Site), CLI-07-10, 65 NRC 144, 146-47 (2007)
a NEPA analysis is not the vehicle for exploring questions about the potential for a terrorist attack upon a proposed nuclear facility; LBP-07-3, 65 NRC 269 (2007)
licensing boards are required to apply the Commission's directive that outside the Ninth Circuit, NEPA does not require the evaluation of the impact of terrorist attacks by aircraft or other means; LBP-09-18, 70 NRC 413 (2009); LBP-09-26, 70 NRC 980, 981 (2009)
the environmental effect caused by third-party miscreants is simply too far removed from the natural or expected consequences of agency action to require a study under NEPA; CLI-10-1, 71 NRC 13 (2010)
the National Environmental Policy Act does not require the analysis of potential terrorist attacks on a proposed nuclear facility outside the jurisdiction of the Ninth Circuit; LBP-08-21, 68 NRC 567-68 n.12 (2008)
- System Energy Resources, Inc.* (Early Site Permit for Grand Gulf ESP Site), CLI-07-10, 65 NRC 144, 147 (2007)
contentions requiring an evaluation of terrorist attacks under NEPA are inadmissible in an early site permit proceeding; LBP-08-6, 67 NRC 332 n.513 (2008)
- System Energy Resources, Inc.* (Early Site Permit for Grand Gulf ESP Site), CLI-07-14, 65 NRC 216, 217 (2007)
regarding an early site permit application, any gaps and questions concerning groundwater transport and hydrology safety issues are acceptable and deferred until the construction permit or combined license stage; LBP-07-9, 65 NRC 601 (2007)
- System Energy Resources, Inc.* (Early Site Permit for Grand Gulf ESP Site), CLI-07-14, 65 NRC 216, 218-19 (2007)
if certain environmental effects cannot be meaningfully assessed at the ESP stage, the Staff's decision to defer consideration of those effects until a time when they can be accurately assessed is consistent with NEPA's requirements; CLI-07-27, 66 NRC 236 (2007)
- System Energy Resources, Inc.* (Early Site Permit for Grand Gulf ESP Site), LBP-04-19, 60 NRC 277, 289 (2004)
bare or conclusory assertions, even by an expert, are not sufficient to support admission of a contention; LBP-06-20, 64 NRC 177-78 (2006)
- System Energy Resources, Inc.* (Early Site Permit for Grand Gulf ESP Site), LBP-04-19, 60 NRC 277, 292 (2004)
the adequacy of applicant's control room and equipment design radiological protections, in light of the fact that the reactor is proposed to be located within the EPZ of an existing reactor, is an issue that is appropriate in a COLA or Standard Design Certification proceeding; LBP-09-10, 70 NRC 110 (2009)
- System Energy Resources, Inc.* (Early Site Permit for Grand Gulf ESP Site), LBP-04-19, 60 NRC 277, 296-97 (2004)
challenges to NRC regulations are inadmissible; LBP-08-21, 68 NRC 587 (2008)
contentions challenging the Waste Confidence Rule are inadmissible; LBP-08-17, 68 NRC 456 (2008); LBP-09-4, 69 NRC 217 (2009); LBP-09-10, 70 NRC 114 (2009); LBP-09-17, 70 NRC 337 (2009)

LEGAL CITATIONS INDEX

CASES

- contentions on the environmental impacts of spent fuel storage are inadmissible; LBP-09-18, 70 NRC 406 (2009)
- licensing boards may not admit a contention that directly or indirectly challenges 10 C.F.R. 51.51, Table S-3; LBP-09-10, 70 NRC 115 (2009)
- System Energy Resources, Inc.* (Early Site Permit for Grand Gulf ESP Site), LBP-07-1, 65 NRC 27 (2007), *aff'd*, CLI-07-14, 65 NRC 216 (2007)
- adequacy of Staff review is questioned by a licensing board; CLI-08-23, 68 NRC 473 (2008)
- System Energy Resources, Inc.* (Early Site Permit for Grand Gulf ESP Site), LBP-07-1, 65 NRC 27, 35, *permit issuance authorized*, CLI-07-14, 65 NRC 216 (2007)
- early site permit applications, as partial construction permit applications, are subject to the Atomic Energy Act hearing requirement, as well as all procedural requirements in 10 C.F.R. Part 2; LBP-09-19, 70 NRC 456 (2009)
- System Energy Resources, Inc.* (Early Site Permit for Grand Gulf ESP Site), LBP-07-1, 65 NRC 27, 36 n.14 (2007)
- benefit-cost analysis can be postponed until the reactor licensing stage; LBP-07-9, 65 NRC 559 n.31 (2007)
- System Energy Resources, Inc.* (Early Site Permit for Grand Gulf ESP Site), LBP-07-1, 65 NRC 27, 88, *permit issuance authorized*, CLI-07-14, 65 NRC 216 (2007)
- NRC provides detailed guidance for Staff personnel reviewing the safety aspects of early site permit applications; LBP-09-19, 70 NRC 541 (2009)
- System Energy Resources, Inc.* (Early Site Permit for Grand Gulf ESP Site), LBP-07-1, 65 NRC 27, 90, *permit issuance authorized*, CLI-07-14, 65 NRC 216 (2007)
- items for which sufficient information is lacking at the early site permit stage of the licensing process may be subject to deferral for consideration at the combined license stage; LBP-09-19, 70 NRC 541 (2009)
- Teachers Insurance and Annuity Association of America v. Shamrock Broadcasting Co.*, 521 F. Supp. 638, 642 (S.D.N.Y. 1981)
- submitting information to a government agency is voluntary even if the company submitting the information feels pressure to do so as a result of its dealings with the federal government; CLI-08-6, 67 NRC 183-84 n.2 (2008)
- Tenet v. Doe*, 544 U.S. 1, 8 (2005)
- public policy forbids the maintenance of any suit in a court of justice, the trial of which would inevitably lead to the disclosure of matters which the law itself regards as confidential, and respecting which it will not allow the confidence to be violated; CLI-08-1, 67 NRC 20 (2008)
- Tennessee Gas Pipeline Co. v. Federal Power Commission*, 606 F.2d 1373, 1380 (D.C. Cir. 1979)
- the limitations imposed by article III on what matters federal courts may hear affect administrative agencies only indirectly; LBP-09-14, 70 NRC 195 (2009)
- Tennessee Valley Authority* (Bellefonte Nuclear Power Plant, Units 1 and 2), CLI-10-6, 113, 126 n.49 (2010)
- the SUNSI Access Order is issued by the Commission or NRC in its role as supervisor of NRC Staff and does not constitute an adjudicatory ruling by the Commission; LBP-10-2, 71 NRC 202 n.36 (2010)
- Tennessee Valley Authority* (Bellefonte Nuclear Power Plant, Units 1 and 2), CLI-10-26, 72 NRC 474, 475-78 (2010)
- the Commission elaborates on the standards for accepting an appeal filed out of time; LBP-10-21, 72 NRC 636 (2010)
- Tennessee Valley Authority* (Bellefonte Nuclear Power Plant, Units 1 and 2), CLI-10-26, 72 NRC 474, 476 (2010)
- strict enforcement of deadlines furthers the dual interests of efficient case management and prompt resolution of adjudications; LBP-10-21, 72 NRC 636 (2010)
- Tennessee Valley Authority* (Bellefonte Nuclear Power Plant, Units 1 and 2), CLI-10-26, 72 NRC 474, 476-77 & n.18 (2010)
- a motion to file late should generally be denied, except under extraordinary conditions; LBP-10-21, 72 NRC 635 (2010)

LEGAL CITATIONS INDEX

CASES

- Tennessee Valley Authority* (Bellefonte Nuclear Power Plant, Units 1 and 2), CLI-10-26, 72 NRC 474, 477 (2010)
a party at risk of filing out of time arguably never needs to file out of time because the party can first request an extension, doing so well before the time specified expires; LBP-10-21, 72 NRC 637 (2010)
- Tennessee Valley Authority* (Bellefonte Nuclear Power Plant, Units 1 and 2), CLI-10-26, 72 NRC 474, 477 n.17 (2010)
participant filing out of time must offer a satisfactory explanation for its lateness, including, if necessary, an account as to why a request for extension could not have been filed beforehand; LBP-10-21, 72 NRC 637 (2010)
- Tennessee Valley Authority* (Bellefonte Nuclear Power Plant, Units 1 and 2), LBP-10-7, 71 NRC 391, 430 (2010)
off-again/on-again approach to construction of long-delayed units has generated a unique set of circumstances such that Commission should consider holding a new mandatory hearing prior to allowing full-power operation of units; LBP-10-12, 71 NRC 672 n.77 (2010)
- Tennessee Valley Authority* (Bellefonte Nuclear Power Plant, Units 3 and 4), CLI-09-3, 69 NRC 68 (2009)
absent a waiver, a contention that constitutes a collateral attack on NRC regulations is inadmissible; CLI-09-20, 70 NRC 923 (2009)
contentions challenging low-level radioactive waste storage may not rely on 10 C.F.R. Part 61, which pertains to land disposal facilities; CLI-10-2, 71 NRC 43 n.78 (2010)
- Tennessee Valley Authority* (Bellefonte Nuclear Power Plant, Units 3 and 4), CLI-09-3, 69 NRC 68, 70 n.2 (2009)
the Commission may have more to offer regarding the need for a NEPA carbon footprint analysis in new reactor licensing proceedings; LBP-09-19, 70 NRC 495 n.17 (2009)
- Tennessee Valley Authority* (Bellefonte Nuclear Power Plant, Units 3 and 4), CLI-09-3, 69 NRC 68, 72 (2009)
the Commission will review a referred ruling only if it raises significant and novel legal or policy issues, and resolution of the issues would materially advance the orderly disposition of the proceeding; CLI-09-13, 69 NRC 577 (2009); CLI-09-21, 70 NRC 930 (2009)
- Tennessee Valley Authority* (Bellefonte Nuclear Power Plant, Units 3 and 4), CLI-09-3, 69 NRC 68, 72-73 (2009)
Part 61 is inapplicable to onsite storage of licensee's own low-level radioactive waste; LBP-09-3, 69 NRC 163 (2009)
- Tennessee Valley Authority* (Bellefonte Nuclear Power Plant, Units 3 and 4), CLI-09-3, 69 NRC 68, 73 (2009)
in evaluating petitions to intervene, licensing boards are not free to ignore the contention admissibility requirements of 10 C.F.R. 2.309(f)(1); CLI-09-8, 69 NRC 324 (2009)
Part 61 is inapplicable in a combined license proceeding because it applies only to land disposal facilities that receive waste from others, not to onsite facilities where licensee intends to store its own low-level radioactive waste; LBP-09-4, 69 NRC 221 (2009); LBP-09-10, 70 NRC 121 (2009); LBP-09-27, 70 NRC 1002 (2009)
- Tennessee Valley Authority* (Bellefonte Nuclear Power Plant, Units 3 and 4), CLI-09-3, 69 NRC 68, 73-74 n.24 (2009)
the Commission rejected a low-level radioactive waste contention challenging applicant's 2-year plan for storing Class B and Class C waste; LBP-09-27, 70 NRC 1014 (2009)
- Tennessee Valley Authority* (Bellefonte Nuclear Power Plant, Units 3 and 4), CLI-09-3, 69 NRC 68, 74-75 (2009)
the extent to which a combined license application's environmental report must address the management of low-level wastes is discussed; LBP-09-10, 70 NRC 122 (2009)
- Tennessee Valley Authority* (Bellefonte Nuclear Power Plant, Units 3 and 4), CLI-09-3, 69 NRC 68, 75 (2009)
contentions that challenge 10 C.F.R. 51.51, Table S-3, are inadmissible because no rule or regulation of the Commission is subject to attack in any adjudicatory proceeding; LBP-09-4, 69 NRC 222 (2009); LBP-09-10, 70 NRC 115, 122 (2009); LBP-09-16, 70 NRC 255 (2009); LBP-09-18, 70 NRC 407 (2009)

LEGAL CITATIONS INDEX

CASES

- Tennessee Valley Authority* (Bellefonte Nuclear Power Plant, Units 3 and 4), CLI-09-3, 69 NRC 68, 75 n.9 (2009)
Table S-3 assumes that solid, low-level waste from reactors will be disposed of through shallow land burial, and concludes that this kind of disposal will not result in the release of any significant effluent to the environment; LBP-09-16, 70 NRC 255 (2009)
- Tennessee Valley Authority* (Bellefonte Nuclear Power Plant, Units 3 and 4), CLI-09-3, 69 NRC 68, 75 n.30 (2009)
Table S-3 assumes that solid, low-level waste from reactors will be disposed of through shallow land burial, and concludes that this kind of disposal will not result in the release of any significant effluent to the environment; LBP-09-4, 69 NRC 223 (2009); LBP-09-10, 70 NRC 122 (2009)
- Tennessee Valley Authority* (Bellefonte Nuclear Power Plant, Units 3 and 4), CLI-09-3, 69 NRC 68, 76 (2009)
future availability of disposal capacity for low-level radioactive waste remains highly uncertain; LBP-09-4, 69 NRC 226 (2009)
- Tennessee Valley Authority* (Bellefonte Nuclear Power Plant, Units 3 and 4), CLI-09-3, 69 NRC 68, 76-77 (2009)
questions of the safety and environmental impacts of onsite low-level waste storage are largely site- and design-specific, and appropriately decided in an individual licensing proceeding, provided that litigants proffer properly framed and supported contentions; LBP-09-4, 69 NRC 223 (2009); LBP-09-10, 70 NRC 122 (2009); LBP-09-16, 70 NRC 256 (2009)
- Tennessee Valley Authority* (Bellefonte Nuclear Power Plant, Units 3 and 4), CLI-09-3, 69 NRC 68, 77 (2009)
contentions that concern greater-than-Class-C waste, seek to require a change to the decommissioning cost estimate, or constitute a challenge to Table S-3 of 10 C.F.R. 51.51 are inadmissible; LBP-09-16, 70 NRC 253 (2009)
even if the Commission had chosen to promulgate a low-level waste confidence rule, such a rule would not, if it followed the pattern of the high-level waste confidence rule, alter any requirements to consider in the adjudicatory proceeding the environmental impacts of waste storage during the term of the license; LBP-09-4, 69 NRC 223 (2009); LBP-09-10, 70 NRC 122 (2009); LBP-09-16, 70 NRC 256 (2009)
- Tennessee Valley Authority* (Bellefonte Nuclear Power Plant, Units 3 and 4), CLI-09-3, 69 NRC 68, 77 n.42 (2009)
an application-specific contention suitable for litigation on the subject of onsite storage of low-level radioactive waste could be admissible; LBP-09-4, 69 NRC 223 (2009)
contentions on information a COL applicant should supply in order to satisfy NRC regulations regarding the safety of long-term storage of low-level radioactive waste are application-specific and thus would benefit from further development by the board and the parties; CLI-09-16, 70 NRC 38 n.27 (2009)
in a future combined license proceeding, a petitioner could proffer an application-specific contention suitable for litigation on the subject of onsite storage of low-level radioactive waste; LBP-09-10, 70 NRC 122 (2009); LBP-09-16, 70 NRC 255 (2009)
power reactor licensees have safely stored and managed low-level radioactive waste under NRC oversight for years without the development of immediate safety problems or concerns; LBP-09-16, 70 NRC 253 (2009)
- Tennessee Valley Authority* (Bellefonte Nuclear Power Plant, Units 3 and 4), LBP-08-16, 68 NRC 361 (2008)
novel issues warrant referral to the Commission for its immediate consideration; LBP-08-17, 68 NRC 436 (2008)
the Commission addresses a board's additional views when the board refers its decision to the Commission; CLI-10-9, 71 NRC 266 n.130 (2010)
- Tennessee Valley Authority* (Bellefonte Nuclear Power Plant, Units 3 and 4), LBP-08-16, 68 NRC 361, 374 (2008), *rev'd in part*, CLI-09-3, 69 NRC 68, *referred ruling declined*, CLI-09-21, 70 NRC 927 (2009)
a combined license is essentially a construction permit that also requires consideration and resolution of many of the issues currently considered at the operating license stage; LBP-10-7, 71 NRC 405 (2010)

LEGAL CITATIONS INDEX

CASES

- the 10 C.F.R. Part 50 licensing process that was formerly applied to commercial nuclear power plants required that an applicant first obtain a construction permit for the facility, followed by an operating license; LBP-10-7, 71 NRC 405 (2010)
- Tennessee Valley Authority* (Bellefonte Nuclear Power Plant, Units 3 and 4), LBP-08-16, 68 NRC 361, 378 (2008)
- the proximity presumption applies to combined license proceedings; LBP-09-16, 70 NRC 240 (2009)
- under the proximity presumption, petitioner in an operating license proceeding who lives within 50 miles of a nuclear power reactor is presumed to have standing without the need specifically to plead injury, causation, and redressability; LBP-09-26, 70 NRC 947 (2009)
- Tennessee Valley Authority* (Bellefonte Nuclear Power Plant, Units 3 and 4), LBP-08-16, 68 NRC 361, 378-80 (2008)
- under the proximity presumption, petitioner is presumed to have standing to intervene without the need to specifically plead injury, causation, and redressability if petitioner lives within 50 miles of the proposed facility; LBP-09-18, 70 NRC 395 (2009)
- Tennessee Valley Authority* (Bellefonte Nuclear Power Plant, Units 3 and 4), LBP-08-16, 68 NRC 361, 394 (2008)
- NEPA does not require applicants or licensees to consider terrorist attacks as part of their environmental reviews outside the Ninth Circuit; LBP-09-26, 70 NRC 981 (2009)
- Tennessee Valley Authority* (Bellefonte Nuclear Power Plant, Units 3 and 4), LBP-08-16, 68 NRC 361, 395 (2008)
- a contention that fails to provide any document that, read as a whole, supports its theory that uranium supplies will be insufficient to support the operation of the units during the licensed period is inadmissible; LBP-08-21, 68 NRC 574 (2008)
- Tennessee Valley Authority* (Bellefonte Nuclear Power Plant, Units 3 and 4), LBP-08-16, 68 NRC 361, 397 (2008)
- in making the findings required for issuance of a combined license, the Commission shall treat as resolved those matters resolved in connection with the issuance or renewal of a design certification rule; LBP-10-21, 72 NRC 653 (2010)
- Tennessee Valley Authority* (Bellefonte Nuclear Power Plant, Units 3 and 4), LBP-08-16, 68 NRC 361, 399-400, 404, 407, 429 (2008)
- a reply may not be used as a vehicle to introduce new arguments or support, may not expand the scope of arguments set forth in the original petition, and may not attempt to cure an otherwise deficient contention; LBP-09-17, 70 NRC 323 (2009)
- Tennessee Valley Authority* (Bellefonte Nuclear Power Plant, Units 3 and 4), LBP-08-16, 68 NRC 361, 404 (2008)
- failure to provide facts or expert opinion sufficient to show that the environmental report disregarded a feasible alternative based on either wind power, solar power, or some combination of the two renders the contention inadmissible; LBP-09-16, 70 NRC 304 (2009)
- Tennessee Valley Authority* (Bellefonte Nuclear Power Plant, Units 3 and 4), LBP-08-16, 68 NRC 361, 413-15 (2008), *rev'd*, CLI-09-3, 69 NRC 68, 72-75 (2009)
- a contention challenging potential unavailability of a disposal site for 10 C.F.R. 61.55(a) Class B or C low-level radioactive waste due to the recent closure of a low-level waste disposal facility is admitted; LBP-09-3, 69 NRC 160 (2009)
- a contention that raises the issue of applicant's future compliance with the agency's regulations is not material to the proceeding; LBP-09-3, 69 NRC 163 (2009)
- Tennessee Valley Authority* (Bellefonte Nuclear Power Plant, Units 3 and 4), LBP-08-16, 68 NRC 361, 413-15 (2008), *rev'd*, CLI-09-3, 69 NRC 68, 78 (2009)
- contention focusing exclusively on regulations governing waste disposal is inadmissible; CLI-09-16, 70 NRC 35 (2009)
- Tennessee Valley Authority* (Bellefonte Nuclear Power Plant, Units 3 and 4), LBP-08-16, 68 NRC 361, 414 (2008)
- Part 61 does not apply to onsite facilities where the licensee intends to store its own low-level radioactive waste; LBP-09-10, 70 NRC 121 n.57 (2009)

LEGAL CITATIONS INDEX

CASES

- Tennessee Valley Authority* (Bellefonte Nuclear Power Plant, Units 3 and 4), LBP-08-16, 68 NRC 361, 415-16 (2008)
contentions challenging the Waste Confidence Rule are inadmissible; LBP-09-17, 70 NRC 337 (2009)
- Tennessee Valley Authority* (Bellefonte Nuclear Power Plant, Units 3 and 4), LBP-08-16, 68 NRC 361, 416 (2008)
challenges to NRC's Waste Confidence rule are inadmissible; LBP-08-17, 68 NRC 456 (2008);
LBP-08-23, 68 NRC 689 (2008); LBP-09-4, 69 NRC 217 (2009); LBP-09-10, 70 NRC 114 (2009)
licensing boards may not admit a contention that directly or indirectly challenges 10 C.F.R. 51.51, Table S-3; LBP-09-10, 70 NRC 114 (2009)
the claim that applicant should consider licensing the site for a new reactor under 10 C.F.R. Part 61 is outside the scope of a combined license proceeding; LBP-09-4, 69 NRC 221 (2009)
- Tennessee Valley Authority* (Bellefonte Nuclear Power Plant, Units 3 and 4), LBP-08-16, 68 NRC 361, 418-20 (2008)
contentions involving possible errors in Table S-3 have been referred to the Commission; LBP-09-21, 70 NRC 617 (2009)
- Tennessee Valley Authority* (Bellefonte Nuclear Power Plant, Units 3 and 4), LBP-08-16, 68 NRC 361, 420-22 (2008)
challenges to NRC regulations are inadmissible; LBP-08-21, 68 NRC 587 (2008)
part of a contention relating to accuracy of cost data and its potential to affect the cost component of the alternatives analysis in applicant's environmental report is admissible; LBP-08-21, 68 NRC 577 n.26 (2008)
- Tennessee Valley Authority* (Bellefonte Nuclear Power Plant, Units 3 and 4), LBP-08-16, 68 NRC 361, 456-57 (2008); LBP-09-18, 70 NRC 406 (2009)
contentions on the environmental impacts of spent fuel storage are inadmissible; LBP-09-18, 70 NRC 406 (2009)
- Tennessee Valley Authority* (Browns Ferry Nuclear Plant, Units 1 and 2), LBP-76-10, 3 NRC 209, 216 (1976)
a board cannot be expected to sift through reams of data to determine whether a contention is admissible; LBP-07-3, 65 NRC 263 n.6 (2007)
- Tennessee Valley Authority* (Browns Ferry Nuclear Plant, Units 1, 2, and 3), ALAB-677, 15 NRC 1387, 1394 (1982)
parties to NRC proceedings have a duty to apprise the board of significant developments affecting the proceeding; LBP-06-10, 63 NRC 331 (2006)
standards of attorney conduct require that NRC adjudicatory bodies be alerted to information relevant to matters being adjudicated; LBP-06-10, 63 NRC 370 (2006)
- Tennessee Valley Authority* (Browns Ferry Nuclear Plant, Units 1, 2, and 3), LBP-73-29, 6 AEC 682, 688 (1973)
summary disposition may be a useful device to eliminate the need for the time and cost of a hearing if the truth on a contested issue is clear and there is no genuine issue on any material fact;
LBP-07-12, 66 NRC 128 (2007)
- Tennessee Valley Authority* (Hartsville Nuclear Plant, Units 1A, 2A, 1B, and 2B), ALAB-367, 5 NRC 92, 121 (1977)
a non-expert's testimony based on what he was told by an anonymous expert may be stricken as unreliable hearsay; LBP-06-15, 63 NRC 662 (2006)
- Tennessee Valley Authority* (Hartsville Nuclear Plant, Units 1A, 2A, 1B, and 2B), ALAB-463, 7 NRC 341, 352 (1978)
a licensing board decision may not be based on factual material that has not been introduced into evidence because it deprives opposing parties of an opportunity to impeach it by cross-examination or to rebut it with other evidence; LBP-08-12, 68 NRC 38 n.10 (2008)
- Tennessee Valley Authority* (Hartsville Nuclear Plant, Units 1A, 2A, 1B, and 2B), ALAB-463, 7 NRC 341, 360 (1978), *reconsideration denied*, ALAB-467, 7 NRC 459 (1978)
absent some special statutory standard of proof, factual issues are determined by a preponderance of the evidence; CLI-08-26, 68 NRC 521 n.64 (2008)

LEGAL CITATIONS INDEX

CASES

- Tennessee Valley Authority* (Phipps Bend Nuclear Plant, Units 1 and 2), LBP-77-60, 6 NRC 647, 658 (1977), *aff'd*, ALAB-506, 8 NRC 533 (1978)
Staff is chastised for what appears to have been a totally uncritical reliance on only those alternative site possibilities suggested to it through the medium of the applicant's environmental report; CLI-07-27, 66 NRC 230 n.78 (2007)
- Tennessee Valley Authority* (Sequoyah Nuclear Plant, Units 1 and 2; Watts Bar Nuclear Plant, Unit 1), LBP-02-14, 56 NRC 15 (2002)
occasional contact with an affected area is not sufficient to establish standing; LBP-07-4, 65 NRC 296 (2007)
- Tennessee Valley Authority* (Sequoyah Nuclear Plant, Units 1 and 2; Watts Bar Nuclear Plant, Unit 1), LBP-02-14, 56 NRC 15, 25 (2002)
precedent supports applying a proximity radius within 17 miles for a reactor that intended to add additional material to its core inventory; LBP-07-14, 66 NRC 183, 187 (2007)
there are obvious offsite consequences from a technical specification change that would add tens of millions of curies of radioactive gas to already significant core inventory; LBP-07-10, 66 NRC 18 (2007)
- Tennessee Valley Authority* (Sequoyah Nuclear Plant, Units 1 and 2; Watts Bar Nuclear Plant, Unit 1), LBP-02-14, 56 NRC 15, 26 (2002)
for proximity-based standing, frequency of contact must reflect regular interaction with the zone of harm, not merely occasional contact; CLI-07-21, 65 NRC 524 (2007)
the agency has denied proximity-based standing where contact has been limited to mere occasional trips to areas located close to reactors; CLI-07-21, 65 NRC 524 (2007); LBP-10-1, 71 NRC 177 (2010)
- Tennessee Valley Authority* (Sequoyah Nuclear Plant, Units 1 and 2; Watts Bar Nuclear Plant, Unit 1), LBP-02-14, 56 NRC 15, 28-29 (2002)
discretionary intervention is an extraordinary procedure that is rarely granted; CLI-06-16, 63 NRC 716 (2006)
- Tennessee Valley Authority* (Sequoyah Nuclear Plant, Units 1 and 2; Watts Bar Nuclear Plant, Unit 1), LBP-02-14, 56 NRC 15, 35 (2002)
there is no statutory or regulatory requirement that an applicant demonstrate any benefit from a requested license amendment; LBP-09-1, 69 NRC 41 n.121 (2009)
- Tennessee Valley Authority* (Sequoyah Nuclear Plant, Units 1 and 2; Watts Bar Nuclear Plant, Unit 1), LBP-02-14, 56 NRC 15, 37 (2002)
contentions must rest on the license application, not on NRC Staff reviews; LBP-08-9, 67 NRC 435 n.90 (2008)
- Tennessee Valley Authority* (Watts Bar Nuclear Plant, Unit 1; Sequoyah Nuclear Plant, Units 1 and 2; Browns Ferry Nuclear Plant, Units 1, 2, and 3), CLI-04-24, 60 NRC 160, 189 (2004)
licensing board findings of fact that turn on witness credibility receive the Commission's highest deference on appeal; CLI-10-23, 72 NRC 225 n.64 (2010)
the Commission defers to licensing boards' findings unless clearly erroneous, i.e., not even plausible in light of the record viewed in its entirety; CLI-09-7, 69 NRC 259 (2009); CLI-10-17, 72 NRC 11 n.40 (2010)
the Commission generally defers to boards' fact-based decisions; CLI-06-12, 63 NRC 501 (2006)
the Commission will not overturn a hearing judge's findings simply because the Commission might have reached a different result; CLI-10-23, 72 NRC 241 n.153 (2010)
to satisfy the "clearly erroneous" standard, a litigant must show that the board's findings are not even plausible in light of the record viewed in its entirety; CLI-10-17, 72 NRC 11-12 nn.41 & 43 (2010); CLI-10-23, 72 NRC 225 (2010)
whether collateral estoppel should be applied is a legal question that the Commission reviews de novo; CLI-10-23, 72 NRC 250 (2010)
- Tennessee Valley Authority* (Watts Bar Nuclear Plant, Unit 1; Sequoyah Nuclear Plant, Units 1 and 2; Browns Ferry Nuclear Plant, Units 1, 2, and 3), CLI-04-24, 60 NRC 160, 189, 199 (2004)
on appeal, the Commission is loath to address complaints concerning a board's skepticism of expert witness's testimony, given that the Commission lacks the board's ability to observe the demeanor of

LEGAL CITATIONS INDEX

CASES

- the parties' expert witnesses in general and petitioner's witness in particular; CLI-10-17, 72 NRC 46-47 (2010)
- Tennessee Valley Authority* (Watts Bar Nuclear Plant, Unit 1; Sequoyah Nuclear Plant, Units 1 and 2; Browns Ferry Nuclear Plant, Units 1, 2, and 3), CLI-04-24, 60 NRC 160, 190 (2004)
legal questions are reviewed de novo and will be reversed if a licensing board's legal rulings are a departure from or contrary to established law; CLI-09-7, 69 NRC 259 (2009); CLI-10-5, 71 NRC 99 (2010); CLI-10-18, 72 NRC 73 (2010)
- Tennessee Valley Authority* (Watts Bar Nuclear Plant, Unit 1; Sequoyah Nuclear Plant, Units 1 and 2; Browns Ferry Nuclear Plant, Units 1, 2, and 3), CLI-04-24, 60 NRC 160, 203 (2004)
enforcement orders typically limit adjudication to whether the facts as stated in the order are true, and whether the proposed sanction is supported by those facts; CLI-06-16, 63 NRC 720 (2006)
- Tennessee Valley Authority* (Watts Bar Nuclear Plant, Unit 1; Sequoyah Nuclear Plant, Units 1 and 2; Browns Ferry Nuclear Plant, Units 1, 2, and 3), CLI-04-24, 60 NRC 160, 204 (2004)
contentions must be within the scope of the proceeding as defined by the Commission in its initial hearing notice and order referring the proceeding to the licensing board; LBP-08-16, 68 NRC 384 (2008)
- Tennessee Valley Authority* (Watts Bar Nuclear Plant, Unit 1; Sequoyah Nuclear Plant, Units 1 and 2; Browns Ferry Nuclear Plant, Units 1, 2, and 3), CLI-04-24, 60 NRC 160, 218 n.176 (2004)
sanction for deliberate misconduct by an unlicensed individual is determined by applying four factors to assess the safety significance of the misconduct and nine factors to assess mitigating or aggravating circumstances; LBP-09-24, 70 NRC 851 n.44 (2009)
- Tennessee Valley Authority* (Watts Bar Nuclear Plant, Unit 2), CLI-10-12, 71 NRC 319, 323 (2010)
good cause is the most significant of the late-filing factors; LBP-10-11, 71 NRC 639 (2010)
- Tennessee Valley Authority* (Watts Bar Nuclear Plant, Unit 2), LBP-09-26, 70 NRC 939, 990 (2009)
although an expert may be misinterpreting data submitted by applicant, this is not considered at the contention admissibility stage; LBP-09-27, 70 NRC 1010 n.97 (2009)
- Tennessee Valley Authority* (Watts Bar Nuclear Plant, Units 1 and 2), ALAB-413, 5 NRC 1418, 1421 n.4 (1977)
a claim of residence within 50 miles of a facility might entitle petitioner to a presumption of standing based on proximity in a reactor construction permit or operating license proceeding; CLI-07-19, 65 NRC 426 (2007)
- Tennessee Valley Authority* (Watts Bar Nuclear Plant, Units 1 and 2), ALAB-413, 5 NRC 1418, 1422-23 (1977), *aff'g* LBP-77-36, 5 NRC 1292, 1296 (1977)
all six discretionary intervention factors, regardless of the result on the critical first factor, typically are examined; CLI-06-16, 63 NRC 722 n.47 (2006)
- Tennessee Valley Authority* (Yellow Creek Nuclear Plant, Units 1 and 2), ALAB-515, 8 NRC 702, 704 (1978)
to discharge heated water into the ocean from a nuclear facility, the licensee needs an NPDES permit from the water supply and pollution control commission; CLI-07-16, 65 NRC 377 n.17 (2007)
- Tennessee Valley Authority* (Yellow Creek Nuclear Plant, Units 1 and 2), ALAB-515, 8 NRC 702, 709-10 (1978)
NRC abstinence from setting water quality standards is fully consistent with congressional general intent that the Clean Water Act is to be implemented in a way that will avoid needless duplication and unnecessary delays at all levels of government; CLI-07-16, 65 NRC 389 (2007)
- Tennessee Valley Authority* (Yellow Creek Nuclear Plant, Units 1 and 2), ALAB-515, 8 NRC 702, 712 (1978)
Congress, in enacting the Clean Water Act, removed the broad responsibility of multiple federal agencies for water quality standards and placed that responsibility solely in the hands of the Environmental Protection Agency; CLI-07-16, 65 NRC 388 (2007)
the effect of Clean Water Act §511(c)(2) is to require federal licensing agencies to accept as dispositive Environmental Protection Agency's determinations respecting the discharge of pollutants; CLI-07-16, 65 NRC 377 n.20 (2007)

LEGAL CITATIONS INDEX

CASES

- Tennessee Valley Authority* (Yellow Creek Nuclear Plant, Units 1 and 2), ALAB-515, 8 NRC 702, 712 n.47 (1978)
when enacting this section, Congress specifically intended to deprive the NRC's predecessor agency (the Atomic Energy Commission) of authority over pollutant discharges; CLI-07-16, 65 NRC 377 n.20 (2007)
- Tennessee Valley Authority* (Yellow Creek Nuclear Plant, Units 1 and 2), ALAB-515, 8 NRC 702, 712-13, 715 (1978)
where a state has assessed aquatic impacts in approving a plant's cooling system, NRC must take their evaluation at face value and may not undercut their judgment by undertaking an independent analysis or establishing its own standards; LBP-06-20, 64 NRC 217 (2006)
- Tennessee Valley Authority* (Yellow Creek Nuclear Plant, Units 1 and 2), ALAB-515, 8 NRC 702, 715 (1978)
NRC may not undercut EPA by undertaking its own analyses and reaching its own conclusions on water quality issues already decided by EPA; CLI-07-16, 65 NRC 388 (2007)
- Tesoro Hawaii Corp. v. United States*, 405 F.3d 1339, 1346 (Fed. Cir. 2005)
courts construe regulations in the same manner as they do statutes, by ascertaining the plain meaning of the regulation; CLI-06-11, 63 NRC 491 (2006)
the plain meaning of a regulation controls its interpretation; CLI-08-23, 68 NRC 483 (2008)
- Texas Utilities Electric Co.* (Comanche Peak Steam Electric Station, Unit 1), ALAB-868, 25 NRC 912, 930 (1987)
support for a contention generally is fulfilled when the sponsor of an otherwise acceptable contention provides a brief recitation of the factors underlying the contention or references to documents and texts that provide such reasons; LBP-06-10, 63 NRC 339 (2006); LBP-06-23, 64 NRC 356 (2005); LBP-09-6, 69 NRC 410 (2009)
- Texas Utilities Electric Co.* (Comanche Peak Steam Electric Station, Unit 1), CLI-86-15, 24 NRC 397 (1986)
the "good cause" rationale that must be put forth by a construction permit holder to justify an extension is to be the focus of any intervenor challenge to the CP holder's request; LBP-10-7, 71 NRC 418 (2010)
- Texas Utilities Electric Co.* (Comanche Peak Steam Electric Station, Unit 2), CLI-93-1, 37 NRC 1 (1993)
until the license has actually been issued, the Commission itself, as opposed to the licensing board, retains jurisdiction to reopen a closed case; CLI-06-4, 63 NRC 36 (2006)
- Texas Utilities Electric Co.* (Comanche Peak Steam Electric Station, Unit 2), CLI-93-1, 37 NRC 1, 3 (1993)
although issuance of a full-power license closed out the notice of opportunity for hearing for Unit 1, issuance of a low-power license did not terminate the proceeding for Unit 2; CLI-09-5, 69 NRC 121 n.28 (2009)
- Texas Utilities Electric Co.* (Comanche Peak Steam Electric Station, Unit 2), CLI-93-2, 37 NRC 55, 57-58 n.2 (1993)
four factors should be considered in ruling on any request for stay; LBP-07-11, 66 NRC 97 (2007)
only if one has been admitted as a party to a proceeding, by showing standing and submitting an admissible contention, can one have a request for stay considered by a presiding officer; LBP-07-11, 66 NRC 97 (2007)
- Texas Utilities Electric Co.* (Comanche Peak Steam Electric Station, Unit 2), CLI-93-2, 37 NRC 55, 59 n.4 (1993)
grant of a request for oral argument requires a showing of how it will assist the Commission in reaching a decision; CLI-10-9, 71 NRC 251 n.30 (2010)
- Texas Utilities Electric Co.* (Comanche Peak Steam Electric Station, Unit 2), CLI-93-4, 37 NRC 156, 161-62 (1993)
a nonparty seeking late intervention after the record has closed must address both the standard for late intervention and the standard for reopening a closed record; CLI-09-5, 69 NRC 124 (2009)
- Texas Utilities Electric Co.* (Comanche Peak Steam Electric Station, Unit 2), CLI-93-4, 37 NRC 156, 162-63 (1993)
petitioner has an affirmative duty to demonstrate that it has standing in each proceeding in which it seeks to participate because a petitioner's status can change over time and the bases for its standing

LEGAL CITATIONS INDEX

CASES

- in an earlier proceeding may no longer apply; CLI-10-7, 71 NRC 138 (2010); LBP-09-18, 70 NRC 401 (2009); LBP-10-21, 72 NRC 640 (2010)
- Texas Utilities Electric Co.* (Comanche Peak Steam Electric Station, Unit 2), CLI-93-4, 37 NRC 156, 163 (1993)
- it might be sufficient to allow petitioner to rely on a prior standing demonstration if that prior demonstration is specifically identified and shown to correctly reflect the current status of petitioner's standing; LBP-10-21, 72 NRC 642 n.10 (2010)
- Texas Utilities Electric Co.* (Comanche Peak Steam Electric Station, Unit 2), CLI-93-4, 37 NRC 156, 164 (1993)
- the test for good cause for late filing is when the information became available, when petitioners reasonably should have become aware of that information, and whether petitioners acted promptly after learning of the new information; LBP-08-6, 67 NRC 260 (2008)
- Texas Utilities Electric Co.* (Comanche Peak Steam Electric Station, Unit 2), CLI-93-4, 37 NRC 156, 164-65 (1993)
- good cause has long been interpreted to mean that the information on which the proposed new contention is based was not previously available; CLI-09-5, 69 NRC 126 (2009)
- Texas Utilities Electric Co.* (Comanche Peak Steam Electric Station, Unit 2), CLI-93-4, 37 NRC 156, 166 (1993)
- petitioner must provide more than vague assertions that it will be able to assist in developing the record to satisfy a requirement for late filing; CLI-10-12, 71 NRC 326 (2010)
- petitioner's vague statements that it would rely on its experts and documents from various sources are insufficient to satisfy a requirement for late filing; CLI-10-12, 71 NRC 326 (2010)
- Texas Utilities Electric Co.* (Comanche Peak Steam Electric Station, Unit 2), CLI-93-10, 37 NRC 192, 198 (1993)
- lack of a brief is sufficient reason, without more, to reject petitioner's "appeal"; CLI-06-6, 63 NRC 163 (2006)
- Texas Utilities Electric Co.* (Comanche Peak Steam Electric Station, Unit 2), CLI-93-10, 37 NRC 192, 200 (1993)
- the mootness doctrine derives from the Constitution's limitation of federal courts' jurisdiction to cases or controversies; LBP-09-15, 70 NRC 209 (2009)
- when an issue is no longer live, such that a party no longer has a legal interest in the issue, then it is moot; LBP-10-10, 71 NRC 540 (2010)
- Texas Utilities Electric Co.* (Comanche Peak Steam Electric Station, Unit 2), CLI-93-10, 37 NRC 192, 204 (1993)
- despite not being bound by the case or controversy requirement, common sense counsels against proceeding with an adjudication where no effective relief can be granted; LBP-09-14, 70 NRC 196 n.16 (2009)
- Texas Utilities Electric Co.* (Comanche Peak Steam Electric Station, Unit 2), LBP-92-37, 36 NRC 370, 384 (1992), *appeals dismissed as moot*, CLI-93-10, 37 NRC 192 (1993)
- any contention that fails directly to controvert the application or that mistakenly asserts the application does not address a relevant issue can be dismissed; LBP-06-10, 63 NRC 341 (2006); LBP-06-23, 64 NRC 358 (2005); LBP-07-3, 65 NRC 254 (2007); LBP-07-4, 65 NRC 306 (2007); LBP-07-10, 66 NRC 24 (2007); LBP-07-11, 66 NRC 58 (2007); LBP-07-16, 66 NRC 289 (2007); LBP-08-16, 68 NRC 386 (2008); LBP-09-3, 69 NRC 154 (2009); LBP-09-27, 70 NRC 1016 (2009); LBP-10-7, 71 NRC 421 (2010)
- Texas Utilities Electric Co.* (Comanche Peak Steam Electric Station, Units 1 and 2), CLI-88-12, 28 NRC 605, 611 (1988)
- petitioner must provide more than vague assertions that it will be able to assist in developing the record to satisfy a requirement for late filing; CLI-10-12, 71 NRC 326 (2010)
- when petitioner addresses 10 C.F.R. 2.309(c)(1)(viii), it should set out with as much particularity as possible the precise issues it plans to cover, identify its prospective witnesses, and summarize their proposed testimony; CLI-10-12, 71 NRC 326 (2010)

LEGAL CITATIONS INDEX

CASES

- Texas Utilities Electric Co.* (Comanche Peak Steam Electric Station, Units 1 and 2), CLI-92-1, 35 NRC 1 (1992)
until the license has actually been issued, the Commission itself, as opposed to the licensing board, retains jurisdiction to reopen a closed case; CLI-06-4, 63 NRC 36 (2006)
- Texas Utilities Electric Co.* (Comanche Peak Steam Electric Station, Units 1 and 2), CLI-92-1, 35 NRC 1, 6 (1992)
the Commission has held that only a party to a proceeding may move to reopen a closed record; CLI-09-5, 69 NRC 124 (2009)
- Texas Utilities Electric Co.* (Comanche Peak Steam Electric Station, Units 1 and 2), CLI-92-1, 35 NRC 1, 6 n.5 (1992)
until a license actually is issued, there remains in existence an operating license proceeding that can be reopened; CLI-06-3, 63 NRC 24 (2005)
- Texas Utilities Electric Co.* (Comanche Peak Steam Electric Station, Units 1 and 2), CLI-92-12, 36 NRC 62, 67 (1992)
if NRC Staff has already issued a license, a subsequently filed motion to reopen would be considered as a petition for enforcement action under section 2.206; CLI-06-4, 63 NRC 36 n.4 (2006)
under the prior rules of practice, an intervenor was entitled to a hearing prior to issuance of the operating license; CLI-09-5, 69 NRC 121 n.28 (2009)
- Texas Utilities Electric Co.* (Comanche Peak Steam Electric Station, Units 1 and 2), CLI-92-12, 36 NRC 62, 68-69 (1992)
grant of a request for oral argument requires a showing of how intervenor will assist the Commission in reaching a decision; CLI-10-9, 71 NRC 251 n.30 (2010)
the Commission declines to exercise its discretion to allow oral argument because the written record in the case is thorough, effectively sets forth the positions of the participants, and, overall, contains sufficient information on which to base its decision; CLI-10-9, 71 NRC 251 (2010)
- Texas Utilities Electric Co.* (Comanche Peak Steam Electric Station, Units 1 and 2), CLI-92-12, 36 NRC 62, 69-70 (1992)
new information may constitute good cause for late intervention if petitioners file promptly thereafter; LBP-10-11, 71 NRC 640 n.124 (2010)
- Texas Utilities Electric Co.* (Comanche Peak Steam Electric Station, Units 1 and 2), CLI-92-12, 36 NRC 62, 73 (1992)
determinations on any nontimely filing of a petition must be based on a balancing of factors under 10 C.F.R. 2.309(c), the most important of which is good cause, if any, for the failure to file on time; LBP-08-6, 67 NRC 257 (2008)
- Texas Utilities Electric Co.* (Comanche Peak Steam Electric Station, Units 1 and 2), CLI-92-12, 36 NRC 62, 73-74 (1992)
absent good cause, a petitioner's demonstration on the other late-filing factors must be compelling; LBP-09-26, 70 NRC 949 (2009)
- Texas Utilities Electric Co.* (Comanche Peak Steam Electric Station, Units 1 and 2), CLI-93-11, 37 NRC 251, 255 (1993)
in addressing the section 2.309(c)(1) factors, failure to provide any specific discussion of most of these items or the weight they should be given in the balance is a potentially fatal omission; LBP-10-21, 72 NRC 649 n.18 (2010)
- Texas Utilities Generating Co.* (Comanche Peak Steam Electric Station, Units 1 and 2), ALAB-255, 1 NRC 3, 7 (1975)
if appellant had submitted an offer of proof, indicating what rebuttal evidence it would have offered to the board, then the Commission might have had some basis for determining whether that evidence would be substantial enough to justify a remand to the board; CLI-10-23, 72 NRC 246 (2010)
- Texas Utilities Generating Co.* (Comanche Peak Steam Electric Station, Units 1 and 2), ALAB-714, 17 NRC 86, 94 (1983)
issuance of advisory opinions is generally disfavored by the Commission; CLI-08-21, 68 NRC (2008)

LEGAL CITATIONS INDEX

CASES

- Textron Lycoming Reciprocating Engine Division, Avco Corp. v. United Automobile, Aerospace, Agricultural Implement Workers of America, International Union*, 523 U.S. 653, 657 (1998)
the most natural way to read a provision that sets forth a general obligation followed by a set of specific requirements is that the specific requirements provide the details necessary to fulfilling the general obligation; LBP-09-15, 70 NRC 217 n.57 (2009)
- The Lands Council v. McNair*, 537 F.3d 981, 1003 (9th Cir. 2008)
an environmental impact statement need not be based on the best scientific methodology available; CLI-10-11, 71 NRC 316 n.146 (2010)
- Tiger v. Western Investment Co.*, 221 U.S. 286 (1911)
the Trust Responsibility requires federal agencies to take actions or refrain from taking actions in fulfillment of Congress's duty to protect the Indians; LBP-09-13, 70 NRC 189 (2009)
- Time Warner Entertainment Co. L.P. v. Everest Midwest Licensee, L.L.C.*, 381 F.3d 1039, 1050 (10th Cir. 2004)
courts construe regulations in the same manner as they do statutes, by ascertaining the plain meaning of the regulation; CLI-06-11, 63 NRC 491 (2006)
- Time Warner Entertainment Co. L.P. v. Everest Midwest Licensee, L.L.C.*, 381 F.3d 1039, 1051 (10th Cir. 2004)
the plain meaning of a regulation controls its interpretation; CLI-08-23, 68 NRC 483 (2008)
- Toledo Edison Co. (Davis-Besse Nuclear Power Station)*, ALAB-300, 2 NRC 752, 758 (1975)
according to the Commission's longstanding practice, a board order is considered appealable where it disposes of a major segment of the case or terminates a party's right to participate; CLI-08-2, 67 NRC 34 n.14 (2008)
- Toledo Edison Co. (Davis-Besse Nuclear Power Station, Units 1, 2, and 3)*, ALAB-378, 5 NRC 557, 560-61 (1977)
if a tribunal were to render an adverse ruling against a party based exclusively on the collateral estoppel doctrine, which was subsequently reversed, the party against whom collateral estoppel had been applied would be entitled to file a timely motion with the tribunal seeking appropriate relief; LBP-09-24, 70 NRC 813 n.5 (2009)
- Toledo Edison Co. (Davis-Besse Nuclear Power Station, Units 1, 2, and 3)*, ALAB-378, 5 NRC 557, 561 (1977)
collateral estoppel is a form of issue preclusion that prevents the relitigation of issues of law or fact that have been finally adjudicated by a tribunal of competent jurisdiction in a proceeding involving the same parties or their privies; CLI-10-23, 72 NRC 249 (2010); LBP-09-24, 70 NRC 711, 809 (2009)
- Toledo Edison Co. (Davis-Besse Nuclear Power Station, Units 1, 2, and 3)*, ALAB-378, 5 NRC 557, 562 (1977)
a tribunal, when considering the applicability of collateral estoppel, may not look behind the decision to determine whether its findings of fact and conclusions of law were well founded; LBP-09-24, 70 NRC 815 (2009)
tribunals are required to conclude that the jury understood the trial court's instructions and rendered well-founded findings of fact in compliance with those instructions; LBP-09-24, 70 NRC 820 (2009)
- Toledo Edison Co. (Davis-Besse Nuclear Power Station, Units 1, 2, and 3)*, ALAB-378, 5 NRC 557, 562-63 (1977)
collateral estoppel may be applied in administrative adjudicatory proceedings; LBP-09-24, 70 NRC 711 (2009)
in determining whether to apply collateral estoppel, a board should not look into the jury trial to determine whether the verdict was correct; CLI-10-23, 72 NRC 252 (2010)
licensing boards may give collateral estoppel effect to issues previously decided in a district court proceeding; CLI-10-23, 72 NRC 249 (2010)
- Toledo Edison Co. (Davis-Besse Nuclear Power Station, Units 1, 2, and 3)*, ALAB-378, 5 NRC 557, 563 (1977)
potentially duplicative and unnecessary litigation in the second forum does not take place while an appeal is pending, but if the appeal later proves successful, thus invalidating the original judgment upon which collateral estoppel had been based, then the litigation in the second forum is allowed to proceed; LBP-09-24, 70 NRC 713 (2009)

LEGAL CITATIONS INDEX

CASES

- Toledo Edison Co.* (Davis-Besse Nuclear Power Station, Units 1, 2, and 3), ALAB-378, 5 NRC 557, 563 n.7 (1977)
overriding competing policy considerations can provide discretion to withhold the application of collateral estoppel; LBP-09-24, 70 NRC 712 n.60 (2009)
where the four elements for applying collateral estoppel are satisfied, and no overriding public policy consideration dictates against its application, a board should not withhold the application of collateral estoppel as a discretionary matter; LBP-09-24, 70 NRC 813 n.5 (2009)
- Toledo Edison Co.* (Davis-Besse Nuclear Power Station, Units 1, 2, and 3), ALAB-378, 5 NRC 557, 563-64 & n.7 (1977)
in applying collateral estoppel principles, the question is not whether the subsequent tribunal believes that the prior tribunal correctly decided the issue at hand, but rather, if all factors of the doctrine are met, collateral estoppel comes into play; LBP-09-24, 70 NRC 711-12 n.58 (2009)
- Toledo Edison Co.* (Davis-Besse Nuclear Power Station, Units 1, 2, and 3), ALAB-560, 10 NRC 265, 301 (1979) (opinion of Mr. Sharfman)
the coordination services market is a market for the exchange of surplus electric power between utilities on a nonfirm basis and the joint and coordinated operation by utilities of their systems of generation and distribution, all with the purpose of achieving maximum efficiency and economies in their overall power supply operations; CLI-06-2, 63 NRC 16 n.27 (2006)
- Totten v. United States*, 92 U.S. 105, 107 (1876)
public policy forbids the maintenance of any suit in a court of justice, the trial of which would inevitably lead to the disclosure of matters that the law itself regards as confidential, and respecting which it will not allow the confidence to be violated; CLI-08-1, 67 NRC 20 (2008)
- Town of Winthrop v. Federal Aviation Administration*, 535 F.3d 1, 11 (1st Cir. 2008)
although there will always be more data that could be gathered, agencies must have some discretion to draw the line and move forward with decisionmaking; CLI-10-11, 71 NRC 315 (2010); LBP-10-15, 72 NRC 286 (2010)
- Town of Winthrop v. Federal Aviation Administration*, 535 F.3d 1, 11-13 (1st Cir. 2008)
an environmental impact statement is not intended to be a research document, reflecting the frontiers of scientific methodology, studies, and data; CLI-10-11, 71 NRC 315 (2010)
- Town of Winthrop v. Federal Aviation Administration*, 535 F.3d 1, 12-13 (1st Cir. 2008)
the National Environmental Policy Act does not require agencies to use technologies and methodologies that are still emerging and under development, or to study phenomena for which there are not yet standard methods of measurement or analysis; CLI-10-11, 71 NRC 315 (2010)
- Town of Winthrop v. Federal Aviation Administration*, 535 F.3d 1, 13 (1st Cir. 2008)
an environmental impact statement is not intended to be a research document; CLI-10-22, 72 NRC 208 (2010)
the National Environmental Policy Act allows agencies to select their own methodology as long as that methodology is reasonable; CLI-10-11, 71 NRC 315 (2010)
- Township of Lower Alloways Creek v. Public Service Electric & Gas Co.*, 687 F.2d 732, 741 (3d Cir. 1982)
NRC cannot avoid its statutory responsibility under the National Environmental Policy Act merely by asserting that an activity it wishes to pursue will have an insignificant effect on the environment; LBP-08-13, 68 NRC 214 (2008)
- Transnuclear, Inc.* (Export of 93.3% Enriched Uranium), CLI-99-15, 49 NRC 366, 368 (1999)
while denying standing as of right and finding a discretionary hearing to be unwarranted, the Commission permitted interested participants to summarize their positions in a 2-1/2 hour public meeting, at which it also requested presentations from the applicant and the Executive Branch; LBP-09-1, 69 NRC 39 n.115 (2009)
- Treadway v. Gateway Chevrolet Oldsmobile Inc.*, 362 F.3d 971, 976 (7th Cir. 2004)
nonsensical statutory interpretations are disfavored because legislators are unlikely to draft such statutes; LBP-06-1, 63 NRC 69 (2006)
- Truswal Systems Corp. v. Hydro-Air Engineering, Inc.*, 813 F.2d 1207, 1211 (Fed. Cir. 1987)
federal courts resolving discovery disputes generally find that a court-imposed protective order limiting the use of privileged materials to the trial provides sufficient protection against public disclosure; LBP-06-25, 64 NRC 387 (2006)

LEGAL CITATIONS INDEX

CASES

- TRW, Inc. v. Andrews*, 534 U.S. 19, 31 (2001)
a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant; LBP-07-11, 66 NRC 78 n.161 (2007)
- Tuite v. Henry*, 98 F.3d 1411, 1417 (D.C. Cir. 1996)
a privacy interest does not exist as a generalized theory but instead will depend on such specific factors as the impact of the information's disclosure upon particular individuals; LBP-06-25, 64 NRC 393 (2006)
- Tuite v. Henry*, 98 F.3d 1411, 1417-18 (D.C. Cir. 1996)
a ten-point test for evaluating the law enforcement privilege under FOIA has been used; LBP-06-25, 64 NRC 385 (2006)
- Twenty First Century Corp. v. LaBianca*, 801 F. Supp. 1007 (E.D.N.Y. 1992)
sometimes the pendency of a criminal prosecution necessitates delaying a parallel civil or administrative proceeding; LBP-06-13, 63 NRC 537 (2006)
- U.S. Army* (Jefferson Proving Ground Site), CLI-05-23, 62 NRC 546, 549 (2005)
general areas of concern are no longer sufficient to trigger a hearing in a Subpart L proceeding; LBP-06-12, 63 NRC 406 (2006)
- U.S. Army* (Jefferson Proving Ground Site), LBP-00-9, 51 NRC 159, 160-61 (2000)
standing was found for an organization representing three members living in close proximity to decommissioning site, who expressed concern that depleted uranium materials could affect a waterway abutting the property of two members; CLI-10-20, 72 NRC 189 n.13 (2010)
- U.S. Army* (Jefferson Proving Ground Site), LBP-04-1, 59 NRC 27, 29 (2004)
where a petitioner is accorded standing in one proceeding, that petitioner need not make a separate demonstration of standing in another proceeding regarding that same facility and the same parties; LBP-07-10, 66 NRC 19 n.9 (2007); LBP-07-14, 66 NRC 189 (2007); LBP-08-24, 68 NRC 703 (2008)
- U.S. Army* (Jefferson Proving Ground Site), LBP-06-6, 63 NRC 167, 185-86 (2006)
having granted a hearing request on the strength of one admissible contention, it is appropriate, in the interest of the economical use of the board's resources, to defer consideration of the remaining contentions pending the Staff's completion of its technical review of the proposal under scrutiny and its issuance of the SER and EIS or EA; LBP-07-5, 65 NRC 359-60 (2007); LBP-07-8, 65 NRC 536 (2007)
- U.S. Army* (Jefferson Proving Ground Site), LBP-06-27, 64 NRC 438 (2006)
contentions initially submitted by the hearing requestor required substantial alteration as a result of the outcome of the technical review; LBP-07-8, 65 NRC 536 (2007)
the admissibility of proposed contentions may be determined after the Staff has issued the materials license amendment; CLI-07-20, 65 NRC 502 (2007)
- U.S. Army* (Jefferson Proving Ground Site), LBP-06-27, 64 NRC 438, 447 (2006)
to be admissible, a contention must comply with every requirement listed in 10 C.F.R. 2.309(f)(1); LBP-10-16, 72 NRC 416 (2010)
- U.S. Army* (Jefferson Proving Ground Site), LBP-08-4, 67 NRC 105, 146 (2008)
an alternate schedule proposal for submission of a decommissioning plan by 2011 was accepted by the Staff and approved by the licensing board; LBP-08-8, 67 NRC 416 (2008)
- U.S. Army Installation Command* (Schofield Barracks, Oahu, Hawaii, and Pohakuloa Training Area, Island of Hawaii, Hawaii), CLI-10-20, 72 NRC 185, 195 (2010)
when a contested proceeding has been terminated following the resolution of all submitted contentions, an individual, group, or governmental entity that wishes to interpose an additional issue must submit a new intervention petition that addresses the standards in section 2.309(c)(1) that govern nontimely intervention petitions; LBP-10-21, 72 NRC 647 (2010)
- U.S. Army Installation Command* (Schofield Barracks, Oahu, Hawaii, and Pohakuloa Training Area, Island of Hawaii, Hawaii), CLI-10-20, 72 NRC 185, 195 & n.56 (2010)
to interpose a new contention after a proceeding has been terminated requires submission of a fresh intervention petition that fulfills the applicable standards for such filings, including an appropriate standing demonstration; LBP-10-21, 72 NRC 640 (2010)

LEGAL CITATIONS INDEX

CASES

- U.S. Department of Energy* (High-Level Waste Repository), CLI-04-32, 60 NRC 469, 473 (2004)
issuance of advisory opinions is generally disfavored by the Commission; CLI-08-21, 68 NRC 353 (2008)
- U.S. Department of Energy* (High-Level Waste Repository), CLI-05-27, 62 NRC 715, 718 (2005)
irreparable harm is the most important of the four standards for obtaining a stay; CLI-06-8, 63 NRC 237 (2006)
litigation expense, even substantial and unrecoverable cost, does not constitute irreparable injury; CLI-09-6, 69 NRC 135 (2009)
- U.S. Department of Energy* (High-Level Waste Repository), CLI-05-27, 62 NRC 715, 719 (2005)
for a party seeking a stay, an overwhelming showing of likelihood on the merits can overcome a weak showing of irreparable harm; CLI-09-23, 70 NRC 937 (2009)
- U.S. Department of Energy* (High-Level Waste Repository), CLI-06-5, 63 NRC 143 (2006)
a draft license application does not qualify as documentary material; LBP-08-5, 67 NRC 213-14 (2008)
the plain meaning of a regulation controls its interpretation; CLI-08-23, 68 NRC 483 (2008)
- U.S. Department of Energy* (High-Level Waste Repository), CLI-06-5, 63 NRC 143, 154 (2006)
the interpretation of a regulation, like the interpretation of a statute, begins with the language and structure of the provision itself and the entirety of the provision must be given effect; CLI-08-12, 67 NRC 391 (2008); CLI-08-28, 68 NRC 674 (2008); LBP-08-1, 67 NRC 46 (2008)
- U.S. Department of Energy* (High-Level Waste Repository), CLI-08-11, 67 NRC 379, 384 (2008)
there is a longstanding presumption of regularity, under which adjudicatory bodies presume, absent strong and concrete evidence otherwise, that government agencies and their employees will do their jobs honestly and properly; CLI-09-14, 69 NRC 606 (2009)
- U.S. Department of Energy* (High-Level Waste Repository), CLI-08-12, 67 NRC 386, 392 (2008)
the initial mandatory disclosures in Subpart J only apply to extant documentary material; LBP-09-30, 70 NRC 1047 n.9 (2009)
- U.S. Department of Energy* (High-Level Waste Repository), CLI-08-20, 68 NRC 272, 274-75 (2008)
boards do not direct the Staff in the performance of its administrative functions; LBP-10-17, 72 NRC 513 (2010)
the decision to docket, and the subsequent handling of an application, is within the discretion of the Staff; LBP-10-17, 72 NRC 512 (2010)
- U.S. Department of Energy* (High-Level Waste Repository), CLI-09-14, 69 NRC 580, 588 (2009)
a generalized assertion, without specific ties to NRC regulatory requirements or to safety in general, does not provide adequate support demonstrating the existence of a genuine dispute of fact or law with respect to the construction authorization application; LBP-09-27, 70 NRC 111-12 (2009)
- U.S. Department of Energy* (High-Level Waste Repository), CLI-09-14, 69 NRC 580, 590 (2009)
initial contentions necessarily focus on the adequacy of the applicant's environmental report under Part 51 because the ER is the only environmental document available when NRC issues its notice of opportunity to request a hearing; LBP-09-25, 70 NRC 889 n.139 (2009)
NRC's procedural rules permit contentions that raise issues of law as well as contentions that raise issues of fact; LBP-09-10, 70 NRC 86 n.30 (2009); LBP-10-17, 72 NRC 510 (2010)
requiring a petitioner to allege facts under section 2.309(f)(1)(v) or to provide an affidavit that sets out the factual and/or technical bases under section 51.109(a)(2) in support of a legal contention as opposed to a factual contention is not necessary; LBP-10-17, 72 NRC 510 (2010)
- U.S. Department of Energy* (High-Level Waste Repository), CLI-09-14, 69 NRC 580, 590, *aff'g* LBP-09-6, 69 NRC 367, 422 (2009)
legal issue contentions do not require any supporting facts; LBP-10-11, 71 NRC 646 (2010)
- U.S. Department of Energy* (High-Level Waste Repository), LBP-04-20, 60 NRC 300, 313 & n.26 (2004)
regarding sufficiency of documentary production, perfection is not required and any production is bound to have some human mistakes; LBP-09-6, 69 NRC 448 (2009)
- U.S. Department of Energy* (High-Level Waste Repository), LBP-04-20, 60 NRC 300, 314-15 (2004)
petitioners in the high-level waste proceeding must make a good-faith effort to produce all documentary material; LBP-09-6, 69 NRC 448 (2009)

LEGAL CITATIONS INDEX

CASES

- U.S. Department of Energy* (High-Level Waste Repository), LBP-04-20, 60 NRC 300, 329-30 (2004)
a document's availability on the Internet does not authorize its exclusion from the Licensing Support Network; LBP-09-6, 69 NRC 448 (2009)
- U.S. Department of Energy* (High-Level Waste Repository), LBP-04-20, 60 NRC 300, 337 (2004)
applicant required consultants and contractors working on the application to submit all of the relevant documentary material in their possession; LBP-12-23, 72 NRC 710 n.27 (2010)
- U.S. Department of Energy* (High-Level Waste Repository), LBP-08-5, 67 NRC 205, 212 n.32, 221 (2008)
(Karlin, J., dissenting)
state intervenor required its consultants and contractors to submit all of the relevant documentary material in their possession; LBP-12-23, 72 NRC 710 n.27 (2010)
- U.S. Department of Energy* (High-Level Waste Repository), LBP-09-6, 69 NRC 367, 381-82 (2009)
NRC applies judicial standing concepts that require a petitioner to establish a distinct and palpable harm that constitutes injury-in-fact, the harm is fairly traceable to the challenged action, and the harm is likely to be redressed by a favorable decision; LBP-10-11, 71 NRC 632 (2010)
- U.S. Department of Energy* (High-Level Waste Repository), LBP-09-6, 69 NRC 367, 416 (2009)
applicant cannot, at the contention admissibility stage, demand that petitioners rerun a sensitivity analysis in order to demonstrate the impact of alleged defects; LBP-10-14, 72 NRC 128 n.182 (2010)
- U.S. Department of Energy* (High-Level Waste Repository), LBP-09-6, 69 NRC 367, 433 (2009)
economic harm itself has been held sufficient to establish standing under the Nuclear Waste Policy Act; LBP-10-11, 71 NRC 638 n.113 (2010)
- U.S. Department of Energy* (High-Level Waste Repository), LBP-09-29, 70 NRC 1028, 1036 (2009)
to raise a timely contention, a party is not expected to piece together disparate shreds of information that, standing alone, have little apparent significance; CLI-10-27, 72 NRC 487 n.27 (2010); LBP-10-9, 71 NRC 504 n.42 (2010)
- U.S. Department of Energy* (Plutonium Export License), CLI-04-17, 59 NRC 357 (2004)
NRC has no legal duty to consider the environmental impacts of terrorism at NRC-licensed facilities; LBP-08-6, 67 NRC 333 (2008)
- U.S. Department of Energy* (Plutonium Export License), CLI-04-17, 59 NRC 357, 363 (2004)
in assessing whether petitioner has standing, NRC has long applied contemporaneous judicial concepts of standing; CLI-06-6, 63 NRC 163 (2006); CLI-09-20, 70 NRC 915 (2009); LBP-09-28, 70 NRC 1024 (2009)
- U.S. Department of Labor v. Triplett*, 494 U.S. 715, 719 (1990)
if one party's standing has been established, the standing of allied parties is not to be questioned; LBP-10-7, 71 NRC 414 (2010)
- U.S. Department of Transportation v. Public Citizen*, 541 U.S. 752, 756-57 (2004)
NEPA requires federal agencies to consider the likely environmental impacts of the preferred course of action as well as reasonable alternatives; LBP-10-24, 72 NRC 729 n.16 (2010)
- U.S. Department of Transportation v. Public Citizen*, 541 U.S. 752, 757 (2004)
Council on Environmental Quality regulations receive substantial deference from federal courts; LBP-10-24, 72 NRC 755 n.74 (2010)
- U.S. Enrichment Corp.* (Paducah, Kentucky Gaseous Diffusion Plant), CLI-01-23, 54 NRC 267, 272 (2001)
petitioner bears the burden to provide facts sufficient to establish standing; CLI-10-7, 71 NRC 139 (2010)
the Commission treats pro se litigants more leniently than litigants with counsel; CLI-10-17, 72 NRC 45 n.246 (2010)
- U.S. Enrichment Corp.* (Paducah, Kentucky Gaseous Diffusion Plant), CLI-01-23, 54 NRC 267, 272-73 (2001)
to determine whether an interest is in the zone of interests of a statute, it is necessary first to discern the interests arguably to be protected by the statutory provision at issue, and then to inquire whether the petitioner's interests affected by the agency action are among them; LBP-08-24, 68 NRC 702 (2008); LBP-09-13, 70 NRC 176 (2009)

LEGAL CITATIONS INDEX

CASES

- U.S. Enrichment Corp.* (Paducah, Kentucky Gaseous Diffusion Plant), CLI-01-23, 54 NRC 267, 273 (2001)
to determine whether an interest is in the zone of interests of a statute, it is necessary first to discern the interests arguably to be protected by the statutory provision at issue and then to inquire whether petitioner's interests affected by the agency action are among them; LBP-10-16, 72 NRC 381 (2010)
- U.S. Enrichment Corp.* (Paducah, Kentucky Gaseous Diffusion Plant), CLI-01-23, 54 NRC 267, 280 n.37 (2001)
the standard review plan provides guidance but does not impose requirements on license renewal applicants; CLI-10-17, 72 NRC 20 (2010)
- U.S. Enrichment Corp.* (Paducah, Kentucky, and Piketon, Ohio), CLI-96-12, 44 NRC 231, 242 (1996)
generalized claims that are vague and insufficiently supported and do not tend to establish any connection with the proposed license or potential harm to petitioner are insufficient to support a contention; CLI-10-20, 72 NRC 194 n.49 (2010)
- U.S. Postal Service v. Gregory*, 534 U.S. 1, 10 (2001)
a presumption of regularity attaches to the actions of a federal agency; LBP-09-6, 69 NRC 459 (2009)
- Union Electric Co.* (Callaway Plant, Unit 1), ALAB-740, 18 NRC 343, 346 (1983)
demonstration of a pervasive failure to carry out the quality assurance program might well stand in the way of the requisite safety finding; LBP-10-9, 71 NRC 522 (2010)
perfection in plant construction and the facility construction quality assurance program is not a precondition for a license, but rather what is required is reasonable assurance that the plant, as built, can and will be operated without endangering the public health and safety; LBP-10-9, 71 NRC 519 (2010)
- Union of Concerned Scientists v. AEC*, 499 F.2d 1069, 1076 (D.C. Cir. 1974)
a board's role in an uncontested proceeding is somewhat analogous to the function of an appellate court applying the substantial evidence test; CLI-06-20, 64 NRC 25 (2006)
- Union of Concerned Scientists v. NRC*, 735 F.2d 1437 (D.C. Cir. 1984), *cert. denied*, 469 U.S. 1132 (1985)
awarding applicant a license now and allowing it to postpone the performance of the necessary analysis-of-record time-limited aging analysis is inconsistent with the language, structure, and intent of the Part 54 regulations and would violate the Intervenor's right under section 189a of the Atomic Energy Act to have a hearing on an issue material to the licensing decision; LBP-08-25, 68 NRC 824 (2008)
intervenor do not have a right to an adjudicatory hearing on future determinations that may be made under license conditions; CLI-06-1, 63 NRC 4 (2006)
- Union of Concerned Scientists v. NRC*, 735 F.2d 1437, 1443 (D.C. Cir. 1984)
the hearing requirement of section 189(a) of the Atomic Energy Act has been interpreted to mean that the hearing must encompass all material factors bearing on the licensing decision; LBP-06-14, 63 NRC 573 (2006); LBP-09-10, 70 NRC 77, 139 n.79 (2009); LBP-09-15, 70 NRC 221 (2009)
- Union of Concerned Scientists v. NRC*, 735 F.2d 1437, 1446 (D.C. Cir. 1984)
under the Atomic Energy Act, petitioners have a right to an adjudicatory hearing on any material public safety-related issue; LBP-08-25, 68 NRC 827 (2008)
- Union of Concerned Scientists v. NRC*, 735 F.2d 1437, 1447 (D.C. Cir. 1984), *cert. denied*, 469 U.S. 1132 (1985)
issues material to the agency's licensing decision must be subject to adjudicatory challenge; LBP-10-21, 72 NRC 657 n.28 (2010)
- Union of Concerned Scientists v. NRC*, 735 F.2d 1437, 1448 (D.C. Cir. 1984)
the Atomic Energy Act's guarantee of a hearing on material issues does not unduly limit the Commission's wide discretion to structure its licensing hearings in the interests of speed and efficiency; CLI-08-28, 68 NRC 677 (2008)
- Union of Concerned Scientists v. NRC*, 880 F.2d 552, 557-58 (D.C. Cir. 1989)
petitioners may not advocate additional requirements that are not supported by Commission case law and regulations; CLI-09-7, 69 NRC 263 (2009)
- Union of Concerned Scientists v. NRC*, 880 F.2d 552, 558 (D.C. Cir. 1989)
like the Atomic Energy Act's standard of adequate protection, the reasonable assurance determination need not be reduced to a mechanical verbal formula or set of objective standards, but may be given content through case-by-case applications of the Commission's technical judgment, in light of all

LEGAL CITATIONS INDEX

CASES

- relevant information; CLI-09-7, 69 NRC 263 n.143 (2009); CLI-10-14, 71 NRC 466 (2010); LBP-08-22, 68 NRC 645 n.265 (2008); LBP-08-25, 68 NRC 787 n.26 (2008)
- reasonable assurance does not denote a specific statistical parameter, but the standard is a flexible one that does not require focus on extreme values or precise quantification of parameters to a high degree of confidence; LBP-08-22, 68 NRC 645 (2008)
- whether the reasonable assurance standard is satisfied is based on sound technical judgment applied on a case-by-case basis; LBP-07-17, 66 NRC 340 (2007)
- Union of Concerned Scientists v. NRC*, 920 F.2d 50, 53 n.2, 57 (D.C. Cir. 1990)
- NRC contention admissibility and late-filed contention requirements are valid on their face and even the combined effect of the new contentions rule and the late-filing rule does not violate the Atomic Energy Act, the Administrative Procedure Act, or the National Environmental Policy Act; CLI-09-7, 69 NRC 281 (2009)
- Union of Concerned Scientists v. NRC*, 920 F.2d 50, 55 (D.C. Cir. 1990)
- new information concerning safety may be new evidence, but not necessarily raise a new issue, which is raised only when the argument itself (as distinct from its chances of success) was not apparent at the time of the application; CLI-09-7, 69 NRC 281 (2009)
- NRC may exclude a later intervenor if another party has fully presented a material issue identical to the one the excluded party seeks to raise or if the later intervenor's proposed new contention is based on a later filed safety evaluation report or environmental impact statement where the issues were apparent at the time of the application; LBP-06-14, 63 NRC 573 (2006)
- whether an actual new issue is raised is a matter for the NRC to determine in the first instance and is reviewed deferentially; CLI-09-7, 69 NRC 281 (2009)
- Union of Concerned Scientists v. NRC*, 920 F.2d 50, 55-56 (D.C. Cir. 1990)
- the balancing test in the Commission's late-filed contention rule, properly applied, is consistent with the Atomic Energy Act; CLI-09-7, 69 NRC 281 (2009)
- Union of Concerned Scientists v. NRC*, 920 F.2d 50, 56 (D.C. Cir. 1990)
- any application of the NRC rules to prevent all parties from raising material issues which could not be raised prior to the release of the environmental reports would be a misapplication subject to judicial review; LBP-06-14, 63 NRC 574 (2006)
- United Church of Christ v. Federal Communications Commission*, 359 F.2d 994, 1005-06 (D.C. Cir. 1966)
- agencies should be accorded broad discretion in establishing and applying rules for public participation, including rules for determining which community representatives are to be allowed to participate; CLI-08-19, 68 NRC 265 (2008)
- United Food and Commercial Workers Union Local 751 v. Brown Group, Inc.*, 517 U.S. 544, 552 (1996)
- a test for representational standing is applied to unions; CLI-08-19, 68 NRC 264 (2008)
- United Food and Commercial Workers Union Local 751 v. Brown Group, Inc.*, 517 U.S. 544, 557 (1996)
- the notion of associational standing is only one strand of the doctrine of representational standing; CLI-08-19, 68 NRC 264 (2008)
- United Gas Improvement Co. v. Callery Properties, Inc.*, 382 U.S. 223, 229 (1965)
- administrative agencies have inherent authority to change and modify their own prior decisions; CLI-10-6, 71 NRC 123 (2010)
- United Paperworkers International Union, Local 14, AFL-CIO-CLC v. International Paper Co.*, 64 F.3d 28, 31 (1st Cir. 1995)
- where parties cross-move for summary disposition on stipulated facts and have in effect submitted their case as a case stated, in a nonjury case a district court is freed from the usual constraints that attend the adjudication of summary judgment motions; LBP-07-12, 66 NRC 127 n.71 (2007); LBP-07-13, 66 NRC 131 (2007)
- United States Department of Energy* (Clinch River Breeder Reactor Plant), ALAB-721, 17 NRC 539, 543 (1983)
- four factors should be considered in ruling on any request for stay; LBP-07-11, 66 NRC 97-98 (2007)
- United States Department of Energy* (Clinch River Breeder Reactor Plant), CLI-82-83, 16 NRC 412, 422-25 (1982)
- NRC has traditionally read the language "authorized by law" to be the functional equivalent of "not prohibited by law; LBP-07-6, 65 NRC 464 (2007)

LEGAL CITATIONS INDEX

CASES

- United States Energy Research and Development Administration* (Clinch River Breeder Reactor Plant), CLI-76-13, 4 NRC 67, 75 (1976)
absence of a specific rule does not, and could not, interfere with NRC's inherent supervisory authority over the conduct of adjudicatory proceedings before the Commission; CLI-08-11, 67 NRC 383 (2008)
- United States Energy Research and Development Administration* (Clinch River Breeder Reactor Plant), CLI-76-13, 4 NRC 67, 76 (1976)
the Commission has used sua sponte review as a vehicle to address an issue of wide implication; CLI-07-1, 65 NRC 4 (2007)
- United States ex rel. Chumie v. Ringrose*, 788 F.2d 638 (9th Cir. 1986)
Native Americans have tribal rights to, and interests in, aboriginal lands; LBP-08-24, 68 NRC 713 (2008)
preservation of Native American cultural traditions is a protected interest under federal law; LBP-10-16, 72 NRC 391 (2010)
- United States Postal Service Board of Governors v. Aikens*, 460 U.S. 711, 714 n.3 (1983)
plaintiff may prove his case by direct or circumstantial evidence; CLI-10-23, 72 NRC 242 n.157 (2010)
- United States v. 29 Cartons of . . . An Article of Food, Etc.*, 987 F.2d 33, 35 (1st Cir. 1993)
a food additive is presumed to be unsafe until demonstrated otherwise; CLI-08-16, 68 NRC 224 (2008)
- United States v. Adair*, 723 F.2d 1394 (9th Cir. 1983)
a Native American nation retains its water rights even after its land rights have been extinguished, but those reserved rights must originate in a treaty in order to survive; LBP-09-6, 69 NRC 475 (2009)
- United States v. Ahmed*, 472 F.3d 427, 433 (6th Cir. 2006), *cert. denied*, 551 U.S. 1132 (2007)
a false statement charge, like a perjury charge, effectively demands an inquiry into defendant's state of mind and intent to deceive at the time the testimony was given, and the entire focus of a perjury inquiry centers upon what the testifier knew and when he knew it, in order to establish beyond a reasonable doubt that he knew his testimony to be false when he gave it; CLI-10-23, 72 NRC 223 (2010)
- United States v. Alcan Aluminum Corp.*, 990 F.2d 711, 722-23 (2d Cir. 1993)
summary judgment is not appropriate if it would require a judge to assess the correctness of facts and conclusions that are embodied in the competing, well-founded opinions of the parties' experts; LBP-07-12, 66 NRC 126 (2007); LBP-07-13, 66 NRC 131 (2007)
- United States v. Alghazouli*, 517 F.3d 1179, 1187 (9th Cir. 2008)
rules of statutory construction must be employed to give each word Congress used a separate and distinct significance that is consistent with its ordinary meaning; LBP-09-30, 70 NRC 1049 n.11 (2009)
- United States v. All Funds on Deposit in Any Account at Certain Financial Institutions Held in the Names of Certain Individuals*, 767 F. Supp. 36 (E.D.N.Y. 1991)
sometimes the pendency of a criminal prosecution does not necessitate delaying a parallel civil or administrative proceeding; LBP-06-13, 63 NRC 538 n.42 (2006)
- United States v. Anderson*, 79 F.3d 1522, 1531 n.15 (9th Cir. 1996)
it is a party's responsibility to assert the privilege, and the court will not raise the privilege itself; LBP-06-25, 64 NRC 378 n.34 (2006)
- United States v. Asubike*, 564 F.3d 59 (1st Cir. 2009)
"deliberate ignorance" or "willful blindness" instruction has its place and sees frequent usage in drug possession cases where the defendant purports not to know, for example, what is in the package someone asked him to deliver in secretive fashion; LBP-09-24, 70 NRC 719 n.81 (2009)
- United States v. AVX Corp.*, 962 F.2d 108, *passim* (1st Cir. 1992)
criteria for representational standing are applied to an environmental organization; CLI-08-19, 68 NRC 265 n.48 (2008)
- United States v. Barnhart*, 979 F.2d 647, 651 (8th Cir. 1992)
instruction to juries on deliberate ignorance or willful blindness can relieve the government of its constitutional obligation to prove the defendant's knowledge beyond a reasonable doubt; LBP-09-24, 70 NRC 720 n.85 (2009)

LEGAL CITATIONS INDEX

CASES

- United States v. Barnhart*, 979 F.2d 647, 652 (8th Cir. 1992)
despite the cautionary disclaimer with an instruction to juries on deliberate ignorance or willful blindness, there is a possibility that the jury will be led to employ a negligence standard and convict a defendant on an impermissible ground; LBP-09-24, 70 NRC 720 n.85 (2009)
there is no doubt that there was evidence of either actual knowledge or no knowledge on the defendant's part, but other evidentiary theories relating to deliberate ignorance were dismissed; LBP-09-24, 70 NRC 721 n.90 (2009)
- United States v. Beaty*, 245 F.3d 617 (6th Cir. 2001)
where the prosecution must rely on circumstantial evidence to establish a defendant's knowledge, the use of a deliberate ignorance instruction is unexceptional and entirely proper and is given in illegal gambling business cases; LBP-09-24, 70 NRC 820 (2009)
- United States v. Bonds*, 18 F.3d 1327, 1330-31 (6th Cir. 1994)
mere experience or background in a relevant technical field does not imply knowledge of the specific disputed facts in a case; CLI-10-22, 72 NRC 206 (2010)
- United States v. Burgos*, 94 F.3d 849, 869 (4th Cir. 1996)
some circumstances surrounding a person's false statement may be so obvious that knowledge of its character may be fairly attributed to him; CLI-10-23, 72 NRC 223 n.52 (2010)
- United States v. Carney*, 387 F.3d 436, 449 (6th Cir. 2004)
courts generally refer to actual knowledge as knowledge derived from direct evidence, whereas knowledge based on the deliberate ignorance theory is derived from circumstantial evidence; LBP-09-24, 70 NRC 819 (2009)
the knowledge component of the deliberate ignorance theory is slightly less than knowledge to a 100% certainty where the prosecutor's case is based on circumstantial evidence that precludes establishing defendant's knowledge to a 100% certainty; LBP-09-24, 70 NRC 818 n.8, 821 n.10 (2009)
- United States v. Chase*, 2005 WL 757259 (Jan. 10, 2005 D.C. Super. Ct.)
the term, "reasonable assurance," is interpreted; LBP-08-22, 68 NRC 644 n.261 (2008)
- United States v. Christensen*, 419 F.2d 1401, 1403-04 (9th Cir. 1969)
in construing a regulation, the intent of the enacting body may be ascertained by considering the language used and the overall purpose of the regulation, and by reflecting on the practical effect of the possible interpretations; CLI-06-11, 63 NRC 491 (2006)
- United States v. Connor*, 926 F.2d 81, 83 (1st Cir. 1991)
the "law of the case" doctrine is a flexible concept with exceptions; CLI-06-11, 63 NRC 488 (2006)
- United States v. Curran*, 20 F.3d 560, 567 (3d Cir. 1994)
to convict a person accused of making a false statement, the government must prove not only that the statement was false, but that the accused knew it to be false; CLI-10-23, 72 NRC 223 n.52 (2010)
- United States v. Dawkins*, 562 F.2d 567, 569 (8th Cir. 1977)
with respect to a prosecutor's role, government lawyers should understand and follow the venerable maxim that the government wins when justice is done; LBP-09-24, 70 NRC 799 n.8 (2009)
- United States v. Dion*, 476 U.S. 734, 738 n.4 (1986)
a tribe member may assert treaty rights as an individual member of the tribe; LBP-08-24, 68 NRC 743 n.292 (2008)
- United States v. Eight Thousand Eight Hundred and Fifty Dollars in United States Currency*, 461 U.S. 555 (1983)
four factors are applied to determine whether a delay in a forfeiture proceeding violates the Fifth Amendment right against deprivation of property without due process; LBP-06-13, 63 NRC 535 n.29 (2006)
- United States v. Eight Thousand Eight Hundred and Fifty Dollars in United States Currency*, 461 U.S. 555, 565 (1983)
the five factors that are weighed to determine whether there is good cause to delay a proceeding are guides in balancing the interests of the claimant and the government to assess whether the basic due process requirement of fairness has been satisfied in a particular case; LBP-06-13, 63 NRC 535 n.29 (2006)

LEGAL CITATIONS INDEX

CASES

- United States v. Estate of Romani*, 523 U.S. 517, 530-31 (1998)
a specific policy embodied in a later federal statute should control the construction of the earlier statute, even though it has not been expressly amended; LBP-10-11, 71 NRC 623 (2010)
- United States v. Eurodif S.A.*, 129 S. Ct. 878, 886-87 (2009)
courts generally accord considerable weight to an agency's construction of the statutes it administers; CLI-10-13, 71 NRC 389 n.9 (2010)
- United States v. Farley*, 11 F.3d 1385, 1389 (7th Cir. 1993)
since the documents at issue are within the scope of the deliberative process privilege, the government could only be required to produce them if the defendant made a showing that his need for the documents outweighed the government's interest in not disclosing them; LBP-06-25, 64 NRC 390 n.101 (2006)
- United States v. Farley*, 11 F.3d 1385, 1389-90 (7th Cir. 1993)
courts are generally unwilling to compel discovery of deliberative materials, even when an individual's due process rights are plainly at stake; LBP-06-25, 64 NRC 391 n.108 (2006)
even limited disclosure in a courtroom could harm the frankness of debate, which explains the lack of precedent for allowing deliberative process documents to be released under a protective order, or for even considering such a measure; LBP-06-25, 64 NRC 391 n.107 (2006)
- United States v. Farley*, 11 F.3d 1385, 1389-91 (7th Cir. 1993)
if the documents for which deliberative process privilege is asserted are not relevant, then, as a matter of law, a showing of sufficient need is not possible; LBP-06-3, 63 NRC 92, 93 (2006)
- United States v. Fernandez*, 231 F.3d 1240, 1248 (9th Cir. 2000)
courts are generally unwilling to compel discovery of deliberative materials, even when an individual's due process rights are plainly at stake; LBP-06-25, 64 NRC 391 n.108 (2006)
- United States v. Figueroa*, 165 F.3d 111, 115-16 (2d Cir. 1998)
knowledge may suffice for criminal culpability if extensive enough to attribute to the knower a guilty mind, or knowledge that he or she is performing a wrongful act; CLI-10-23, 72 NRC 223 (2010)
- United States v. Figueroa*, 720 F.2d 1239, 1246 (11th Cir. 1983)
some circumstances surrounding a person's false statement may be so obvious that knowledge of its character may be fairly attributed to him; CLI-10-23, 72 NRC 223 n.52 (2010)
- United States v. Florida East Coast Railway Co.*, 410 U.S. 224, 243 (1973)
the right to a hearing embraces not only the right to present evidence, but also a reasonable opportunity to know the claims of the opposing party and to meet them; LBP-09-24, 70 NRC 792-93 n.176 (2009)
- United States v. Funds Held in the Names or for the Benefit of Wetterer*, 138 F.R.D. 356 (E.D.N.Y. 1991)
sometimes the pendency of a criminal prosecution necessitates delaying a parallel civil or administrative proceeding; LBP-06-13, 63 NRC 537 (2006)
- United States v. Geiger Transfer Service*, 174 F.R.D. 382 (S.D. Miss. 1997)
sometimes the pendency of a criminal prosecution does not necessitate delaying a parallel civil or administrative proceeding; LBP-06-13, 63 NRC 538 n.42 (2006)
- United States v. Geiger Transfer Service*, 174 F.R.D. 382, 385 (S.D. Miss. 1997)
a stay request was denied because it was the government that created the conflict between the civil and criminal cases by simultaneously filing those actions; LBP-06-13, 63 NRC 540 (2006)
the mere relationship between criminal and civil proceedings, and the resulting prospect that discovery in the civil case could prejudice the criminal proceeding, does not establish the requisite good cause for a stay; LBP-06-13, 63 NRC 541 n.56 (2006)
- United States v. Gemmill*, 535 F.2d 1145, 1147 (9th Cir. 1976)
continuous and exclusive use of property is sufficient, unless duly extinguished, to establish Indian or aboriginal title; LBP-08-24, 68 NRC 712 n.103 (2008)
- United States v. Gonsalves*, 435 F.3d 64, 72 (1st Cir. 2006)
willfulness means nothing more in the context of a false statement than that the defendant knew that his statement was false when he made it or consciously disregarded or averted his eyes from its likely falsity; CLI-10-23, 72 NRC 223 n.52 (2010)
- United States v. Guerrero*, 114 F.3d 332, 344 n.12 (1st Cir. 1997)
deliberate ignorance is tantamount to knowledge; LBP-09-24, 70 NRC 817 (2009)

LEGAL CITATIONS INDEX

CASES

- United States v. Heredia*, 483 F.3d 913 (9th Cir. 2007) (en banc)
“deliberate ignorance” or “willful blindness” instruction has its place and sees frequent usage in drug possession cases where the defendant purports not to know, for example, what is in the package someone asked him to deliver in secretive fashion; LBP-09-24, 70 NRC 719 n.81 (2009)
- United States v. Heredia*, 483 F.3d 913, 918 n.4 (9th Cir. 2007) (en banc)
a deliberately ignorant defendant is one who was aware of the high probability of a critical fact, but deliberately ignored that probability; LBP-09-24, 70 NRC 819 (2009)
a negligent defendant is one who should have had similar suspicions but, in fact, did not; LBP-09-24, 70 NRC 819 (2009)
a reckless defendant is one who merely knew of a substantial and unjustifiable risk that his conduct was criminal; LBP-09-24, 70 NRC 819 (2009)
deliberate ignorance is categorically different from negligence or recklessness; LBP-09-24, 70 NRC 819 (2009)
- United States v. Heredia*, 483 F.3d 913, 919 n.6 (9th Cir. 2007) (en banc)
a finding of deliberate ignorance is equivalent to a finding of knowledge, because the deliberate ignorance theory focuses on defendant’s actual beliefs and actions; LBP-09-24, 70 NRC 817 (2009)
- United States v. Heredia*, 483 F.3d 913, 920 (9th Cir. 2007) (en banc)
a conviction based on deliberate ignorance requires a finding that a defendant acted deliberately, and a deliberate action is one that is intentional, premeditated, and fully considered; LBP-09-24, 70 NRC 819 (2009)
- United States v. Heredia*, 483 F.3d 913, 920 n.10 (9th Cir. 2007) (en banc)
the deliberate ignorance instruction defines when an individual has sufficient information so that he can be deemed to know something; LBP-09-24, 70 NRC 818 n.8 (2009)
the knowledge component of the deliberate ignorance theory is slightly less than knowledge to a 100% certainty in that the defendant does not take the final step to confirm that knowledge; LBP-09-24, 70 NRC 818 n.8 (2009)
- United States v. Heredia*, 483 F.3d 913, 922 n.13 (9th Cir. 2007) (en banc)
deliberate ignorance is tantamount to knowledge; LBP-09-24, 70 NRC 817, 818 n.8, 819, 821 n.10, 822 n.11 (2009)
- United States v. Heredia*, 483 F.3d 913, 923 (9th Cir. 2007) (en banc)
a jury is presumed to follow the instructions given to it, and there is no reason to fear that juries will be less able to do so when trying to sort out a criminal defendant’s state of mind than any other issue; LBP-09-24, 70 NRC 818 (2009)
- United States v. Heredia*, 483 F.3d 913, 923-24 (9th Cir. 2007) (en banc)
tribunals are required to conclude that the jury understood the trial court’s instructions and rendered well-founded findings of fact in compliance with those instructions; LBP-09-24, 70 NRC 820 (2009)
- United States v. Heredia*, 483 F.3d 913, 924 (9th Cir. 2007) (en banc)
recklessness or negligence never comes into play in the deliberate ignorance instruction, and there is little reason to suspect that juries will import these concepts into their deliberations; LBP-09-24, 70 NRC 818-19 (2009)
- United States v. Jewell*, 532 F.2d 697, 699 (9th Cir. 1976)
a defendant can be convicted if he was aware that a high probability existed of the fact or circumstances that would make his conduct criminal, but ignored that probability so he could disclaim knowledge later; CLI-10-23, 72 NRC 251 n.207 (2010)
- United States v. Kordel*, 397 U.S. 1, 11-12 (1970)
constitutional violations may arise if the government brings a civil action solely to obtain evidence for its criminal prosecution; LBP-06-13, 63 NRC 539 n.46 (2006)
- United States v. Mari*, 47 F.3d 782, 785 (6th Cir. 1995)
a fundamental tenet of the jury system assumes that the jury complies with the instructions provided by the trial court; LBP-09-24, 70 NRC 815, 818, 820 (2009)
the plain language of the Sixth Circuit Pattern Jury Instruction on deliberate ignorance forecloses the possibility that a jury will convict on the basis of negligence; LBP-09-24, 70 NRC 818 (2009)
the warning to jurors that the added instruction on deliberate ignorance or willful blindness is not intended to allow them to base guilt on negligence or carelessness is sufficient to legitimize the instruction; LBP-09-24, 70 NRC 719 (2009)

LEGAL CITATIONS INDEX

CASES

- United States v. Massachusetts Institute of Technology*, 129 F.3d 681, 686 (1st Cir. 1997)
submitting information to a government agency is voluntary even if the company submitting the information feels pressure to do so as a result of its dealings with the federal government; CLI-08-6, 67 NRC 183 (2008)
- United States v. Mendoza*, 464 U.S. 154, 160 (1984)
the Commission is not obliged to adhere, in all of its proceedings, to the first court of appeals decision to address a controversial question, and is not prevented from relitigating the issue in future cases; LBP-07-14, 66 NRC 185 (2007); LBP-08-13, 68 NRC 142 (2008)
under preclusion doctrines, a court of appeals decision may prevent the government from relitigating the same issue with the same party, but it still leaves the government free to litigate the same issue in the future with other litigants; CLI-07-8, 65 NRC 129 n.14 (2007)
- United States v. Miami University*, 294 F.3d 797, 824 (6th Cir. 2002)
as long as the administrative proceedings walk, talk, and squawk very much like an Article III judicial proceeding, they should be open to the public; LBP-10-2, 71 NRC 208 n.59 (2010)
- United States v. Microsoft*, 56 F.3d 1148 (D.C. Cir. 1995)
when evaluating whether a settlement in an enforcement proceeding is in the public interest, four factors are considered; LBP-06-18, 63 NRC 837 (2006)
- United States v. Mitchell*, 463 U.S. 206, 224 (1983)
the trust responsibility imposes a fiduciary duty on NRC, as a federal agency, to the Tribe and its members; LBP-08-24, 68 NRC 742 (2008)
- United States v. Monus*, 128 F.3d 376 (6th Cir. 1998)
where the prosecution must rely on circumstantial evidence to establish a defendant's knowledge, the use of a deliberate ignorance instruction is unexceptional and entirely proper and is given in fraud, money laundering, and conspiracy cases; LBP-09-24, 70 NRC 820 (2009)
- United States v. Navajo Nation*, 537 U.S. 488, 515 (2003)
the Trust Responsibility requires federal agencies to take actions or refrain from taking actions in fulfillment of Congress's duty to protect the Indians; LBP-09-13, 70 NRC 189 (2009)
- United States v. Nixon*, 418 U.S. 683, 706, 711 (1974)
specifics are needed in regard to the invocation of executive privilege; LBP-06-25, 64 NRC 391 (2006)
- United States v. Nixon*, 418 U.S. 683, 707 (1974)
privileges are looked upon more favorably when asserted narrowly and when specific information is given about what is being protected and why; LBP-06-25, 64 NRC 377 (2006)
- United States v. Nixon*, 418 U.S. 683, 707-11 (1974)
privileges protecting deliberative process are not absolute; LBP-06-25, 64 NRC 376 (2006)
- United States v. Nixon*, 418 U.S. 683, 709 (1974)
privilege for the President and other executive branch officials is not absolute when information is needed for a criminal trial; LBP-06-25, 64 NRC 376 (2006)
privileges are designed to protect weighty and legitimate competing interests; LBP-06-25, 64 NRC 376 (2006)
privileges protecting privacy interests are qualified and, depending on the particular circumstances of the litigation, may be overcome if the interests on the other side are particularly weighty, or the privilege claim is particularly weak; LBP-06-25, 64 NRC 376 (2006)
- United States v. Nixon*, 418 U.S. 683, 710 (1974)
exceptions to the demand for every man's evidence are not lightly created or expansively construed, for they are in derogation of the search for truth; LBP-06-25, 64 NRC 376 (2006)
- United States v. O'Neill*, 619 F.2d 222, 227 (3d Cir. 1980)
courts evaluate the strength of the particular interest protected by the deliberative process privilege, not a generalized agency interest in confidentiality; LBP-06-25, 64 NRC 391 (2006)
privileges are looked upon more favorably when asserted narrowly and when specific information is given about what is being protected and why; LBP-06-25, 64 NRC 377 (2006)
- United States v. Olbres*, 61 F.3d 967, 971 (1st Cir. 1995)
one who signs a contract is presumed to know its contents; LBP-09-24, 70 NRC 708 n.47 (2009)

LEGAL CITATIONS INDEX

CASES

- United States v. Orji-Nwosu*, 549 F.3d 1005 (5th Cir. 2008)
“deliberate ignorance” or “willful blindness” instruction has its place and sees frequent usage in drug possession cases where the defendant purports not to know, for example, what is in the package someone asked him to deliver in secretive fashion; LBP-09-24, 70 NRC 719 n.81 (2009)
- United States v. Pend Oreille County Public Utility District No. 1*, 585 F. Supp. 606 (D. Wash. 1984)
Native Americans have tribal rights to, and interests in, aboriginal lands; LBP-08-24, 68 NRC 713 (2008)
preservation of Native American cultural traditions is a protected interest under federal law; LBP-10-16, 72 NRC 391 (2010)
- United States v. Philip Morris Inc.*, 209 F.R.D. 13, 17 (D.D.C. 2002)
depositions of opposing trial or litigation counsel are permitted only if no other means exist to obtain the information, and the information sought is relevant and nonprivileged, and crucial to the preparation of the case; LBP-06-10, 63 NRC 335 (2006)
- United States v. Picciandra*, 788 F.2d 39, 46 (1st Cir.), *cert. denied*, 479 U.S. 847 (1986)
any reasonable person would realize that in today’s society the bizarre bearing of shopping bags filled with large sums of cash signals some form of illegal activity; CLI-10-23, 72 NRC 223 n.52 (2010)
- United States v. Postal Service*, 534 U.S. 1, 10 (2001)
a presumption of regularity attaches to the actions of government agencies; CLI-08-11, 67 NRC 384 (2008)
- United States v. Rayborn*, 491 F.3d 513 (6th Cir. 2007)
where the prosecution must rely on circumstantial evidence to establish a defendant’s knowledge, the use of a deliberate ignorance instruction is unexceptional and entirely proper and is given in mail fraud, wire fraud, and money laundering cases; LBP-09-24, 70 NRC 820 (2009)
- United States v. Rayborn*, 491 F.3d 513, 521 (2007)
the Sixth Circuit is increasingly focusing on the difference between deliberate ignorance and actual knowledge; LBP-09-24, 70 NRC 719 n.82 (2009)
- United States v. Raynor*, 302 U.S. 540, 547 (1938)
where possible, a regulation should be construed in a manner that avoids internal inconsistencies; LBP-06-1, 63 NRC 57 (2006)
- United States v. Reynolds*, 345 U.S. 1, 10-11 (1953)
public policy forbids the maintenance of any suit in a court of justice, the trial of which would inevitably lead to the disclosure of matters that the law itself regards as confidential, and respecting which it will not allow the confidence to be violated; CLI-08-1, 67 NRC 20 (2008)
- United States v. Reynolds*, 345 U.S. 1, 11 (1953)
the “state secrets” privilege is absolute; CLI-08-1, 67 NRC 21 n.97 (2008)
- United States v. Rivera*, 926 F.2d 1564, 1571 (11th Cir. 1991)
the danger of instruction to juries on deliberate ignorance or willful blindness in an inappropriate case is that juries will convict on a basis akin to a standard of negligence; LBP-09-24, 70 NRC 720 n.85 (2009)
- United States v. Rivera-Martinez*, 931 F.2d 148, 150 (1st Cir.), *cert. denied*, 502 U.S. 862 (1991)
legal determinations made on appeal in a case are controlling precedent, becoming the “law of the case,” for all later decisions in the same case; CLI-06-11, 63 NRC 488 (2006)
- United States v. Rivera-Martinez*, 931 F.2d 148, 151 (1st Cir.), *cert. denied*, 502 U.S. 862 (1991)
a prior decision should be followed unless it is clearly erroneous and its enforcement would work a manifest injustice, intervening controlling authority makes reconsideration appropriate, or substantially different evidence was adduced at a subsequent trial; CLI-06-11, 63 NRC 489 (2006)
“law of the case” doctrine is a salutary rule of policy and practice, grounded in important considerations related to stability in the decisionmaking process, predictability of results, proper working relationships between trial and appellate courts, and judicial economy; CLI-06-11, 63 NRC 488 (2006)
the litany of exceptional circumstances sufficient to sidetrack the law of the case is not only short, but narrowly cabined; CLI-06-11, 63 NRC 489 (2006)

LEGAL CITATIONS INDEX

CASES

- United States v. Ross*, 502 F.3d 521 (6th Cir. 2007)
where the prosecution must rely on circumstantial evidence to establish a defendant's knowledge, the use of a deliberate ignorance instruction is unexceptional and entirely proper and is given in bank fraud cases; LBP-09-24, 70 NRC 820 (2009)
- United States v. Ross*, 502 F.3d 521, 528 (2007)
the Sixth Circuit is increasingly focusing on problems caused when the evidence does not support the use of the deliberate ignorance charge; LBP-09-24, 70 NRC 719 n.82 (2009)
- United States v. Salerno*, 481 U.S. 739, 751-52 (1987)
to succeed in imposing pretrial detention because the accused is a danger to the community, the government must, among other things, prove in an adversary hearing by clear and convincing evidence that no conditions of release can reasonably assure the community's safety; LBP-09-24, 70 NRC 806 (2009)
- United States v. Shaffer Equipment Co.*, 11 F.3d 450, 457-58 (4th Cir. 1993)
the purpose and scope of the duty of candor that is placed on lawyers is described; LBP-06-10, 63 NRC 371 (2006)
- United States v. Shaffer Equipment Co.*, 11 F.3d 450, 457-59 (4th Cir. 1993)
counsel have a broader, more general duty of candor and good faith, which is related to the duty to update a tribunal about any development that may conceivably affect the outcome of litigation; LBP-06-10, 63 NRC 370 (2006)
counsel have a continuing duty to update a tribunal of any development that may conceivably affect the outcome of litigation; LBP-06-10, 63 NRC 333 (2006)
- United States v. Sioux Nation of Indians*, 448 U.S. 371 (1980)
given that the Oglala Lakota no longer own the land upon which ISL mines are located, it is plain that the mining operations are not occurring within the tribal boundaries; LBP-09-13, 70 NRC 184 (2009)
licensing boards may not make a determination on treaty matters; LBP-08-24, 68 NRC 743 (2008)
the difference between "aboriginal title" and "aboriginal lands" is distinguished; LBP-08-24, 68 NRC 712-13 n.103 (2008)
- United States v. Sioux Nation of Indians*, 448 U.S. 371, 374 n.1 (1980)
petitioners argue that mine sites are within the Indian Treaty boundaries, that they possess water and mineral rights under the Treaties, that infringement of the treaties would constitute injury in fact for purposes of standing; LBP-08-6, 67 NRC 268 (2008)
- United States v. Sioux Nation of Indians*, 448 U.S. 371, 382-83 (1980)
the United States is no longer bound by the terms of the 1868 Fort Laramie Treaty; LBP-09-13, 70 NRC 187 (2009)
- United States v. Sioux Nation of Indians*, 448 U.S. 371, 382-83, 410-11 (1980)
because Congress rescinded the portion of the Fort Laramie Treaty that granted the Black Hills territory to the Sioux Tribe, through Congress's power of eminent domain, any claims to ownership of the land upon which a mining site sits cannot support standing; CLI-09-9, 69 NRC 337 (2009)
- United States v. Sioux Nation of Indians*, 448 U.S. 371, 409-11 (1980)
the tribe's hunting and fishing rights outside of the Pine Ridge Reservation were abrogated by the Black Hills Act of 1877; LBP-08-24, 68 NRC 744 n.299 (2008)
- United States v. Sioux Nation of Indians*, 448 U.S. 371, 410-11 (1980)
plenary authority over the tribal relations of the Indians has been exercised by Congress from the beginning, and the power has always been deemed a political one, not subject to be controlled by the judicial department of the government; LBP-08-24, 68 NRC 712 (2008)
- United States v. Sioux Nation of Indians*, 448 U.S. 371, 410-12 (1980)
Congress's plenary power with respect to Native Americans entitles it to abrogate treaties with Native American nations; LBP-09-13, 70 NRC 187 n.32 (2009)
- United States v. Skeddle*, 176 F.R.D. 258, 261 (N.D. Ohio 1997)
production of documents is required if the party has practical ability to obtain the documents from another, irrespective of his legal entitlement to the documents; LBP-12-23, 72 NRC 708 n.22 (2010)

LEGAL CITATIONS INDEX

CASES

- United States v. Springer*, 262 Fed. Appx. 703, 706 (6th Cir. 2008)
instruction to juries on deliberate ignorance or willful blindness should be used with caution to avoid the possibility that the jury will convict on the lesser standard that the defendant should have known his conduct was illegal; LBP-09-24, 70 NRC 720 n.85 (2009)
- United States v. Stauffer Chemical Co.*, 464 U.S. 165, 169 (1984)
collateral estoppel applies to another case involving virtually identical facts; LBP-08-24, 68 NRC 703 (2008)
- United States v. Stauffer Chemical Co.*, 464 U.S. 165, 173 (1984)
NRC is not obligated to adhere, in all of its proceedings, to the first court of appeals decision to address a controversial question; CLI-10-1, 71 NRC 14 n.67 (2010); LBP-08-13, 68 NRC 142 (2008)
the Commission is not obliged to adhere, in all of its proceedings, to the first court of appeals decision to address a controversial question, and is not prevented from relitigating the issue in future cases; LBP-07-14, 66 NRC 185 (2007)
under preclusion doctrines, a court of appeals decision may prevent the government from relitigating the same issue with the same party, but it still leaves the government free to litigate the same issue in the future with other litigants; CLI-07-8, 65 NRC 129 n.14 (2007)
- United States v. Swissco Properties Within the Southern District of Florida*, 821 F. Supp. 1472 (S.D. Fla. 1972)
remedies short of complete abeyance of a proceeding are sometimes appropriate; LBP-06-13, 63 NRC 538 n.43 (2006)
- United States v. Thirteen Machine Guns & One Silencer*, 689 F.2d 861, 864 (9th Cir. 1982)
the government's delay in instituting a forfeiture action violated the due process right to a prompt hearing because conclusory allegations that a forfeiture action would jeopardize its criminal prosecution are clearly not sufficient; LBP-06-13, 63 NRC 540 n.52 (2006)
- United States v. Tobeler*, 311 F.3d 1201, 1206 (9th Cir. 2002)
rules of statutory construction must be employed to give each word Congress used a separate and distinct significance that is consistent with its ordinary meaning; LBP-09-30, 70 NRC 1049 n.11 (2009)
- United States v. Turkette*, 452 U.S. 576, 580 (1981)
statutes should not be interpreted so as to create internal inconsistencies, an absurd result, or an interpretation inconsistent with congressional intent; LBP-10-11, 71 NRC 627 (2010)
- United States v. United States Currency in the Amount of \$228,536.00*, 895 F.2d 908, 917 (2d Cir. 1990)
a 4-year stay was found to be reasonable despite the fact that the court found that 4 years was lengthy, because the parallel civil proceedings may have required that the government turn over sensitive information, and the defendant was not prejudiced by the delay; LBP-06-13, 63 NRC 546 (2006)
- United States v. Vogel Fertilizer Co.*, 455 U.S. 16, 26 (1982)
a regulation is not a reasonable statutory interpretation unless it harmonizes with the statute's 'origin and purpose; LBP-08-24, 68 NRC 752 n.343 (2008)
- United States v. Wasserson*, 418 F.3d 225, 237 (3rd Cir. 2005)
deliberate ignorance instruction to juries must be tailored to avoid the implication that a defendant may be convicted simply because he or she should have known of the facts of which he or she was unaware; LBP-09-24, 70 NRC 720 n.85 (2009)
- United States v. Wasserson*, 418 F.3d 225, 237-39 (3d Cir. 2005)
a defendant can be convicted if he was aware that a high probability existed of the fact or circumstances that would make his conduct criminal, but ignored that probability so he could disclaim knowledge later; CLI-10-23, 72 NRC 251 n.207 (2010)
- United States v. Westinghouse Electric Corp.*, 638 F.2d 570, 579 (3d Cir. 1980)
whether there are effective provisions for security of the information against subsequent unauthorized disclosure must be considered in determinations of personal privacy privilege; LBP-06-25, 64 NRC 386 (2006)
- United States v. Westinghouse Electric Corp.*, 638 F.2d 570, 580 (3d Cir. 1980)
despite the strong privacy interests involved, a company was ordered to turn over the personal health information of its employees to a government agency because the agency has provided sufficiently adequate assurance of nondisclosure, including security measures; LBP-06-25, 64 NRC 387 (2006)

LEGAL CITATIONS INDEX

CASES

- United States v. Wilson*, 503 F.3d 195 (2d Cir. 2007)
“deliberate ignorance” or “willful blindness” instruction has its place and sees frequent usage in drug possession cases where the defendant purports not to know, for example, what is in the package someone asked him to deliver in secretive fashion; LBP-09-24, 70 NRC 719 n.81 (2009)
- United States v. Winans*, 198 U.S. 371 (1905)
a Native American nation retains its water rights even after its land rights have been extinguished, but those reserved rights must originate in a treaty in order to survive; LBP-09-6, 69 NRC 475 (2009)
- United States v. Wofford*, 560 F.3d 341, 352 (5th Cir. 2009)
where the *mens rea* required for conviction is that the defendant act knowingly or willfully, a deliberate ignorance instruction creates a risk that the jury might convict for negligence or stupidity, i.e., that the defendant should have been aware of the illegal conduct; LBP-09-24, 70 NRC 720 n.85 (2009)
- United Steelworkers of America, AFL-CIO-CLC v. North Star Steel Co., Inc.*, 5 F.3d 39, 43 (3d Cir. 1993)
a statute’s provisions should be read to be consistent with one another, rather than the contrary; LBP-07-11, 66 NRC 78 n.161 (2007)
- Upjohn Co. v. United States*, 449 U.S. 383, 386 (1981)
during an internal company investigation, all communications with company lawyers hired to provide advice to the company are privileged; CLI-08-6, 67 NRC 181 (2008)
- Upton v. Tribilcock*, 91 U.S. 45, 50 (1875)
one who signs a contract is presumed to know its contents; LBP-09-24, 70 NRC 708 n.47 (2009)
- USA Recycling, Inc. v. Town of Babylon*, 66 F.3d 1272, 1295 (2d Cir. 1995)
irreparable harm is the most important of the four standards for obtaining a stay; CLI-06-8, 63 NRC 237 (2006)
- USEC Inc.* (American Centrifuge Plant), CLI-04-30, 60 NRC 426, 432 (2004)
threshold environmental legal and policy issues need not await issuance of the final environmental impact statement; CLI-07-17, 65 NRC 396 (2007)
- USEC Inc.* (American Centrifuge Plant), CLI-05-11, 61 NRC 309, 311 (2005)
in a materials licensing case, petitioner must show a plausible mechanism through which those materials could harm him; CLI-10-20, 72 NRC 189 (2010)
in a materials licensing case, petitioner must show more than that he lives or works within a certain distance of the site where materials will be located; CLI-10-20, 72 NRC 188-89 (2010)
in cases not involving nuclear power reactors, whether petitioner could be affected by the licensing action must be determined on a case-by-case basis, taking into account petitioner’s distance from the source, the nature of the licensed activity, and the significance of the radioactive source; CLI-10-20, 72 NRC 188 (2010)
in proceedings for construction permits and operating licenses for nuclear power plants, a proximity presumption is recognized in favor of standing for persons who have frequent contacts within a 50-mile radius of the plant; CLI-10-7, 71 NRC 138 (2010)
the Commission has long looked for guidance to judicial concepts of standing; CLI-08-19, 68 NRC 265 (2008)
- USEC Inc.* (American Centrifuge Plant), CLI-05-11, 61 NRC 309, 311-12 (2005)
in source materials cases, petitioner has the burden of showing a specific and plausible means by which the proposed license activities may affect him or her; CLI-09-9, 69 NRC 345 (2009); LBP-09-13, 70 NRC 177 (2009); LBP-10-16, 72 NRC 382 (2010)
proximity-based presumption of standing does not apply in source materials cases; LBP-09-13, 70 NRC 177 (2009); LBP-10-16, 72 NRC 381 (2010)
where there is no obvious potential for offsite harm, petitioner must show a specific and plausible means of how the challenged action may harm him or her; CLI-09-9, 69 NRC 345 n.72 (2009)
- USEC Inc.* (American Centrifuge Plant), CLI-05-11, 61 NRC 309, 312 (2005)
in cases where the record fails to support the existence of a significant source of radioactivity producing an obvious potential for offsite consequences at a particular distance frequented by a petitioner, it becomes petitioner’s burden to show a specific and plausible means of how the challenged action may harm him or her; LBP-10-4, 71 NRC 229 (2010)

LEGAL CITATIONS INDEX

CASES

- USEC Inc.* (American Centrifuge Plant), CLI-06-9, 63 NRC 433 (2006)
the issue of consideration of threshold environmental legal and policy issues prior to issuance of the final environmental impact statement became moot because no contentions were admitted; CLI-07-17, 65 NRC 396 (2007)
- USEC Inc.* (American Centrifuge Plant), CLI-06-9, 63 NRC 433, 437 (2006)
contention admissibility requirements are deliberately strict and any contention that does not satisfy the requirements of 10 C.F.R. 2.309(f)(1) will be rejected; CLI-09-7, 69 NRC 259 (2009); CLI-09-14, 69 NRC 590 (2009); CLI-09-20, 70 NRC 914 (2009); CLI-10-1, 71 NRC 7 (2010); CLI-10-9, 71 NRC 253 (2010); CLI-10-21, 72 NRC 201 (2010)
intervenor must provide a clear statement as to the basis for their contentions and the submission of supporting information and references to specific documents and sources that establish the validity of the contention; CLI-09-8, 69 NRC 323 (2009)
the head of any federal agency shall afford the Advisory Council on Historic Preservation a reasonable opportunity to comment with regard to licensing undertakings on lands to which tribes ascribe cultural or religious significance; LBP-08-24, 68 NRC 722 n.164 (2008)
unlike federal court practice, the Commission does not accept mere notice pleading in support of an admissible contention; LBP-08-24, 68 NRC 730 (2008)
- USEC Inc.* (American Centrifuge Plant), CLI-06-9, 63 NRC 433, 437-38 (2006)
NRC implements its responsibilities under the National Historic Preservation Act in conjunction with the National Environmental Policy Act process; CLI-09-9, 69 NRC 348 n.89 (2009); CLI-09-12, 69 NRC 566 n.137 (2009)
- USEC Inc.* (American Centrifuge Plant), CLI-06-9, 63 NRC 433, 438-39 & n.29 (2006)
the Commission does not credit arguments made for the first time in a reply brief; CLI-06-22, 64 NRC 46 (2006)
- USEC Inc.* (American Centrifuge Plant), CLI-06-9, 63 NRC 433, 439 (2006)
a reply cannot expand the scope of the arguments set forth in the original hearing request; CLI-06-17, 63 NRC 732 (2006)
- USEC Inc.* (American Centrifuge Plant), CLI-06-9, 63 NRC 433, 439 n.32 (2006)
the Commission regularly affirms board decisions on the admissibility of contentions where the appellant points to no error of law or abuse of discretion; CLI-06-24, 64 NRC 121 (2006); CLI-07-20, 65 NRC 503 n.20 (2007); CLI-09-7, 69 NRC 260 (2009); CLI-09-20, 70 NRC 914 (2009)
- USEC Inc.* (American Centrifuge Plant), CLI-06-9, 63 NRC 433, 439-40 (2006)
the Commission's customary practice is to affirm board rulings on contention admissibility absent an abuse of discretion or error of law; CLI-06-17, 63 NRC 729 (2006)
- USEC Inc.* (American Centrifuge Plant), CLI-06-9, 63 NRC 433, 445 n.65 (2006)
when a contention alleges the omission of particular information or an issue from an application, and the information is later supplied by the applicant or considered by the NRC Staff in an environmental impact statement, the contention is moot; LBP-08-6, 67 NRC 330 (2008)
- USEC Inc.* (American Centrifuge Plant), CLI-06-9, 63 NRC 433, 455-56 (2006)
supporting information is to be provided at the time the contention is filed, not at a later date or on appeal; CLI-07-20, 65 NRC 504 (2007)
- USEC Inc.* (American Centrifuge Plant), CLI-06-9, 63 NRC 433, 458 (2006)
rewriting a contention on appeal is not permitted; CLI-06-24, 64 NRC 122 (2006)
the purpose of an appeal is to point out errors made in the board's decision, not to attempt to cure deficient contentions by presenting arguments and evidence never provided to the board; CLI-07-20, 65 NRC 504 (2007)
- USEC Inc.* (American Centrifuge Plant), CLI-06-9, 63 NRC 433, 460 (2006)
under longstanding agency precedent, petitioners or intervenors may request and, where appropriate, obtain, under protective order or other measures, information withheld from the general public for proprietary or security reasons; CLI-06-24, 64 NRC 122 n.71 (2006)
- USEC Inc.* (American Centrifuge Plant), CLI-06-10, 63 NRC 451 (2006)
the issue of consideration of threshold environmental legal and policy issues prior to issuance of the final environmental impact statement became moot because no contentions were admitted; CLI-07-17, 65 NRC 396 (2007)

LEGAL CITATIONS INDEX

CASES

- USEC Inc.* (American Centrifuge Plant), CLI-06-10, 63 NRC 451, 456-57 (2006)
the Commission generally extends some latitude to pro se litigants, but they still are expected to comply with NRC procedural rules, including contention pleading requirements; CLI-07-20, 65 NRC 502 (2007); CLI-10-1, 71 NRC 6 (2010)
- USEC Inc.* (American Centrifuge Plant), CLI-06-10, 63 NRC 451, 457 (2006)
information, alleged facts, and expert opinions provided by a petitioner will be examined by the board to confirm that petitioner does indeed supply adequate support for its contention; CLI-10-9, 71 NRC 262 (2010); LBP-09-26, 70 NRC 955 (2009); LBP-10-6, 71 NRC 361 (2010)
it is a contention's proponent, not the licensing board, that is responsible for formulating the contention and providing the necessary information to satisfy the basis requirement for the admission of contentions; LBP-10-24, 72 NRC 775 (2010)
it is insufficient for petitioner to point to an Internet Web site or article and expect the board on its own to discern what particular issue a petitioner is raising and why; CLI-10-15, 71 NRC 482 n.15 (2010)
- USEC Inc.* (American Centrifuge Plant), CLI-06-10, 63 NRC 451, 457, 460 (2006)
a no-reactor or no-action alternative that was not raised before the board is therefore improperly raised on appeal; CLI-10-9, 71 NRC 265 (2010)
- USEC Inc.* (American Centrifuge Plant), CLI-06-10, 63 NRC 451, 457, 462 (2006)
a board appropriately reviews the materials cited in support of a contention, while making no pronouncements on whether the information contained in the application or the claims made in the petition are valid; CLI-10-9, 71 NRC 261 (2010)
- USEC Inc.* (American Centrifuge Plant), CLI-06-10, 63 NRC 451, 458 (2006)
absent extreme circumstances, the Commission will not consider on appeal either new arguments or new evidence supporting the contentions which a board never had the opportunity to consider; CLI-10-21, 72 NRC 201 n.16 (2010)
new information, not part of the original contention, may not be introduced for the first time on appeal; CLI-07-8, 65 NRC 133 (2007); CLI-07-25, 66 NRC 106 n.26 (2007); CLI-10-1, 71 NRC 5 n.20 (2010)
petitioners may not raise entirely new arguments in a reply brief unless the standards for late-filed contentions are met; CLI-09-7, 69 NRC 276 (2009)
petitioners may not skirt contention rules by initially filing unsupported contentions, and later recasting or modifying their contentions on appeal with new arguments never raised before the board; CLI-08-17, 68 NRC 234 (2008); CLI-09-5, 69 NRC 123 (2009); CLI-09-12, 69 NRC 546 (2009)
- USEC Inc.* (American Centrifuge Plant), CLI-06-10, 63 NRC 451, 460 (2006)
petitioners cannot seek to revive a contention based on new arguments never presented to the licensing board; CLI-08-17, 68 NRC 239 n.38 (2008)
petitioners or intervenors may request and, where appropriate, obtain, under protective order or other measures, information withheld from the general public for proprietary or security reasons; CLI-10-24, 72 NRC 463 n.74 (2010)
- USEC Inc.* (American Centrifuge Plant), CLI-06-10, 63 NRC 451, 462 (2006)
a contention should be dismissed if it does not directly controvert a position taken by the applicant in the license application; LBP-09-27, 70 NRC 1016 (2009)
- USEC Inc.* (American Centrifuge Plant), CLI-06-10, 63 NRC 451, 462-63 (2006)
any contention that fails to controvert the application or that mistakenly asserts that the application does not address a relevant issue, may be dismissed; LBP-10-6, 71 NRC 362 n.29 (2010)
- USEC Inc.* (American Centrifuge Plant), CLI-06-10, 63 NRC 451, 464 (2006)
a single, past violation of licensee's state permit could not demonstrate an ongoing pattern of violations or disregard for regulations that might be expected to recur in the future; CLI-09-9, 69 NRC 355 (2009)
- USEC Inc.* (American Centrifuge Plant), CLI-06-10, 63 NRC 451, 467 (2006)
the NEPA analysis of alternatives should not ignore the stated purposes of the project and the applicant's needs; LBP-07-9, 65 NRC 608-09 (2007)
- USEC Inc.* (American Centrifuge Plant), CLI-06-10, 63 NRC 451, 472 (2006)
an expert opinion that merely states a conclusion (e.g., the application is deficient, inadequate, or wrong) without providing a reasoned basis or explanation for that conclusion is inadequate because it

LEGAL CITATIONS INDEX

CASES

- deprives the board of the ability to make the necessary, reflective assessment of the opinion;
CLI-10-2, 71 NRC 40 (2010); LBP-06-23, 64 NRC 358 (2005); LBP-09-6, 69 NRC 411 (2009);
LBP-09-16, 70 NRC 290 (2009); LBP-10-6, 71 NRC 360-61, 368 n.54 (2010); LBP-10-10, 71 NRC
579 (2010)
- even the opinion of a qualified and properly identified expert will not support a contention if the
opinion lacks a reasoned basis or explanation; LBP-08-17, 68 NRC 449 (2008)
- quotations from unintelligible correspondence with a purported expert, with no explanation or analysis
of how the expert's statements relate to an error or omission in the application, are insufficient to
support a contention; LBP-06-20, 64 NRC 151, 166 (2006)
- USEC Inc.* (American Centrifuge Plant), CLI-06-10, 63 NRC 451, 472 n.127 (2006)
- a board need not accept an expert's bare conclusions that an application is deficient, inadequate, or
wrong as support for a contention; CLI-10-2, 71 NRC 40 n.64 (2010)
- USEC Inc.* (American Centrifuge Plant), CLI-06-10, 63 NRC 451, 474 & n.144 (2006)
- the burden of a settlement with an intervenor regarding NEPA issues falls on the NRC Staff;
CLI-06-18, 64 NRC 5 (2006)
- USEC Inc.* (American Centrifuge Plant), CLI-06-10, 63 NRC 451, 482 (2006)
- strict contention standards ensure that those admitted to NRC hearings bring actual knowledge of
safety and environmental issues that bear on the licensing decision, and therefore can litigate issues
meaningfully; CLI-08-17, 68 NRC 233 (2008)
- USEC Inc.* (American Centrifuge Plant), CLI-07-5, 65 NRC 109 (2007)
- this decision resolves a number of issues concerning uranium enrichment licensing and may be relied
upon as precedent; CLI-09-15, 70 NRC 17 (2009); CLI-10-4, 71 NRC 71 (2010)
- USEC Inc.* (American Centrifuge Plant), LBP-05-28, 62 NRC 585, 596-97 (2005)
- in ruling on contention admissibility a board is not to look to the merits of the contention;
LBP-09-17, 70 NRC 328 (2009)
- USEC Inc.* (American Centrifuge Plant), LBP-05-28, 62 NRC 585, 597 (2005), *aff'd*, CLI-06-10, 63 NRC
451 (2006)
- a bare assertion without the requisite support for claims is inadequate to support the admission of a
contention; LBP-09-16, 70 NRC 273 (2009)
- mere mention of a document without providing its contents or an explanation of its significance
cannot support admissibility of the contention; LBP-09-21, 70 NRC 602 n.94 (2009)
- presentation of excerpts from a combined license application without further explanation does not
provide sufficient support for a contention; LBP-09-16, 70 NRC 284 (2009)
- USEC Inc.* (American Centrifuge Plant), LBP-05-28, 62 NRC 585, 613 (2005)
- support for a contention that consisted of brief quotes from the petitioners' correspondence with a
physicist were found to be bare conclusory remarks with respect to which the petitioner offered no
explanation or analysis; CLI-10-2, 71 NRC 40 (2010)
- Utah v. Evans*, 536 U.S. 452, 468 (2002)
- technical terms of art should be interpreted by reference to the trade or industry to which they apply;
CLI-06-14, 63 NRC 519 (2006)
- Utahns for Better Transportation v. U.S. Department of Transportation*, 305 F.3d 1152, 1172 (10th Cir.
2002)
- an agency is not obligated to consider unreasonable alternatives, including those whose effect cannot
be reasonably ascertained, and whose implementation is deemed remote and speculative; LBP-07-9,
65 NRC 607 (2007)
- Ute Indians v. United States*, 28 Fed. Cl. 768 (1993)
- Native Americans have tribal rights to, and interests in, aboriginal lands; LBP-08-24, 68 NRC 713
(2008)
- preservation of Native American cultural traditions is a protected interest under federal law;
LBP-10-16, 72 NRC 391-92 (2010)
- Vaughn v. Rosen*, 484 F.2d 820, 823-25 (D.C. Cir. 1973)
- the process referred to as a *Vaughn* index is described; CLI-08-1, 67 NRC 16 (2008)
- when an agency's withholding of documents is disputed in FOIA litigation, the agency will ordinarily
provide a *Vaughn* index, which identifies the documents withheld, the FOIA exemptions claimed,

LEGAL CITATIONS INDEX

CASES

- and an explanation of why each document falls within the claimed exemption; LBP-08-7, 67 NRC 367 n.3 (2008)
- Vaughn v. Rosen*, 484 F.2d 820, 825-27 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 977 (1974)
- that opposing counsel was able to prepare a table of redactions from a log that failed to indicate which areas were redacted and for what reasons does not excuse the party claiming a privilege from the obligations imposed on it; LBP-06-25, 64 NRC 379 n.35 (2006)
- the party claiming privilege must present at the outset adequate privilege logs, including more detailed information regarding the location of and reason for any redactions; LBP-06-25, 64 NRC 379 n.35 (2006)
- Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 435 U.S. 519, 543 (1978)
- absent constitutional constraints or extremely compelling circumstances, the Commission should be free to fashion its own rules of procedure and to pursue methods of inquiry capable of permitting it to discharge its multitudinous duties; LBP-06-23, 64 NRC 299 n.170 (2006)
- an agency's interpretation of its own regulation is controlling provided it is not plainly erroneous or inconsistent with the regulation; CLI-10-13, 71 NRC 389 n.10 (2010)
- Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 435 U.S. 519, 551 (1978)
- all reasonable alternatives are to be rigorously explored and objectively evaluated, but for alternatives eliminated from detailed study, only a brief discussion of the reasons for their having been eliminated is required; LBP-10-10, 71 NRC 578 (2010)
- alternatives that are remote and speculative do not require detailed discussion in an environmental impact statement and a detailed statement of alternatives cannot be found wanting simply because not every alternative device and thought conceivable by the mind of man has not been included; LBP-07-9, 65 NRC 607 (2007); LBP-09-10, 70 NRC 127 (2009); LBP-10-6, 71 NRC 380 n.87 (2010); LBP-10-10, 71 NRC 583 (2010)
- although NEPA does require identification, rigorous exploration, and objective evaluation of all reasonable alternatives, this does not mean that every conceivable alternative must be included in the EIS; LBP-10-10, 71 NRC 567, 581 (2010)
- an agency is not obligated to consider unreasonable alternatives, including those whose effect cannot be reasonably ascertained, and whose implementation is deemed remote and speculative; LBP-06-8, 63 NRC 259 (2006); LBP-07-9, 65 NRC 607 (2007)
- applicant and NRC Staff must conduct a rigorous and objective evaluation of all reasonable, nonspeculative alternatives in relation to the objectives of the proposed project; CLI-06-9, 63 NRC 448 (2006)
- applicant is not required to examine all possible alternatives, but only those that can reasonably accomplish its elected purpose; LBP-09-2, 69 NRC 111 (2009)
- applicant's discussion of alternatives in its environmental report is bounded by feasibility; CLI-10-18, 72 NRC 78 (2010); LBP-09-17, 70 NRC 378 (2009); LBP-10-10, 71 NRC 572, 603 (2010)
- if effects are remote or speculative, the environmental impact statement need not discuss them; LBP-09-7, 69 NRC 632, 719 (2009)
- not every conceivable alternative must be included in the environmental impact statement; LBP-09-17, 70 NRC 378 (2009)
- the hard look required by NEPA is subject to a rule of reason, such that it is not necessary to look at every conceivable alternative to the proposed licensing action, but only those that are feasible, and reasonably related to the scope and goals of the proposed action; LBP-08-13, 68 NRC 92, 95 (2008); LBP-10-10, 71 NRC 581 (2010)
- the issue of whether the level of detail in the Staff's alternative site analysis was so narrow as to render the results foreordained or, instead, whether the level of detail was reasonable under NEPA's rule of reason is considered; CLI-07-27, 66 NRC 229 (2007)
- Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 435 U.S. 519, 552-53 (1978)
- intervenors' comments must be significant enough to step over a threshold requirement of materiality, not merely state that a particular mistake was made, but show why the mistake was of possible significance; LBP-10-10, 71 NRC 583 (2010)

LEGAL CITATIONS INDEX

CASES

- it is incumbent upon intervenors who wish to participate to structure their participation so that it is meaningful and alerts the agency to the intervenors' position and contentions; LBP-10-10, 71 NRC 583 (2010)
- Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 435 U.S. 519, 553 (1978)
- it is the NRC Staff, not the intervenors, that has the burden of complying with NEPA; LBP-10-24, 72 NRC 764 (2010)
- Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 435 U.S. 519, 553-54 (1978)
- administrative proceedings should not be a game or a forum to engage in unjustified obstructionism by making cryptic and obscure references to matters that "ought to be" considered; LBP-10-10, 71 NRC 583 (2010)
- the purpose of the contention rule is to focus litigation on concrete issues and result in a clearer and more focused record for decision; LBP-07-16, 66 NRC 285 (2007); LBP-08-9, 67 NRC 429 (2008); LBP-08-13, 68 NRC 61 (2008); LBP-08-15, 68 NRC 312 n.77 (2008); LBP-08-26, 68 NRC 915 (2008); LBP-09-26, 70 NRC 952 (2009)
- Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 435 U.S. 519, 554 (1978)
- all intervenors and their experts need to provide at the contention admission stage is a reasoned presentation sufficient to warrant further inquiry; LBP-10-10, 71 NRC 580 (2010)
- intervenors should not be held to a prima facie burden at the contention admissibility stage of a proceeding, but its showing should be sufficient to require reasonable minds to inquire further; LBP-10-10, 71 NRC 583-84 (2010)
- petitioner must present sufficient information to show a genuine dispute and reasonably indicating that a further inquiry is appropriate; LBP-08-6, 67 NRC 292 (2008); LBP-09-17, 70 NRC 329 (2009)
- Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 435 U.S. 519, 554-55 (1978)
- agencies need not reopen adjudicatory proceedings merely on a plea of new evidence; CLI-06-3, 63 NRC 25 (2005)
- the standard for admitting a new contention after the record is closed is higher than for an ordinary late-filed contention; CLI-08-28, 68 NRC 668 (2008)
- Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 435 U.S. 519, 555 (1978)
- if standards for reopening were not strict and demanding, there would be little hope of completing administrative proceedings if each newly arising allegation required an agency to reopen its hearings; LBP-08-12, 68 NRC 15 (2008)
- rationale for the requirement that motions to reopen must address at least nineteen different regulatory factors is provided; LBP-10-19, 72 NRC 534 (2010)
- Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 435 U.S. 519, 558 (1978)
- the NEPA requirement to prepare an environmental impact statement is a procedural mechanism designed to ensure that agencies give proper consideration to the environmental consequences of their actions; LBP-10-24, 72 NRC 729 n.16 (2010)
- Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), ALAB-124, 6 AEC 358, 360 (1973)
- issues that relate to the applicant's quality assurance program must be resolved prior to issuance of the license; CLI-08-28, 68 NRC 672 n.55 (2008)
- Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), ALAB-124, 6 AEC 358, 364 (1973)
- movant seeking to reopen the record need not present additional affidavits to restate what information the Staff has found self-evident regarding a significant safety issue; LBP-08-12, 68 NRC 17 n.10 (2008)

LEGAL CITATIONS INDEX

CASES

- Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), ALAB-124, 6 AEC 358, 365 (1973)
a timely motion to reopen may be denied if it raises issues that are not of major significance to plant safety while a nontimely motion may be granted if it raises an issue of sufficient gravity;
LBP-10-21, 72 NRC 643 (2010)
- Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), ALAB-124, 6 AEC 358, 365 n.10 (1973)
if the problem raised in a late-filed contention presents a sufficiently grave threat to public safety, a board should reopen the record to consider it even if it is not newly discovered and could have been raised in timely fashion; LBP-08-12, 68 NRC 33 (2008)
- Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), ALAB-138, 6 AEC 520, 523 (1973)
a timely motion to reopen may be denied if it raises issues that are not of major significance to plant safety while a nontimely motion may be granted if it raises an issue of sufficient gravity;
LBP-10-21, 72 NRC 643 (2010)
in denying a motion to reopen the record, the tribunal will necessarily have supplemented the record with, for example, the affidavits, letters, or other materials accompanying the motion and the responses thereto, but the hearing record will not have been reopened; LBP-08-12, 68 NRC 16 (2008)
- Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), ALAB-138, 6 AEC 520, 528-29 (1973)
applicant's failure to comply with applicable standards may have consequential import in evaluating whether to grant a motion to reopen the record; LBP-08-12, 68 NRC 25 n.19 (2008)
- Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), ALAB-919, 30 NRC 29, 44 (1989)
agencies may decline to examine issues that the agency in good faith considers remote and speculative or inconsequentially small; LBP-06-8, 63 NRC 259 (2006); LBP-09-7, 69 NRC 631-32, 719 (2009)
impacts that are remote and speculative or inconsequentially small need not be examined; LBP-10-14, 72 NRC 110 (2010)
- Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), ALAB-919, 30 NRC 29, 44 n.17 (1989), *vacated in part on other grounds*, CLI-90-4, 31 NRC 333 (1990)
although Council on Environmental Quality regulations do not bind the Commission, it does look to them for guidance; CLI-07-27, 66 NRC 236 n.115 (2007)
- Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), ALAB-919, 30 NRC 29, 48 (1989), *vacated in part on other grounds and remanded*, CLI-90-4, 31 NRC 333 (1990)
information, facts, and expert opinions provided by petitioner in support of a contention will be examined by the board to confirm that the petitioner does indeed supply adequate support for the contention; LBP-06-20, 64 NRC 151 (2006); LBP-06-23, 64 NRC 355 (2005); LBP-07-3, 65 NRC 254 (2007); LBP-07-10, 66 NRC 24 (2007); LBP-07-16, 66 NRC 288 (2007); LBP-08-9, 67 NRC 433 (2008); LBP-08-13, 68 NRC 64 (2008); LBP-08-16, 68 NRC 385 (2008); LBP-08-26, 68 NRC 918 (2008); LBP-09-3, 69 NRC 154 (2009); LBP-09-26, 70 NRC 955 (2009); LBP-10-6, 71 NRC 361 (2010); LBP-10-7, 71 NRC 421 (2010)
the NEPA requirement to consider alternatives to a proposed action is governed by the rule of reason applicable to all NEPA-required alternatives analyses and does not extend to events that are remote and speculative; LBP-09-26, 70 NRC 970 (2009)
- Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), ALAB-919, 30 NRC 29, 49 (1989), *vacated in part on other grounds*, CLI-90-4, 31 NRC 333 (1990)
licensing boards are expected to examine cited materials to verify that they do, in fact, support a contention; CLI-06-10, 63 NRC 457 (2006)
- Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), CLI-90-4, 31 NRC 333 (1990)
if the accident sought to be considered is sufficiently unlikely, such that it can be characterized fairly as remote and speculative, then consideration under the National Environmental Policy Act is not required as a matter of law; LBP-09-4, 69 NRC 208 (2009); LBP-09-26, 70 NRC 970 (2009)

LEGAL CITATIONS INDEX

CASES

- Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), CLI-90-7, 32 NRC 129 (1990)
low probability is the key to applying NEPA's rule-of-reason test to contentions that allege that a specified accident scenario presents a significant environmental impact that must be evaluated; LBP-09-26, 70 NRC 970 (2009)
- Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), CLI-90-7, 32 NRC 129, 131 (1990)
low probability is the key to applying the National Environmental Policy Act's rule-of-reason test to contentions that allege that a specific accident scenario presents a significant environmental impact that must be evaluated; LBP-09-4, 69 NRC 208 (2009); LBP-10-10, 71 NRC 555, 557 (2010)
- Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), CLI-00-17, 52 NRC 79, 82-83 (2000)
contested license transfer proceedings move simultaneously along both an adjudicatory and an administrative path; CLI-06-18, 64 NRC 6 (2006)
- Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), CLI-00-17, 52 NRC 79, 83 (2000)
license transfer applicants who have received Staff approval but are still awaiting the results of a Commission adjudication are free to act in reliance on the Staff's order but do so at their peril in the event that the Commission later determines that intervenors have raised valid objections to the license transfer application; CLI-08-19, 68 NRC 257 (2008)
petitioner has a right to a reasoned adjudicatory decision; CLI-10-23, 72 NRC 224 n.58 (2010)
- Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), CLI-00-20, 52 NRC 151, 161 (2000)
a direct license transfer application seeks authorization for the transfer of both ownership and operation of the facility; CLI-08-19, 68 NRC 255 n.3 (2008)
- Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), CLI-00-20, 52 NRC 151, 163 (2000)
a declaration in support of petitioner's standing based on geographic proximity must include a specific statement of distance from the licensed facility; CLI-07-18, 65 NRC 413 n.43 (2007)
an organization must identify its authorizing member and show that the member has authorized the organization to represent him or her and request a hearing on his or her behalf; LBP-10-16, 72 NRC 390 (2010)
an organization seeking to establish representational standing must show that at least one of its members may be affected by the proceeding; LBP-10-16, 72 NRC 389-90 (2010)
an organization asserting representational standing must demonstrate that the interest of at least one of its members will be harmed, demonstrate that the member would have standing in his or her own right, identify that member by name and address, and demonstrate that the organization is authorized to request a hearing on behalf of that member; CLI-07-18, 65 NRC 409 (2007); LBP-07-3, 65 NRC 250 (2007); CLI-08-19, 68 NRC 259 (2008); LBP-06-20, 64 NRC 144 (2006); LBP-08-9, 67 NRC 427 (2008); LBP-08-16, 68 NRC 378 (2008); LBP-08-17, 68 NRC 439 (2008); LBP-08-21, 68 NRC 559 n.2 (2008); LBP-08-26, 68 NRC 911 (2008); LBP-09-2, 69 NRC 94 n.17 (2009); LBP-09-3, 69 NRC 149 (2009); LBP-09-6, 69 NRC 382 (2009); LBP-09-10, 70 NRC 115 (2009); LBP-09-13, 70 NRC 178 (2009); LBP-10-11, 71 NRC 637 (2010); LBP-10-15, 72 NRC 276 (2010); LBP-10-16, 72 NRC 383 (2010)
petitioner's residence within a 50-mile radius of the proposed facility has established standing in his own right, and, accordingly, representational standing has been established through him; LBP-09-18, 70 NRC 395 (2009)
- Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), CLI-00-20, 52 NRC 151, 163-64 (2000)
an entity seeking to intervene on behalf of its members must show that it has an individual member who can fulfill all the necessary standing elements and who has formally authorized the organization to represent his or her interests; LBP-10-21, 72 NRC 639 (2010)
petitioners in direct license transfer cases who qualified for proximity-based standing lived within a 6-1/2-mile radius of their plant; CLI-08-19, 68 NRC 269 (2008)

LEGAL CITATIONS INDEX

CASES

- the longest specific distance for which proximity-based standing has been granted in a license transfer case is 6 to 6-1/2 miles; CLI-07-21, 65 NRC 523 (2007)
- Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), CLI-00-20, 52 NRC 151, 164 (2000)
- the Commission will not accept the filing of a vague, unparticularized issue; CLI-09-7, 69 NRC 277 n.230 (2009)
- Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), CLI-00-20, 52 NRC 151, 165-66 (2000)
- petitioner may not demand a hearing to express generalized grievances about NRC policies or to attack the NRC's general competence; LBP-08-17, 68 NRC 452 (2008)
- Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), CLI-00-20, 52 NRC 151, 173-74 (2000)
- suspension of licensing proceedings is a drastic action that is not warranted absent immediate threats to public health and safety; CLI-08-23, 68 NRC 483 n.104 (2008)
- Village of Bensonville v. Federal Aviation Administration*, 457 F.3d 52, 71 (D.C. Cir. 2006)
- NEPA requires NRC to provide a reasonable mitigation alternatives analysis, containing reasonable estimates, including full disclosures of any known shortcomings in methodology, incomplete or unavailable information and significant uncertainties; CLI-10-22, 72 NRC 209 (2010)
- Virginia Electric and Power Co.* (North Anna Power Station, Unit 3), LBP-08-15, 68 NRC 294 (2008)
- inconsistencies in Staff position of onsite storage of low-level radioactive waste are noted; CLI-09-16, 70 NRC 37 (2009)
- Virginia Electric and Power Co.* (North Anna Power Station, Unit 3), LBP-08-15, 68 NRC 294, 303 (2008)
- under the proximity presumption, petitioner is presumed to have standing to intervene without the need to specifically plead injury, causation, and redressability if petitioner lives within 50 miles of the proposed facility; LBP-09-18, 70 NRC 395 (2009)
- Virginia Electric and Power Co.* (North Anna Power Station, Unit 3), LBP-08-15, 68 NRC 294, 303-04 (2008)
- an individual may satisfy standing requirements by demonstrating that his or her residence or activities are within the geographical area that might be affected by an accidental release of fission products, and in proceedings involving nuclear power plants this area has been defined as being within a 50-mile radius of such a plant; LBP-09-4, 69 NRC 178 (2009)
- Virginia Electric and Power Co.* (North Anna Power Station, Unit 3), LBP-08-15, 68 NRC 294, 304 (2008)
- if none of the affidavits submitted in support of petitioners' hearing request indicates that an organization represents the interests of the submitter, the organization has failed to establish that it has standing; LBP-08-16, 68 NRC 379-80 (2008); LBP-10-7, 71 NRC 414 (2010)
- Virginia Electric and Power Co.* (North Anna Power Station, Unit 3), LBP-08-15, 68 NRC 294, 309 (2008)
- intervenor is not necessarily foreclosed from raising their concerns about the environmental impacts of dredging if and when a decision is made later to dredge a federal navigation channel; LBP-09-7, 69 NRC 730 (2009)
- Virginia Electric and Power Co.* (North Anna Power Station, Unit 3), LBP-08-15, 68 NRC 294, 312-14 (2008)
- applicant should explain its current plan for management of low-level radioactive waste, given the lack of an offsite disposal facility, and the potential environmental impact of retaining LLRW at the reactor site for an extended period; LBP-09-16, 70 NRC 257 (2009)
- Virginia Electric and Power Co.* (North Anna Power Station, Unit 3), LBP-08-15, 68 NRC 294, 313 n.86 (2008)
- because disposal of Greater-Than-Class-C waste is the responsibility of the federal government, the disposal of GTCC radioactive waste is not directly affected by the partial closure of the Barnwell disposal facility and so is not an admissible aspect of a contention; LBP-08-16, 68 NRC 414 (2008)
- only the management of Class B and Class C wastes is properly the subject of a contention in a combined license proceeding; LBP-09-16, 70 NRC 254 (2009)
- partial closure of a low-level waste disposal facility does not directly affect the disposal of Greater-Than-Class-C radioactive waste because the disposal of that type of waste is the responsibility of the federal government; CLI-10-2, 71 NRC 48 n.109 (2010); LBP-09-4, 69 NRC 221 (2009); LBP-09-16, 70 NRC 254 (2009)

LEGAL CITATIONS INDEX

CASES

- Virginia Electric and Power Co.* (North Anna Power Station, Unit 3), LBP-08-15, 68 NRC 294, 313-14 (2008)
a contention that provides a specific statement of the legal or factual issue sought to be raised by alleging, in relevant part, that the applicant's environmental report should have examined the environmental consequences of long-term onsite storage of low-level radioactive waste is admissible; LBP-09-4, 69 NRC 225 (2009)
- Virginia Electric and Power Co.* (North Anna Power Station, Unit 3), LBP-08-15, 68 NRC 294, 313-21 (2008)
contention challenging potential unavailability of a disposal site for 10 C.F.R. 61.55(a) Class B or C low-level radioactive waste due to the recent closure of a low-level waste disposal facility is admitted; LBP-09-3, 69 NRC 160 (2009)
contentions that concern greater-than-Class-C waste, seek to require a change to the decommissioning cost estimate, or constitute a challenge to Table S-3 of 10 C.F.R. 51.51 are inadmissible; LBP-09-16, 70 NRC 253 (2009)
- Virginia Electric and Power Co.* (North Anna Power Station, Unit 3), LBP-08-15, 68 NRC 294, 314-15 (2008)
contentions of omission claim that the application fails to contain information on a relevant matter as required by law provides supporting reasons for the petitioner's belief; LBP-09-10, 70 NRC 123 (2009)
- Virginia Electric and Power Co.* (North Anna Power Station, Unit 3), LBP-08-15, 68 NRC 294, 315 (2008)
a contention is material if it shows that some significant link exists between the claimed deficiency and either the health and safety of the public, or the environment; LBP-09-26, 70 NRC 953 (2009); LBP-10-6, 71 NRC 360 (2010)
challenge to the legal sufficiency of the environmental report included in the combined license application is within the scope of the proceeding; LBP-09-4, 69 NRC 225 (2009)
- Virginia Electric and Power Co.* (North Anna Power Station, Unit 3), LBP-08-15, 68 NRC 294, 315-20 (2008)
further inquiry is warranted into the safety-related matter of whether the FSAR has failed to include necessary information concerning applicant's plans for onsite management of Class B and C waste; LBP-08-16, 68 NRC 315-20 (2008)
- Virginia Electric and Power Co.* (North Anna Power Station, Unit 3), LBP-08-15, 68 NRC 294, 316-17 (2008)
a contention that raises the issue of applicant's future compliance with the agency's regulations is not material to the proceeding; LBP-09-3, 69 NRC 163 (2009)
because applicant did not apply for an early site permit, petitioners thus are not precluded from raising an environmental issue relative to failure of applicant's environmental report to assess the onsite impacts associated with the potential long-term storage of low-level waste; LBP-08-16, 68 NRC 316-17 (2008)
contentions that challenge the legal sufficiency of applicant's environmental report and final safety analysis report are within the scope of a combined proceeding; LBP-09-10, 70 NRC 124 (2009)
Part 61 does not apply to onsite facilities where the licensee intends to store its own low-level radioactive waste; LBP-09-10, 70 NRC 121 n.57 (2009)
- Virginia Electric and Power Co.* (North Anna Power Station, Unit 3), LBP-08-15, 68 NRC 294, 316-18 (2008)
the claim that applicant should consider licensing the site for a new reactor under 10 C.F.R. Part 61 is outside the scope of a combined license proceeding; LBP-09-4, 69 NRC 221 (2009)
- Virginia Electric and Power Co.* (North Anna Power Station, Unit 3), LBP-08-15, 68 NRC 294, 317 (2008)
arguments premised on the prediction that someday a nuclear plant site will become a permanent storage or disposal facility for low-level radioactive waste are too speculative and therefore not material to the findings the NRC must make to support the action that is involved in the present proceeding; LBP-08-16, 68 NRC 414 (2008); LBP-09-4, 69 NRC 221 (2009); LBP-09-16, 70 NRC 255 (2009)
a contention of omission becomes moot if applicant cures the omission in its application; LBP-09-4, 69 NRC 190 (2009); LBP-09-16, 70 NRC 245 (2009); LBP-10-16, 72 NRC 395 (2010)

LEGAL CITATIONS INDEX

CASES

- a contention of omission need only identify the regulatively required missing information and provide enough facts to show that the application is incomplete; LBP-09-3, 69 NRC 161 (2009); LBP-09-4, 69 NRC 190 (2009)
- Part 61 of Title 10 applies only to land disposal facilities that receive waste from others, not to onsite facilities where the licensee intends to store its own low-level radioactive waste; CLI-09-3, 69 NRC 73 (2009)
- the pleading requirements of 10 C.F.R. 2.309(f)(1)(v) calling for a recitation of facts or expert opinion supporting the issue raised are inapplicable to a contention of omission beyond identifying the regulatively required missing information; LBP-09-4, 69 NRC 190 (2009); LBP-09-16, 70 NRC 244 (2009); LBP-10-16, 72 NRC 395 (2010)
- Virginia Electric and Power Co.* (North Anna Power Station, Unit 3), LBP-08-15, 68 NRC 294, 317-18 (2008)
- intervenors characterize applicant's silence on the point that its reactor is not developed, proven, or available as a material omission, which should result in the contention being admitted for adjudication; LBP-10-10, 71 NRC 599 n.350 (2010)
- Virginia Electric and Power Co.* (North Anna Power Station, Unit 3), LBP-08-15, 68 NRC 294, 318 (2008)
- low-level radioactive waste disposal contentions have been admitted when that issue was not sufficiently discussed in the applications and there was no mention of the closure of the Barnwell facility; LBP-09-18, 70 NRC 410-11 (2009)
- Virginia Electric and Power Co.* (North Anna Power Station, Unit 3), LBP-08-15, 68 NRC 294, 321-25 (2008)
- an environmental contention is not litigable in a combined license proceeding if it has already been resolved in an early site permit proceeding; CLI-09-3, 69 NRC 71 n.8 (2009)
- Virginia Electric and Power Co.* (North Anna Power Station, Unit 3), LBP-08-15, 68 NRC 294, 331-32 (2008)
- contention that fails to dispute dose calculations presented in the application or that those calculated doses fail to comply with all relevant NRC regulations is inadmissible; LBP-08-16, 68 NRC 396 (2008)
- Virginia Electric and Power Co.* (North Anna Power Station, Unit 3), LBP-08-15, 68 NRC 294, 335 (2008)
- petitioner does not have to prove its contention at the admissibility stage; LBP-09-26, 70 NRC 954 (2009); LBP-10-6, 71 NRC 361 (2010)
- petitioner's failure to cite any document that supports its theory that uranium supplies will be insufficient to support the operation of the facility during its licensed period renders the contention inadmissible; LBP-08-16, 68 NRC 395 (2008); LBP-08-21, 68 NRC 574 (2008)
- Virginia Electric and Power Co.* (North Anna Power Station, Unit 3), LBP-08-15, 68 NRC 294, 336 (2008)
- contention that challenges NRC's regulations is inadmissible; LBP-08-16, 68 NRC 390 (2008)
- Virginia Electric and Power Co.* (North Anna Power Station, Unit 3), LBP-08-15, 68 NRC 294, 336-37 (2008)
- challenges to NRC regulations are inadmissible; LBP-08-21, 68 NRC 587 (2008)
- the Waste Confidence Rule is applicable to all new reactor proceedings, and contentions challenging the rule or seeking its reconsideration are inadmissible; LBP-08-16, 68 NRC 416 (2008); LBP-08-17, 68 NRC 456 (2008); LBP-09-17, 70 NRC 337 (2009); LBP-09-18, 70 NRC 406 (2009)
- Virginia Electric and Power Co.* (North Anna Power Station, Unit 3), LBP-08-15, 68 NRC 294, 337 (2008)
- challenges to the Waste Confidence Rule are prohibited; LBP-09-10, 70 NRC 114 (2009)
- licensing boards may not admit a contention that directly or indirectly challenges 10 C.F.R. 51.51, Table S-3; LBP-09-10, 70 NRC 114 (2009)
- Virginia Electric and Power Co.* (North Anna Power Station, Unit 3), LBP-09-27, 70 NRC 992, 996 (2009)
- the final safety analysis report was configured to accommodate at least 10 years of onsite storage; LBP-10-20, 72 NRC 600 n.33 (2010)
- Virginia Electric and Power Co.* (North Anna Power Station, Unit 3), LBP-09-27, 70 NRC 992, 998 (2009)
- intervenors with contentions rooted in new material information need not make the same showing as intervenors who have simply delayed filing their contentions until after expiration of the regulatory deadline; LBP-10-9, 71 NRC 505 n.46 (2010)

LEGAL CITATIONS INDEX

CASES

- Virginia Electric and Power Co.* (North Anna Power Station, Unit 3), LBP-09-27, 70 NRC 992, 1016 (2009), *reconsideration denied*, Licensing Board Order (Denying Motion for Reconsideration of LBP-09-27) (Mar. 22, 2010)
an amended contention challenging applicant's FSAR LLRW storage plan was admitted based on intervenor's adequately supported challenge to the plan's provisions regarding waste volume reduction; LBP-10-8, 71 NRC 446 n.9 (2010)
- Virginia Electric and Power Co.* (North Anna Power Station, Units 1 and 2), ALAB-146, 6 AEC 631 (1973)
licensing boards have been lenient in permitting pro se petitioners the opportunity to cure procedural defects in petitions to intervene regarding standing; LBP-09-18, 70 NRC 396 (2009)
- Virginia Electric and Power Co.* (North Anna Power Station, Units 1 and 2), ALAB-146, 6 AEC 631, 633 (1973)
a petition that is not submitted under oath and does not state expressly the manner in which the petitioner's interest would be affected by the proceeding involves defects that are readily curable; LBP-07-11, 66 NRC 55 (2007); LBP-08-6, 67 NRC 277 (2008)
participation of intervenors in licensing proceedings can furnish valuable assistance to the adjudicatory process; LBP-08-6, 67 NRC 277 (2008)
- Virginia Electric and Power Co.* (North Anna Power Station, Units 1 and 2), ALAB-146, 6 AEC 631, 633-34 (1973)
NRC intervention rules are strict by design; LBP-09-1, 69 NRC 17 (2009)
while there must be strict observance of the requirements governing intervention, in order that the adjudicatory process is invoked only by those persons who have real interests at stake and who seek resolution of concrete issues, it is not necessary to the attainment of that goal that interested persons be rebuffed by the inflexible application of procedural requirements; LBP-07-11, 66 NRC 54 (2007); LBP-08-6, 67 NRC 278 (2008)
- Virginia Electric and Power Co.* (North Anna Power Station, Units 1 and 2), ALAB-342, 4 NRC 98, 105-06 (1976)
damage to applicant's reputation does not constitute a threatened injury to the interests of union members; CLI-08-19, 68 NRC 266 (2008)
- Virginia Electric and Power Co.* (North Anna Power Station, Units 1 and 2), ALAB-342, 4 NRC 98, 107 (1976)
there is no relationship between the legislative purpose underlying the safety provisions of the Atomic Energy Act and petitioner's interest in protecting its reputation and avoiding damage suits; CLI-08-19, 68 NRC 266 (2008)
- Virginia Electric and Power Co.* (North Anna Power Station, Units 1 and 2), ALAB-363, 4 NRC 631, 633 (1976)
an enforcement contention might appropriately address the factual underpinnings of the NRC Staff's finding of violation or the mitigating factors to be considered in determining a penalty; CLI-06-16, 63 NRC 720 (2006)
- Virginia Electric and Power Co.* (North Anna Power Station, Units 1 and 2), ALAB-363, 4 NRC 631, 633-34 (1976)
discretionary intervention is granted to an intervenor who raised a serious issue and was well equipped to make a contribution to the record; LBP-09-6, 69 NRC 438 n.386 (2009)
only eight petitions for discretionary intervention have ever been granted during the 30 years NRC has applied the current six-factor test; CLI-06-16, 63 NRC 717 (2006)
- Virginia Electric and Power Co.* (North Anna Power Station, Units 1 and 2), ALAB-522, 9 NRC 54, 56 (1979)
close proximity to a facility has always been deemed to be enough, standing alone, to establish the requisite interest to confer standing; LBP-06-23, 64 NRC 270 (2006); LBP-07-4, 65 NRC 294 (2007); LBP-07-11, 66 NRC 52 n.22 (2007)
for construction permit and operating license proceedings, the Commission generally has recognized a presumption in favor of standing for those persons who have frequent contacts with the area near a nuclear power plant; LBP-09-4, 69 NRC 177 (2009)

LEGAL CITATIONS INDEX

CASES

- the Commission has accepted a proximity presumption granting standing to residents within 50 miles of a reactor, but has not accepted any such presumption in nonreactor cases; LBP-07-14, 66 NRC 178 (2007)
- the proximity approach to standing presumes that the elements of standing are satisfied if an individual lives within the zone of possible harm from the source of radioactivity; LBP-06-7, 63 NRC 195-96 (2006)
- the rule of thumb generally applied in reactor licensing proceedings includes a presumption of standing for persons who reside or frequent the area within a 50-mile radius of the facility; LBP-09-4, 69 NRC 181 (2009)
- Virginia Electric and Power Co.* (North Anna Power Station, Units 1 and 2), ALAB-536, 9 NRC 402, 404 n.2 (1979)
- there are certain organizations for which member authorization for organizational standing might be presumed; LBP-09-6, 69 NRC 434 (2009)
- Virginia Electric and Power Co.* (North Anna Power Station, Units 1 and 2), CLI-74-16, 7 AEC 313, 314 (1974)
- in procedural and scheduling matters, where first-hand contact with and appreciation for all the circumstances surrounding a case are necessary, maximum reliance on the proper discretion of a presiding officer is essential; CLI-10-17, 72 NRC 47 n.255 (2010)
- Virginia Electric and Power Co.* (North Anna Power Station, Units 1 and 2), CLI-74-16, 7 AEC 313, 315 (1974)
- deliberative process information regarding a possible geological fault at a nuclear power plant site was made public when it was not discovered until after the plants' construction permits were issued and allegations, sufficient to warrant an investigation, were made that the licensee had intentionally withheld information concerning the fault; LBP-06-25, 64 NRC 391 n.110 (2006)
- Virginia Electric and Power Co.* (North Anna Power Station, Units 1 and 2), LBP-84-40A, 20 NRC 1195, 1199 (1984)
- a board may reframe contentions, following a determination of their admissibility, for purposes of clarity, succinctness, and a more efficient proceeding; CLI-06-16, 63 NRC 720 (2006); LBP-06-22, 64 NRC 236 n.10 (2006); LBP-08-12, 68 NRC 30 n.1 (2008)
- a board's efforts at contention reformulation did not achieve the goal of clarity, succinctness, and a more efficient proceeding; CLI-09-12, 69 NRC 553 (2009)
- Virginia Petroleum Jobbers Association v. Federal Power Commission*, 259 F.2d 921, 925 (D.C. Cir. 1958)
- four factors should be considered in ruling on any request for stay; LBP-07-11, 66 NRC 97 (2007)
- mere injuries, however substantial, in terms of money, time, and energy necessarily expended in the absence of a stay, are not enough; CLI-10-8, 71 NRC 153 n.56 (2010)
- Volmar Distributors, Inc. v. New York Post Co.*, 152 F.R.D. 36, 40 (S.D.N.Y. 1993)
- speculation about death or witness intimidation is simply insufficient to overcome the real probability of substantial prejudice; LBP-06-13, 63 NRC 541 n.56 (2006)
- Von Bulow v. Von Bulow*, 811 F.2d 136, 144 (2d Cir.), *cert. denied*, 481 U.S. 1015 (1987)
- the burden is on a party claiming the protection of a privilege to establish those facts that are the essential elements of the privilege; LBP-06-10, 63 NRC 335 n.68 (2006)
- Wagner v. City of Cleveland*, 574 N.E.2d 533, 536-37 (Ohio Ct. App. 1988)
- lower court's decision on a moot issue was found to be a vain act and a nullity; LBP-09-14, 70 NRC 196 n.15 (2009)
- Walsh Securities, Inc. v. Cristo Property Management*, 7 F. Supp. 2d 523, 526-27 (D.N.J. 1998)
- convenience in managing caseload and efficiency in using resources, the interests of nonparties, and the public interest may be considered in determining whether to delay a proceeding; LBP-06-13, 63 NRC 535 n.30 (2006)
- Warm Springs Dam Task Force v. Gribble*, 621 F.2d 1017, 1026-27 (9th Cir. 1980)
- an agency would not proceed in the face of any substantial risk that a dam might fail, making consequences of such a failure remote and speculative; CLI-10-18, 72 NRC 90 n.192 (2010)
- Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc.*, 559 F.2d 841, 843, 845 (D.C. Cir. 1977)
- a stay pending appeal is granted where the absence of a stay would mean the destruction of the business in its current form; CLI-10-8, 71 NRC 152 n.54 (2010)

LEGAL CITATIONS INDEX

CASES

- Washington Public Power Supply System* (Hanford No. 2 Nuclear Power Plant), ALAB-113, 6 AEC 251, 252 (1973)
key safety issues must be resolved in the hearing, not post-hearing by NRC Staff and applicant; LBP-08-25, 68 NRC 829 (2008)
- Washington Public Power Supply System* (WPPSS Nuclear Project No. 2), LBP-79-7, 9 NRC 330, 337-38 (1979)
occasional trips to areas located close to reactors have been found to be insufficient grounds to demonstrate a risk to the intervenor's health and safety; LBP-08-9, 67 NRC 429 n.39 (2008)
- Washington Public Power Supply System* (WPPSS Nuclear Project No. 2), LBP-79-7, 9 NRC 330, 338 (1979)
the agency has denied proximity-based standing where contact has been limited to mere occasional trips to areas located close to reactors; CLI-07-21, 65 NRC 524 (2007)
- Washington Public Power Supply System* (WPPSS Nuclear Project No. 3), ALAB-747, 18 NRC 1167 (1983)
availability of Staff review outside the hearing process generally does not constitute adequate protection of a private party's rights when considering 10 C.F.R. 2.309(c)(1)(ii); LBP-08-12, 68 NRC 42 (2008)
- Washington Public Power Supply System* (WPPSS Nuclear Project No. 3), ALAB-747, 18 NRC 1167, 1171 (1983)
under the abuse-of-discretion review standard, appellant must persuade the Commission that a reasonable mind could reach no other result; CLI-06-16, 63 NRC 715 (2006)
- Washington Public Power Supply System* (WPPSS Nuclear Project No. 3), ALAB-747, 18 NRC 1167, 1173 (1983)
the significance of the issue being raised by a new contention would be a relevant "good cause" consideration; LBP-10-21, 72 NRC 648-49 (2010)
- Washington Public Power Supply System* (WPPSS Nuclear Project No. 3), ALAB-747, 18 NRC 1167, 1175 (1983)
a request for action under 10 C.F.R. 2.206 is not a substitute for participation in an adjudication; LBP-08-25, 68 NRC 828 (2008)
- Washington Public Power Supply System* (WPPSS Nuclear Project No. 3), ALAB-747, 18 NRC 1167, 1175-76 (1983)
participation of the NRC Staff in a licensing proceeding is not equivalent to participation by a private intervenor; LBP-06-23, 64 NRC 317 (2006)
- Washington Public Power Supply System* (WPPSS Nuclear Project No. 3), LBP-96-21, 44 NRC 134, 136 (1996)
although NRC may require an applicant to submit certain information, the NRC cannot delegate its duty to comply with the National Environmental Policy Act to the applicant; LBP-09-10, 70 NRC 87 (2009)
- Washington Public Power Supply System* (WPPSS Nuclear Project Nos. 1 and 2), CLI-82-29, 16 NRC 1221, 1228-30 (1982)
in the context of a construction permit extension proceeding, the Commission outlines its understanding of the basic parameters under which the Atomic Energy Act § 185a "good cause" standard is to be applied; LBP-10-7, 71 NRC 416 (2010)
- Washington Public Power Supply System* (WPPSS Nuclear Project Nos. 3 and 5), CLI-77-11, 5 NRC 719, 722 (1977)
NRC has traditionally read the language "authorized by law" to be the functional equivalent of "not prohibited by law"; LBP-07-6, 65 NRC 464 (2007)
- Water Quality Ass'n Employees' Benefit Corp. v. United States*, 795 F.2d 1303, 1307 (7th Cir. 1986)
where possible, a regulation should be construed in a manner that avoids internal inconsistencies; LBP-06-1, 63 NRC 57 (2006)
- Watson v. Lowcountry Red Cross*, 974 F.2d 482, 487-88 (4th Cir. 1992)
with confidential protection orders in place, weighing the privacy invasion from public disclosure against a party's need for the materials is no longer appropriate, instead becoming a red herring; LBP-06-25, 64 NRC 387, 396 (2006)

LEGAL CITATIONS INDEX

CASES

- Weinberger v. Catholic Action of Hawaii*, 454 U.S. 139 (1981)
National Environmental Policy Act claims are governed by NEPA's own specific nondisclosure provision rather than by more general provisions in the Atomic Energy Act or in NRC regulations; CLI-08-26, 68 NRC 523 (2008)
security considerations may permit or require modification of some of the NEPA procedures even though security issues do not result in some kind of NEPA waiver; CLI-08-8, 67 NRC 196 (2008)
Staff may withhold some facts underlying its findings and conclusions on terrorism-related risks as classified national security information; CLI-07-11, 65 NRC 151 (2007)
- Weinberger v. Catholic Action of Hawaii*, 454 U.S. 139, 142 (1981)
to the fullest extent possible, all federal agencies shall include in every recommendation or report on proposals for legislation and other major federal actions significantly affecting the quality of the human environment, a detailed statement discussing the environmental impact of the proposed action and possible alternatives; CLI-08-26, 68 NRC 531 (2008)
- Weinberger v. Catholic Action of Hawaii*, 454 U.S. 139, 143 (1981)
NEPA § 102(2)(C) contemplates that in a given situation a federal agency might have to include environmental considerations in its decisionmaking process, yet withhold public disclosure of any NEPA documents, in whole or in part, under the authority of a FOIA exemption; CLI-08-1, 67 NRC 15 (2008); LBP-08-7, 67 NRC 370 (2008)
the Commission need not and will not provide petitioner with access to exempt documents; CLI-08-1, 67 NRC 17 (2008)
- Weinberger v. Catholic Action of Hawaii*, 454 U.S. 139, 144-46 (1981)
if the existence of a document is classified, such that disclosure of the title and a description of the contents would also be classified, then, where the environmental impact statement is classified because the very presence or absence of nuclear weapons is classified, FOIA Exemption 1 would apply, and even limited information, such as the title of the document, could be withheld; CLI-08-1, 67 NRC 16 n.71 (2008)
- Weinberger v. Catholic Action of Hawaii*, 454 U.S. 139, 145 (1981)
Congress, in enacting section 102(2)(C) of NEPA, set the balance between the public's need to be informed and the government's need for secrecy; LBP-08-7, 67 NRC 371 (2008)
disclosure of documents under the National Environmental Policy Act is expressly governed by the Freedom of Information Act; CLI-08-5, 67 NRC 176 (2008)
protecting national security information overrides ordinary NEPA disclosure requirements; CLI-08-1, 67 NRC 9 (2008)
- Weinberger v. Catholic Action of Hawaii*, 454 U.S. 139, 146 (1981)
an inability to adjudicate or publicize NEPA information does not justify an agency's failure to perform a NEPA analysis; CLI-08-1, 67 NRC 21 n.98 (2008)
- Weinberger v. Catholic Action of Hawaii*, 454 U.S. 139, 146-47 (1981)
NEPA does not contemplate adjudications resulting in the disclosure of matters under law considered secret or confidential; CLI-08-8, 67 NRC 201 (2008)
public policy forbids the maintenance of any suit in a court of justice, the trial of which would inevitably lead to the disclosure of matters that the law itself regards as confidential, and respecting which it will not allow the confidence to be violated; CLI-08-1, 67 NRC 20 (2008)
- Weinberger v. Catholic Action of Hawaii*, 454 U.S. 139, 202-03 (1981)
NEPA provides that any information kept from the public under the exemptions in FOIA need not be disclosed; CLI-08-1, 67 NRC 15 (2008)
- Weinberger v. Romero-Barcelo*, 456 U.S. 305, 311 (1982)
an injunction is an equitable remedy, not a remedy that issues as of course; CLI-06-27, 64 NRC 401 n.9 (2006)
- Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312 (1982)
the basis for injunctive relief has always been irreparable injury and the inadequacy of legal remedies; CLI-06-27, 64 NRC 401 n.9 (2006)
- Western Fuels-Utah, Inc.*, 900 F.2d 318, 320 (D.C. Cir. 1990)
courts must construe regulations in light of the statutes they implement, keeping in mind that where there is an interpretation of an ambiguous regulation that is reasonable and consistent with the statute, that interpretation is to be preferred; LBP-09-16, 70 NRC 261 (2009)

LEGAL CITATIONS INDEX

CASES

- Westinghouse Electric Corp. v. Republic of the Philippines*, 951 F.2d 1414, 1418 (3d Cir. 1991)
in the context of privilege covering voluntarily disclosed information, the privilege holder has waived its privilege as to the agency that received the investigative materials; CLI-08-6, 67 NRC 183 (2008)
- Westinghouse Electric Corp.* (Nuclear Fuel Export License for Czech Republic — Temelin Nuclear Power Plants), CLI-94-7, 39 NRC 322, 331 (1994)
redressability requires petitioner to show that its alleged injury in fact could be cured or alleviated by some action of the tribunal; LBP-09-13, 70 NRC 177 (2009); LBP-10-16, 72 NRC 382 (2010)
- Westlands Water District v. U.S. Department of Interior*, 376 F.3d 853, 868 (9th Cir. 2004)
existence of a viable but unexamined alternative renders an environmental impact statement inadequate; LBP-10-10, 71 NRC 584-85 n.288 (2010)
NEPA's rule of reason does not require an agency to undertake a separate analysis of alternatives that are not significantly distinguishable from alternatives actually considered, or which have substantially similar consequences; CLI-10-18, 72 NRC 82 (2010)
under the rule of reason, the environmental impact statement need not consider an infinite range of alternatives, only reasonable or feasible ones; LBP-07-9, 65 NRC 607, 631 (2007); LBP-09-10, 70 NRC 127 (2009); LBP-09-17, 70 NRC 379 (2009); LBP-09-21, 70 NRC 626 n.271 (2009)
- Westlands Water District v. U.S. Department of the Interior*, 376 F.3d 853, 871-72 (9th Cir. 2004)
an agency need not undertake a separate NEPA analysis of alternatives that are not significantly distinguishable from alternatives already considered, or that have substantially similar consequences; CLI-06-29, 64 NRC 422 n.22 (2006)
- Westlands Water District v. U.S. Department of the Interior*, 376 F.3d 853, 872 (9th Cir. 2004)
the purpose of addressing possible mitigation measures in a final environmental impact statement is to ensure that the agency has taken a hard look at the potential environmental impacts of a proposed action; CLI-06-29, 64 NRC 426 (2006)
- Wetlands Action Network v. Army Corps of Engineers*, 222 F.3d 1105, 1114 (9th Cir. 2000), *cert. denied*, 534 U.S. 815 (2001)
the burden of a settlement with an intervenor regarding NEPA issues falls on the NRC Staff; CLI-06-18, 64 NRC 5 (2006)
- Whalen v. Roe*, 429 U.S. 589, 600-01 (1977)
a state program tracking sensitive information about patients' drug prescriptions did not violate the patients' right of privacy because there was no public disclosure of the information outside of the state government; LBP-06-25, 64 NRC 386 (2006)
- Whalen v. Roe*, 429 U.S. 589, 601 (1977)
the remote possibility that judicial supervision of the evidentiary use of particular items of stored information will provide inadequate protection is not adequate to find a privacy interest has been violated; LBP-06-25, 64 NRC 386 n.80 (2006)
- Wheeler v. Central Intelligence Agency*, 271 F. Supp. 2d 132, 139 (D.D.C. 2003)
discovery is generally unavailable in FOIA actions; CLI-08-5, 67 NRC 177 (2008)
- Whiteland Woods, L.P. v. W. Whiteland*, 193 F. 3d 177, 181 (3d Cir. 1999)
as long as the administrative proceedings walk, talk, and squawk very much like an Article III judicial proceeding, they should be open to the public; LBP-10-2, 71 NRC 208 n.59 (2010)
- Whitman v. American Trucking Associations, Inc.*, 531 U.S. 457, 468 (2001)
Congress does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions, hiding elephants in mouseholes; LBP-10-11, 71 NRC 624 (2010)
like Congress, the Commission is not to be assumed to hide elephants in mouseholes; LBP-08-1, 67 NRC 48 (2008)
- Whitmore v. Arkansas*, 495 U.S. 149, 158-59 (1990)
standing generally has been denied when the threat of injury is not concrete and particularized; LBP-09-13, 70 NRC 176 (2009); LBP-10-16, 72 NRC 381 (2010)
- Wicker Park Historic District Preservation Fund v. Pierce*, 565 F. Supp. 1066, 1075-76 (N.D. Ill. 1982)
the National Historic Preservation Act and its implementing regulations do not impose an obligation to consider alternative sites; CLI-06-9, 63 NRC 449 (2006)
- Wickwire Gavin, P.C. v. U.S. Postal Service*, 356 F.3d 588 (4th Cir. 2004)
challenges in FOIA cases routinely are resolved on the basis of summary judgment pleadings; LBP-08-7, 67 NRC 371 (2008)

LEGAL CITATIONS INDEX

CASES

- Wiener v. Federal Bureau of Investigation*, 943 F.2d 972, 977 (9th Cir. 1991)
when access to documents is disputed in FOIA litigation, the government must submit detailed public affidavits identifying the documents withheld, the FOIA exemptions claimed, and a particularized explanation of why each document falls within the claimed exemption; CLI-08-1, 67 NRC 16 (2008)
- Wilderness Society v. Griles*, 824 F.2d 4, 11 (D.C. Cir. 1987)
the requisite injury that qualifies a petitioner for standing may be either actual or threatened; LBP-06-10, 63 NRC 327 (2006); LBP-06-23, 64 NRC 270 (2006); LBP-07-11, 66 NRC 52 (2007); LBP-08-6, 67 NRC 271 (2008); LBP-09-28, 70 NRC 1024 (2009)
to establish standing, the requisite injury may be either actual or threatened, but must arguably lie within the zone of interests protected by the statutes governing the proceeding; LBP-07-4, 65 NRC 294 (2007)
- Wilderness Watch & Public Employees for Environmental Responsibility v. Mainella*, 375 F.3d 1085, 1096 (11th Cir. 2004)
an explanation of the applicability of a categorical exclusion is required where special circumstances necessitating an environmental review have been alleged; LBP-06-4, 63 NRC 109 n.36 (2006)
- Wilderness Workshop v. U.S. Bureau of Land Management*, 531 F.3d 1220, 1229 (10th Cir. 2008)
projects, for the purposes of the National Environmental Policy Act, are described as proposed actions, or proposals in which action is imminent; CLI-09-14, 69 NRC 593 n.77 (2009)
- Williams v. Eastside Lumberyard and Supply Co.*, 190 F. Supp. 2d 1104, 1114 (S.D. Ill. 2001)
arguments that an intervenor fails to adequately develop are treated as waived; LBP-06-19, 64 NRC 76 n.21 (2006)
- Williams v. United States*, 379 F.2d 719, 723 (5th Cir. 1967)
some circumstances surrounding a person's false statement may be so obvious that knowledge of its character may be fairly attributed to him; CLI-10-23, 72 NRC 223 n.52 (2010)
- Wilshire Westwood Associates v. Atlantic Richfield Corp.*, 881 F.2d 801, 804 (9th Cir. 1989)
pursuant to the rule of the last antecedent, qualifying words, phrases, and clauses must be applied to the words or phrases immediately preceding them and are not to be construed as extending to and including others more remote; LBP-06-1, 63 NRC 56 n.11 (2006)
- Wilson v. Westinghouse Electric Corp.*, 838 F.2d 286, 289-90 (8th Cir. 1988)
federal courts have rejected the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome, and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits; LBP-07-11, 66 NRC 54 (2007); LBP-08-6, 67 NRC 278 (2008)
- Winters v. United States*, 207 U.S. 564, 567 (1908)
contamination of water on the reservation and depletion of a Tribe's water sources as a result of mining operations is asserted as a violation of the Tribe's Winters Rights, under which it is to receive a sufficient quantity of quality water on the Reservation; LBP-08-24, 68 NRC 743 n.291 (2008)
- Winters v. United States*, 207 U.S. 564, 567, 573 (1908)
it is essential and necessary that all of the waters of the river flow down the channel uninterruptedly and undiminished in quantity and undeteriorated in quality and are to be fully protected against invasion by other parties; LBP-08-24, 68 NRC 743 n.292 (2008)
- Wisconsin v. Weinberger*, 745 F.2d 412, 418 (7th Cir. 1984)
a supplemental environmental impact statement is needed where new information raises new concerns of sufficient gravity that another, formal in-depth look at the environmental consequences of the proposed action is necessary; CLI-06-3, 63 NRC 28 (2005)
- Wisconsin v. Weinberger*, 745 F.2d 412, 422-23 (7th Cir. 1984)
an environmental impact statement need not be supplemented where additional studies done after its publication had inconsistent results and limited relevance to the a proposed project; CLI-06-3, 63 NRC 29 (2005)
- Wisconsin Electric Power Co.* (Koshkonong Nuclear Plant, Units 1 and 2), CLI-74-45, 8 AEC 928, 929 (1974)
discovery is not permitted before a petition to intervene has been granted; CLI-10-24, 72 NRC 463 n.70 (2010)

LEGAL CITATIONS INDEX

CASES

- Wisconsin Electric Power Co.* (Point Beach Nuclear Plant, Unit 1), ALAB-696, 16 NRC 1245, 1263 (1982)
petitioners are precluded from using discovery as a device to uncover additional information supporting the admissibility of contentions; CLI-07-18, 65 NRC 416 (2007)
- Wisconsin Gas Co. v. Federal Energy Regulatory Commission*, 758 F.2d 669, 674 (D.C. Cir. 1985)
a party seeking a stay must show it faces imminent, irreparable harm that is both certain and great; CLI-06-8, 63 NRC 237 (2006)
- Withrow v. Larkin*, 421 U.S. 35, 53 (1975)
the Commission acts as adjudicator and in that light considers the reinstatement of a construction permit afresh, without regard for its earlier views; CLI-10-6, 71 NRC 120 (2010)
- Withrow v. Larkin*, 421 U.S. 35, 55 (1975)
there is a longstanding presumption of regularity, under which adjudicatory bodies presume, absent strong and concrete evidence otherwise, that government agencies and their employees will do their jobs honestly and properly; CLI-09-14, 69 NRC 606 (2009)
- Worthington v. Endee*, 177 F.R.D. 113, 118 (N.D.N.Y. 1998)
if a company claims that the internal investigation establishes that it has met its obligation, then the company has waived the attorney-client privilege associated with the internal investigation; CLI-08-6, 67 NRC 184 (2008)
- Wrangler Laboratories*, ALAB-951, 33 NRC 505, 513-14 (1991)
interpretation of any regulation must begin with the language and structure of the provision itself; LBP-06-23, 64 NRC 299 n.170 (2006)
- Wyoming Outdoor Council v. U.S. Army Corps of Engineers*, 351 F. Supp. 2d 1232, 1242 (D. Wyo. 2005)
NRC cannot either fail to perform an adequate evaluation or evade a NEPA responsibility by deferring to another agency; CLI-10-5, 71 NRC 110 n.107 (2010)
- Wyoming Outdoor Council v. U.S. Army Corps of Engineers*, 351 F. Supp. 2d 1232, 1250 (D. Wyo. 2005)
mitigation measures have been relied upon to avoid the need to prepare an environmental impact statement; CLI-06-29, 64 NRC 427 n.56 (2006)
- Yankee Atomic Electric Co. v. United States*, 73 Fed. Cl. 249, 315 (2006)
recoverability of spent nuclear fuel storage expenses is equally applicable to greater-than-Class-C waste, which is stored onsite in the same manner as spent nuclear fuel; CLI-10-2, 71 NRC 47 n.106 (2010)
- Yankee Atomic Electric Co. v. United States*, 536 F.3d 1268, 1277 (Fed. Cir. 2008)
utilities must dispose of greater-than-Class-C waste before they can decommission reactor sites; CLI-10-2, 71 NRC 47 n.105 (2010)
- Yankee Atomic Electric Co. v. United States*, 536 F.3d 1268, 1277, 1278-79 (Fed. Cir. 2008)
greater-than-Class-C waste is the responsibility of the federal government; CLI-10-2, 71 NRC 47 (2010)
- Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-94-3, 39 NRC 95, 102 n.10 (1994)
an assertion that members live “close” to transportation routes at issue is insufficient for standing; CLI-07-18, 65 NRC 410 n.27 (2007)
an organization seeking to intervene in an NRC proceeding must allege that the challenged action will cause a cognizable injury to the organization’s interests or to the interests of its members; LBP-06-20, 64 NRC 144 (2006); LBP-09-10, 70 NRC 115 (2009); LBP-10-15, 72 NRC 276 (2010)
- Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-94-3, 39 NRC 95, 103 (1995)
discretionary intervention is an extraordinary procedure that is rarely granted; CLI-06-16, 63 NRC 716 (2006)
- Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-96-1, 43 NRC 1, 6 (1996)
a detailed discussion of the requirements to show standing is provided; LBP-09-2, 69 NRC 94 n.17 (2009)
a requirement for a nexus between the injury claimed and the right being asserted was rejected; LBP-09-1, 69 NRC 18 (2009)
an injury that establishes standing must be fairly traceable to the challenged action and likely to be redressed by a favorable decision; LBP-07-3, 65 NRC 249 (2007)
as long as either denial of a license or issuance of a decision mandating compliance with legal requirements would alleviate a petitioner’s potential injury, then under longstanding NRC

LEGAL CITATIONS INDEX

CASES

jurisprudence the petitioner may prosecute any admissible contention that could result in the denial or in the compliance decision; CLI-09-20, 70 NRC 918 n.28 (2009)

in determining whether an individual or organization should be granted party status in a proceeding based on standing "as of right," the agency has applied contemporaneous judicial standing concepts; LBP-07-10, 66 NRC 14 (2007); LBP-08-9, 67 NRC 426 (2008); LBP-08-16, 68 NRC 378 (2008); LBP-08-17, 68 NRC 438 (2008); LBP-08-21, 68 NRC 559 n.2 (2008); LBP-08-26, 68 NRC 911 (2008); LBP-09-3, 69 NRC 149 (2009)

once parties demonstrate that they have standing, the parties will then be free to assert any contention, which, if proved, will afford them the relief they seek; CLI-09-9, 69 NRC 340 (2009); LBP-09-1, 69 NRC 18 (2009); LBP-09-4, 69 NRC 187 (2009); LBP-09-10, 70 NRC 69 (2009); LBP-09-16, 70 NRC 242 (2009); LBP-09-21, 70 NRC 592 (2009); LBP-10-15, 72 NRC 276 (2010)

the agency applies contemporaneous judicial standing concepts that require a participant to establish that it has suffered or will suffer a distinct and palpable injury that constitutes injury-in-fact within the zones of interests arguably protected by the governing statutes; LBP-07-3, 65 NRC 249 (2007)

to establish standing "as of right," petitioner must show that has suffered or will suffer a distinct and palpable harm that constitutes injury-in-fact within the zone of interests arguably protected by the governing statutes, the injury is fairly traceable to the challenged action, and the injury is likely to be redressed by a favorable decision; CLI-06-2, 63 NRC 14 (2006); LBP-06-20, 64 NRC 143 (2006); LBP-08-17, 68 NRC 438 (2008); LBP-09-10, 70 NRC 69 (2009); LBP-09-18, 70 NRC 395 (2009); LBP-09-28, 70 NRC 1024 (2009); LBP-10-1, 71 NRC 176 (2010); LBP-10-7, 71 NRC 410 (2010); LBP-10-15, 72 NRC 275 (2010); LBP-10-21, 72 NRC 639 (2010)

Yankee Atomic Electric Co. (Yankee Nuclear Power Station), CLI-96-1, 43 NRC 1, 6 n.3 (1996)

intervenor's contentions may be limited to those that will afford it relief from the injuries asserted as a basis for standing; LBP-09-1, 69 NRC 18 n.19 (2009)

Yankee Atomic Electric Co. (Yankee Nuclear Power Station), CLI-96-1, 43 NRC 1, 9 (1996)

a board is not to be involved simply in formalistic redrafting in connection with a decommissioning funding plan, but if the applicant's cost estimate lacks sufficient support regarding the direct and indirect costs involved, then the availability of the periodic adjustment should not be the basis, in and of itself, for passing the plan forward with the hope that its deficiencies will be rectified at some point in the future; LBP-06-15, 63 NRC 683 (2006)

Yankee Atomic Electric Co. (Yankee Nuclear Power Station), CLI-96-1, 43 NRC 1, 9-11 (1996)

the Commission has used sua sponte review as a vehicle to set a specific timetable; CLI-07-1, 65 NRC 4 (2007)

Yankee Atomic Electric Co. (Yankee Nuclear Power Station), CLI-96-7, 43 NRC 235, 249 (1996)

all intervenors and their experts need to provide at the contention admission stage is a reasoned presentation sufficient to warrant further inquiry; LBP-10-10, 71 NRC 580 (2010)

although support for a contention may be weak and the contention may be technically imperfect, it may still raise a valid and significant issue with reasonably specific factual and legal allegations and be sufficient support further inquiry; LBP-06-10, 63 NRC 381 (2006)

although the contention admissibility rule imposes on a petitioner the burden of going forward with a sufficient factual basis, it does not shift the ultimate burden of proof from applicant to petitioner; LBP-06-10, 63 NRC 342 (2006); LBP-06-23, 64 NRC 359 (2005); LBP-09-27, 70 NRC 1006-07 (2009); LBP-10-24, 72 NRC 756-57 (2010)

demonstration that intervention petitioners have expert assistance to address the issues they raise is sometimes in the form of an affidavit or written statement of an expert's opinion, but this is not required; LBP-06-10, 63 NRC 380 (2006)

for factual disputes, petitioner must present sufficient information to show a genuine dispute; CLI-10-20, 72 NRC 193 n.42 (2010); LBP-10-24, 72 NRC 756-57 (2010)

for factual disputes, petitioner need not proffer facts in formal affidavit or evidentiary form, sufficient to withstand a summary disposition motion, but must present sufficient information to show a genuine dispute and reasonably indicating that a further inquiry is appropriate; LBP-08-6, 67 NRC 292 (2008); LBP-09-17, 70 NRC 328, 329 (2009); LBP-09-16, 70 NRC 290 (2009); LBP-09-27, 70 NRC 1006-07 (2009); LBP-10-24, 72 NRC 756-57 (2010)

LEGAL CITATIONS INDEX

CASES

- petitioner must present sufficient information to show a genuine dispute and reasonably indicating that a further inquiry is appropriate; LBP-08-6, 67 NRC 292 (2008); LBP-09-27, 70 NRC 1006-07, 1010 (2009)
- the contention admissibility rule does not require a petitioner to prove its case at the contention stage; LBP-09-27, 70 NRC 1006-07 (2009); LBP-10-24, 72 NRC 756-57 (2010)
- the level of support necessary for an admissible contention is explained; LBP-10-24, 72 NRC 756-57 (2010)
- Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-96-7, 43 NRC 235, 251 (1996)
- contentions that advocate stricter requirements than agency rules impose or that otherwise seek to litigate a generic determination established by a Commission rulemaking are inadmissible; LBP-07-3, 65 NRC 252-53 (2007); LBP-07-10, 66 NRC 22 (2007); LBP-08-16, 68 NRC 383 (2008); LBP-09-3, 69 NRC 152-53 (2009); LBP-10-7, 71 NRC 419-20 (2010); LBP-10-21, 72 NRC 651 (2010)
- Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-96-7, 43 NRC 235, 257, 259-60 (1996)
- a board's analysis of decommissioning cost estimates should be tailored to the specifics of the proceeding; CLI-06-22, 64 NRC 42 (2006)
- Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-96-7, 43 NRC 235, 259 (1996)
- boards do not sit to flyspeck environmental documents or to add details or nuances; LBP-10-10, 71 NRC 607 n.14 (2010)
- Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-96-7, 43 NRC 235, 261 (1996)
- new arguments may not be raised for the first time in a reply brief; CLI-06-9, 63 NRC 439 n.29 (2006)
- Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-96-7, 43 NRC 235, 262 (1996)
- petitioner is obliged to present the factual information or expert opinions necessary to support its contention adequately, and failure to do so requires that the contention be rejected; LBP-06-20, 64 NRC 150 (2006); LBP-06-23, 64 NRC 356 (2005)
- Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-98-21, 48 NRC 185, 194-95 (1998)
- to establish organizational standing, an organization must demonstrate that the action at issue will cause an injury-in-fact to the organization's interests or the interests of its members and that the injury is within the zone of interests protected by the National Environmental Policy Act or the Atomic Energy Act; LBP-09-13, 70 NRC 178 (2009); LBP-10-16, 72 NRC 383 (2010)
- Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-98-21, 48 NRC 185, 195 (1998)
- an organization seeking representational standing must demonstrate that the interests of at least one of its members will be harmed; LBP-07-4, 65 NRC 294 (2007)
- individual petitioners may demonstrate standing to participate in a proceeding based on their proximity within 50 miles of a nuclear plant; LBP-06-10, 63 NRC 328 (2006)
- NRC generally follows judicial concepts of standing, which require a petitioner to allege a concrete and particularized injury that is fairly traceable to the challenged action and likely to be redressed by a favorable decision; LBP-06-10, 63 NRC 327 (2006); LBP-06-23, 64 NRC 270 (2006); LBP-07-4, 65 NRC 293 (2007); LBP-07-11, 66 NRC 52 (2007); LBP-08-13, 68 NRC 59 (2008); LBP-08-14, 68 NRC 286 (2008); LBP-08-24, 68 NRC 701 (2008); LBP-09-16, 70 NRC 240 (2009); LBP-09-17, 70 NRC 321-22 n.30 (2009); LBP-09-20, 70 NRC 574 (2009); LBP-09-26, 70 NRC 947 (2009)
- the requisite injury that qualifies a petitioner for standing may be either actual or threatened; LBP-06-23, 64 NRC 270 (2006); LBP-07-11, 66 NRC 52 (2007); LBP-08-6, 67 NRC 271 (2008); LBP-09-28, 70 NRC 1024 (2009)
- to demonstrate organizational standing, the petitioner must show injury in fact to the interests of the organization itself; LBP-06-4, 63 NRC 103 (2006); LBP-07-4, 65 NRC 294 (2007)
- to establish organizational standing, petitioner must show that the interests of the organization will be harmed by the proposed licensing action, while an organization seeking representational standing must demonstrate that the interests of at least one of its members will be so harmed; LBP-06-7, 63 NRC 195 (2006); LBP-06-23, 64 NRC 271 (2006); LBP-07-11, 66 NRC 52 (2007); LBP-07-14, 66 NRC 183 (2007); LBP-08-6, 67 NRC 271 (2008); LBP-08-24, 68 NRC 702 (2008); LBP-08-26, 68 NRC 911 (2008)
- to establish standing, petitioner must allege a concrete and particularized injury that is fairly traceable to the challenged action and likely to be redressed by a favorable decision; LBP-06-10, 63 NRC 327

LEGAL CITATIONS INDEX

CASES

- (2006); LBP-06-23, 64 NRC 270 (2006); LBP-07-4, 65 NRC 294 (2007); LBP-07-11, 66 NRC 52 (2007); LBP-08-6, 67 NRC 271 (2008); LBP-09-16, 70 NRC 240 (2009); LBP-09-17, 70 NRC 321-22 n.30 (2009); LBP-09-20, 70 NRC 574 (2009)
- where a facility will not be located within an Indian tribe's boundaries, the tribe must meet the standing requirements imposed by 10 C.F.R. 2.309(d)(1); LBP-10-16, 72 NRC 390-91 (2010)
- Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-98-21, 48 NRC 185, 195-96 (1998)
- intervention petitioner's injury must arguably lie within the zone of interests protected by the Atomic Energy Act or the National Environmental Policy Act; LBP-07-11, 66 NRC 52 (2007); LBP-08-24, 68 NRC 701 (2008)
- it will be presumed that the elements of standing are satisfied if an individual lives within the zone of possible harm from the significant source of radioactivity, without requiring a party to specifically plead injury, causation, and redressability; LBP-06-23, 64 NRC 270-71 (2006)
- the injury asserted in support of a petitioner's standing must arguably lie within the zone of interests protected by the statutes governing the proceeding; LBP-06-10, 63 NRC 327 (2006); LBP-06-23, 64 NRC 270 (2006); LBP-08-6, 67 NRC 271 (2008); LBP-09-13, 70 NRC 176 (2009); LBP-10-16, 72 NRC 381 (2010)
- to establish standing, the requisite injury may be either actual or threatened, but must arguably lie within the zone of interests protected by the statutes governing the proceeding; LBP-07-4, 65 NRC 294 (2007)
- Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-98-21, 48 NRC 185, 201 (1998)
- although boards do not hold pro se petitioners to the same standard that it holds litigants who are represented by counsel, pro se petitioners are expected to comply with basic procedural rules including those establishing filing deadlines; LBP-10-4, 71 NRC 235 n.22 (2010)
- fairness requires that all participants in NRC adjudicatory proceedings abide by its procedural rules, especially those who are cognizant of those rules and represented by counsel; CLI-10-12, 71 NRC 327 (2010)
- Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-98-21, 48 NRC 185, 202 (1998)
- in the interest of efficient case management and prompt resolution of adjudications, the Commission has generally enforced the 10-day deadline for appeals strictly, excusing it only in unavoidable and extreme circumstances; CLI-10-26, 72 NRC 476 (2010)
- Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-98-21, 48 NRC 185, 202-03 (1998)
- an advisory body that lacks executive or legislative responsibilities is so far removed from having the representative authority to speak and act for the public that it does not qualify as a governmental entity; CLI-07-18, 65 NRC 412 n.37 (2007)
- only in truly extraordinary and unanticipated circumstances are late filings to be accepted; LBP-10-21, 72 NRC 636-37 (2010)
- Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-98-21, 48 NRC 185, 203 (1998)
- an entity wishing to participate as a governmental body must demonstrate that it goes beyond an advisory role and exercises executive or legislative responsibilities; LBP-09-13, 70 NRC 186 (2009)
- Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-98-21, 48 NRC 185, 204 & n.7 (1998)
- contentions are necessarily limited to issues that are germane to the application pending before the board; LBP-06-10, 63 NRC 338 (2006); LBP-06-23, 64 NRC 353 (2005)
- Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-98-21, 48 NRC 185, 210 (1998)
- the Commission has used sua sponte review as a vehicle to provide guidance to a licensing board; CLI-07-1, 65 NRC 5 (2007)
- Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-98-21, 48 NRC 185, 210 n.13 (1998)
- petitioner is not required to provide expert testimony in support of his plausible scenario for injury; CLI-09-12, 69 NRC 546 (2009)
- Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-99-24, 50 NRC 219, 222 (1999)
- licensing board rulings are not precedential; CLI-10-2, 71 NRC 48 (2010)
- unreviewed board decisions have no binding effect on a later board; CLI-10-7, 71 NRC 138 (2010)
- the Commission has used sua sponte review as a vehicle to vacate an unreviewed board order after withdrawal of the challenged application; CLI-07-1, 65 NRC 4 (2007)

LEGAL CITATIONS INDEX

CASES

- Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-99-24, 50 NRC 219, 222 n.3 (1999)
although the Atomic Safety and Licensing Appeal Board was disbanded in 1991, its decisions still carry precedential value; CLI-07-16, 65 NRC 387 n.76 (2007); CLI-09-2, 69 NRC 63 n.33 (2009)
the prospect of a second lawsuit with its expenses and uncertainties or another application does not provide the requisite quantum of legal harm to warrant dismissal of an application with prejudice; LBP-10-11, 71 NRC 630 (2010)
- Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-05-15, 61 NRC 365, 375 n.26 (2005)
as guidance reached in a rulemaking following notice and comment, and endorsed by the Commission, the Statement of Considerations is entitled to special weight; CLI-08-3, 67 NRC 166 (2008)
- Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-05-15, 61 NRC 365, 377 (2005)
a site characterization plan should provide sufficient information to allow the NRC to determine the extent and range of expected radioactive contamination; LBP-08-4, 67 NRC 116, 117 (2008)
what constitutes "sufficient information," in a site characterization depends, to a large extent, on site-specific conditions; LBP-08-4, 67 NRC 117 (2008)
with respect to an adequate site characterization, it is reasonable to interpret the regulations as requiring decommissioning plan submissions to contain the type of information discussed in the NUREG-1700 acceptance criteria; LBP-08-4, 67 NRC 116 n.73 (2008)
- Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), LBP-96-2, 43 NRC 61, 75-76 (1996), *rev'd in part on other grounds*, CLI-96-7, 43 NRC 235 (1996)
the materiality requirement for contention admission often dictates that any contention alleging deficiencies or errors in an application also indicate some significant link between the claimed deficiency and either the health and safety of the public or the environment; LBP-07-3, 65 NRC 254 (2007); LBP-07-10, 66 NRC 24 (2007); LBP-07-16, 66 NRC 287 (2007); LBP-08-13, 68 NRC 62 (2008); LBP-08-16, 68 NRC 385 (2008); LBP-09-3, 69 NRC 154 (2009); LBP-09-26, 70 NRC 953 (2009); LBP-10-7, 71 NRC 421 (2010)
- Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), LBP-96-2, 43 NRC 61, 88-90 (1996), *rev'd in part on other grounds*, CLI-96-7, 43 NRC 235 (1996)
the NEPA requirement to consider alternatives to a proposed action is governed by the rule of reason applicable to all NEPA-required alternatives analyses and does not extend to events that are remote and speculative; LBP-09-26, 70 NRC 970 (2009)
- Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), LBP-96-2, 43 NRC 61, 90 (1996), *rev'd in part on other grounds*, CLI-96-7, 43 NRC 235 (1996)
a document put forth by an intervenor as supporting the basis for a contention is subject to scrutiny, for both what it does and does not show; LBP-07-3, 65 NRC 254 (2007); LBP-08-9, 67 NRC 432 (2008); LBP-09-27, 70 NRC 1009 (2009)
any material provided by petitioner in support of its contention, including those portions of the material that are not relied upon, is subject to board scrutiny; LBP-06-20, 64 NRC 150 (2006); LBP-06-23, 64 NRC 356 (2005); LBP-07-10, 66 NRC 24 (2007); LBP-07-16, 66 NRC 288 (2007); LBP-08-13, 68 NRC 63 (2008); LBP-08-15, 68 NRC 334 n.207 (2008); LBP-08-16, 68 NRC 385 (2008); LBP-08-26, 68 NRC 917 (2008); LBP-09-3, 69 NRC 154 (2009); LBP-09-17, 70 NRC 328 (2009); LBP-09-21, 70 NRC 612 n.165 (2009); LBP-09-26, 70 NRC 954 (2009); LBP-10-7, 71 NRC 421 (2010); LBP-10-10, 71 NRC 594 (2010)
petitioner's inaccurate reading and presentation of applicant's spent fuel storage plan cannot serve as a litigable basis for a contention; LBP-09-27, 70 NRC 1008 (2009)
- Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), LBP-96-2, 43 NRC 61, 90 n.30, *rev'd in part on other grounds*, CLI-96-7, 43 NRC 235 (1996)
boards may examine both the statements in the document that support the petitioner's assertions and those that do not; LBP-10-24, 72 NRC 750 (2010)
- Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), LBP-96-15, 44 NRC 8, 24 (1996)
the most important of the late-filing criteria is good cause, if any, for the failure to file on time; LBP-07-14, 66 NRC 191 n.64 (2007)
- Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), LBP-96-15, 44 NRC 8, 26 (1996)
where new and material information is revealed in a piecemeal fashion, and where the foundation for a contention is not reasonably available until the later pieces fall into place, the admissibility decision turns on a determination about when, as a cumulative matter, the separate pieces of the

LEGAL CITATIONS INDEX

CASES

- information puzzle were sufficiently in place to make the particular concerns reasonably apparent; LBP-06-14, 63 NRC 579 (2006); LBP-09-10, 70 NRC 143 n.82 (2009)
- Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), LBP-98-12, 47 NRC 343, 354, *aff'd in part and rev'd in part*, CLI-98-21, 48 NRC 185 (1998)
- organizational petitioners must be authorized by individual affected members who have authorized the organization to represent them; LBP-06-10, 63 NRC 328 (2006)
- Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), LBP-98-12, 47 NRC 343, 358, *aff'd in part and rev'd in part on other grounds*, CLI-98-21, 48 NRC 185 (1998)
- discretionary intervention is an extraordinary procedure that is rarely granted; CLI-06-16, 63 NRC 716 (2006)
- Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), LBP-99-27, 50 NRC 45, 53 (1999)
- licensing boards have awarded payment of litigation fees and expenses from a licensee to an intervenor if there has been legal harm to the intervenors caused by some activity or action of the licensee; LBP-09-1, 69 NRC 43 n.134 (2009)
- Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), LBP-04-27, 60 NRC 530, 542 n.3 (2004)
- a presiding officer must assess a hearing petition to determine whether the standing elements are met even if there are no objections to a petitioner's standing; LBP-07-10, 66 NRC 15 (2007)
- although the Commission has accepted a proximity presumption granting standing to residents within 50 miles of a reactor, it has not accepted any such presumption in nonreactor cases; LBP-07-14, 66 NRC 178 (2007)
- Ziegler v. Connecticut General Life Insurance Co.*, 916 F.2d 548, 553 (9th Cir. 1990)
- inquiry into an individual's actual knowledge is entirely factual, requiring examination of the record; LBP-09-24, 70 NRC 708 (2009)

**LEGAL CITATIONS INDEX
REGULATIONS**

- 10 C.F.R. 1.15
the Commission has broad authority to delegate powers to the Atomic Safety and Licensing Boards;
CLI-08-14, 67 NRC 406 n.14 (2008)
- 10 C.F.R. Part 2
a request that the Commission require licensees to return spent fuel pools to their original low-density storage configuration and to use dry storage for any excess fuel is not appropriate for litigation in a license renewal hearing; CLI-06-26, 64 NRC 226 (2006)
parties are obligated to ensure that their arguments and assertions in their filings are supported by appropriate and accurate references to legal authority and factual basis, including, as appropriate, citation to the record; CLI-09-15, 70 NRC 16 (2009)
the Commission expects that the licensing board, NRC Staff, the applicant, and other parties will follow the applicable requirements; CLI-09-15, 70 NRC 12 (2009)
- 10 C.F.R. 2.3(a)
in any conflict between a general rule in Part 2, Subpart C, and a special rule in Part 2, the special rule governs; LBP-08-16, 68 NRC 382 n.6 (2008)
- 10 C.F.R. 2.4
an organization, like an individual, is considered a "person"; CLI-07-18, 65 NRC 411 (2007)
"potential party" is defined; CLI-09-15, 70 NRC 21-22 (2009); CLI-10-24, 72 NRC 454 n.12 (2010);
CLI-10-25, 72 NRC 470 n.7 (2010); LBP-10-5, 71 NRC 344 n.297 (2010)
- 10 C.F.R. 2.101(a-1)(2)
this provision pertains to early consideration of site suitability issues, allows a COL applicant requesting such consideration to submit its application in parts, and provides a schedule for submitting those parts of the application to the agency; LBP-10-17, 72 NRC 516 (2010)
- 10 C.F.R. 2.101(e)(3)
a docket number is assigned to an application if and when the Staff determines that the application is acceptable for docketing; CLI-08-20, 68 NRC 275 (2008)
NRC regulations direct how an application for construction authorization for a high-level waste repository will be processed; CLI-08-20, 68 NRC 274 (2008)
NRC Staff must review the construction authorization application to determine whether it is complete and acceptable for docketing; CLI-08-20, 68 NRC 276 (2008)
should the Director of the Office of Nuclear Material Safety and Safeguards reject the high-level waste repository construction authorization application, applicant will be informed of this determination, and of the respects in which the application is deficient; CLI-08-20, 68 NRC 275 (2008)
the Director of the Office of Nuclear Material Safety and Safeguards must determine whether the tendered high-level waste repository construction authorization application is complete and acceptable for docketing; CLI-08-20, 68 NRC 274 (2008)
- 10 C.F.R. 2.101(e)(8)
NRC regulations direct how an application for construction authorization for a high-level waste repository will be processed; CLI-08-20, 68 NRC 274 (2008)
- 10 C.F.R. 2.104(b)
issues to be addressed in uncontested proceedings are specified; LBP-06-28, 64 NRC 471 n.18 (2006)
the mandatory hearing board is required to answer six questions for the uncontested early site permit proceedings; LBP-08-15, 68 NRC 301 (2008)

LEGAL CITATIONS INDEX
REGULATIONS

- 10 C.F.R. 2.104(b)(1)
the scope of issues to be considered in a contested proceeding for licensing a uranium enrichment facility are described; LBP-06-17, 63 NRC 763 (2006)
without conducting a de novo evaluation of the application, a board must determine whether the application and the record of the proceeding contain sufficient information, and the review of the application by NRC Staff has been adequate to support affirmative findings on paragraphs (i)-(iii) and a negative finding on paragraph (iv); LBP-06-28, 64 NRC 471 (2006)
- 10 C.F.R. 2.104(b)(1)(i)(d)(2)
in the mandatory early site permit hearing, the NRC must address whether, taking into consideration the site criteria contained in 10 C.F.R. Part 100, a reactor having the characteristics that fall within the parameters for the site, can be constructed and operated without undue risk to the health and safety of the public; CLI-07-27, 66 NRC 221 (2007)
- 10 C.F.R. 2.104(b)(1)(iv)
in the mandatory early site permit hearing, the NRC must address whether issuance of an ESP will be inimical to the common defense and security or to the health and safety of the public; CLI-07-27, 66 NRC 221 (2007)
on AEA Safety Issue 1, the board must determine whether the application and the record of the proceeding contain sufficient information, and the review of the application by NRC Staff has been adequate, to support a negative finding on the question of whether the issuance of the early site permit will be inimical to the common defense and security or to the health and safety of the public; LBP-07-9, 65 NRC 556 n.26, 557 n.28 (2007)
- 10 C.F.R. 2.104(b)(2)
in a mandatory hearing, a board's task is to ensure that the Staff's review is adequate and that the Staff has made findings with reasonable support in logic and fact; CLI-06-20, 64 NRC 19 (2006); LBP-06-28, 64 NRC 471 (2006)
in a mandatory hearing, the licensing board must carefully probe the Staff's findings by asking appropriate questions, and by requiring supplemental information when necessary; LBP-07-1, 65 NRC 98 (2007)
in a mandatory hearing, the licensing board must review the sufficiency of the record and the sufficiency of the NRC Staff's review, and decide if they are adequate to support the Staff's proposed findings; LBP-07-9, 65 NRC 555, 598 (2007)
in conducting their sufficiency review, licensing boards are directed to make specific findings; LBP-07-1, 65 NRC 36 (2007)
not all of the safety issues relevant to construction permits are ripe for review in an early site permit proceeding; LBP-06-28, 64 NRC 472 (2006)
the procedures to be followed by the licensing board when an application for a construction permit is uncontested are described; LBP-07-6, 65 NRC 436 (2007)
the scope of issues to be considered in an uncontested proceeding for licensing a uranium enrichment facility are described; LBP-06-17, 63 NRC 764 (2006)
- 10 C.F.R. 2.104(b)(2)(i)
a board must determine whether an application and the record of the proceeding contain sufficient information, and the review of the application by NRC Staff has been adequate, to support affirmative findings by the Staff; CLI-06-20, 64 NRC 24 (2006); LBP-06-28, 64 NRC 480 (2006)
this regulation merely specifies the contents of the notice of hearing and is not the source of the board's legal responsibilities; LBP-07-9, 65 NRC 557 n.28 (2007)
with respect to safety matters, licensing board determinations are to be made without conducting a de novo evaluation of the application; LBP-06-28, 64 NRC 473 (2006)
- 10 C.F.R. 2.104(b)(2)(ii)
with respect to environmental matters stemming from the agency's NEPA obligations, a board must determine whether the review conducted by the NRC Staff pursuant to 10 C.F.R. Part 51 has been adequate; LBP-06-17, 63 NRC 813 (2006)
- 10 C.F.R. 2.104(b)(3)
decisions on NEPA baseline issues must be made regardless of whether the proceeding is contested or uncontested; LBP-06-17, 63 NRC 764 (2006); LBP-07-9, 65 NRC 559 (2007)

LEGAL CITATIONS INDEX
REGULATIONS

- procedures to be followed by the licensing board to ensure compliance with section 52.21 when a proceeding involving an application for a construction permit is uncontested is described; LBP-07-1, 65 NRC 35 (2007); LBP-07-6, 65 NRC 436 (2007)
- three NEPA-related matters must be addressed by boards; LBP-06-28, 64 NRC 471 (2006)
- 10 C.F.R. 2.104(b)(3)(i)-(iii)
in conducting their sufficiency review, licensing boards are directed to make specific findings; LBP-07-1, 65 NRC 36 (2007)
- 10 C.F.R. 2.104(b)(3)(ii)
boards must independently consider the final balance among conflicting factors in the record; LBP-07-6, 65 NRC 490 (2007)
- 10 C.F.R. 2.104(c)(1)
a proceeding commences when a notice of hearing or notice of proposed action is issued; CLI-08-14, 67 NRC 403 n.4 (2008)
- 10 C.F.R. 2.105
a proceeding commences when a notice of hearing or a notice of proposed action is issued; CLI-08-14, 67 NRC 406 (2008)
- 10 C.F.R. 2.107(a)
this section does not authorize withdrawal of an application but rather clarifies that licensing boards have authority to impose reasonable conditions upon voluntary withdrawals in appropriate circumstances; LBP-10-11, 71 NRC 624 (2010)
when applicant decides it no longer wishes to have the agency evaluate its application, the usual approach is for applicant to request that the agency permit it to withdraw its licensing request; LBP-09-23, 70 NRC 667 (2009)
withdrawal of a license application is subject to such terms as the presiding officer may prescribe; CLI-10-13, 71 NRC 388-89 (2010); LBP-09-23, 70 NRC 667 n.25 (2009)
- 10 C.F.R. 2.202
a request for hearing before the Atomic Safety and Licensing Board to challenge an enforcement order is automatically granted; CLI-06-16, 63 NRC 714 n.3 (2006)
- 10 C.F.R. 2.202(a)
twenty days in which to request a hearing is the minimum required by the agency's regulations for orders issued under this section; LBP-09-20, 70 NRC 571 (2009)
- 10 C.F.R. 2.202(a)(2)
in addition to having the burden on immediate effectiveness, the target is apparently expected to address the merits at that point as well, all in 20 days, unless extended; LBP-09-24, 70 NRC 801 n.12 (2009)
- 10 C.F.R. 2.202(a)(3)
in enforcement cases, a party against whom a case is brought has a right to a hearing; LBP-06-10, 63 NRC 384 (2006)
when issuing an order modifying a license, the agency is required to inform licensee or any other person adversely affected by the order of his or her right, within 20 days of the date of the order, or such other time as may be specified in the order, to demand a hearing; LBP-09-20, 70 NRC 571 n.27 (2009)
- 10 C.F.R. 2.202(a)(5)
Staff may make an enforcement order immediately effect on the basis of public health and safety or a "willful violation" aspect; LBP-06-26, 64 NRC 433 n.3 (2006)
- 10 C.F.R. 2.202(c)
in enforcement cases, a party against whom a case is brought has a right to a hearing; LBP-06-10, 63 NRC 384 (2006)
- 10 C.F.R. 2.202(c)(1)
hearings on immediately effective orders are to be conducted expeditiously; CLI-06-19, 64 NRC 12 (2006); CLI-07-6, 65 NRC 118 (2007); LBP-06-13, 63 NRC 534 (2006); LBP-09-24, 70 NRC 687 n.4 (2009)
length of the delay is an important factor in considering whether to postpone a hearing on an immediately effective order because the Commission's regulations require that such hearings be conducted expeditiously; LBP-06-13, 63 NRC 536 (2006)

LEGAL CITATIONS INDEX

REGULATIONS

- 10 C.F.R. 2.202(c)(2)(i)
- a challenge to an order's immediate effectiveness could be brought on the basis of the long delay between investigation and action; LBP-06-26, 64 NRC 434 n.5 (2006)
 - a challenge to immediate effectiveness must state with particularity the reasons why the enforcement order is unsound; LBP-09-24, 70 NRC 804 n.16 (2009)
 - because of his decision not to challenge the immediate effectiveness of his enforcement order, less weight is accorded to the severity of the potential harm to the subject of an enforcement order from holding a proceeding in abeyance; CLI-07-6, 65 NRC 119 (2007)
 - in addition to having the burden on immediate effectiveness, the target is apparently expected to address the merits at that point as well; LBP-09-24, 70 NRC 801 n.12 (2009)
 - the scope of early review of an enforcement order is severely limited and the order's immediate effectiveness depriving the accused of the freedom to work pending trial is presumptively valid, placing the burden on the accused to demonstrate its invalidity; LBP-09-24, 70 NRC 801 (2009)
 - the subject of an enforcement order has the right to challenge, on limited grounds, the immediate effectiveness of the order; LBP-09-24, 70 NRC 687 (2009)
 - the subject of an immediately effective enforcement order is allowed to challenge its immediate effectiveness, prior to the hearing on the merits, on the grounds that it is not based on adequate evidence but on mere suspicion, unfounded allegations, or error; LBP-06-13, 63 NRC 544 (2006); LBP-09-24, 70 NRC 801 (2009)
- 10 C.F.R. 2.202(c)(2)(ii)
- a presiding officer may, on motion by the Staff or any other party to the proceeding, where good cause exists, delay the hearing on an immediately effective order at any time for such periods as are consistent with the due process rights of the affected parties; LBP-06-13, 63 NRC 534 (2006)
 - failure, before the hearing on the merits, to challenge an order's immediate effectiveness is not necessarily crucial to the fourth stay factor because it could involve simply a strategic decision to avoid delaying the eventual resolution of the merits; LBP-06-13, 63 NRC 544 (2006)
 - proponent of a motion to hold an enforcement proceeding in abeyance has the burden of showing good cause in the form of an overriding government interest; LBP-06-13, 63 NRC 567 (2006)
 - the decision on whether good cause exists for a delay must be consistent with the due process rights of the order's target and other affected parties; LBP-06-13, 63 NRC 544 (2006)
- 10 C.F.R. 2.203
- a stipulation or compromise in an enforcement proceeding is subject to approval by the designated presiding officer, who may order such adjudication of the issues as he may deem to be required in the public interest; LBP-06-18, 63 NRC 836 n.13 (2006)
 - if approved by the presiding officer, the terms of the settlement or compromise shall be embodied in a decision or order settling and discontinuing the proceeding; LBP-06-18, 63 NRC 836 n.13 (2006)
 - settlement agreements become effective upon their execution by both parties, but agreements are contingent upon approval by the board; LBP-09-12, 70 NRC 166 (2009)
 - settlement agreements must comply with agency regulations and be in the public interest; LBP-06-26, 64 NRC 432 (2006)
 - settlement shall be subject to approval by a board, which may order such adjudication of the issues as it may deem to be required in the public interest; LBP-06-21, 64 NRC 220 (2006); LBP-06-26, 64 NRC 432 (2006)
 - the board exercised its authority to request clarification from the parties regarding the extent that a proposed settlement agreement called upon licensee to take specific measures to avoid repetition of the storage drum mislabeling and insufficient operator training that led to a hydrofluoric acid spill event; LBP-10-18, 72 NRC 522 (2010)
- 10 C.F.R. 2.204
- NRC may issue demands for information to NRC licensees for the purpose of determining whether an order under section 2.202 should be issued, or whether other actions should be taken; DD-07-1, 65 NRC 199 (2007)
 - the administrative action of issuing a demand for information is described; DD-06-3, 64 NRC 409 (2006)
- 10 C.F.R. 2.205
- a civil penalty of \$130,000 was imposed on licensee for failure of the radio only-activation feature of the emergency notification system to meet its test acceptance criteria; DD-09-1, 69 NRC 511-12 (2009)

LEGAL CITATIONS INDEX

REGULATIONS

- NRC initiates the civil penalty process by issuing a notice of violation and proposed imposition of a civil penalty; DD-07-3, 65 NRC 646 (2007)
- 10 C.F.R. 2.206
- a motion to reopen alleging that a facility is releasing excessive amounts of strontium-90 under its current license is treated as a request for enforcement action and is referred to NRC Staff for whatever action they deem necessary; CLI-06-4, 63 NRC 38, 39 (2006)
- a petitioner that seeks to express a personal view regarding the direction of regulatory policy may submit a request that NRC Staff take enforcement action; LBP-06-20, 64 NRC 149 (2006)
- a request for action is not a substitute for participation in an adjudication; LBP-08-25, 68 NRC 828 (2008)
- a request for action regarding leaks or potential leaks of radioactively contaminated water into the ground is granted in part regarding power reactors and denied regarding research and test reactors because existing NRC design and regulatory programs ensure that there is a minimal risk for a significant release of contaminated liquid effluents; DD-06-3, 64 NRC 408-16 (2006)
- a request for an order modifying a license based upon an alleged potential hazardous condition in the current spent fuel pool amounts to a request for agency enforcement action and thus is not suitable for a license renewal adjudication; CLI-06-26, 64 NRC 226-27 (2006)
- an interested person may propose health and safety measures after a license has been issued by filing a petition for enforcement action; LBP-10-4, 71 NRC 231 n.16 (2010)
- any challenge arguing that the terms or conditions of an early site permit should be modified may only be raised as a petition to modify a license; CLI-07-12, 65 NRC 209 (2007)
- any person may file a petition for an enforcement action to address any perceived post-licensing problems that may present themselves; LBP-08-22, 68 NRC 652 n.295 (2008)
- any person may file a request to institute a proceeding pursuant to section 2.202 to modify, suspend, or revoke a license, or for any other action as may be proper; CLI-06-26, 64 NRC 227 n.4 (2006); CLI-08-23, 68 NRC 487 n.120 (2008)
- because a licensee applying to extend its operating license is submitting a licensing action, the NRC cannot address the petitioners' request for enforcement action; DD-07-3, 65 NRC 657 (2007)
- claims that challenge a licensee's compliance with the current licensing basis or with other operational requirements may be raised via a petition under this section; LBP-07-17, 66 NRC 339 n.17 (2007)
- following termination of a proceeding, the proper avenue for a person challenging an existing license is to file a request to modify, suspend, or revoke a license; CLI-09-5, 69 NRC 121 n.27 (2009)
- if a petitioner wishes to challenge, or raise concerns about, a facility's emergency preparedness program relating to spent fuel accidents, it may petition for enforcement action; LBP-06-7, 63 NRC 202 n.9 (2006)
- if an intervenor wishes to raise concerns with respect to licensee's environmental radiation monitoring plan or the Staff's review of that plan, it may exercise its rights to seek an enforcement action; LBP-06-27, 64 NRC 449 n.28 (2006)
- if petitioner believes it has in hand information requiring license amendments or other protective measures, it may petition the NRC for enforcement relief; CLI-07-8, 65 NRC 133 (2007)
- if petitioners wish to propose security measures in addition to those laid out in a Staff enforcement order, their remedy is to petition the NRC for further enforcement action; CLI-10-3, 71 NRC 53 n.21, 54 (2010)
- if the Staff has already issued a license, a subsequently filed motion to reopen would be considered as a petition for enforcement action; CLI-06-4, 63 NRC 36 n.4 (2006)
- invocation of this procedure requires that the NRC staff give serious consideration to requests for regulatory action concerning a licensed facility as long as the request specifies the action sought and sets forth the facts that constitute the basis of the request; LBP-10-7, 71 NRC 417 (2010)
- licensees are ordered to consider the impact of fire barrier degradation on the operability of affected equipment and assess the impact on plant safety, implement appropriate compensatory measures, and develop plans to resolve any noncompliances; DD-06-1, 63 NRC 134-41 (2006)
- local emergency response organizations can implement protective actions if necessary, to protect public health and safety, in accordance with their emergency procedures, regardless of local severe weather conditions or other natural disasters coincident with an emergency at the nuclear power plant; DD-06-2, 63 NRC 426-32 (2006)

LEGAL CITATIONS INDEX

REGULATIONS

once a proceeding has been closed, petitioners will still have the opportunity to raise issues by using NRC enforcement procedures; CLI-10-17, 72 NRC 10 n.17 (2010)

outside the adjudicatory context, a petitioner may request that the NRC Staff take enforcement action; LBP-07-4, 65 NRC 305 (2007); LBP-07-11, 66 NRC 58 (2007)

petitioner requests that NRC scrutinize the steps taken to improve the handling of safety concerns brought to management by workers; DD-07-1, 65 NRC 196-201 (2007)

petitioner's concerns regarding underground leakage of contaminated water at Indian Point and failure to implement the new emergency notification siren system in a timely manner are addressed; DD-08-2, 68 NRC 340-49 (2008)

petitioner's request for action concerning deficiencies in licensee's employee concerns program is denied; DD-10-1, 72 NRC 150-62 (2010)

petitioner's request that NRC issue a demand for information to licensee regarding vibration levels prior to restart is denied; DD-09-2, 70 NRC 900-909 (2009)

petitioner's request that unescorted access authorization be restored so that he can perform his accepted job tasks with all record of denial removed from any and all records is denied; DD-10-2, 72 NRC 163-70 (2010)

petitioner's requests for enforcement action for alleged regulatory, criminal, and ethical misconduct and coverup by NRC Staff is denied; DD-10-3, 72 NRC 172-84 (2010); DD-10-3, 72 NRC 171 (2010)

petitioners may protect their interests by filing a request for Commission action; CLI-10-12, 71 NRC 327 n.50 (2010)

petitioners may seek to raise alleged regulatory violations in a petition requesting that the NRC Staff take an enforcement action; CLI-06-1, 63 NRC 6 (2006); LBP-06-10, 63 NRC 360 (2006)

petitioners or any other member of the public may seek enforcement action with respect to ongoing licensed activities, including licensed exports; CLI-09-12, 69 NRC 570 n.159 (2009)

petitioners' request for the imposition of backfit requirements is not a proper subject for consideration in license renewal adjudication; LBP-07-11, 66 NRC 96-97 (2007)

petitioners' request that NRC condemn and stop the use of the two ISFSI concrete pads holding dry spent fuel storage casks because of the potential for amplification of earthquakes is denied; DD-07-2, 65 NRC 366-70 (2007)

petitions submitted under this section are assessed by the Staff in accord with NRC Management Directive 8.11 and associated Handbook 8.11; LBP-10-7, 71 NRC 424 n.11 (2010)

petitions to require backfitting to protect against spent fuel pool accidents are more appropriately filed as a request for NRC enforcement action than in a license renewal proceeding; LBP-06-23, 64 NRC 267 n.4 (2006)

process for considering petitions is discussed; DD-10-3, 72 NRC 174-75 (2010); DD-10-3, 72 NRC 171 (2010)

proper implementation of quality assurance requirements is a matter that may be raised in a subsequent Part 50 operating license proceeding or in a petition for agency action under 10 C.F.R. 2.206; CLI-10-26, 72 NRC 478 n.22 (2010)

request for an enforcement-type action where the underlying concern is the partial collapse of a cooling tower is credible and sufficient to warrant further inquiry; DD-08-1, 67 NRC 348-51 (2008)

request for enforcement action for noncompliances with fire protection issues is denied; DD-07-3, 65 NRC 644-58 (2007)

request for suspension of operations and imposition of civil penalty for deficiencies in licensee's siren system and discharges of radiological and chemical carcinogens is denied; DD-09-1, 69 NRC 502-19 (2009)

requests for diagnostic evaluation team examination, safety culture assessment, and NRC investigation at other licensee facilities are rejected for review because they are not requests for enforcement-type actions; DD-08-1, 67 NRC 348-51 (2008)

requests for enforcement action must be filed with the NRC's Executive Director of Operations, who will refer the request to the appropriate NRC office director; CLI-06-26, 64 NRC 227 n.4 (2006)

the appropriate avenue for resolution of concerns regarding an ongoing operational issue at a facility is via a request for action under this section; CLI-08-23, 68 NRC 486 n.117 (2008)

the current licensing basis of a plant is properly challenged through the process prescribed by this section; LBP-08-9, 67 NRC 438 n.102 (2008)

LEGAL CITATIONS INDEX
REGULATIONS

- the failure of a licensee to fulfill responsibilities associated with a license amendment issued by the Staff gives rise to an enforcement issue that does not come within the purview of a license amendment adjudication; LBP-07-7, 65 NRC 514, 515 (2007)
- the proper avenue for challenging the adequacy of the Updated Final Safety Analysis Report would be to seek an enforcement action; LBP-08-13, 68 NRC 77, 119 (2008)
- to the extent petitioner believes that NRC Staff has overlooked facts indicating an inadequate safety culture as a matter separate and apart from license renewal, then its remedy is to direct Staff's attention to the supporting facts via a petition for enforcement action; CLI-10-27, 72 NRC 492 (2010)
- to the extent petitioners believe that licensee has violated any financial-qualification or financial-assurance regulations, they may file an enforcement petition; CLI-07-22, 65 NRC 529 (2007)
- to the extent that petitioners have any basis for claiming that there are current, ongoing excessive radiological releases from a facility, petitioners may seek NRC enforcement action; CLI-08-17, 68 NRC 245 n.77 (2008)
- 10 C.F.R. 2.206(a)
- if new and significant information comes to light showing that licensee's mining operations adversely affect the environment, any member of the public may seek to institute an action regarding the licensee's authority to operate under its NRC license; LBP-06-19, 64 NRC 102 (2006)
- petitioners are free to file a request to modify, suspend, or revoke a license, or for any other action as may be proper; LBP-08-12, 68 NRC 28 (2008)
- 10 C.F.R. 2.206(c)
- intervention petitioners cannot attempt to collaterally attack a final director's decision and relitigate it in a license renewal proceeding, nor does the licensing board have jurisdiction to review the director's decision; LBP-07-11, 66 NRC 70 (2007)
- 10 C.F.R. 2.302
- all filings in adjudicatory proceedings are to be sent through the NRC's E-Filing system; CLI-09-4, 69 NRC 81 n.1 (2009)
- 10 C.F.R. 2.302(a)
- e-filing is mandatory; CLI-08-17, 68 NRC 235 n.19 (2008)
- 10 C.F.R. 2.302(d)(1)
- a filing will be considered complete by electronic transmission when the filer performs the last act that it must perform to transmit a document, in its entirety, electronically; LBP-08-16, 68 NRC 381 (2008)
- 10 C.F.R. 2.302(g)
- participants who believe that they have a good cause for not submitting documents electronically must file an exemption request with their initial paper filing requesting authorization to continue to submit documents in paper format; CLI-10-4, 71 NRC 65 (2010)
- 10 C.F.R. 2.302(g)(3)
- for good cause shown, the board grants the requests of petitioners for exemptions from compliance with the Commission's E-filing requirement; LBP-10-4, 71 NRC 227 n.13 (2010)
- 10 C.F.R. 2.304
- the Commission may reject an appeal summarily for violating NRC procedural regulations; CLI-08-17, 68 NRC 235 n.18 (2008)
- 10 C.F.R. 2.304(c)
- attorneys must assure that representations made in all pleadings to the best of their knowledge, information, and belief are true; LBP-06-10, 63 NRC 333, 386, 370 (2006)
- counsel have an ethical responsibility not to knowingly make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer; LBP-06-10, 63 NRC 333 (2006)
- the statement that the "original of each document must be signed in ink" applies only to pleadings and a party's affidavits, as evidenced by the fact that the regulation expressly requires a signature by the party, the party's authorized representative, or the party's attorney; LBP-06-7, 63 NRC 220 n.33 (2006)
- 10 C.F.R. 2.304(d)
- an electronic signature on a document serves as the signer's representation that the document has been subscribed in the capacity specified with full authority, that he or she has read it and knows the contents, that to the best of his or her knowledge, information, and belief the statements made in it are true, and that it is not interposed for delay; LBP-09-6, 69 NRC 446 (2009)

LEGAL CITATIONS INDEX
REGULATIONS

- representations of a summary disposition movant are described; LBP-09-22, 70 NRC 652 (2009)
- 10 C.F.R. 2.304(d)(1)
when its LSN compliance is challenged, petitioner need only state in its reply that it has complied with the LSN requirements; LBP-09-6, 69 NRC 386 (2009)
- 10 C.F.R. 2.304(g)
exhibits and prefiled written testimony should be submitted via the agency's E-Filing system as separate electronic files; LBP-08-10, 67 NRC 457 (2008)
- 10 C.F.R. 2.305
the Commission may reject an appeal summarily for violating NRC procedural regulations; CLI-08-17, 68 NRC 235 n.18 (2008)
- 10 C.F.R. 2.306(c)(2)
to be considered timely, a document must be submitted to the E-Filing system for docketing and service by 11:59 p.m. Eastern Time; LBP-08-16, 68 NRC 381 (2008)
- 10 C.F.R. 2.307
timeliness of new contentions is dictated by the terms of the protective order; LBP-10-2, 71 NRC 210 (2010)
- 10 C.F.R. 2.307(a)
it could be argued that the broad grant of authority in this section is intended to empower licensing boards to grant requests for extension of time to file exceptions; LBP-07-17, 66 NRC 370 n.59 (2007)
the Commission or presiding officer may extend a time limit upon a showing of good cause; CLI-09-4, 69 NRC 82 (2009)
- 10 C.F.R. 2.307(c)
procedures and schedules set forth in the SUNSI Access Order are intended only to deal with issues arising before intervention occurs and a board is created; LBP-10-2, 71 NRC 202 n.36 (2010)
the Secretary of the Commission is delegated authority to issue orders establishing procedures and timelines for submitting and resolving requests for sensitive unclassified nonsafeguards information; LBP-10-2, 71 NRC 199, 201 n.36 (2010)
the Secretary of the Commission will assess initially whether a proposed recipient has shown a need for sensitive unclassified nonsafeguards information or or safeguards information; LBP-10-2, 71 NRC 201 n.34 (2010)
- 10 C.F.R. 2.309
a petitioner, including a potential party given access to the Licensing Support Network, may not be granted party status if the petitioner cannot demonstrate substantial and timely compliance with the requirements in section 2.1003 at the time of the request for participation in the high-level waste proceeding; CLI-08-25, 68 NRC 499-500 (2008)
a "potential party" is any person who intends, or may intend, to participate as a party in the proceeding by demonstrating standing and filing an admissible contention; LBP-09-5, 69 NRC 306 n.2 (2009)
although the contention pleading requirements are strict by design, a licensing board may permit potential intervenors to cure defects in petitions in order to obviate dismissal of an intervention petition because of inarticulate draftsmanship or procedural or pleading defects; LBP-08-6, 67 NRC 277 (2008)
an organization, like an individual, is considered a "person"; CLI-07-18, 65 NRC 411 (2007)
any person whose interest may be affected by the high-level waste proceeding and who desires to participate as a party must file a written petition for leave to intervene; CLI-08-25, 68 NRC 499 (2008)
any person whose interest will be affected by a proposed combined operating license may file a request for a hearing and petition for leave to intervene within 60 days of the *Federal Register* notice of opportunity for hearing; LBP-08-16, 68 NRC 375 (2008)
intervention petitions must address the nature of petitioner's right under the Atomic Energy Act to be made a party to the proceeding, the nature and extent of petitioner's property, financial, or other interest in the proceeding, and the possible effect of any order that may be entered on the petitioner's interest; CLI-10-4, 71 NRC 62 (2010)
intervention petitions must provide the name, address, and telephone number of the petitioner and specifically explain the reasons why intervention should be permitted; CLI-10-4, 71 NRC 62 (2010)
intervention petitions shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding; CLI-09-15, 70 NRC 8 (2009); CLI-10-4, 71 NRC 62 (2010)

LEGAL CITATIONS INDEX

REGULATIONS

- materiality in the context of paragraph (f)(2) differs from materiality in the context of paragraph (f)(1); LBP-10-1, 71 NRC 183 n.9 (2010)
- no language in the NRC rule on standing and contentions even suggests that intervenors must show standing with regard to one contention specifically and separately from its standing to litigate the other contentions already admitted; LBP-09-1, 69 NRC 17 (2009)
- NRC applies traditional judicial concepts of standing when determining whether a petitioner has set forth a sufficient interest to intervene; LBP-07-14, 66 NRC 182 (2007)
- NRC must provide a hearing upon the request of any person whose interest may be affected by the proceeding; LBP-06-23, 64 NRC 270 (2006)
- the opportunity to participate as an interested state is available only if the state has not been admitted as a party; LBP-06-20, 64 NRC 205 n.80 (2006)
- when assessing whether petitioner has set forth a sufficient interest to intervene, licensing boards apply judicial concepts of standing; LBP-06-4, 63 NRC 103 (2006); LBP-08-14, 68 NRC 286 (2008)
- 10 C.F.R. 2.309(a)
- a licensing board will grant a request for a hearing if it determines that the requestor has standing under the provisions of this section and has proposed at least one admissible contention that meets the requirements of 10 C.F.R. 2.309(f); LBP-10-4, 71 NRC 228 (2010)
- a petition for review and request for hearing must include a showing that the board should consider the nature of the petitioner's right under the AEA or NEPA to be made a party to the proceeding, the nature and extent of petitioner's property, financial, or other interest in the proceeding, and the possible effect of any decision or order that may be issued in the proceeding on the petitioner's interest; LBP-10-16, 72 NRC 380 (2010)
- a petition for review and request for hearing must include a showing that the petitioner has standing; LBP-09-13, 70 NRC 175 (2009); LBP-10-16, 72 NRC 380 (2010)
- all six contention admissibility requirements must be met in order for a contention to be admitted; LBP-07-16, 66 NRC 301, 306, 311, 318, 325 (2007); LBP-08-9, 67 NRC 448 (2008)
- any person or organization seeking to intervene in a licensing proceeding must establish standing and proffer at least one admissible contention that meets the requirements of section 2.309(f)(1); CLI-06-16, 63 NRC 719 (2006); CLI-06-24, 64 NRC 118 (2006); CLI-07-18, 65 NRC 408 (2007); CLI-08-17, 68 NRC 233 (2008); CLI-10-26, 72 NRC 475 (2010); LBP-06-7, 63 NRC 194 (2006); LBP-06-20, 64 NRC 143 (2006); LBP-06-22, 64 NRC 234 n.6 (2006); LBP-07-4, 65 NRC 302 (2007); LBP-07-5, 65 NRC 345 (2007); LBP-08-9, 67 NRC 426 (2008); LBP-08-13, 68 NRC 59 (2008); LBP-08-17, 68 NRC 436, 438 (2008); LBP-08-18, 68 NRC 542 (2008); LBP-08-19, 68 NRC 547 (2008); LBP-08-20, 68 NRC 551 (2008); LBP-08-26, 68 NRC 910, 914 (2008); LBP-09-10, 70 NRC 69, 71 (2009); LBP-09-16, 70 NRC 243 (2009); LBP-09-17, 70 NRC 318 (2009); LBP-09-18, 70 NRC 394 (2009); LBP-09-26, 70 NRC 946 (2009); LBP-09-28, 70 NRC 1023 (2009); LBP-10-4, 71 NRC 241 (2010); LBP-10-15, 72 NRC 275, 277 (2010); LBP-10-16, 72 NRC 394 (2010)
- anyone who wishes to intervene as a party in the high-level waste proceeding must establish that it has standing, be able to demonstrate substantial and timely Licensing Support Network compliance, and proffer at least one admissible contention; LBP-09-6, 69 NRC 381 (2009)
- because no petitioner has demonstrated standing, the Commission need not reach the question of whether either group has submitted at least one admissible contention; CLI-08-19, 68 NRC 255 n.2 (2008)
- for a petitioner to be admitted as a party in a materials license amendment proceeding, it must propose at least one admissible contention that meets the requirements of 10 C.F.R. 2.309(f)(1); LBP-06-6, 63 NRC 171, 183 (2006)
- if petitioner fails to make a showing of adverse effect, the hearing request must be denied; LBP-07-16, 66 NRC 293 (2007)
- in ruling on a hearing request or intervention petition, licensing boards will determine whether petitioner has an interest affected by the proceeding; LBP-09-23, 70 NRC 669 (2009)
- in ruling on intervention petitions in the high-level waste proceeding, boards are to consider any failure of the petitioner to participate as a potential party in the pre-license application phase under subpart J of this part; LBP-09-6, 69 NRC 382, 383-84 (2009)
- it is the contention, not bases, whose admissibility must be determined; LBP-06-20, 64 NRC 147 (2006); LBP-06-23, 64 NRC 353 (2005); LBP-08-6, 67 NRC 293 (2008)

LEGAL CITATIONS INDEX
REGULATIONS

- nothing in NRC rules of practice excuses a petitioner seeking discretionary intervention from proposing at least one admissible contention; CLI-06-16, 63 NRC 719 (2006)
- NRC is required to hold a hearing upon the request of any person whose interest may be affected by the proceeding and to allow that person to intervene; CLI-09-20, 70 NRC 915 (2009)
- only one admissible contention is required for each petitioner to intervene; LBP-10-11, 71 NRC 646-47 n.166 (2010)
- reference to the term “hearing” suggests that it means an evidentiary hearing; LBP-08-23, 68 NRC 684 (2008)
- to be admitted as a party in an NRC proceeding, a petitioner must establish standing by satisfying the requirements set forth in section 2.309(d); LBP-09-2, 69 NRC 93 (2009)
- to intervene in a Commission proceeding, a person must file a petition for leave to intervene; CLI-06-9, 63 NRC 436 (2006)
- 10 C.F.R. 2.309(b)
- if, after the original 60-day *Federal Register* notice period has expired, previously unavailable information that raises for the first time a material new issue, becomes available, and if an existing party asserts that new and material contention in a timely fashion, and the contention otherwise satisfies the pleading requirements of section 2.309(f)(1), then that contention is to be admitted, without being required to jump through the eight additional hoops for “nontimely” contentions; LBP-06-14, 63 NRC 574 (2006)
- 10 C.F.R. 2.309(b)(1)
- following release of sensitive information, petitioners must file revised contentions within 20 days; CLI-07-18, 65 NRC 416 (2007)
- 10 C.F.R. 2.309(b)(2)
- the 30-day hearing petition and contention-filing deadlines set forth in this section have been modified for the high-level waste proceeding; CLI-08-25, 68 NRC 499 (2008)
- the initial 6-month period between DOE’s initial certification and license application provides an opportunity to frame focused and meaningful contentions at the initial juncture, 30 days after NRC docket the license application; LBP-08-1, 67 NRC 50-51 (2008)
- 10 C.F.R. 2.309(b)(3)
- petitioners have 60 days to file intervention petitions and hearing requests in NRC proceedings other than those for license transfer requests and the construction authorization application for a high-level waste repository; CLI-08-18, 68 NRC 249 n.18 (2008)
- the 60-day period provided is ample time for potential intervenors to review an application and develop contentions; CLI-06-10, 63 NRC 458 (2006)
- 10 C.F.R. 2.309(b)(3)(iii)
- contentions must be filed with the original intervention petition within 60 days of notice of the proceeding in the *Federal Register*, unless a longer period is therein specified, an extension is granted, or the contentions meet certain criteria for late-filed or new contentions based on information that is available only at a later time; LBP-06-10, 63 NRC 337, 354 n.156 (2006); LBP-06-23, 64 NRC 273 n.44, 352 (2005); LBP-07-4, 65 NRC 303 n.95 (2007); LBP-07-11, 66 NRC 56 n.45 (2007); LBP-08-6, 67 NRC 291 n.254 (2008)
- 10 C.F.R. 2.309(c)
- a contention amendment that fails to meet the late-filing criteria will not be admitted; LBP-06-15, 63 NRC 611 (2006)
- a hearing request that is 7 days late may be denied; LBP-07-16, 66 NRC 310 (2007)
- a late-filed environmental contention may be admitted only where petitioner relies upon newly available, significant information, meets the nontimely filing requirements, or successfully argues for supplementing the EIS; LBP-08-11, 67 NRC 475 (2008)
- a matter raised for the first time in a prehearing conference would only be admissible if petitioner could satisfy the test for admitting late-filed contentions; CLI-07-25, 66 NRC 106 n.26 (2007)
- a motion and proposed contention filed later than 30 days after the date when the new and material information on which it is based first becomes available shall be deemed nontimely; LBP-09-22, 70 NRC 647 (2009)
- a nontimely contention is not perforce inadmissible, but a petitioner must demonstrate that its admission is warranted pursuant to the eight-factor balancing test; LBP-06-22, 64 NRC 234 n.7 (2006)

LEGAL CITATIONS INDEX

REGULATIONS

absent a demonstration of good cause, a compelling showing must be made on the other factors if a nontimely petition is to be granted or a nontimely contention is to be admitted; LBP-10-1, 71 NRC 181 (2010)

allowing a party to freely augment its contentions in its reply would circumvent the requirements for late or amended contentions; LBP-06-12, 63 NRC 405 (2006)

although exhibits are not themselves either "petitions" or "contentions," the board considers the timeliness of their filing, given that the exhibits are offered in support of petitioners' standing and certain of their contentions; LBP-08-6, 67 NRC 258 (2008)

although issues relating to fire protection at a plant cannot be addressed by petitioners in a license renewal proceeding, a possible license amendment application might trigger another opportunity to petition to intervene, if appropriate and adequate contentions are timely and properly submitted under relevant requirements; LBP-07-11, 66 NRC 75 (2007)

an amended contention must meet both the standard for nontimely admission of contentions and the general contention admissibility requirements; LBP-06-8, 63 NRC 253 (2006)

an energy alternatives contention that is not based on data or conclusions that differ significantly from data or conclusions in the environmental report or generic environmental impact assessment can only be admitted upon a favorable balancing of the untimeliness factors; LBP-06-20, 64 NRC 174 (2006)

any attempt to add bases to existing contentions or to advance new contentions must be entirely based upon information contained in the environmental assessment or safety evaluation report and the information must not have been previously available; LBP-06-27, 64 NRC 444 (2006)

applicant's reliance on a facility for low-level radioactive waste disposal that will no longer permit out-of-compact entities to import LLRW for disposal at its site could provide the basis for a new contention; LBP-10-8, 71 NRC 445 n.8 (2010)

applying the standards for late-filed contentions, a board concluded that an e-mail citing only sources that had been published, in some cases years earlier, contained no new information; CLI-09-12, 69 NRC 540 n.10 (2009)

because of the nature of the two-step structure created for the MOX fuel fabrication facility, environmental contentions are beyond the scope of the current proceeding unless they meet requirements beyond the ordinary contention admissibility tests of 10 C.F.R. 2.309(f)(1); LBP-07-14, 66 NRC 192 (2007)

contentions must be filed with the original petition within 60 days of notice of the proceeding in the *Federal Register*, unless a longer period is therein specified, an extension is granted, or the contentions meet certain criteria for late-filed or new contentions based on information that is available only at a later time; LBP-07-4, 65 NRC 303 n.95 (2007); LBP-07-11, 66 NRC 56 n.45 (2007); LBP-09-17, 70 NRC 325 n.50 (2009); LBP-08-6, 67 NRC 291 n.254 (2008)

determinations on any nontimely filing of a petition must be based on a balancing of certain factors, the most important of which is good cause, if any, for the failure to file on time; LBP-08-6, 67 NRC 257 (2008)

even if the current admitted contentions are resolved before the FEIS is issued so as to conclude the contested portion of the proceeding, petitioners could timely seek to litigate contentions regarding FEIS data or conclusions that differ significantly from the ER or the DEIS; LBP-07-3, 65 NRC 277 n.25 (2007)

except to the extent necessary to elucidate and explain specific rulings regarding various pieces of information, in determining the admissibility of a contention, the board has not considered any information in petitioner's reply other than that which would constitute legitimate amplification, appropriate responses to arguments raised in the answers, or properly late- or newly filed material; LBP-07-4, 65 NRC 302 (2007)

factors (v) and (vi) generally are given less weight than factors (vii) and (viii); LBP-10-1, 71 NRC 181 (2010)

failure to comply with Commission pleading requirements for late filings constitutes sufficient grounds for rejecting intervention and hearing requests; LBP-10-4, 71 NRC 226 n.11 (2010)

for untimely new or amended contentions, the pleading shall include a motion for leave to file the contention and the support for the proposed new or amended contention showing that it satisfies section 2.309(f)(1); LBP-09-22, 70 NRC 647 (2009)

LEGAL CITATIONS INDEX

REGULATIONS

good cause for late filing of contentions could be based on a petitioner's medical emergency; LBP-06-14, 63 NRC 573 n.14 (2006)

good cause is the most significant of the late-filing factors; CLI-09-12, 69 NRC 549 n.61 (2009); LBP-09-10, 70 NRC 140 (2009); LBP-10-1, 71 NRC 181 (2010); LBP-10-9, 71 NRC 506 (2010); LBP-10-24, 72 NRC 731, 769 (2010)

if a contention satisfies the timeliness requirement of 10 C.F.R. 2.309(f)(2)(iii), then, by definition, it is not subject to this section which specifically applies to nontimely filings; LBP-10-9, 71 NRC 506 n.46 (2010)

if a motion to reopen relates to a contention not previously in controversy among the parties, movant must meet the late-filing requirements; LBP-10-21, 72 NRC 643 (2010)

if a party seeks to reopen a closed record and, in the process, raises an issue that was not an admitted contention in the initial proceeding, it must demonstrate that raising this issue satisfies the requirements for a nontimely or late-filed contention; CLI-06-4, 63 NRC 37, 38 (2006)

if petitioner files a new contention within the 20-day time limit set by the board, and if it satisfies the remaining factors in section 2.309(f)(2), petitioner need not address the requirements that apply to nontimely filings; LBP-06-16, 63 NRC 745 n.12 (2006)

if petitioners cannot show that their new or revised contentions could not have been submitted without the requested access to the redacted information in the license transfer application, then they will have to meet not only the contention pleading requirements, but also the late-filing requirements; CLI-07-18, 65 NRC 415 (2007)

if the design certification rulemaking amendment application results in updates to applicant's combined license application, new contentions may be filed, subject to the requirements of this section; CLI-09-8, 69 NRC 325 n.36 (2009)

if, within 60 days after pertinent information that would support the framing of a contention first becomes available, intervenors submit a particularized and otherwise admissible contention regarding the construction of the facility, then the contention will be deemed timely without the need to satisfy the balancing test for late-filing requirements; CLI-09-2, 69 NRC 59, 65, 66 n.60 (2009); LBP-06-14, 63 NRC 574 (2006)

intervenors must move for leave to file an untimely new or amended contention under this section; LBP-10-14, 72 NRC 107 (2010)

late contentions may always be filed for good cause; LBP-08-1, 67 NRC 44 (2008)

late-filed environmental contentions must meet not only the usual contention pleading requirements applicable to all proceedings, but also the additional requirements for new contentions; LBP-08-11, 67 NRC 479 (2008)

motions to reopen must address eight separate factors that must be considered and balanced for any nontimely filing; LBP-10-19, 72 NRC 534-35 (2010)

new arguments not raised in the intervention petition can only be introduced into a proceeding pursuant to this section; LBP-08-13, 68 NRC 161 (2008)

new bases for a contention cannot be introduced in a reply brief, or any other time after the date the original contentions are due, unless the petitioner meets the late-filing criteria; CLI-06-17, 63 NRC 732 (2006)

no new contention will be admitted unless petitioner has satisfactorily provided the information required by this regulation; LBP-10-19, 72 NRC 535 (2010)

NRC regulations preserve the right to a hearing when an application is amended by allowing new or amended contentions to be filed in response to material new information; LBP-10-17, 72 NRC 515 (2010)

opportunities are provided to file new or amended contentions to address new developments when they arise; CLI-09-4, 69 NRC 85 (2009)

petitions and contentions filed after the initial 60-day deadline are admissible only upon a balancing of eight factors; LBP-09-26, 70 NRC 948 (2009)

reply briefs that introduce new issues must address the late-filing factors; LBP-06-10, 63 NRC 329 (2006)

requirements for untimely filings are stringent; CLI-09-7, 69 NRC 260 (2009)

the admissibility of nontimely new contentions is evaluated by the eight-factor balancing test as well as the six general contention admissibility standards; LBP-07-15, 66 NRC 267 (2007)

LEGAL CITATIONS INDEX

REGULATIONS

- the appropriate mechanism for intervenor to have sought to raise a new issue where the record of the proceeding had closed upon the board's disposition of intervenor's original contentions is to address the reopening standards contemporaneously with a late-filed intervention petition, which must satisfy the standards for both contention admissibility and late filing; CLI-09-5, 69 NRC 124 (2009)
- the Commission may decide the admissibility of late-filed contentions based on previously unavailable information or defer ruling on them, considering the need for access to redacted information and other relevant factors; CLI-07-18, 65 NRC 414 n.46 (2007)
- the filing of late contentions is permitted if sufficient justification is provided; LBP-09-15, 70 NRC 211 (2009)
- the first step in assessing the admissibility of a new contention is to determine if it is timely or nontimely; LBP-09-10, 70 NRC 138 (2009)
- the regulation is potentially relevant to new NEPA contentions, given that it provides criteria for boards to apply in deciding whether to admit nontimely filings; LBP-10-24, 72 NRC 729 (2010)
- the unusual volume and complexity of information to be sifted does not constitute good cause for a late-filed contention because petitioner had recognized the alleged problem 5 months earlier; LBP-06-14, 63 NRC 581 (2006)
- this regulation applies only to nontimely filings; LBP-06-14, 63 NRC 573 n.14 (2006)
- this section governs the admission of contentions that do not satisfy 10 C.F.R. 2.309(f)(2); LBP-10-14, 72 NRC 108 n.27 (2010)
- under appropriate circumstances, petitions to intervene, requests for hearing, and new and amended contentions may be filed after the initial 30-day deadline; LBP-08-1, 67 NRC 51 (2008)
- where new material sought to be introduced in a motion to reopen does not deal with a matter previously in controversy, the person moving to reopen the record must also meet the standards for filing untimely contentions; CLI-09-5, 69 NRC 125 (2009)
- where petitioner conceded that information in its addendum was previously available, admitted the lateness of her filing, and made no effort at the time of its submission to justify its lateness or explain why this board should consider it, her request to supplement her submission is denied; LBP-10-4, 71 NRC 235 n.22 (2010)
- whether a nontimely petition and its associated contentions should be considered is based upon a balancing of eight factors; LBP-10-1, 71 NRC 180-81 (2010)
- 10 C.F.R. 2.309(c)(1)
- boards must balance eight factors in evaluating nontimely intervention petitions, hearing requests, and contentions; CLI-10-12, 71 NRC 322 (2010); LBP-08-27, 68 NRC 954-55 (2008); LBP-09-20, 70 NRC 572-73 n.32 (2009); LBP-10-9, 71 NRC 506 n.47 (2010); LBP-10-24, 72 NRC 731 (2010)
- contentions filed after, and less formally than in, the initial petition must carry with them a demonstration that they are timely or that there is (among other things) good cause for their untimeliness; LBP-08-11, 67 NRC 503 n.13 (2008)
- filings that are nearly 3 months late must satisfy not only the requirements to demonstrate standing and submit at least one admissible contention, but also must satisfy eight stringent requirements for untimely filings and late-filed contentions; CLI-06-21, 64 NRC 33, 34 (2006)
- finding no good cause for late filing tips the balance against admitting a contention; CLI-09-7, 69 NRC 247 (2009)
- good cause is the most important factor to be weighed in allowing an untimely filing; LBP-06-14, 63 NRC 575 (2006); LBP-09-6, 69 NRC 477 (2009); LBP-09-10, 70 NRC 144 (2009); LBP-09-26, 70 NRC 949 (2009)
- if petitioner were to delay and submit contentions on National Environmental Policy Act topics addressed in the environmental report after issuance of the environmental impact statement, they would likely be characterized as late-filed contentions, subject to much more stringent admissibility standards; LBP-08-26, 68 NRC 932 (2008)
- the eight factors need to be considered only to the extent that they apply to the particular nontimely filing; LBP-06-14, 63 NRC 575 (2006)
- the good cause factor favors petitioners who have filed their petition within 30 days of the availability of the document they contend contains new and significant information so as to form the basis for their contention; LBP-10-1, 71 NRC 181-82 (2010)

LEGAL CITATIONS INDEX
REGULATIONS

- the provisions of this section are deemed to apply to any nontimely petition or new or amended contention; LBP-10-1, 71 NRC 187 (2010)
- where a motion to reopen the record seeks to admit a new contention that has not previously been in controversy among the parties, movant must show that a balancing of eight factors weighs in favor of reopening; LBP-08-12, 68 NRC 15, 28, 40-41 (2008)
- 10 C.F.R. 2.309(c)(1)(i)
- a contention filed within 30 days of the issuance of a document that legitimately undergirds the contention would be timely and presumptively meet the good cause requirement; CLI-10-18, 72 NRC 87 (2010)
- failure to meet the good cause factor considerably enhances the burden of showing that the other factors justify admission of a late-filed petition; LBP-10-21, 72 NRC 648 (2010)
- failure to show good cause for its late filing is a determinative factor militating against admission of the belated contentions; LBP-06-11, 63 NRC 396 n.3 (2006)
- good cause is the factor given the greatest weight when ruling on motions for leave to submit late-filed contentions; CLI-10-17, 72 NRC 53 n.304 (2010); LBP-07-14, 66 NRC 191 (2007)
- 10 C.F.R. 2.309(c)(1)(i)-(viii)
- a nontimely petition or contention will not be entertained in the high-level waste proceeding unless the Commission, a licensing board, or a presiding officer designated to rule on the petition determines that the late petition or contention meets the late-filing requirements; CLI-08-25, 68 NRC 499 (2008)
- in the case of the yet-to-issue NRC rules for the high-level waste proceeding, the Commission is dispensing in advance with all late-filing factors except the "good cause" factor; CLI-08-25, 68 NRC 507 n.5 (2008)
- it is neither logical nor sensible to impose only eight conditions on the admissibility of a contention based on old information and where the proponent has, through his own inadvertence, forgotten to raise it, and yet impose even more hurdles on a contention based on new information where the proponent is blameless and prompt; LBP-06-14, 63 NRC 573 n.14 (2006)
- nontimely contentions may be accepted only upon a showing of good cause for failure to file in a timely manner and a weighing of a number of factors; LBP-08-27, 68 NRC 955 n.20 (2008)
- nontimely filings may be admissible if the petitioner shows a favorable balance among eight factors; LBP-06-14, 63 NRC 575 (2006)
- nontimely intervention petitions, contentions, amended petitions, and supplemental petitions will not be entertained absent a determination by the Commission, the licensing board, or a presiding officer that a balancing of the factors specified in this section favors admission; CLI-10-4, 71 NRC 63 (2010); LBP-10-4, 71 NRC 223 (2010)
- nontimely petitions to intervene and contentions, amended petitions, and supplemental petitions will not be entertained absent a determination by the Commission, the licensing board, or a presiding officer that the petition should be granted and/or the contentions should be admitted based upon a balancing of eight factors; CLI-09-15, 70 NRC 9 (2009)
- 10 C.F.R. 2.309(c)(1)(ii)-(viii)
- in addition to establishing good cause, petitioners seeking admission of a nontimely filing must also address the remaining seven factors; LBP-07-14, 66 NRC 191 n.64 (2007)
- 10 C.F.R. 2.309(c)(1)(v)
- availability of Staff review outside the hearing process generally does not constitute adequate protection of a private party's rights; LBP-08-12, 68 NRC 42 (2008)
- 10 C.F.R. 2.309(c)(1)(vi)
- boards must consider the extent a petitioner's interests are represented by existing parties, not potential parties; LBP-10-11, 71 NRC 642-43 (2010)
- 10 C.F.R. 2.309(c)(2)
- filings that are nearly 3 months late must satisfy not only the requirements to demonstrate standing and submit at least one admissible contention, but also must satisfy eight stringent requirements for untimely filings and late-filed contentions; CLI-06-21, 64 NRC 33, 34 (2006)
- petitioner must address all eight factors set forth in section 2.309(c)(1); CLI-09-7, 69 NRC 260 (2009)
- the Commission dispensed with all but the good cause factor for late-filed contentions; LBP-09-29, 70 NRC 1031 n.17 (2009)

LEGAL CITATIONS INDEX

REGULATIONS

10 C.F.R. 2.309(d)

a clause in a settlement agreement regarding standing does not apply to NRC Staff, nor would it bind a future licensing board to make any particular determination regarding whether any of the petitioners has established its standing, either as of right or as a matter of discretion; LBP-09-23, 70 NRC 669 (2009)

a licensing board, in ruling on a request for a hearing, must determine whether petitioner has an interest potentially affected by the proceeding; LBP-06-4, 63 NRC 103 (2006); LBP-07-14, 66 NRC 182 (2007); LBP-08-14, 68 NRC 286 (2008)

an intervention petitioner must demonstrate standing; CLI-06-24, 64 NRC 118 (2006); CLI-07-19, 65 NRC 425 (2007)

any person submitting a request for hearing on a confirmatory order shall set forth with particularity the manner in which his interest is adversely affected by the order and shall address the criteria set forth in this section; LBP-08-14, 68 NRC 285 (2008)

failure of an organizational participant to have a representative provide an appearance notice might be cause for an appropriate sanction for failure to properly prosecute its litigation, but such a failure does not fall into the same category as failure to support an intervention petition with affidavits providing necessary information regarding the basis for representational standing; LBP-10-7, 71 NRC 412 (2010)

filings that are nearly 3 months late must satisfy not only the requirements to demonstrate standing and submit at least one admissible contention, but also must satisfy the stringent requirements for untimely filings and late-filed contentions; CLI-06-21, 64 NRC 33 (2006)

if petitioner fails to make a showing of adverse effect, the hearing request must be denied; LBP-07-16, 66 NRC 293 (2007)

in ruling on a petition to intervene in high-level waste proceeding, the presiding officer shall consider the factors on standing to intervene; CLI-08-25, 68 NRC 499 (2008)

intervention petitioner must be able to show how it would have personally suffered or will suffer a distinct and palpable harm that constitutes injury in fact; LBP-09-18, 70 NRC 400 (2009)

intervention petitioners must demonstrate standing and proffer at least one admissible contention; CLI-06-2, 63 NRC 13 (2006); CLI-06-9, 63 NRC 436 (2006); CLI-06-16, 63 NRC 719 (2006); CLI-10-26, 72 NRC 475 (2010); LBP-06-22, 64 NRC 234 n.6 (2006)

judicial concepts of standing are applied in NRC proceedings; LBP-08-15, 68 NRC 302 (2008); LBP-10-1, 71 NRC 176 (2010); LBP-10-7, 71 NRC 410 (2010); LBP-10-21, 72 NRC 639 (2010)

NRC applies judicial standing concepts that require a petitioner to establish a distinct and palpable harm that constitutes injury-in-fact, is fairly traceable to the challenged action, and is likely to be redressed by a favorable decision; LBP-10-11, 71 NRC 632 n.89 (2010)

NRC is required to hold a hearing upon the request of any person whose interest may be affected by the proceeding and to allow that person to intervene; CLI-09-20, 70 NRC 915 (2009); LBP-08-18, 68 NRC 538 (2008)

the introduction to intervention petitions shall identify the petitioner and set forth the basis on which it asserts standing, including specific, labeled sections addressing, as applicable, the required elements, such as injury-in-fact and zone of interests; LBP-08-10, 67 NRC 453 (2008)

those seeking NRC hearings must show the nature and extent of their interest and the possible effect of the challenged NRC licensing action on that interest; CLI-08-19, 68 NRC 260 (2008)

timing of petitioner's designation of a representative provides the board with no basis for concluding that the organization lacks standing; LBP-10-7, 71 NRC 412-13 (2010)

10 C.F.R. 2.309(d)(1)

a board shall consider three factors when deciding whether to grant standing to a petitioner; LBP-06-10, 63 NRC 327 n.17 (2006)

a hearing request must state the name, address, and telephone number of the requestor; LBP-09-28, 70 NRC 1023 (2009)

a hearing requestor must set forth his or her interest in the proceeding, as well as the possible effect that any order or decision entered therein might have upon that interest; LBP-07-5, 65 NRC 345 (2007)

a licensing board will grant a request for a hearing if it determines that the requestor has standing under the provisions of this section and has proposed at least one admissible contention; LBP-10-4, 71 NRC 228 (2010)

intervention petitions must establish the nature of the petitioner's right under the governing statutes to be made a party, its interest in the proceeding, and the possible effect of any decision or order on the

LEGAL CITATIONS INDEX

REGULATIONS

- petitioner's interest; CLI-09-20, 70 NRC 915 (2009); LBP-08-14, 68 NRC 286 (2008); LBP-08-15, 68 NRC 302 (2008); LBP-08-17, 68 NRC 438 (2008); LBP-08-18, 68 NRC 538 (2008); LBP-08-26, 68 NRC 910 (2008); LBP-09-4, 69 NRC 177 (2009); LBP-09-6, 69 NRC 382 (2009); LBP-09-28, 70 NRC 1023 (2009)
- petitions to intervene must provide certain basic information supporting the petitioner's claim to standing; LBP-08-9, 67 NRC 426 (2008)
- pleading requirements to demonstrate standing are discussed; LBP-10-4, 71 NRC 228 (2010)
- state and federally recognized Indian tribes do not need to address standing requirements if the facility is located within their boundaries; CLI-09-15, 70 NRC 9 (2009); CLI-10-4, 71 NRC 63 (2010)
- the general requirements for standing to intervene on a confirmatory order are provided; LBP-08-14, 68 NRC 285 (2008)
- to demonstrate standing, petitioner must identify an interest in the proceeding and specify the facts pertaining to that interest; CLI-08-19, 68 NRC 258 (2008)
- to establish organizational standing, an organization must demonstrate that the action at issue will cause an injury-in-fact to the organization's interests or the interests of its members and that the injury is within the zone of interests protected by the National Environmental Policy Act or the Atomic Energy Act; LBP-09-13, 70 NRC 178 (2009); LBP-10-16, 72 NRC 383 (2010)
- 10 C.F.R. 2.309(d)(1)(ii)-(iv)
- a licensing board, in ruling on a request for a hearing, is to consider the nature of petitioner's right under the Atomic Energy Act or the National Environmental Policy Act to be made a party to the proceeding, the nature and extent of petitioner's property, financial, or other interest in the proceeding, and the possible effect of any decision or order that may be issued in the proceeding on petitioner's interest; LBP-06-20, 64 NRC 143 (2006); LBP-06-23, 64 NRC 270 n.24 (2006); LBP-07-4, 65 NRC 293 n.23 (2007); LBP-07-11, 66 NRC 51 n.17 (2007); LBP-08-6, 67 NRC 270 (2008); LBP-08-24, 68 NRC 701 (2008); LBP-09-10, 70 NRC 69 (2009); LBP-09-13, 70 NRC 175 (2009); LBP-09-16, 70 NRC 239 (2009); 70 NRC 321-22 n.30 (2009); LBP-09-18, 70 NRC 394-95 (2009); LBP-09-20, 70 NRC 574 (2009); LBP-09-21, 70 NRC 590 (2009); LBP-09-26, 70 NRC 946-47 (2009); LBP-10-15, 72 NRC 275 (2010); LBP-10-16, 72 NRC 380 (2010)
- petitioner must provide basic information supporting its claim to standing in order to satisfy the requirements of this section; LBP-08-13, 68 NRC 59 (2008)
- 10 C.F.R. 2.309(d)(1)(iii)
- petitioner must state the nature and extent of his/her/its property, financial, or other interest in the proceeding, a concept separate and apart from what constitutes a contention; LBP-09-1, 69 NRC 17 (2009)
- 10 C.F.R. 2.309(d)(2)
- a federally recognized Indian tribe may seek to participate in a proceeding; LBP-10-16, 72 NRC 390 (2010)
- a state, county, municipality, federally recognized Indian tribe, or agencies thereof may submit a petition to the Commission to participate as a party in a materials license proceeding; CLI-09-15, 70 NRC 9 (2009); CLI-10-4, 71 NRC 63 (2010)
- a state or local governmental entity located outside the state in which a reactor is located may qualify for standing under the proximity presumption; LBP-06-20, 64 NRC 145 (2006)
- a state that wishes to be a party in a proceeding for a facility located within its boundaries need not address the standing requirements; LBP-06-23, 64 NRC 271 (2006)
- affected units of local government must establish standing in the same manner as all other potential parties; LBP-08-10, 67 NRC 458 (2008)
- any state and local governmental body (county, municipality, or other subdivision) in which the geologic repository operations area is located, and any affected federally recognized Indian tribe need not address the standing requirements; CLI-08-25, 68 NRC 502 (2008)
- local governmental bodies within whose boundaries a facility is located do not need to make any further demonstration of standing; CLI-07-18, 65 NRC 412 n.37 (2007); LBP-08-10, 67 NRC 458 (2008)
- not all organizations with governmental ties are entitled to participate in NRC proceedings as a local governmental body (county, municipality, or other subdivision); CLI-07-18, 65 NRC 412 n.37 (2007)

LEGAL CITATIONS INDEX
REGULATIONS

- 10 C.F.R. 2.309(d)(2)(i)
a state has standing to intervene when a proceeding involves a facility located within the state's boundaries; LBP-06-7, 63 NRC 194 (2006)
an organization that is neither a federally recognized Indian tribe nor a local governmental body does not qualify for standing; LBP-09-13, 70 NRC 184 (2009)
certain governmental entities are exempted from the requirement to show standing concerning activities that occur within their borders; LBP-09-13, 70 NRC 184 (2009)
not all entities with governmental ties are entitled to participate in licensing proceedings as local governmental bodies; LBP-09-13, 70 NRC 186 (2009)
the phrase "federally recognized Indian tribe" was added to the regulation in order to comply with Executive Order 13084; LBP-09-13, 70 NRC 184-85 (2009)
- 10 C.F.R. 2.309(d)(2)(i)-(ii)
a state or local governmental body that wishes to be a party in a proceeding that involves a facility located within its boundaries is automatically deemed to have standing; LBP-06-20, 64 NRC 144 (2006); LBP-08-13, 68 NRC 60 (2008)
- 10 C.F.R. 2.309(d)(2)(ii)
a board may grant party status only to a single representative for each affected federally recognized Indian tribe; LBP-09-6, 69 NRC 428 (2009)
a state that wishes to be a party in a proceeding that involves a facility located within its boundaries is automatically deemed to have standing; LBP-06-7, 63 NRC 194 (2006)
- 10 C.F.R. 2.309(d)(2)(iii)
an affected federally recognized Indian tribe is automatically entitled to participate in the Yucca Mountain proceeding; LBP-09-6, 69 NRC 427 (2009)
because the high-level waste repository is not to be located within California's boundaries, California is not entitled to automatic standing in the proceeding; LBP-09-6, 69 NRC 424 (2009)
standing as of right has been conferred in the high-level waste proceeding on the state and local governmental bodies in which the geologic repository operations area is located as well as any affected federally recognized Indian tribe if the contention admission requirements are satisfied with respect to at least one contention; CLI-08-25, 68 NRC 502 (2008); LBP-09-6, 69 NRC 381 (2009)
- 10 C.F.R. 2.309(d)(3)
a hearing request/intervention petition must state the name, address, and telephone number of the requestor/petitioner, the nature of the requestor's/intervenor's right under the AEA to be made a party to the proceeding, the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding, and the possible effect of any decision or order issued in the proceeding on the petitioner's/requestor's interest; LBP-10-7, 71 NRC 410 n.3 (2010)
even if neither applicant nor NRC Staff challenges petitioner's standing, the board must make its own determination; LBP-08-15, 68 NRC 303 (2008)
licensing boards or presiding officers must determine whether requestor/petitioner is a person whose interest may be affected by the proceeding; LBP-09-23, 70 NRC 669 (2009); LBP-10-7, 71 NRC 410 n.3 (2010)
- 10 C.F.R. 2.309(e)
a clause in a settlement agreement regarding standing does not apply to NRC Staff, nor would it bind a future licensing board to make any particular determination regarding whether any of the petitioners has established its standing, either as of right or as a matter of discretion; LBP-09-23, 70 NRC 669 (2009)
any petitioner requesting discretionary standing shall label its discussion of each of the applicable regulatory requirements; LBP-08-10, 67 NRC 453 (2008)
basing its "sound record" ruling not on petitioners' relevant knowledge and experience, but instead on defendant's and his counsel's purported lack of such knowledge and experience is legal error; CLI-06-16, 63 NRC 723 (2006)
discretionary intervention comes into play only in the event that the petitioner is determined to lack standing to intervene as a matter of right; CLI-06-16, 63 NRC 719 n.29 (2006)
discretionary intervention may be granted in circumstances when one petitioner has standing as of right and has proffered at least one admissible contention, but other petitioners have not demonstrated their standing; CLI-08-19, 68 NRC 267 (2008); LBP-07-10, 66 NRC 21 n.14 (2007); LBP-10-1, 71 NRC 180 n.6 (2010)

LEGAL CITATIONS INDEX

REGULATIONS

- in ruling on discretionary intervention requests, licensing boards will consider and balance enumerated factors weighing in favor of and against allowing intervention; LBP-09-23, 70 NRC 669 (2009)
- 10 C.F.R. 2.309(e)(1)-(2)
- in exercising their discretion to provide hearings or permit interventions, presiding officers and licensing boards traditionally consider the six factors; CLI-06-16, 63 NRC 716 (2006)
- 10 C.F.R. 2.309(f)
- a contention amendment that fails to meet the general admissibility requirements will not be admitted; LBP-06-15, 63 NRC 611 (2006)
- a petitioner seeking to intervene as of right in NRC adjudication must demonstrate standing and offer an admissible contention; CLI-06-10, 63 NRC 455 (2006); CLI-06-16, 63 NRC 719 (2006)
- admissibility requirements for contentions are specified; LBP-07-10, 66 NRC 21-22 (2007)
- an amended contention must meet both the standard for nontimely contentions and the general contention admissibility requirements; LBP-06-8, 63 NRC 253 (2006)
- an intervention petitioner must proffer at least one admissible contention; CLI-07-19, 65 NRC 425 (2007)
- any person submitting a request for hearing on a confirmatory order shall set forth with particularity the manner in which his interest is adversely affected by the order and shall address the criteria set forth in this section; LBP-08-14, 68 NRC 285 (2008)
- appeals of partial initial decisions are not the proper procedural context in which to revise contentions; CLI-10-17, 72 NRC 44 (2010)
- applying the standards for late-filed contentions, a board concluded that an e-mail citing only sources that had been published, in some cases years earlier, contained no new information; CLI-09-12, 69 NRC 540 n.10 (2009)
- contention admissibility requirements for a hearing on a confirmatory order are addressed; LBP-08-14, 68 NRC 285 (2008)
- contention pleading requirements are meant to focus litigation on concrete issues and result in a clearer and more focused record for decision; LBP-06-4, 63 NRC 108 (2006)
- contentions must be specific, material, and within the scope of the license application, and supported by factual evidence; CLI-06-17, 63 NRC 729 (2006)
- contentions must meet the admissibility standards in license transfer proceedings; CLI-07-18, 65 NRC 414 (2007)
- if petitioner fails to make a showing of adverse effect, the hearing request must be denied; LBP-07-16, 66 NRC 293 (2007)
- in addition to meeting NRC's regular contention admissibility requirements in this section, environmental contentions addressing any DOE environmental impact statement or supplement must also conform to the requirements and address the applicable factors outlined in section 51.109; CLI-08-25, 68 NRC 502 (2008)
- issues that raise legal or factual challenges related to an application are appropriately considered as proposed contentions in the context of a merits hearing on the application; CLI-08-20, 68 NRC 274 (2008)
- petitioner must explain and support its contention in the petition to intervene; CLI-08-7, 67 NRC 191 (2008)
- petitioners are directed to file their NEPA contentions based on the applicant's environmental report; CLI-06-15, 63 NRC 701 (2006)
- petitioners must set forth, with adequate elaboration and support, a plausible claim that a proposed facility would not be adequately protective in the event of specific phenomena; CLI-08-3, 67 NRC 167 (2008)
- requirements for contention admissibility are described; CLI-09-5, 69 NRC 122 (2009)
- specificity and support are required for the positions parties take in their filings; LBP-07-13, 66 NRC 140 (2007)
- the conditions set out in this section serve as minimum specificity standards for the showing of a genuine issue of fact; LBP-07-13, 66 NRC 140 n.6 (2007)
- the "issues" in license transfer proceedings constitute "contentions" under section 2.309(f) and must therefore meet the standards for admissibility set forth in this regulation; CLI-07-18, 65 NRC 405-06 n.7 (2007)
- the scope of a contention is limited to issues of law and fact pleaded with particularity in the intervention petition, including its stated bases; CLI-10-5, 71 NRC 100 (2010)

LEGAL CITATIONS INDEX

REGULATIONS

- to be admissible, a contention must provide a specific statement of the issue of law or fact to be raised or controverted, a brief explanation of the basis for the contention, and a concise statement of the alleged facts or expert opinions that support the contention, and upon which the petitioner will rely at the hearing, together with references to those documents or other sources of which the petitioner is aware and upon which he intends to rely; CLI-06-10, 63 NRC 456 (2006)
- where warranted, NRC allows for amendment of admitted contentions, but does not allow distinctly new complaints to be added at will as litigation progresses, stretching the scope of admitted contentions beyond their reasonably inferred bounds; CLI-10-11, 71 NRC 309 (2010)
- 10 C.F.R. 2.309(f)(1)
- a contention challenging the aging management program for corrosion in the sand bed region of the drywell liner is admissible in a license renewal proceeding; LBP-06-7, 63 NRC 212, 217 (2006)
 - a contention that fails to provide sufficient information to show that a genuine dispute exists with the applicant/licensee or fails to include references to specific disputed portions of the application must be rejected; LBP-06-14, 63 NRC 588 (2006)
 - a contention that fails to state an issue of law or fact and makes no attempt to comply with the contention pleading criteria is inadmissible; LBP-09-10, 70 NRC 78 (2009)
 - a hearing request or petition to intervene must set forth with particularity the contentions sought to be raised; LBP-07-14, 66 NRC 184 (2007)
 - a legal issue contention need not satisfy all the contention admissibility criteria; LBP-09-6, 69 NRC 422 (2009); LBP-09-29, 70 NRC 1032 (2009)
 - a licensing board erred in referring a contention to the NRC Staff without making an appropriate contention admissibility determination; CLI-10-9, 71 NRC 249 (2010)
 - a request for hearing must set forth with particularity the contentions sought to be raised; LBP-06-4, 63 NRC 107 (2006)
 - a single sentence labeled a contention, with no reference to the six elements of this section does not make an admissible contention; LBP-10-16, 72 NRC 396 (2010)
 - a state that wishes to raise specific concerns may submit contentions complying with the pleading requirements and become a party to the adjudication; LBP-06-20, 64 NRC 205 (2006)
 - a vague, one-sentence assertion falls far short of satisfying any of the six admissibility factors; LBP-06-22, 64 NRC 250 n.23 (2006)
 - all of the contention admissibility requirements must be met for a contention to be admissible; CLI-09-8, 69 NRC 323 (2009); LBP-06-6, 63 NRC 171, 177, 183 (2006); LBP-06-7, 63 NRC 197-98 (2006); LBP-07-7, 65 NRC 511 (2007); LBP-07-16, 66 NRC 301, 306, 311, 318, 325 (2007); LBP-08-9, 67 NRC 448 (2008); LBP-08-19, 68 NRC 546-47 (2008); LBP-08-20, 68 NRC 551 (2008); LBP-08-21, 68 NRC 560 (2008); LBP-08-25, 68 NRC 787 (2008); LBP-09-2, 69 NRC 95 (2009); LBP-09-3, 69 NRC 152 (2009); LBP-09-4, 69 NRC 189 (2009); LBP-09-8, 69 NRC 737 (2009); LBP-09-10, 70 NRC 71-72 (2009); LBP-09-21, 70 NRC 592 (2009); LBP-10-1, 71 NRC 183 n.9 (2010); LBP-10-14, 72 NRC 109 (2010); LBP-10-16, 72 NRC 394 (2010)
 - although a board is free to view intervenors' support for its contention in the light most favorable to intervenors, the board may not ignore the contention admissibility requirements of this section; CLI-09-3, 69 NRC 73 (2009)
 - although a board may view supporting information in a light favorable to a petitioner, a board may not simply infer the bases for a contention; CLI-09-7, 69 NRC 275 (2009)
 - although issues relating to fire protection at a plant cannot be addressed by petitioners in a license renewal proceeding, a possible license amendment application might also trigger another opportunity to petition to intervene, if appropriate and adequate contentions are timely and properly submitted under relevant requirements; LBP-07-11, 66 NRC 75 (2007)
 - amendment of a combined license application to comply with an amended aircraft impacts rule during the pendency of the combined license application could form the basis for a late-filed contention; CLI-10-1, 71 NRC 13 n.63 (2010)
 - any new or amended contentions must satisfy the usual contention admissibility requirements; CLI-09-2, 69 NRC 66 (2009)
 - challenge to the technical adequacy of baseline water quality data and adequate confinement of the host aquifer in applicant's environmental report is admissible; LBP-10-16, 72 NRC 403 (2010)

LEGAL CITATIONS INDEX

REGULATIONS

contention alleging that the threatened eastern fox snake inhabits the nuclear plant site and that construction activities for the new reactor will kill snakes, destroy their habitat, and might eliminate them from the area is within the scope of a combined license proceeding; LBP-09-16, 70 NRC 287 (2009)

contention asserting that DOE's description of its expert elicitation relating to a probabilistic volcanic hazard analysis update fails to comply with section 63.21(c)(19) or the NRC guidance document that DOE formally committed to follow, is admissible; LBP-09-29, 70 NRC 1034 (2009)

contention that the high-level waste application inadequately addresses generalized corrosion because it relies on flawed experimental data raises a genuine, material dispute with the application by pointing to specific sections that allegedly fail to comply with the NRC's requirements for conducting a post-closure performance assessment; LBP-09-29, 70 NRC 1036-37 (2009)

even if the late-filed contention criteria are satisfied, proposed contentions still must meet the threshold admissibility standards contained in this section; CLI-09-7, 69 NRC 262 (2009)

filings that are nearly 3 months late must satisfy not only the requirements to demonstrate standing and submit at least one admissible contention, but also must satisfy the stringent requirements for untimely filings and late-filed contentions; CLI-06-21, 64 NRC 33 (2006)

for a contention to be admissible, it must satisfy eight pleading requirements; LBP-10-7, 71 NRC 419 (2010); LBP-10-13, 71 NRC 677 n.6 (2010)

hearing requests and intervention petitions must set forth with particularity the contentions sought to be raised; CLI-10-1, 71 NRC 7-8 (2010); CLI-10-9, 71 NRC 253 (2010)

in addition to providing a specific statement of their contention and briefly explaining the basis for it, petitioners must support it with references to the application and a fact-based argument, stating why they disagree with the applicant's actions and position; LBP-08-6, 67 NRC 328 (2008)

in addition to the eight-factor balancing test of section 2.309(c), a late-filed contention must satisfy six additional factors to be deemed admissible; LBP-06-11, 63 NRC 395 (2006); LBP-06-22, 64 NRC 234 (2006)

in the second step of a two-decision process for the initiation of new contentions, parties litigate and the board decides whether the contention satisfies the requirements of this section; LBP-07-15, 66 NRC 266 (2007)

intervenor are obliged to offer specific contentions on material issues, supported by alleged facts or expert opinion; CLI-09-8, 69 NRC 323 (2009)

it is petitioner's burden of going forward at the contention admission stage to submit a complete, self-contained contention addressing each of the elements required by this section; LBP-10-16, 72 NRC 415-16 (2010)

motions to reopen must address the six criteria that all contentions must meet; LBP-10-19, 72 NRC 535 (2010)

new or amended contention, like any other, must comply with the admissibility requirements of this section; LBP-10-17, 72 NRC 515 (2010)

NRC contention admissibility requirements are deliberately strict, and any contention that does not satisfy them will be rejected; CLI-10-21, 72 NRC 201 (2010)

petitioner, especially one represented by counsel, bears the burden of going forward and specifically addressing each of the six elements in this section; LBP-10-16, 72 NRC 396 (2010)

petitioner failed to identify any statute or NRC regulation to support its theory that applicant may not revise its application to include a different reactor design; LBP-10-17, 72 NRC 509-10 (2010)

petitioner raises a genuine dispute with the application with respect to the adequacy of information needed to characterize the site and offsite hydrogeology to ensure confinement of the extraction fluids; LBP-10-16, 72 NRC 426 (2010)

petitioners must set forth their contentions with particularity; CLI-10-15, 71 NRC 482 (2010)

pleading requirements for admissible contentions are discussed; CLI-09-7, 69 NRC 260 (2009); CLI-09-12, 69 NRC 554 (2009); LBP-08-14, 68 NRC 287 (2008); LBP-08-16, 68 NRC 383 (2008)

six basic pleading standards must be satisfied whether contentions are filed at the outset of the proceeding, are filed in a timely fashion when material new information arises, or are untimely filings; LBP-06-14, 63 NRC 575-76 (2006)

supporting information is to be provided at the time the contention is filed, not at a later date or on appeal; CLI-07-20, 65 NRC 503 (2007)

LEGAL CITATIONS INDEX

REGULATIONS

the admissibility of nontimely new contentions is evaluated by the eight-factor balancing test as well as the six general contention admissibility standards; LBP-07-15, 66 NRC 267 (2007)

the appropriate mechanism for intervenor to have sought to raise a new issue where the record of the proceeding had closed upon the board's disposition of intervenor's original contentions is to address the reopening standards contemporaneously with a late-filed intervention petition, which must satisfy the standards for both contention admissibility and late filing; CLI-09-5, 69 NRC 124 (2009)

the contention admissibility standards and their interpretation in case law are addressed; LBP-06-23, 64 NRC 351-59 (2005)

the determination of contention admissibility is not the time or place for broad policy arguments; LBP-09-10, 70 NRC 135 (2009)

the existence of a Staff request for additional information does not, by itself, constitute compliance with contention admissibility criteria, nor does it ensure the admission of a contention; LBP-09-10, 70 NRC 77 (2009)

the hearing process is only intended for issues that are appropriate for, and susceptible to, resolution in an NRC hearing; LBP-10-15, 72 NRC 278 (2010)

the purpose of contention pleading requirements is to focus litigation on concrete issues and result in a clearer and more focused record for decision; LBP-09-4, 69 NRC 189 (2009); LBP-09-10, 70 NRC 133 (2009); LBP-10-15, 72 NRC 278 (2010); LBP-10-16, 72 NRC 394 (2010)

the requirements in paragraphs (iv) and (v) are related to the scope requirement of paragraph (iii) because if an issue is not within the scope of a proceeding, then it is also necessarily not material, either legally or factually, at the contention admissibility stage; LBP-07-11, 66 NRC 58 (2007)

the support for a contention, as reflected in its stated bases and any accompanying affidavits or documentary information, should be set forth with reasonable specificity so as to put the other parties on notice as to what issues they will have to defend against or oppose; LBP-08-2, 67 NRC 73 (2008)

the third step in determining the admissibility of any new contention is the requirement that it satisfy the six standards; LBP-09-10, 70 NRC 140 (2009)

threshold contention standards require petitioners to review application materials and set forth their contentions with particularity; CLI-10-11, 71 NRC 308 (2010)

to be admissible, a contention calling for an irradiation siting analysis must conform to all the requirements of this section, including providing sufficient basis to show that a siting analysis is necessary to determine that the facility will be adequate to protect health and minimize danger to life or property; CLI-08-3, 67 NRC 170 (2008)

to be admissible, a contention must meet certain specificity and basis requirements and also must fall within the scope of the proceeding; CLI-06-16, 63 NRC 720 (2006)

to be admitted in a proceeding, a new contention must meet the new or amended contention requirements as well as the general contention admissibility requirements; LBP-09-9, 70 NRC 45 (2009)

to intervene in an NRC proceeding, a petitioner must, in addition to demonstrating standing, submit at least one admissible contention; LBP-06-10, 63 NRC 336 (2006); LBP-06-23, 64 NRC 272 (2006); LBP-06-27, 64 NRC 446-47 (2006); LBP-07-4, 65 NRC 302 (2007); LBP-08-6, 67 NRC 290 (2008); LBP-09-2, 69 NRC 93 (2009); LBP-09-4, 69 NRC 189 (2009)

to litigate a contention, petitioner who has established standing must also ensure each contention meets six admissibility criteria; LBP-10-2, 71 NRC 210 (2010)

to participate as a party in a combined license proceeding, intervention petitioner must not only establish standing, but must also proffer at least one admissible contention that meets the requirements of this section; LBP-09-16, 70 NRC 243 (2009)

to participate as a party in a materials license renewal proceeding, intervention petitioner must not only establish standing, but also proffer at least one admissible contention; LBP-08-24, 68 NRC 715-16 (2008)

to the extent that licensee's response focuses on the merits of petitioner's contention at the admissibility stage, and not on whether it is admissible, the response is beyond consideration; LBP-06-6, 63 NRC 177 (2006)

under the 2004 Part 2 revisions, contentions are now required to be included with, rather than being submitted sometime subsequent to the filing of, the intervention petition; LBP-10-1, 71 NRC 188 n.4 (2010)

LEGAL CITATIONS INDEX

REGULATIONS

- when a contention of omission has been rendered moot, and the intervenor wishes to raise specific challenges regarding the new information, it may timely file a new contention that addresses the admissibility factors; LBP-06-16, 63 NRC 744 (2006)
- when the Department of Energy is before the Commission, a heightened standard applies for the admissibility of integrity contentions beyond what is imposed by this section; LBP-09-6, 69 NRC 467 (2009)
- where petitioner was admitted to the case as a party at the time it filed an amended contention, consideration of the contention's admissibility is governed by the provisions of this section as well as the general contention admissibility requirements of section 2.309(f)(2); CLI-10-18, 72 NRC 86 n.171 (2010)
- with limited exceptions, no rule or regulation of the Commission is subject to attack in any adjudicatory proceeding; LBP-09-26, 70 NRC 955-56 (2009)
- 10 C.F.R. 2.309(f)(1)(i)
- a contention aimed broadly at all buried systems, structures, and components that may convey or contain radioactively contaminated water is inadmissible; LBP-08-26, 68 NRC 944 (2008)
- a contention that calls into question the adequacy of the licensee's field sampling plan provides a specific statement of the issue of law or fact to be raised or controverted; LBP-06-6, 63 NRC 183 (2006)
- a contention that contains little more than a recitation of a notice of violation does not specify the law or fact to be challenged as required for contention admissibility; LBP-10-9, 71 NRC 526 (2010)
- a contention that provides a specific statement of the issue of fact to be raised satisfies the admissibility requirements; LBP-06-20, 64 NRC 164 (2006); LBP-06-22, 64 NRC 240 (2006)
- although a certain amount of latitude might appropriately be extended to pro se litigants, there nonetheless must be a substantial endeavor to meet the clear regulatory requirements for a hearing request; LBP-07-5, 65 NRC 352 (2007)
- case law interpreting this subsection is discussed; LBP-06-23, 64 NRC 353 (2005)
- contention raised the legal issue of whether the Staff's failure to consider alternative locations complied with NEPA; CLI-10-18, 72 NRC 82 n.151 (2010)
- contentions may raise issues of law as well as issues of fact; CLI-09-14, 69 NRC 590 (2009); LBP-09-6, 69 NRC 422 (2009)
- contentions must provide a specific statement of the issue of law or fact to be raised or controverted; CLI-10-2, 71 NRC 30 (2010); LBP-06-10, 63 NRC 337-38 (2006); LBP-07-10, 66 NRC 22 (2007); LBP-08-5, 67 NRC 235 (2008); LBP-08-9, 67 NRC 430 (2008); LBP-10-9, 71 NRC 508 (2010)
- contentions of omission must describe the information that should have been included in the environmental report and provide the legal basis that requires the omitted information to be included; LBP-09-16, 70 NRC 244 (2009)
- examples of admitted contentions that satisfy the requirement to provide a specific statement of the issue of law or fact to be raised or controverted are provided; LBP-08-5, 67 NRC 235 (2008)
- failure to specify the language of the issue framed by a contention and distinguish it from the discussion that provides the supporting foundation for the issue statement might be grounds for dismissing a contention; LBP-10-7, 71 NRC 422 (2010)
- in addition to the six requirements for contentions set forth in section 2.309(f)(1)(i)-(vi), potential parties shall provide a specific statement of the issue of law or fact to be raised or controverted; LBP-08-10, 67 NRC 454 (2008)
- in ruling on contention admissibility, the board first must consider whether the contention provides a specific statement of the legal or factual issue to be raised; LBP-08-15, 68 NRC 313 (2008)
- pro se litigants are not exempt from the contention pleading requirements; CLI-07-20, 65 NRC 502 (2007)
- the basic allegation that the environmental report does not comply with 10 C.F.R. Part 51 because it does not adequately address all indirect and cumulative environmental impacts that result from certain specified aspects of the proposed project provides a specific statement of the issue of law or fact to be raised or controverted; LBP-09-10, 70 NRC 101 (2009)
- the issue that generally arises under this paragraph is whether a contention is stated with sufficient specificity; LBP-09-17, 70 NRC 326 (2009)

LEGAL CITATIONS INDEX
REGULATIONS

- 10 C.F.R. 2.309(f)(1)(i)-(ii)
although petitioner should provide a separate statement of contention and basis, the board does not rely upon this drafting flaw as a reason for rejecting these contentions; LBP-08-16, 68 NRC 387 n.9 (2008)
an admissible contention must include a specific statement of the issue of law or fact to be raised or controverted as well as a brief explanation of the basis for the contention; LBP-08-26, 68 NRC 915 (2008)
contentions of omission must describe the information that should have been included in the environmental report and provide the legal basis that requires the omitted information to be included; LBP-09-4, 69 NRC 190 (2009); LBP-10-16, 72 NRC 395 (2010)
- 10 C.F.R. 2.309(f)(1)(i)-(vi)
a contention alleging that a license application includes no emergency procedures for tsunamis and hurricanes is within the scope of an irradiator licensing proceeding and also material to the required regulatory compliance finding necessary for the grant of a license; LBP-06-12, 63 NRC 417-18 (2006)
a design-based challenge involving a postulated cask drop on a sealed source is within the scope of, and material to, an irradiator licensing proceeding; LBP-06-12, 63 NRC 409 (2006)
a new contention must meet the requirements of section 2.309(f)(2) as well as six basic contention admissibility standards; LBP-08-27, 68 NRC 955 (2008)
an intervention petitioner must proffer at least one admissible contention; CLI-06-24, 64 NRC 118 (2006)
applicant's and Staff's difficulty in determining the focus and substance of a contention does not eliminate the need to address its admissibility; LBP-06-12, 63 NRC 409 (2006)
at the contention admissibility stage, a board merely decides whether the contentions meet the six pleading requirements; LBP-09-10, 70 NRC 86 (2009)
contention concerning feasibility of developing wind and CAES together, land use relating to CAES, and multiple, overlapping uses of land, it is admissible; LBP-10-10, 71 NRC 569 (2010)
contentions must satisfy six pleading requirements; CLI-06-9, 63 NRC 436 (2006); CLI-08-17, 68 NRC 233 (2008); LBP-06-20, 64 NRC 146-47 (2006); LBP-07-3, 65 NRC 252 (2007); LBP-07-5, 65 NRC 345 (2007); LBP-07-16, 66 NRC 285, 305 (2007); LBP-08-13, 68 NRC 61 (2008); LBP-08-15, 68 NRC 312 (2008); LBP-08-17, 68 NRC 440 (2008); LBP-08-18, 68 NRC 540 (2008); LBP-08-24, 68 NRC 716 (2008); LBP-09-1, 69 NRC 27-42 (2009); LBP-09-6, 69 NRC 389 (2009); LBP-10-4, 71 NRC 241 (2010); LBP-10-6, 71 NRC 358-59 (2010)
- 10 C.F.R. 2.309(f)(1)(ii)
a brief explanation of the basis for a contention is a necessary prerequisite to its admission; CLI-08-3, 67 NRC 168 (2008); CLI-10-2, 71 NRC 30 (2010); LBP-10-9, 71 NRC 508 (2010); LBP-06-20, 64 NRC 147, 164-65 (2006); LBP-06-22, 64 NRC 240 (2006); LBP-07-10, 66 NRC 22 (2007); LBP-07-16, 66 NRC 286 (2007); LBP-08-9, 67 NRC 430 (2008); LBP-08-13, 68 NRC 61 (2008); LBP-08-15, 68 NRC 314 (2008); LBP-09-10, 70 NRC 100 (2009); LBP-09-26, 70 NRC 952 (2009); LBP-10-13, 71 NRC 687 n.66 (2010)
a contention challenging cost estimates for site remediation after a severe accident is admissible; LBP-08-26, 68 NRC 925 (2008)
a contention's basis regarding the inadequacy of the technique for detecting water conduits underlying a site constitutes a brief explanation of the basis for the contention; LBP-06-6, 63 NRC 183 (2006)
case law interpreting this subsection is discussed; LBP-06-23, 64 NRC 353 (2005)
contentions of omission must describe the information that should have been included in the environmental report and provide the legal basis that requires the omitted information to be included; LBP-09-16, 70 NRC 244 (2009)
each contention shall consist of a label, a title, a body addressing separately, in order and clearly labeled, each of the six requirements for contentions, and a statement concerning whether the contention is a joint contention; LBP-08-9, 67 NRC 429 (2008); LBP-08-10, 67 NRC 453 (2008)
enough specificity is required in the basis for a contention to make it clear that there is an issue susceptible to litigation; LBP-06-10, 63 NRC 351 (2006)
failure to specify the language of the issue framed by a contention and distinguish it from the discussion that provides the supporting foundation for the issue statement might be grounds for dismissing a contention; LBP-10-7, 71 NRC 422 (2010)

LEGAL CITATIONS INDEX

REGULATIONS

- for each contention, a petitioner must provide a specific statement of the issue of law or fact to be raised or controverted and a brief explanation of the basis for the contention; LBP-06-10, 63 NRC 337-38 (2006)
- for license renewal proceedings, contention pleading requirements are found in this section and incorporate the prior contention pleading requirements of old 10 C.F.R. 2.714; LBP-08-26, 68 NRC 914 (2008)
- general contention admissibility requirements are described; CLI-10-27, 72 NRC 489-90 (2010); LBP-07-14, 66 NRC 184 (2007); LBP-10-21, 72 NRC 651 (2010)
- intervention petitioner for must establish standing and proffer at least one admissible contention that meets six requirements; LBP-09-18, 70 NRC 403 (2009); LBP-09-26, 70 NRC 951-52 (2009)
- it is not the responsibility of the licensing board to supply the basis information necessary to sustain a contention; LBP-08-24, 68 NRC 742 (2008)
- NRC pleading standards do not allow for mere notice pleading, or the filing of general, vague, or unsupported claims to be elaborated on at some later time; CLI-09-5, 69 NRC 120 n.21 (2009)
- petitioner described the legal basis for its contention under Ninth Circuit legal precedents; CLI-10-18, 72 NRC 82 n.151 (2010)
- petitioners' failure to explain or allege how or why a recirculation screen design is incomplete or the instrumentation and control design has a problem renders the contention inadmissible; LBP-09-10, 70 NRC 77 (2009)
- prior contention pleading requirements of old 10 C.F.R. 2.714 are incorporated along with additional requirements that a contention be within the scope of a proceeding and material; LBP-06-4, 63 NRC 107 (2006)
- requirements for admissibility of contentions are strict by design and any contention that does not satisfy these requirements will be rejected; CLI-06-24, 64 NRC 118 (2006)
- six basic requirements for an admissible contention can be summarized as specificity, brief explanation, within scope, materiality, concise statement of alleged facts or expert opinion, and genuine dispute; LBP-10-15, 72 NRC 277 (2010)
- the brief explanation of the basis that is required helps define the scope of a contention, the reach of a contention necessarily hinging upon its terms coupled with its stated bases; LBP-08-6, 67 NRC 292-93 (2008)
- the purpose of this contention rule is to focus litigation on concrete issues and result in a clearer and more focused record for decision; LBP-08-26, 68 NRC 914-15 (2008)
- the requirement for a brief explanation of the basis for the contention should rarely exceed more than a sentence or two; LBP-08-10, 67 NRC 455 (2008)
- 10 C.F.R. 2.309(f)(1)(iii)
- a challenge to the legal sufficiency of the application is within the scope of a combined license proceeding; LBP-09-3, 69 NRC 160 (2009)
- a contention asserting that the SAMA analysis for a facility is deficient because it fails to consider the vulnerability of the spent fuel pool is outside the scope of a license renewal proceeding; LBP-06-7, 63 NRC 201 (2006)
- a contention contesting licensee's request for an alternative schedule for submittal of a decommissioning plan is within the scope of a materials license amendment proceeding; LBP-06-6, 63 NRC 179, 180, 183 (2006)
- a contention expressing concerns about the possibility of a regulatory "gap" relative to the regulation of water withdrawal that will lead to health and safety impacts as a result of higher-power operation lacks proper support to create a genuine material dispute and is irrelevant and immaterial to the license amendment proceeding; LBP-07-10, 66 NRC 26 (2007)
- a contention is inadmissible because its support is either inaccurate or inadequate to establish that the issue raised is material to the proceeding or is insufficient to show that a genuine dispute on a material factual or legal issue exists so as to warrant admission of the contention; LBP-08-16, 68 NRC 390, 402 (2008)
- a contention must allege facts sufficient to establish that it falls directly within the scope of a proceeding; LBP-07-4, 65 NRC 304 (2007); LBP-07-11, 66 NRC 57, 58, 75, 86, 87, 95 (2007)
- a contention that challenges compliance with fire protection regulations at an existing unit is outside the scope of a combined license proceeding; CLI-10-9, 71 NRC 254-55 (2010)

LEGAL CITATIONS INDEX

REGULATIONS

a contention that challenges the legality of foreign ownership of applicant is within the scope of a combined operating license proceeding; LBP-09-4, 69 NRC 194 (2009)

a contention will not be admitted if the allegation is that the NRC Staff has not performed an adequate analysis, because the sole focus of the hearing is on whether the application satisfies NRC regulatory requirements, rather than adequacy of the NRC Staff performance; LBP-08-9, 67 NRC 435 (2008)

a safety contention alleging that applicant fails to supply information that is related to the effects of aging and that is required by the license renewal regulations is within the scope of a license renewal proceeding; LBP-06-20, 64 NRC 165 (2006)

all proffered contentions must be within the scope of the proceeding as defined by the Commission in its initial hearing notice and order referring the proceeding to the licensing board; CLI-10-2, 71 NRC 30 (2010); LBP-07-3, 65 NRC 253 (2007); LBP-07-10, 66 NRC 23 (2007); LBP-08-13, 68 NRC 62 (2008); LBP-08-15, 68 NRC 314, 329 (2008); LBP-08-16, 68 NRC 384 (2008); LBP-08-17, 68 NRC 440 (2008); LBP-09-3, 69 NRC 153 (2009); LBP-09-6, 69 NRC 390 (2009); LBP-10-7, 71 NRC 420 (2010)

an aircraft attack scenario is outside the scope of a license renewal proceeding; LBP-06-7, 63 NRC 200 (2006)

an attack on licensee's use of the Interconnection Agreement as part of the plant's current licensing basis is outside the scope of a license renewal proceeding; LBP-06-7, 63 NRC 209 n.17 (2006)

any challenge to the Environmental Radiation Monitoring Plan is beyond the scope of a materials license amendment proceeding and therefore inadmissible; LBP-06-27, 64 NRC 449 (2006)

any contention directed at a design undergoing rulemaking review is inadmissible because all matters that are subject of a rulemaking are outside the scope of licensing proceedings; LBP-09-8, 69 NRC 739 n.13 (2009)

assertions based on previous facility changes are outside the scope of a license amendment proceeding; LBP-08-9, 67 NRC 437 n.100 (2008)

assertions that building two new nuclear reactors in a troubled economy is fiscally irresponsible is outside the scope of a combined license proceeding; LBP-09-10, 70 NRC 82 (2009)

by complying with the six contention requirements, an admissible contention must raise an issue that is both within the scope of the proceeding (normally defined by the hearing notice) and material to the findings the NRC must make to support the action involved; LBP-09-18, 70 NRC 403 (2009)

by referencing the license renewal application's aging management plan regarding buried pipes and tanks, petitioner has supported its contention sufficiently to establish that it falls directly within the scope of the license renewal proceeding; LBP-06-23, 64 NRC 310 (2006)

case law interpreting this subsection is discussed; LBP-06-23, 64 NRC 353-54 (2005)

challenge to NRC's authority to engage in alternative dispute resolution is beyond the scope of an enforcement proceeding; LBP-08-14, 68 NRC 292 (2008)

challenges to 10 C.F.R. 51.51, Table S-3 are outside the scope of a combined license proceeding; LBP-09-10, 70 NRC 115 (2009); LBP-09-18, 70 NRC 407 (2009)

claims related to the decommissioning of the facility are not currently ripe for review and are outside the scope of a combined license proceeding; LBP-09-16, 70 NRC 274 (2009)

concerns regarding potential terrorism are inadmissible because it is beyond the scope of a license amendment proceeding and not material to the findings the NRC must make to support the action that is involved in the proceeding; LBP-08-6, 67 NRC 333 (2008)

contention satisfied scope and materiality requirements by raising a legal issue related to completeness of the environmental assessment and compliance with NEPA; CLI-10-18, 72 NRC 82 n.151 (2010)

contention that argues that a license application does not adequately address pollution impacts and require controls necessary to limit hazardous air pollution falls outside the scope of a fuel fabrication facility licensing proceeding; LBP-07-14, 66 NRC 190 (2007)

contentions and their foundational support that raise matters that impermissibly challenge the basic structure of Commission's regulatory program and are either inaccurate or inadequate to establish that the issue raised is material to the proceeding or are insufficient to show that a genuine dispute on a material factual or legal issue exists are inadmissible; LBP-10-7, 71 NRC 422, 424 (2010)

contentions must fall within the scope of the proceeding in which intervention is sought; CLI-06-24, 64 NRC 119 (2006); LBP-06-20, 64 NRC 147-48 (2006); LBP-06-23, 64 NRC 274 (2006)

LEGAL CITATIONS INDEX

REGULATIONS

contentions pertaining to issues dealing with the updated final safety analysis report are not within the scope of license renewal review; LBP-08-13, 68 NRC 74 (2008)

contentions that challenge the basic structure of the Commission's regulatory program are not within the scope of the proceeding and fail to establish a genuine dispute on a material issue of law or fact; LBP-08-16, 68 NRC 386, 387, 388, 389, 394, 397, 412 (2008)

contentions that challenge the legal sufficiency of applicant's environmental report and final safety analysis report are within the scope of a combined license proceeding; LBP-09-10, 70 NRC 124 (2009)

contentions that raise a matter that is not within the scope of the proceeding and impermissibly challenge Commission regulatory requirements are inadmissible; LBP-08-16, 68 NRC 390, 396, 416, 423 (2008)

economic impact of a proposed action on ratepayers is outside the scope of a NEPA analysis; LBP-10-14, 72 NRC 125-26 (2010)

for a contention to be considered within the scope of a materials license amendment proceeding, it must challenge whether licensee's proposal for characterizing the site during the alternate schedule period is necessary to the effective conduct of decommissioning operations, will present no undue risk from radiation to the public health and safety, or is otherwise in the public interest; LBP-06-27, 64 NRC 448 (2006)

for a hearing on a confirmatory order, petitioner must demonstrate that the issue raised in the contention is within the scope of the proceeding, which is whether the confirmatory order should be sustained; LBP-08-14, 68 NRC 291 (2008)

for each contention, petitioner must provide a specific statement of the issue of law or fact to be raised or controverted and a brief explanation of the basis for the contention; LBP-06-10, 63 NRC 337-38 (2006)

issues raised in contentions must fall within the scope of the proceeding, and reflect a genuine dispute with the applicant or licensee on a material issue of law or fact; CLI-06-10, 63 NRC 456 (2006)

issues regarding the adequacy of the river intake flow meters and methods used to measure water withdrawal are wholly within the purview of another agency and so are outside the scope of an extended power uprate proceeding; LBP-07-10, 66 NRC 29 (2007)

issues relating to threats to public health and safety and potential impacts on the environment arising out of water quality issues are within the scope of and material to a license amendment proceeding; LBP-08-6, 67 NRC 320 (2008)

offsite radiological impacts are a Category 1 issue, which the Commission has determined to be "small" for all nuclear power plants seeking a renewed license; LBP-08-26, 68 NRC 929 (2008)

petitioner must demonstrate that the issue raised in a contention is both within the scope of the proceeding and material to the findings the NRC must make to support the action that is involved in the proceeding; LBP-06-10, 63 NRC 338 (2006); LBP-07-10, 66 NRC 22 (2007); LBP-07-16, 66 NRC 286, 306, 318, 325 (2007); LBP-08-9, 67 NRC 430-31, 448 (2008); LBP-08-21, 68 NRC 560, 565, 567-68, 569, 571, 572, 582-83, 585-86 (2008); LBP-08-26, 68 NRC 915 (2008); LBP-09-16, 70 NRC 244 (2009); LBP-09-17, 70 NRC 326 (2009); LBP-09-26, 70 NRC 953 (2009); LBP-10-16, 72 NRC 395 (2010)

petitioner's assertion that terrorist-act-originated SAMA analysis is required by Ninth Circuit law satisfies the requirements that the issue be within the scope of a license renewal proceeding; LBP-10-15, 72 NRC 322 (2010)

petitioner's questioning of the adequacy of applicant's aging management plan for containment coatings has stated a genuine, material dispute with the application that falls within the scope of a license renewal proceeding; LBP-08-26, 68 NRC 934 (2008)

petitioners' concerns regarding the applicant's commitments to relax conservatism in its laboratory testing and groundwater release analysis are in regard to the revised analysis to be submitted in response to the Staff RAI and therefore are dismissed as outside the scope of the proceeding; LBP-09-16, 70 NRC 274 (2009)

petitioners' generalized claims about energy policy are outside the scope of the proceeding; LBP-08-16, 68 NRC 402 (2008)

releases from the nuclear fuel cycle in general, incidences of childhood cancers near nuclear power plants, and a request for the NRC to address radioactive releases from burning of coal at fossil fuel plants are outside the scope of a combined license proceeding; LBP-09-16, 70 NRC 285 (2009)

LEGAL CITATIONS INDEX
REGULATIONS

- revenue decoupling is a state regulatory matter that is outside of the scope of, and not material to, the NRC licensing process; LBP-09-10, 70 NRC 137 (2009)
- security-related issues are not within the scope of a license renewal proceeding; LBP-06-20, 64 NRC 172 (2006)
- terrorism-related events are outside the scope of a combined license proceeding; LBP-08-21, 68 NRC 572 (2008)
- the agency decided not to include the threat of air attacks in the 2007 revision to the design basis threat rule, a decision upheld by the Ninth Circuit; CLI-10-9, 71 NRC 258 (2010)
- the concept of the scope of the proceeding is intertwined with the matter of contention admissibility; LBP-07-16, 66 NRC 306, 311, 325 (2007)
- the manner in which the NRC Staff conducts its sufficiency review and whether its decision to accept an application for review was correct are not matters within the purview of an adjudicatory proceeding; LBP-08-9, 67 NRC 444 (2008)
- the portion of a contention challenging the use of the one-fire assumption is inadmissible because it is outside the scope of a combined license proceeding; LBP-08-21, 68 NRC 565, 566 (2008)
- the requirement for a showing that the issue raised in the contention is within the scope of the proceeding may be satisfied by reference to a potential party's response to the provision for section 2.309(f)(1)(iv); LBP-08-10, 67 NRC 455 (2008)
- the requirement that the issue raised in a contention must be within the scope of the proceeding is of particular relevance given the two-stage jurisdictional procedure established prior to the first mixed oxide fuel fabrication facility proceeding; LBP-07-14, 66 NRC 184 (2007)
- the scope of an admissible contention in a license renewal proceeding is narrower than in some other types of proceedings; LBP-06-10, 63 NRC 384 (2006)
- whether applicant's environmental report complies with the provisions of Part 51 relevant to Category 2 environmental matters is within the scope of a license renewal proceeding; LBP-06-20, 64 NRC 178 (2006)
- 10 C.F.R. 2.309(f)(1)(iii)-(iv)
- allegations that mining activities may cause harm to public health and safety are within the scope of a materials license renewal proceeding and material to the findings the NRC must make; LBP-08-27, 68 NRC 956 (2008)
- issues raised in contentions must be both within the scope of the proceeding and material to the findings the NRC must make to support the action that is involved in the proceeding; LBP-07-3, 65 NRC 252 (2007)
- petitioner must demonstrate that the issue raised in a contention is both within the scope of the proceeding and material to the findings the NRC must make to support the action that is involved in the proceeding; LBP-08-21, 68 NRC 560 (2008); LBP-09-3, 69 NRC 152 (2009)
- whether requirements of other federal agencies have been met is not a proper subject for an NRC proceeding; LBP-09-6, 69 NRC 482 (2009)
- 10 C.F.R. 2.309(f)(1)(iv)
- a contention expressing concerns about the possibility of a regulatory "gap" relative to the regulation of water withdrawal that will lead to health and safety impacts as a result of higher-power operation lacks proper support to create a genuine material dispute and is irrelevant and immaterial to the license amendment proceeding; LBP-07-10, 66 NRC 26 (2007)
- a contention must be material to the findings the NRC must make to support the action that is involved in the proceeding; LBP-06-22, 64 NRC 241 (2006)
- a contention that challenges the legality of foreign ownership of applicant is material to the findings NRC Staff must make to support the issuance of the combined operating license; LBP-09-4, 69 NRC 194 (2009)
- a legitimate challenge to applicant's aging management program for metal fatigue satisfies the materiality requirement; LBP-07-15, 66 NRC 270 (2007)
- a "material" issue is defined as one in which resolution of the dispute would make a difference in the outcome of the licensing proceeding; LBP-06-10, 63 NRC 338 (2006)
- a petitioner must demonstrate that the issue raised in the contention is material to the findings the NRC must make to support the action that is involved in the proceeding; LBP-06-10, 63 NRC 338 (2006)

LEGAL CITATIONS INDEX

REGULATIONS

a properly pleaded contention of omission raises an issue plainly material to an essential finding of regulatory compliance needed for license issuance; LBP-06-12, 63 NRC 414 (2006)

a safety contention alleging that applicant fails to supply information that is related to the effects of aging and that is required by the license renewal regulations is material to the findings that Staff must make in evaluating the license renewal application; LBP-06-20, 64 NRC 165 (2006)

a showing that the issue raised in the contention is material to the findings the NRC must make to support the action that is involved in the proceeding requires citation to a statute or regulation that, explicitly or implicitly, has not been satisfied by reason of the issue raised in the contention; LBP-08-9, 67 NRC 431 (2008); LBP-08-10, 67 NRC 455 (2008)

an admissible contention must raise an issue that is both within the scope of the proceeding, generally defined by the hearing notice, and material to the findings the NRC must make to support the action involved; LBP-09-6, 69 NRC 390 (2009)

an aircraft attack scenario is not material to a license renewal proceeding; LBP-06-7, 63 NRC 200 (2006)

applicant's plan for low-level radioactive waste storage onsite is material to the findings the NRC must make to support the action that is involved in the combined license proceeding; LBP-08-15, 68 NRC 315 (2008)

arguments premised on the prediction that someday a nuclear plant site will become a permanent storage or disposal facility for low-level radioactive waste are too speculative and therefore not material to the findings the NRC must make to support the action that is involved in the proceeding; LBP-09-16, 70 NRC 255 (2009); LBP-09-27, 70 NRC 1002 (2009)

case law interpreting this subsection is discussed; LBP-06-23, 64 NRC 354 (2005)

concerns regarding potential terrorism are inadmissible because it is beyond the scope of a license amendment proceeding and not material to the findings NRC must make to support the action that is involved in the proceeding; LBP-08-6, 67 NRC 333 (2008)

contention questioning the likelihood that power generation benefits will be realized is potentially material to the findings the NRC must make to support the action that is involved in a combined license proceeding; LBP-08-15, 68 NRC 333 (2008)

contention satisfied scope and materiality requirements by raising a legal issue related to completeness of the environmental assessment and compliance with NEPA; CLI-10-18, 72 NRC 82 n.151 (2010)

contentions must assert an issue of law or fact that is material to the outcome of a licensing proceeding, meaning that the subject matter of the contention must impact the grant or denial of a pending license application; LBP-08-13, 68 NRC 62 (2008); LBP-08-15, 68 NRC 315 (2008); LBP-08-16, 68 NRC 385 (2008); LBP-08-17, 68 NRC 440 (2008)

cost-risk calculations that intervenors propose in in their contention as they relate to the existing reactors are not material to the findings that the NRC must make to license the proposed reactors; LBP-10-14, 72 NRC 126 (2010)

ensuring that NRC Staff meets its consultation obligations under section 106 of the National Historic Preservation Act is an issue material to the findings the NRC must make in support of the action involved in a materials license renewal proceeding; LBP-08-24, 68 NRC 723 (2008)

even assuming arguendo that applicant might someday require a permit under Part 61 for a disposal facility, that issue is too speculative at the combined license stage and is therefore not material to the findings NRC must make to support the action that is involved in the proceeding; LBP-09-4, 69 NRC 221 (2009)

for each contention, a petitioner must provide a specific statement of the issue of law or fact to be raised or controverted and a brief explanation of the basis for the contention; LBP-06-10, 63 NRC 337-38 (2006)

if a contention alleges that the application omits information required by law, it necessarily presents a genuine dispute with the applicant on a material issue and raises an issue plainly material to an essential finding of regulatory compliance needed for license issuance; LBP-09-4, 69 NRC 190 (2009)

in determining whether a fact is "material," the licensing board takes its guidance from the procedures for contention admissibility; LBP-07-13, 66 NRC 144 (2007)

issues relating to threats to public health and safety and potential impacts on the environment arising out of water quality issues are within the scope of and material to a license amendment proceeding; LBP-08-6, 67 NRC 320 (2008)

LEGAL CITATIONS INDEX

REGULATIONS

- petitioner demonstrates a genuine, material dispute with a license renewal application by raising the question of whether applicant's "plan to develop a plan" to manage environmentally assisted fatigue is sufficient to meet the license renewal requirements; LBP-06-20, 64 NRC 186 (2006)
- petitioner must demonstrate that the issue raised in the contention is material to the findings the NRC must make to support the action that is involved in the proceeding; LBP-06-20, 64 NRC 149 (2006); LBP-07-11, 66 NRC 58 (2007); LBP-07-16, 66 NRC 287 (2007); LBP-09-17, 70 NRC 326-27 (2009); LBP-09-18, 70 NRC 403 (2009)
- petitioners' request for various additional analyses by applicant is inadmissible because petitioners have made no showing as to how the analyses might make a material contribution to the environmental report or the NRC's National Environmental Policy Act analysis; LBP-08-16, 68 NRC 405, 407 (2008)
- releases from the nuclear fuel cycle in general, incidences of childhood cancers near nuclear power plants, and a request for the NRC to address radioactive releases from burning of coal at fossil fuel plants are outside the scope of a combined license proceeding; LBP-09-16, 70 NRC 285 (2009)
- revenue decoupling is a state regulatory matter that is outside of the scope of, and not material to, the NRC licensing process; LBP-09-10, 70 NRC 137 (2009)
- that applicant might someday require a permit under Part 61 for a disposal facility is too speculative an issue for admission in a combined license proceeding; LBP-08-15, 68 NRC 317 (2008); LBP-08-16, 68 NRC 414 (2008)
- to be admissible, contentions must assert an issue of law or fact that is material to the outcome of a licensing proceeding, meaning that the subject matter of the contention must impact the grant or denial of a pending license application; CLI-10-2, 71 NRC 30 (2010); LBP-07-3, 65 NRC 254, 263, 264, 267 (2007); LBP-07-10, 66 NRC 24 (2007); LBP-08-26, 68 NRC 916 (2008); LBP-09-3, 69 NRC 154 (2009); LBP-10-6, 71 NRC 359 (2010); LBP-10-7, 71 NRC 421 (2010); LBP-10-9, 71 NRC 512 (2010)
- when a contention alleges that increases in radioactive releases create higher doses, but does not provide information or expert opinion to dispute the conclusion that the higher doses would still be under NRC regulatory limits, and no evidence has been presented to show that the higher levels will cause harm, sufficient information to show that a material dispute exists has not been provided and the contention making these claims should not be admitted; LBP-07-3, 65 NRC 266 (2007)
- whether a licensee should be granted an additional 5 years to submit its decommissioning plan is an issue that is material to the findings NRC must make; LBP-06-6, 63 NRC 184 (2006)
- whether applicant's environmental report complies with the provisions of Part 51 relevant to Category 2 environmental matters is material to a license renewal proceeding; LBP-06-20, 64 NRC 178 (2006)
- 10 C.F.R. 2.309(f)(1)(v)
- a bare assertion without the requisite support for claims is inadequate to support the admission of a contention; LBP-09-16, 70 NRC 273 (2009)
- a concise statement of the alleged facts or expert opinions in support an intervention petitioner's position does not require the submission of an expert opinion, nor does it require that an expert opinion be submitted in the form of admissible evidence; LBP-06-7, 63 NRC 221 n.33 (2006)
- a contention must be supported by a concise statement of the alleged facts or expert opinions, including references to specific sources and documents, that support intervenors' position and upon which they intend to rely at the hearing; LBP-10-6, 71 NRC 360 (2010); LBP-10-9, 71 NRC 513 (2010)
- a contention that is unsupported and has no foundation in the law is inadmissible; LBP-08-21, 68 NRC 560, 565-66, 571, 573, 574, 576, 578, 581, 582, 583 (2008)
- a general assessment of radioactivity within waters of the Great Lakes Basin does not address specific issues with regard to the proposed reactor, and it does not provide any support for the petitioners' assertions needed to advance an admissible contention; LBP-09-16, 70 NRC 248-49 (2009)
- a general, unsupported argument is not only insufficient to provide the necessary factual or expert opinion support for a contention, but also is so vague as to fail to demonstrate a disagreement with the applicant; LBP-07-3, 65 NRC 263 (2007)
- a legal issue contention is not required to provide facts or expert opinions; LBP-09-29, 70 NRC 1032 (2009)
- a nonselective citation is not consistent with petitioners' obligation to provide analyses and expert opinion supporting their contention; LBP-07-3, 65 NRC 263 (2007)
- a petitioner is required to provide the analyses and expert opinion showing why its bases support its contention; LBP-06-10, 63 NRC 339-40 (2006)

LEGAL CITATIONS INDEX

REGULATIONS

a proposed contention that is vague and speculative, and lacks expert opinion, documents, or sources to support it, and that presents nothing more than an unsupported conclusion is inadmissible; CLI-06-6, 63 NRC 164 (2006); LBP-06-7, 63 NRC 208, 209 (2006)

absent references to instances in which licensee has failed to comply with NRC regulations or facts that contradict the licensee's stated intention, NRC declines to assume that licensees will contravene its regulations; LBP-06-27, 64 NRC 454 n.39 (2006)

allegations of unaccounted costs are no more than bare assertions and fail to provide the required supporting facts or expert opinion; LBP-07-5, 65 NRC 348 (2007)

although a certain amount of latitude might appropriately be extended to pro se litigants, there nonetheless must be a substantial endeavor to meet the clear regulatory requirements for a hearing request; LBP-07-5, 65 NRC 352 (2007)

at the admissibility stage, petitioners are not required to support contentions by expert opinion, substantive affidavits, or evidence; LBP-09-10, 70 NRC 100 (2009)

case law interpreting this subsection is discussed; LBP-06-23, 64 NRC 355-56 (2005)

contention alleging that depleted uranium-contaminated bombing plume dust causes health issues in the community is inadmissible because it lacks a supporting statement of the alleged facts or expert opinions; LBP-10-4, 71 NRC 241-42 (2010)

contention alleging that the Army employs truckers to remove depleted uranium-contaminated soil from its site and dump it in the community is inadmissible; LBP-10-4, 71 NRC 242 (2010)

contentions and their foundational support that raise matters that impermissibly challenge the basic structure of Commission's regulatory program and are either inaccurate or inadequate to establish that the issue raised is material to the proceeding are inadmissible; LBP-10-7, 71 NRC 424 (2010)

contentions must be supported by a concise statement of the alleged facts or expert opinions that support the requestor's/petitioner's position on the issue together with references to the specific sources and documents on which it intends to rely to support its position; CLI-08-3, 67 NRC 168 (2008); LBP-06-20, 64 NRC 150 (2006); LBP-06-22, 64 NRC 242 (2006); LBP-07-10, 66 NRC 22, 23, 27 n.19, 28 n.20, 30, 32 (2007); LBP-07-16, 66 NRC 287 (2007); LBP-08-9, 67 NRC 432 (2008); LBP-08-10, 67 NRC 455 (2008); LBP-08-13, 68 NRC 62 (2008); LBP-08-15, 68 NRC 317 (2008); LBP-08-26, 68 NRC 916-17 (2008)

contentions that fail to provide expert opinion, documents, or other sources to support petitioner's position are inadmissible; LBP-08-15, 68 NRC 333 (2008); LBP-08-16, 68 NRC 384, 390, 395, 402, 403, 404, 417 (2008); LBP-08-19, 68 NRC 547 (2008); LBP-08-21, 68 NRC 571 (2008)

even if late-filing standards are satisfied, support for a contention must be provided when the contention is filed, not at some later date; CLI-09-7, 69 NRC 276 (2009)

failure to provide any technical support for a claim that the water supply will not be sufficient for plant cooling purposes renders a contention inadmissible; LBP-08-15, 68 NRC 330 n.191 (2008)

failure to specify the language of the issue framed by a contention and distinguish it from the discussion that provides the supporting foundation for the issue statement might be grounds for dismissing contentions; LBP-10-7, 71 NRC 422 (2010)

for purposes of admissibility, petitioner need not prove that the various documents actually contain new and significant information, but instead need only provide a concise statement of the alleged facts or expert opinions that support the contention and provide sufficient information to show that a genuine dispute exists on this point; LBP-06-20, 64 NRC 160 (2006)

general assertions are inadequate to raise an admissible contention; LBP-10-6, 71 NRC 364 (2010)

in passing upon whether a particular contention meets the admissibility test, boards have confined their inquiry to whether, with or without references to particular sources or documents, the supporting expert opinion has offered enough to justify a conclusion that the contention is worthy of further consideration on its merits; LBP-09-6, 69 NRC 412 (2009)

in proffering contentions for admission, petitioner need not make the full investigation and present both sides of the case; LBP-09-6, 69 NRC 468 (2009)

in proffering contentions that challenge an application, petitioner or intervenor must provide support, including references to sources and documents on which it intends to rely and a guidance document could be one of those sources; CLI-10-24, 72 NRC 467 (2010)

intervenor is not called upon to make its case at the contention admissibility stage of a proceeding, but rather to indicate what facts or expert opinions, be it one fact or opinion or many, of which it is aware

LEGAL CITATIONS INDEX

REGULATIONS

at that point in time that provide the basis for its contention; LBP-06-10, 63 NRC 339 (2006); LBP-09-1, 69 NRC 28 n.68 (2009)

petitioner demonstrates a genuine dispute with the applicant on the adequacy of the water quality analysis; LBP-09-16, 70 NRC 278 (2009)

petitioner has not met the pleading requirements because it has not demonstrated any link between the purported violations at an existing unit and any future noncompliance or resulting safety risk affecting proposed units; CLI-10-9, 71 NRC 255 (2010)

petitioner is obliged to present factual information and/or expert opinion necessary to support its contention; CLI-09-2, 69 NRC 65 (2009); LBP-07-3, 65 NRC 253 (2007); LBP-07-10, 66 NRC 23 (2007); LBP-09-3, 69 NRC 153 (2009); LBP-09-17, 70 NRC 328-29 (2009); LBP-10-4, 71 NRC 242 (2010); LBP-10-7, 71 NRC 420 (2010)

petitioner is required merely to provide a simple nexus between the contention and the referenced factual or legal support; LBP-09-21, 70 NRC 602 n.94 (2009); LBP-09-25, 70 NRC 873 n.16, 881 (2009)

petitioner must provide a concise statement of the alleged facts or expert opinion that support the contention, references to sources and documents on which the petitioner intends to rely, and sufficient information to show that a genuine dispute exists; LBP-09-4, 69 NRC 190 (2009); LBP-09-10, 70 NRC 136 n.75 (2009); LBP-09-16, 70 NRC 244 (2009); LBP-09-26, 70 NRC 954 (2009); LBP-09-27, 70 NRC 1006 (2009); LBP-10-16, 72 NRC 395 (2010)

petitioner presented a legal contention of omission and a genuine dispute over compliance with NEPA; CLI-10-18, 72 NRC 82 n.154 (2010)

petitioner's challenge to the EPRI/SOG model for earthquakes is inadmissible because it lacks expert or documentary support; LBP-08-16, 68 NRC 393 (2008)

petitioners question the underlying analysis of fish kills in the environmental report as being outdated, but they fail to provide any information to show that the results of the study are no longer representative; LBP-09-16, 70 NRC 281 (2009)

petitioners' bare assertion that the original analysis for a recirculation nozzle is noncompliant with the ASME Code is inadequate to support admission of the contention, much less to support reopening of the record; LBP-08-12, 68 NRC 27 n.22 (2008)

petitioners' complaint that the environmental report's discussion of the no-action alternative is deficient is itself wanting, both in its support and as to its showing that there is a genuine dispute on a material issue of law or fact; LBP-08-16, 68 NRC 403 (2008)

pleading requirements calling for a recitation of facts or expert opinion supporting the issue raised are inapplicable to a contention of omission beyond identifying the legally required missing information; CLI-09-14, 69 NRC 590 (2009); LBP-06-12, 63 NRC 415 (2006); LBP-08-15, 68 NRC 317 (2008); LBP-09-4, 69 NRC 190 (2009); LBP-09-6, 69 NRC 433 (2009); LBP-09-16, 70 NRC 244 (2009); LBP-10-16, 72 NRC 395 (2010)

pro se litigants are not exempt from our contention pleading requirements; CLI-07-20, 65 NRC 502 (2007)

speculative assertions that lack expert opinion or documentary support are inadmissible; LBP-08-16, 68 NRC 394, 405, 410 (2008)

statements in a contention that inform the board that petitioner has been advised by certain named experts in preparation of its contention and that these experts will be relied upon at the hearing satisfy the admissibility requirements; LBP-06-6, 63 NRC 179, 180, 184 (2006)

the requirement of factual support is not intended to prevent intervention when material and concrete issues exist; LBP-08-27, 68 NRC 956 (2008)

the requirement that contentions be supported by alleged facts or expert opinion generally is fulfilled when the sponsor of an otherwise acceptable contention provides a brief recitation of the factors underlying the contention or references to documents and text that provide such reasons; LBP-09-4, 69 NRC 207 (2009); LBP-10-14, 72 NRC 129 n.182 (2010)

the showing required for "need" for SUNSI could include, but does not require (nor is it limited to), an explanation that the information will be used as support for a contention; CLI-10-24, 72 NRC 465 n.85 (2010)

the threshold criteria regarding the level of support required for summary disposition are the same as for contention admissibility; LBP-07-13, 66 NRC 144 (2007)

LEGAL CITATIONS INDEX

REGULATIONS

- there is no requirement that an expert's opinion must include specific references to supporting sources and documents; LBP-09-6, 69 NRC 410 (2009)
- to be admissible, a contention must assert an issue of law or fact that is material to the findings the NRC must make to support the action that is involved in the proceeding; LBP-09-26, 70 NRC 953 (2009)
- whether petitioners' contention is supported by any expert opinion is a matter properly considered by the board; LBP-06-10, 63 NRC 376, 377 (2006)
- 10 C.F.R. 2.309(f)(1)(vi)
- a challenge to licensee's monitoring program for coating integrity and moisture is inadmissible; LBP-06-22, 64 NRC 248 n.21 (2006)
- a contention asserting that a license application for an irradiator sited at an airport fails to analyze aircraft crash probabilities and consequences presents a genuine dispute on a material issue; LBP-06-12, 63 NRC 420 (2006)
- a contention asserting that the application fails to contain information on a relevant matter as required by law must be supported by petitioner through identification of each failure and the supporting reasons for the petitioner's belief; LBP-10-15, 72 NRC 321 (2010)
- a contention concerning the feasibility of combining solar and thermal energy storage with wind generation and an integrated gas turbine to provide a seamless transition to the load needed by providing energy when the production of both technologies is overlapped is admissible; LBP-10-10, 71 NRC 573 (2010)
- a contention must challenge the license application; CLI-10-24, 72 NRC 467 (2010)
- a contention must identify the disputed portion of the application, and provide supporting reasons for the challenge to the application; CLI-06-10, 63 NRC 456 (2006)
- a contention must show that a genuine dispute exists on a material issue of law or fact with regard to the license application in question, challenge and identify either specific portions of, or alleged omissions from, the application, and provide the supporting reasons for each dispute; LBP-09-26, 70 NRC 955 (2009); LBP-10-6, 71 NRC 361 (2010); LBP-10-7, 71 NRC 421 (2010); LBP-10-9, 71 NRC 517 (2010)
- a contention of omission cannot be admissible unless each failure to include relevant information is identified with specificity and with supporting reasons; CLI-09-8, 69 NRC 324 (2009)
- a contention of omission claims that the application fails to contain information on a relevant matter as required by law and provides the supporting reasons for the petitioner's belief; LBP-08-15, 68 NRC 313-14 (2008); LBP-09-4, 69 NRC 190 (2009); LBP-09-10, 70 NRC 76, 123 (2009); LBP-09-16, 70 NRC 244, 264 (2009); LBP-09-27, 70 NRC 995 (2009)
- a contention of omission is inadmissible if the purportedly missing analysis is indeed present; LBP-08-21, 68 NRC 573-74 (2008)
- a contention that fails to address the information in the application and show a genuine dispute thereon is inadmissible; CLI-09-5, 69 NRC 123 (2009)
- a contention that fails to allege any current deficiency in the agency's ongoing National Environmental Policy Act review process, which includes a need-for-power review, fails to establish a genuine dispute regarding a material legal or factual issue; LBP-08-16, 68 NRC 413 (2008)
- a decommissioning plan must address economic considerations, and a contention that seeks to raise issues in that sphere must include references to specific portions of the plan that the petitioner disputes in order to demonstrate a genuine dispute; LBP-07-5, 65 NRC 347 (2007)
- a general, unsupported argument is not only insufficient to provide the necessary factual or expert opinion support for a contention, but also is so vague as to fail to demonstrate a disagreement with the applicant; LBP-07-3, 65 NRC 263 (2007)
- a legal issue contention raises a genuine dispute with the application because it challenges DOE's performance assessment for the post-10,000-year period; LBP-09-29, 70 NRC 1032 (2009)
- a legitimate challenge to applicant's aging management program for metal fatigue satisfies the genuine dispute requirement; LBP-07-15, 66 NRC 270 (2007)
- a new contention based on NRC Staff's solicitation of public input regarding proposed revisions to Staff guidance documents is not admissible because it fails to raise a genuine dispute on a material issue; LBP-06-11, 63 NRC 399 (2006)
- a new contention challenging the adequacy of applicant's corrosion monitoring program for the inaccessible areas above and below the sand bed region is inadmissible because it fails to demonstrate

LEGAL CITATIONS INDEX

REGULATIONS

that a genuine dispute exists on a material issue or to specify any faulty portions of the license renewal application; LBP-06-11, 63 NRC 398 (2006)

a properly pleaded contention must contain sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact; LBP-06-20, 64 NRC 151 (2006); LBP-06-22, 64 NRC 242 (2006); LBP-06-23, 64 NRC 321 (2006)

a properly pleaded contention of omission must challenge a specific portion of the application and provide a basis for demonstrating the alleged deficiency; LBP-09-26, 70 NRC 968 (2009)

absent references to instances in which licensee has failed to comply with NRC regulations or facts that contradict the licensee's stated intention, NRC declines to assume that licensees will contravene its regulations; LBP-06-27, 64 NRC 454 n.39 (2006)

all properly formulated contentions must focus on the license application in question, challenging either specific portions of or alleged omissions from the application so as to establish that a genuine dispute exists with the applicant on a material issue of law or fact; CLI-09-4, 69 NRC 83 (2009); LBP-07-3, 65 NRC 254 (2007); LBP-09-3, 69 NRC 154 (2009)

any contention that identifies deficiencies in an application and provides supporting reasons for its position presents a genuine dispute with the applicant on a material issue; LBP-08-15, 68 NRC 319 (2008)

applicant's failure to describe its aging management plan to the extent required by section 54.21 is an admissible issue; LBP-08-26, 68 NRC 940 (2008)

at the admissibility stage, petitioners are not required to submit expert affidavits or evidence; LBP-09-10, 70 NRC 100 (2009)

by failing to point to specific parts of the ER's discussion of the no-action alternative that petitioners find inadequate and to provide support for that dispute, petitioners have failed to provide sufficient information to show that a genuine dispute exists with the applicant; LBP-07-3, 65 NRC 260 (2007)

case law interpreting this subsection is discussed; LBP-06-23, 64 NRC 357 (2005)

challenge to a license application can be in the form of either an asserted omission from the application of required information or an asserted error in a specific analysis or other technical matter set out in the application; LBP-08-9, 67 NRC 435 (2008)

challenge to applicant's statistical techniques is inadmissible because petitioners failed to reference or discuss the specific portions of the application that they dispute or to adequately identify a 'material issue of disputed fact; CLI-09-7, 69 NRC 273 n.215 (2009)

challenges to an intervention petition indicate that questions of both law and fact are sharply disputed, satisfying the requirement that a genuine dispute exists; LBP-06-20, 64 NRC 179 (2006)

contention alleging that depleted uranium-contaminated bombing plume dust causes health issues in the community is inadmissible because it fails to show that a genuine dispute exists on a material issue of fact; LBP-10-4, 71 NRC 242 (2010)

contention alleging that the license renewal application fails to supply sufficient details of the aging management program for flow accelerated corrosion to demonstrate that its effects will be adequately managed is admitted; LBP-08-26, 68 NRC 956 (2008)

contention is inadmissible because its support is either inaccurate or inadequate to establish that the issue raised is material to the proceeding or is insufficient to show a genuine dispute on a material factual or legal issue exists so as to warrant admission of the contention; LBP-08-16, 68 NRC 390, 402 (2008)

contentions and their foundational support that raise matters that impermissibly challenge the basic structure of NRC's regulatory program and are either inaccurate or inadequate to establish that the issue raised is material to the proceeding are inadmissible; LBP-10-7, 71 NRC 424 (2010)

contentions must be based on documents or other information available at the time the petition is to be filed, and must point out specifically where or how the combined license application is inadequate; LBP-09-10, 70 NRC 77 (2009)

contentions must show that a genuine dispute exists with regard to the license application in question, challenge and identify either specific portions of, or alleged omissions from, the application, and provide the supporting reasons for each dispute; CLI-08-23, 68 NRC 477 (2008); LBP-07-10, 66 NRC 24 (2007); LBP-07-11, 66 NRC 73 (2007); LBP-07-16, 66 NRC 289 (2007); LBP-08-5, 67 NRC 235 (2008); LBP-08-6, 67 NRC 333 (2008); LBP-08-9, 67 NRC 433 (2008); LBP-08-13, 68 NRC 64 (2008); LBP-08-15, 68 NRC 319 (2008); LBP-08-16, 68 NRC 385 (2008); LBP-08-19, 68 NRC 547 (2008); LBP-08-26, 68 NRC 918 (2008)

LEGAL CITATIONS INDEX

REGULATIONS

contentions of omission claim that the application fails to contain information on a relevant matter as required by law and provide the supporting reasons for petitioner's belief; LBP-10-16, 72 NRC 395 (2010)

contentions that challenge the basic structure of the Commission's regulatory program are not within the scope of the proceeding and fail to establish a genuine dispute on a material issue of law or fact; LBP-08-16, 68 NRC 386, 387, 388, 389, 394, 397, 412 (2008)

contentions that fail to provide expert opinion, documents, or other sources sufficient to supply an adequate basis for the contentions and do not present a genuine dispute regarding a material issue of law or fact are inadmissible; LBP-08-16, 68 NRC 395, 402, 403, 404, 417 (2008)

contentions that label items as omissions from the application but do not identify possible inadequacies in the relevant analyses that are included so as to establish the requisite genuine disputed issue are inadmissible; LBP-08-16, 68 NRC 393 (2008)

failure of petitioner to reference any portion of the combined license application with which it takes issue is grounds for dismissal of a contention; CLI-10-9, 71 NRC 266 (2010); LBP-10-9, 71 NRC 526 (2010)

failure to point to a regulation that requires the inclusion of omitted information in an application is fatal and thus precludes the admission of the contention; LBP-10-16, 72 NRC 411 (2010)

failure to provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact is grounds for dismissal of a contention; CLI-10-9, 71 NRC 266 (2010)

failure to provide supporting facts or expert opinion renders a contention inadmissible; LBP-06-27, 64 NRC 458 (2006)

for a contention of omission, it is sufficient for the petitioner to provide an identification of each failure and the supporting reasons for the petitioner's belief; LBP-08-15, 68 NRC 320 (2008)

for documents that are on the LSN, it will be sufficient to reference them in the same manner as other LSN documents, citing to the most specific portion of the document that is practicable; LBP-08-10, 67 NRC 456 (2008)

for purposes of admissibility, petitioner need not prove that the various documents actually contain new and significant information, but instead need only provide a concise statement of the alleged facts or expert opinions that support the contention and provide sufficient information to show that a genuine dispute exists on this point; LBP-06-20, 64 NRC 160 (2006)

general assertions, without some effort to show why the assertions undercut findings or analyses in the environmental report, fail to satisfy the requirements of this section; LBP-10-6, 71 NRC 364, 378 n.81 (2010)

if a contention makes a prima facie allegation that the application omits information required by law, it necessarily presents a genuine dispute with applicant on a material issue; LBP-09-16, 70 NRC 245 (2009); LBP-10-16, 72 NRC 395 (2010)

in a contention of omission, intervenors must show that what is allegedly omitted is required by law; LBP-10-10, 71 NRC 552 (2010)

in passing upon whether a particular contention meets the admissibility test, boards have confined their inquiry to whether, with or without references to particular sources or documents, the supporting expert opinion has offered enough to justify a conclusion that the contention is worthy of further consideration on its merits; LBP-09-6, 69 NRC 412 (2009)

information that a petitioner must provide in support of a contention in order to have it admitted for adjudication is described; LBP-09-17, 70 NRC 327 (2009)

intervenors' concise statement of alleged facts that support the contention and reliance on various parts of the application itself satisfy the requirement that mandates references to specific portions of the application; LBP-09-1, 69 NRC 27-28 (2009)

issues raised in contentions must fall within the scope of the proceeding and reflect a genuine dispute with the applicant or licensee on a material issue of law or fact; CLI-06-10, 63 NRC 456 (2006)

petitioner demonstrates a genuine dispute with the applicant on the adequacy of the water quality analysis; LBP-09-16, 70 NRC 278 (2009)

petitioner demonstrates a genuine, material dispute with a license renewal application by raising the question of whether applicant's "plan to develop a plan" to manage environmentally assisted fatigue is sufficient to meet license renewal requirements; LBP-06-20, 64 NRC 186 (2006)

LEGAL CITATIONS INDEX

REGULATIONS

petitioner has not met the pleading requirements because it has not demonstrated any link between the purported violations at an existing unit and any future noncompliance or resulting safety risk affecting proposed units; CLI-10-9, 71 NRC 255 (2010)

petitioner is not required to provide supporting facts or expert opinion for a contention of omission at the admissibility stage; LBP-08-26, 68 NRC 932 (2008)

petitioner is obligated to review the application and point to specific portions that are either deficient or do not comply with the Commission's regulations; LBP-08-21, 68 NRC 560, 565, 566, 570, 571, 573, 574, 576, 578, 579, 581, 582, 583, 584-85 (2008)

petitioner must provide a concise statement of the alleged facts or expert opinion that support the contention, references to sources and documents on which the petitioner intends to rely, and sufficient information to show that a genuine dispute exists; LBP-06-23, 64 NRC 314 (2006); LBP-09-10, 70 NRC 136 n.75 (2009)

petitioner must provide support for the proposition that there is an omission from the application or identify any error in any specific part of the application as well as present sufficient information to show the existence of a genuine dispute with the applicant; LBP-09-8, 69 NRC 741 (2009)

petitioner must read the pertinent portions of the license application, including the safety analysis report and the environmental report, state the applicant's position and the petitioner's opposing view, and explain why it disagrees with the applicant; LBP-06-10, 63 NRC 340 (2006); LBP-07-4, 65 NRC 306 (2007); LBP-07-11, 66 NRC 58 (2007)

petitioner presented a legal contention of omission and a genuine dispute over compliance with NEPA; CLI-10-18, 72 NRC 82 n.151 (2010)

petitioner's concerns about possible impacts of applicant's as-yet-to-be-completed strategic plan or a still-to-be-developed state energy plan are inappropriate bases for admitting a contention; LBP-08-16, 68 NRC 410-11 (2008)

petitioner's contention that applicant's severe accident mitigation alternatives analysis does not accurately reflect the cost of cleanup at the site because it relies on outdated assumptions and it undervalues the land occupied by the Indian community is admissible; LBP-08-26, 68 NRC 922 (2008)

petitioner's dispute of the effectiveness of licensee's technique for locating all possible water conduits is a material issue of fact in a materials license amendment proceeding, which includes references to specific portions of the application, satisfies the contention admissibility requirements; LBP-06-6, 63 NRC 179, 180, 184 (2006)

petitioner's questioning of the adequacy of applicant's aging management plan for containment coatings has stated a genuine, material dispute with the application that falls within the scope of a license renewal proceeding; LBP-08-26, 68 NRC 934 (2008)

petitioners must show that any issue raised in a contention has significance regarding the findings the NRC must make to support the action that is involved in the proceeding; LBP-09-17, 70 NRC 326-27 (2009)

petitioners who have failed to discuss the very programs that they are attacking have failed to provide sufficient information to show that a genuine dispute exists regarding a material issue of fact; LBP-06-22, 64 NRC 248 n.21, 249 (2006)

petitioners' assertion that applicant's environmental report fails to include an analysis of the impacts of a governmental entity managing long-term storage of high-level waste onsite and cost quantifications of such management fails to create a genuine dispute that would warrant admission of the contention; LBP-09-21, 70 NRC 606 (2009)

petitioners' assertion that no exposure levels are safe is an impermissible challenge to the exposure limits set forth in the NRC's regulations; LBP-09-16, 70 NRC 285 (2009)

petitioners' assertion that there needs to be an independent assessment by NRC Staff of applicant's power projections and service area electricity consumption growth and peak load demand forecasts fails to allege any current deficiency in the environmental report or the agency's environmental review process; LBP-08-16, 68 NRC 404 (2008)

petitioners' complaint that the environmental report's discussion of the no-action alternative is deficient is itself wanting, both in its support and as to its showing that there is a genuine dispute on a material issue of law or fact; LBP-08-16, 68 NRC 403 (2008)

LEGAL CITATIONS INDEX

REGULATIONS

- petitioners' failure to explain or allege how or why a recirculation screen design is incomplete or the instrumentation and control design has a problem renders the contention inadmissible; LBP-09-10, 70 NRC 77 (2009)
- portions of a contention that are based on a mischaracterization of the discussion in an existing environmental report are inadmissible; LBP-08-16, 68 NRC 401 (2008)
- that a newly proffered contention is moot also means that a motion to reopen must be denied on the ground that the contention is inadmissible because, insofar as it fails to raise a live controversy, it fails to raise a genuine dispute on a material issue of law or fact; LBP-08-12, 68 NRC 22 n.15 (2008)
- the mere posing of questions does not provide sufficient support to admit a contention; LBP-07-4, 65 NRC 324 (2007)
- to be deemed admissible, a contention must provide sufficient information demonstrating that a genuine dispute exists with regard to a material issue of law or fact; LBP-07-10, 66 NRC 22, 23, 28 n.20, 30, 32 (2007)
- when a contention alleges that increases in radioactive releases create higher doses, but does not provide information or expert opinion to dispute the conclusion that the higher doses would still be under NRC regulatory limits, and no evidence has been presented to show that the higher levels will cause harm, sufficient information to show that a material dispute exists has not been provided and the contention making these claims should not be admitted; LBP-07-3, 65 NRC 266 (2007)
- 10 C.F.R. 2.309(f)(1)(vii)
this section applies only to proceedings arising under 10 C.F.R. 52.103(b); CLI-10-27, 72 NRC 490 n.41 (2010)
- 10 C.F.R. 2.309(f)(2)
a challenge to the environmental report is different from a challenge to the environmental impact statement; LBP-09-10, 70 NRC 88 (2009)
- a contention is timely to the extent it challenges the adequacy of the new low-level radioactive waste storage plan, but untimely as to those aspects of the contention that merely reargue issues already decided by the board, without identifying any new information relevant to those issues; LBP-09-27, 70 NRC 998 (2009)
- a contention must challenge the license application; CLI-10-24, 72 NRC 467 (2010)
- a late-filed contention fails to satisfy the regulatory requirements for admission because the information on which it is based is neither new nor materially different than information that was previously available; LBP-06-11, 63 NRC 397 (2006)
- a late-filed environmental contention may be admitted only where petitioner relies on newly available, significant information, meets the late-filing requirements, or successfully argues for supplementing the EIS; LBP-08-11, 67 NRC 475 (2008)
- a motion for leave to file a new contention, accompanied by the proposed contention, shall be deemed timely if filed within 30 days of the date when the new and material information on which it is based first became available; LBP-09-29, 70 NRC 1035 n.42 (2009)
- a new contention may be filed after the deadline in the notice of hearing with leave of the presiding officer upon a showing that information on which it is based was not previously available, is materially different than information previously available, and has been submitted in a timely fashion based on the availability of the subsequent information; LBP-09-27, 70 NRC 998 (2009); LBP-09-29, 70 NRC 1035 (2009); LBP-10-9, 71 NRC 503 (2010)
- a new non-NEPA contention is evaluated under the three-factor test; LBP-07-15, 66 NRC 266 n.10 (2007)
- a newly filed contention must meet the requirements of this section as well as the six basic contention admissibility standards set forth in 10 C.F.R. 2.309(f)(1)(i)-(vi); LBP-08-27, 68 NRC 955 (2008)
- after the initial filing, permission of the board must be sought to file new or amended contentions; LBP-07-14, 66 NRC 210 n.95 (2007)
- allowing a party to freely augment its contentions in its reply would circumvent the requirements for late or amended contentions; LBP-06-12, 63 NRC 405 (2006)
- although exhibits are not themselves either petitions or contentions, the board considers the timeliness of their filing, given that the exhibits are offered in support of petitioners' standing and certain of their contentions; LBP-08-6, 67 NRC 258 (2008)
- although issues relating to fire protection at a plant cannot be addressed by petitioners in a license renewal proceeding, a possible license amendment application might also trigger another opportunity to

LEGAL CITATIONS INDEX

REGULATIONS

petition to intervene, if appropriate and adequate contentions are timely and properly submitted under relevant requirements; LBP-07-11, 66 NRC 75 (2007)

although obligations under NEPA fall to the agency and therefore the NRC Staff, petitioners are required to raise environmental objections based on applicant's environmental report; LBP-10-15, 72 NRC 321 (2010); LBP-10-16, 72 NRC 437 (2010); LBP-10-24, 72 NRC 729 (2010)

amended or new contentions may be filed after the initial filing only with leave of the presiding officer; CLI-09-7, 69 NRC 262 (2009)

amendment of a combined license application to comply with an amended aircraft impacts rule during the pendency of the COL application could form the basis for a late-filed contention; CLI-10-1, 71 NRC 13 n.63 (2010)

an intervenor attempting to litigate an issue based on expressed concerns about the draft environmental impact statement may need to amend the admitted contention or, if the information in the DEIS is sufficiently different from that in the environmental report that supported the contention's admission, submit a new contention; LBP-08-2, 67 NRC 64 (2008); LBP-08-3, 67 NRC 95 (2008)

any attempt to add bases to existing contentions or to advance new contentions must be entirely based upon information contained in the environmental assessment or safety evaluation report and the information must not have been previously available; LBP-06-27, 64 NRC 444 (2006)

any new contentions filed by petitioners, whose original petition was timely and who have demonstrated their standing, that are attributable to the applicant's construction activity or change of plans or design, are governed by the basic provisions of this section rather than by the more restrictive elements applicable to nontimely filings; LBP-07-14, 66 NRC 210 n.95 (2007)

contentions challenging the combined license application must focus on the combined license application as it exists at that moment in time; LBP-09-10, 70 NRC 77 (2009)

contentions may be amended or new contentions filed after the initial filing only with leave of the presiding officer if they successfully address the three factors in this section; CLI-10-18, 72 NRC 87 (2010); LBP-08-6, 67 NRC 257 (2008); LBP-08-10, 67 NRC 458 (2008); LBP-10-1, 71 NRC 181 (2010); LBP-10-14, 72 NRC 107 (2010); LBP-10-17, 72 NRC 508 n.21 (2010)

contentions must be based on documents or information available when the petition is filed; LBP-07-3, 65 NRC 272 (2007); LBP-07-14, 66 NRC 210 n.95 (2007); LBP-08-2, 67 NRC 63 (2008); LBP-08-3, 67 NRC 94 (2008); LBP-08-6, 67 NRC 329 (2008); LBP-08-27, 68 NRC 954 (2008); LBP-09-10, 70 NRC 139 (2009); LBP-10-4, 71 NRC 230-31 n.16 (2010)

contentions must be filed with the original intervention petition within 60 days of notice of the proceeding in the *Federal Register*, unless a longer period is therein specified, an extension is granted, or the contentions meet certain criteria for late-filed or new contentions based on information that is available only at a later time; LBP-07-4, 65 NRC 303 n.95 (2007); LBP-07-11, 66 NRC 56 n.45 (2007); LBP-08-6, 67 NRC 291 n.254 (2008)

contentions that seek compliance with NEPA must be based on the environmental report; CLI-10-2, 71 NRC 34 (2010); LBP-10-10, 71 NRC 547 (2010)

even if the current admitted contentions are resolved before the FEIS is issued so as to conclude the contested portion of the proceeding, petitioners could timely seek to litigate contentions regarding FEIS data or conclusions that differ significantly from the ER or the DEIS; LBP-07-3, 65 NRC 277 n.25 (2007)

except to the extent necessary to elucidate and explain specific rulings regarding various pieces of information, in determining the admissibility of a contention, the board has not considered any information in petitioner's reply other than that which would constitute legitimate amplification, appropriate responses to arguments raised in the answers, or properly late- or newly filed material; LBP-07-4, 65 NRC 302 (2007)

failure to comply with Commission pleading requirements for late filings constitutes sufficient grounds for rejecting intervention and hearing requests; LBP-10-4, 71 NRC 226 n.11 (2010)

filings that are nearly 3 months late must satisfy not only the requirements to demonstrate standing and submit at least one admissible contention, but also must satisfy eight stringent requirements for untimely filings; CLI-06-21, 64 NRC 33 (2006)

for issues arising under NEPA, petitioner must file contentions based on the applicant's environmental report; CLI-06-9, 63 NRC 444 (2006)

LEGAL CITATIONS INDEX

REGULATIONS

- for timely new or amended contentions, the pleading shall include a motion for leave to file the contention showing that it satisfies section 2.309(f)(1); LBP-09-22, 70 NRC 647 (2009)
- if a motion to reopen and proposed new contention are based on material information that was not previously available, then it qualifies as timely; LBP-10-19, 72 NRC 545 (2010)
- if a party files a new contention within 30 days of the availability of the new information to that party, the contention will generally be considered timely; LBP-09-17, 70 NRC 330 n.76 (2009)
- if a petitioner believes that the safety analysis report and the environmental report fail to address a particular relevant issue, the petitioner is to explain why the application is deficient; LBP-06-10, 63 NRC 340-41 (2006)
- if a proposed new contention is not timely, then a second step occurs and its admissibility is governed by the eight-factor balancing specified in section 2.309(c); LBP-09-10, 70 NRC 140 (2009)
- if applicant amends its combined license application by referencing a proposed revision to the standard design, then petitioners will be entitled to file new or amended contentions; LBP-09-10, 70 NRC 77 (2009)
- if applicant's NPDES permit is reinstated with modifications, petitioners may request leave to amend their contention or file a new contention; LBP-06-20, 64 NRC 215 (2006)
- if genuinely new information becomes available as a result of the waste confidence rulemaking proceeding that contravenes the combined license application, then petitioners may file a motion seeking the admission of a new or amended contention; LBP-09-10, 70 NRC 115 (2009); LBP-09-18, 70 NRC 408 (2009)
- if intervenors fail to show that the draft environmental impact statement contains new data or conclusions that differ from those in the environmental report, the intervenor may file a new contention after the initial docketing with leave of the presiding officer upon a showing on three factors; LBP-10-24, 72 NRC 730 (2010)
- if petitioner can show that new and materially different information has become available during the processing of the application, and petitioner promptly files a new contention based on this new information, then the new contention is admissible, assuming it also satisfies the six general contention admissibility standards; LBP-07-15, 66 NRC 266-67 (2007)
- if previously unavailable information that raises for the first time a material new contention becomes available after the original 60-day *Federal Register* notice period has expired, and if an existing party asserts that new and material contention in a timely fashion and the contention otherwise satisfies the pleading requirements of section 2.309(f)(1), then that contention is to be admitted, without being required to jump through the eight additional hoops for "nontimely" contentions; LBP-06-14, 63 NRC 574 (2006)
- if the design certification rulemaking amendment application results in updates to applicant's combined license application, new contentions may be filed, subject to the requirements of this section; CLI-09-8, 69 NRC 325 n.36 (2009)
- in light of the requirements that any new contention be based on material information that was not previously available, the timeliness determination required under this provision and the section 2.326(a) reopening standard can be closely equated; LBP-10-21, 72 NRC 650 (2010)
- in the context of licensing board adjudication of NEPA-related contentions, intervenors are required to file contentions in the first instance based on applicant's environmental report; LBP-09-7, 69 NRC 634 (2009)
- in the face of a Staff DEIS or FEIS that includes additional probative information, an intervenor would be wise to amend its contention to reflect any relevant changes or additions, thereby avoiding any question about whether this additional information falls outside the scope of the admitted contention so as to preclude it from consideration as support for the contention; LBP-08-2, 67 NRC 72 n.13 (2008)
- in the first step of a two-decision process for the initiation of new contentions, parties litigate and the board decides whether the intervenor should be granted leave to file a new contention; LBP-07-15, 66 NRC 265 n.5 (2007)
- intervenors must move for leave to file a timely new or amended contention under this section; LBP-10-14, 72 NRC 107 (2010)
- late-filed environmental contentions must meet not only the usual contention pleading requirements applicable to all proceedings, but also the additional requirements for new contentions; LBP-08-11, 67 NRC 479 (2008)

LEGAL CITATIONS INDEX

REGULATIONS

new bases for a contention cannot be introduced in a reply brief, or any other time after the date the original contentions are due, unless the petitioner meets the late-filing criteria; CLI-06-17, 63 NRC 732 (2006)

new contentions arising under the National Environmental Policy Act are subject to a different standard than safety contentions; LBP-07-15, 66 NRC 266 (2007)

new contentions filed by an intervenor must comply with timeliness standards; LBP-10-2, 71 NRC 209 (2010)

new contentions may be filed after the initial docketing, with leave of the presiding officer, and are evaluated under a three-factor test; LBP-09-10, 70 NRC 138 (2009)

new or amended contentions can be freely filed, at least with respect to environmental contentions, if new data or conclusions appear in new documents; LBP-07-14, 66 NRC 210 n.95 (2007)

new or amended contentions may be filed in the event that there are data or conclusions in the NRC draft or final environmental impact statement that differ significantly from the data or conclusions in the applicant's documents; LBP-10-1, 71 NRC 181 (2010); LBP-10-10, 71 NRC 547 (2010); LBP-10-16, 72 NRC 438 (2010); LBP-10-17, 72 NRC 515 (2010); LBP-10-24, 72 NRC 729-30, 768 (2010)

NRC Staff's communications that are declarations of programmatic policy or regulatory conclusions that, for example, might be analogized to conclusions in an environmental impact statement, could trigger a petitioner's right to amend or file new contentions; LBP-06-11, 63 NRC 399 (2006)

on issues arising under the National Environmental Policy Act, petitioner shall file contentions based on the applicant's environmental report; CLI-07-10, 65 NRC 146 (2007); LBP-08-26, 68 NRC 931 n.180 (2008)

once the deadline for filing an initial intervention petition has passed, a party wishing to submit new or amended contentions on matters not associated with issuance of the Staff's draft or final environmental impact statement must satisfy the requirements of this section; LBP-10-21, 72 NRC 650 (2010)

open-ended extension requests should not be granted because hearing requests must be based on documents or other information available at the time the petition is to be filed; LBP-10-4, 71 NRC 224 (2010)

opportunities are provided to file new or amended contentions to address new developments when they arise; CLI-09-4, 69 NRC 85 (2009)

petitioner may amend contentions after the initial filing only with leave of the presiding officer upon a proper showing of the elements of this section; LBP-08-18, 68 NRC 542 (2008)

petitioners are required to file contentions based on the documents in existence when the petition is filed, including the applicant's environmental report; LBP-06-20, 64 NRC 174 (2006); LBP-09-16, 70 NRC 263 (2009)

petitioners are required to raise their NEPA contentions in response to the environmental report, rather than awaiting publication of the environmental impact statement; LBP-09-16, 70 NRC 263 (2009)

petitioners are to file NEPA-related contentions based on the applicant's environmental report, but may amend those contentions or file new contentions if there are data or conclusions in the NRC draft or final environmental impact statement that differ significantly from the data or conclusions in the applicant's documents; CLI-09-9, 69 NRC 351 n.104 (2009); CLI-09-12, 69 NRC 566 n.141 (2009); LBP-06-14, 63 NRC 572 n.12 (2006); LBP-09-2, 69 NRC 107 (2009)

petitioners may not skirt contention rules by initially filing unsupported contentions, and later recasting or modifying their contentions on appeal with new arguments never raised before the board; CLI-08-17, 68 NRC 234 (2008); CLI-09-5, 69 NRC 123 (2009)

petitioners who seek to introduce a new or amended contention based on allegedly new information that was previously unavailable must show that such information was not previously available and is materially different than information previously available and the amended or new contention has been submitted in a timely fashion based on the availability of the subsequent information; LBP-06-22, 64 NRC 234 (2006)

reply briefs that introduce new issues must address the late-filing factors; LBP-06-10, 63 NRC 329 (2006)

requirements for determining the timeliness of a new NEPA contention are set forth; LBP-10-24, 72 NRC 729 (2010)

requirements for late-filed contentions are stringent; CLI-09-7, 69 NRC 260 (2009)

showing required for new contentions that may be filed after the initial docketing, with leave of the presiding officer, is described; CLI-09-7, 69 NRC 262 (2009); LBP-07-15, 66 NRC 266 (2007)

LEGAL CITATIONS INDEX

REGULATIONS

the appropriate mechanism for intervenor to have sought to raise a new issue where the record of the proceeding had closed upon the board's disposition of intervenor's original contentions is to address the reopening standards contemporaneously with a late-filed intervention petition, which must satisfy the standards for both contention admissibility and late filing; CLI-09-5, 69 NRC 124 (2009)

the Commission may decide the admissibility of late-filed contentions based on previously unavailable information or defer ruling on them, considering the need for access to redacted information and other relevant factors; CLI-07-18, 65 NRC 414 n.46 (2007)

the filing of new or amended contentions based on new information is permitted if sufficient justification is provided; LBP-09-15, 70 NRC 211 (2009)

the first step in assessing the admissibility of a new contention once an adjudicatory proceeding has been initiated is to determine if it is timely; LBP-07-15, 66 NRC 266 (2007)

the licensing board finds that the lateness of petitioner's filing is justifiable because a relevant document was not revealed in a search of NRC's public database because of deficiencies in tagging; LBP-08-6, 67 NRC 259 (2008)

the NEPA-related provision in section 2.714(b)(2)(iii) was retained in the 2004 rule change; LBP-10-1, 71 NRC 186 n.2 (2010)

the new information contemplated by this section is not information created, developed, and adduced by the very petitioner who proposes to use it to support his nontimely contentions under a guise of timeliness; LBP-09-6, 69 NRC 477 (2009)

the scope of a contention is limited to issues of law and fact pleaded with particularity in the intervention petition, including its stated bases, unless the contention is satisfactorily amended in accordance with NRC rules; CLI-10-5, 71 NRC 100 (2010)

the standard for filing a new or amended contention outside the National Environmental Policy Act context is described; LBP-08-26, 68 NRC 919 (2008)

the time for filing a new or an amended contention is triggered by different events; LBP-10-24, 72 NRC 738 (2010)

this amended rule is not intended to alter the standards in section 2.714(a) of its rules of practice as interpreted by NRC case law respecting late-filed contentions; LBP-10-17, 72 NRC 508 n.21 (2010)

to amend a contention, petitioner must demonstrate that the information upon which the amended contention is based was not previously available and is materially different from information previously available, and that the amended contention has been submitted in a timely fashion; LBP-09-26, 70 NRC 988 (2009)

to be admitted in a proceeding, a new contention must meet the new or amended contention requirements as well as the general contention admissibility requirements; LBP-09-9, 70 NRC 45 (2009)

under appropriate circumstances, petitions to intervene, requests for hearing, and new and amended contentions may be filed after the initial 30-day deadline; LBP-08-1, 67 NRC 51 (2008)

under current rules, contentions must be filed with the original petition within 60 days of notice of the proceeding in the *Federal Register*, unless a longer period is therein specified, an extension is granted, or the contentions meet certain criteria for late-filed or new contentions based on information that is available only at a later time; LBP-09-17, 70 NRC 325 n.50 (2009)

under the National Environmental Policy Act, petitioner can file new contentions if there are data or conclusions in the NRC draft or final environmental impact statement, environmental assessment, or any supplements relating thereto, that differ significantly from the data or conclusions in the applicant's documents; LBP-06-20, 64 NRC 174 (2006); LBP-08-26, 68 NRC 919 (2008)

use of the disjunctive phrase "data or conclusions" means that it is sufficient that either data or conclusions in the draft environmental impact statement differ significantly from those in the environmental report; LBP-10-24, 72 NRC 730 (2010)

when information forming the foundation for a new or amended contention becomes available piecemeal over time, the admissibility decision turns on a determination about when, as a cumulative matter, the separate pieces of the information puzzle were sufficiently in place to make the particular concerns reasonably apparent; LBP-09-10, 70 NRC 142 n.82 (2009)

when NRC issues the environmental impact statement, petitioners have the opportunity to file a second wave of environmental contentions that focus on the adequacy of the NRC Staff's environmental analysis under the National Environmental Policy Act; LBP-09-10, 70 NRC 88 (2009)

LEGAL CITATIONS INDEX
REGULATIONS

- where petitioner was admitted to the case as a party at the time it filed an amended contention, consideration of the contention's admissibility is governed by the provisions of this section as well as the general contention admissibility requirements of section 2.309(f)(1); CLI-10-18, 72 NRC 86 n.171 (2010)
- whether and how the Staff fulfills its National Historic Preservation Act and NEPA obligations are issues that could form the basis of a new contention; LBP-10-16, 72 NRC 422 (2010)
- within 25 days after service of a motion and proposed contention, any other party may file an answer responding to all elements of the motion and contention, and within 7 days of service of the answer, the movant may file a reply; LBP-09-22, 70 NRC 647 (2009)
- would-be intervenors must file contentions at the outset of the proceeding, on the basis of the applicant's environmental report; CLI-07-9, 65 NRC 142 (2007)
- 10 C.F.R. 2.309(f)(2)(i)
- a contention filed late is excused only when the information upon which the amended or new contention is based was not previously available; CLI-07-10, 65 NRC 146 (2007)
- a proposed rulemaking and request for comments, do not, in and of themselves, constitute previously unavailable information that would entitle a party to file a new contention; LBP-09-10, 70 NRC 144 (2009)
- an allegation that petitioners timely asked licensee for data and were rebuffed, if properly supported, would be probative of whether an applicant improperly thwarted a petitioner's effort to obtain supporting documentation and, hence, whether such documentation was not previously available; LBP-06-22, 64 NRC 253 n.27 (2006)
- an appeals court ruling does not constitute new information on which a party can file a new contention; CLI-07-9, 65 NRC 142 (2007)
- information upon which a amended or new contention is based must not have been previously available; LBP-09-27, 70 NRC 1000 (2009)
- new contentions based on assumptions that cannot be considered information that was not previously available or materially different than information previously available do not meet admissibility requirements; CLI-10-17, 72 NRC 29 (2010)
- new contentions must be based on information not previously available; CLI-10-27, 72 NRC 496 (2010)
- to determine admissibility of new contentions, boards must consider whether the material forming the basis for the contention was previously unavailable and materially different from other information already available to intervenors; LBP-10-9, 71 NRC 523 (2010)
- 10 C.F.R. 2.309(f)(2)(i)-(iii)
- a new contention based on a new UT testing plan satisfies the timeliness requirements because the information on which the new contention is based was not previously available and is materially different than the prior plan and the contention was submitted in a timely fashion; LBP-06-22, 64 NRC 240 (2006)
- by definition, and through no fault or negligence of the petitioner, contentions admitted under this section are founded on material new information that was not available at the time when the petition was initially due; LBP-09-10, 70 NRC 139 (2009)
- contentions filed after, and less formally than in, the initial petition must carry with them a demonstration that they are timely or that there is (among other things) good cause for their untimeliness; LBP-08-11, 67 NRC 503 n.13 (2008)
- contentions may be filed after the initial 60-day deadline if the petitioner shows that the information on which the amended or new contention is based was not previously available and is materially different than information previously available, and the amended or new contention has been submitted in a timely fashion based on the availability of the subsequent information; LBP-09-9, 70 NRC 45 (2009); LBP-09-26, 70 NRC 948 (2009)
- filing of new contentions is permitted upon leave of the presiding officer when petitioner shows that the underlying information was not previously available and is materially different than previous information, and the new contention was submitted in a timely fashion after the new information becomes available; LBP-07-14, 66 NRC 192 (2007); LBP-08-27, 68 NRC 954 (2008)
- if a contention based on new information fails to satisfy the three-part test of this section, it may be evaluated under section 2.309(c); LBP-10-24, 72 NRC 731, 769 (2010)

LEGAL CITATIONS INDEX
REGULATIONS

- if new and materially different information becomes available during the processing of the application, and a petitioner promptly files a new contention based on this new information, the contention is admissible if it also satisfies the general contention pleading standards; LBP-06-11, 63 NRC 395 (2006); LBP-06-14, 63 NRC 572 (2006); LBP-10-13, 71 NRC 677 (2010)
- intervenor is entitled to submit a new safety contention, with leave of the board, upon three showings; CLI-10-17, 72 NRC 7 n.19 (2010)
- it is neither logical nor sensible to impose only eight conditions on the admissibility of a contention based on old information and where the proponent has, through his own inadvertence, forgotten to raise it, and yet impose even more hurdles on a contention based on new information where the proponent is blameless and prompt; LBP-06-14, 63 NRC 573 n.14 (2006)
- petitioners are given the opportunity to amend existing contentions and file new contentions based on new information that had not previously been available; LBP-10-4, 71 NRC 230-31 n.16 (2010)
- showing that proponent of nontimely contentions must make is described; CLI-10-27, 72 NRC 490 (2010)
- the time for filing a new or an amended contention is triggered by different events; LBP-10-24, 72 NRC 738 (2010)
- 10 C.F.R. 2.309(f)(2)(ii)
- information upon which an amended or new contention is based must be materially different than information previously available; LBP-09-27, 70 NRC 1001 (2009)
- new contentions based on assumptions that cannot be considered information that was not previously available or materially different than information previously available do not meet admissibility requirements; CLI-10-17, 72 NRC 29 (2010); LBP-06-11, 63 NRC 397 (2006); LBP-10-9, 71 NRC 523 (2010)
- 10 C.F.R. 2.309(f)(2)(iii)
- a contention based on information well known to petitioner for approximately 5 months prior to its filing is not timely; LBP-06-14, 63 NRC 579 (2006)
- a contention filed within 30 days of the issuance of a document that legitimately undergirds the contention would be timely and presumptively meet the good cause requirement; CLI-10-18, 72 NRC 87 (2010)
- a motion and proposed new contention shall be deemed timely if it is filed within 30 days of the date when the new and material information on which it is based first becomes available; LBP-09-22, 70 NRC 647 (2009); LBP-10-9, 71 NRC 505 (2010); LBP-10-14, 72 NRC 107-08 (2010)
- an amended or new contention must be submitted in a timely fashion based on the availability of the subsequent information; LBP-09-27, 70 NRC 1003 (2009)
- if a contention satisfies the timeliness requirement of this section, then, by definition, it is not subject to section 2.309(c) which specifically applies to nontimely filings; LBP-10-9, 71 NRC 506 n.46 (2010)
- intervenor must comply with procedural requirements for the filing of new or amended contentions, including the requirement that the contentions be submitted in a timely fashion based on the availability of the subsequent information; LBP-10-17, 72 NRC 515 (2010)
- no specific number of days whereby a board can measure or determine whether a contention is "timely" is specified; LBP-06-14, 63 NRC 574 (2006)
- the first step in assessing the admissibility of a new contention is to determine if it is timely or nontimely; LBP-09-10, 70 NRC 138 (2009)
- thirty days is a reasonable limit for fulfilling the timing requirement of this section because of the significant effort involved in identifying new information, assembling the required expertise, and then drafting a contention that satisfies section 2.309(f)(1); LBP-09-27, 70 NRC 1003 (2009)
- 10 C.F.R. 2.309(f)(3)
- a participant that wishes to adopt the contention of another participant should do so within either 45 days of the filing of the contention to be adopted or 45 days of the admission of the contention to be adopted; LBP-08-10, 67 NRC 458 (2008)
- a petitioner may adopt the contention of a different petitioner if the adopting petitioner agrees that the sponsoring petitioner will act as the representative with respect to that contention or if the sponsoring and adopting petitioners jointly agree and designate which one of them will have the authority to act for the petitioners on that contention; LBP-06-20, 64 NRC 206 (2006)
- excusing a discretionary intervenor from the contention requirement would leave that intervenor free to litigate issues it has not raised, giving that intervenor a participatory role much broader than that of an

LEGAL CITATIONS INDEX

REGULATIONS

- intervenor as of right, who may litigate only its own contentions or those of another intervenor that it has properly adopted; CLI-06-16, 63 NRC 719 (2006)
- petitioner who has established standing and proffered a separate admissible contention of its own is eligible to adopt contentions of other parties; LBP-08-13, 68 NRC 65 n.53, 203, 204, 207 (2008)
- potential parties are encouraged, but not required, to confer and submit joint contentions where practicable; LBP-08-10, 67 NRC 458 (2008)
- the introduction to intervention petitions shall designate which (if any) contentions are submitted as joint contentions; LBP-08-10, 67 NRC 453 (2008)
- there is no requirement for adopted contentions to satisfy the eight lateness criteria; LBP-06-20, 64 NRC 207 (2006)
- where applicable, a statement shall be included indicating that a contention is jointly sponsored, listing all participants that are sponsoring the contention, and designating the specific participant with authority to act with respect to the contention; LBP-08-10, 67 NRC 456 (2008)
- 10 C.F.R. 2.309(g)
- a motion and proposed new contention may address the selection of the appropriate hearing procedure for the proposed new contention; LBP-09-22, 70 NRC 648 (2009)
- boards determine which hearing procedure to use on a contention-by-contention basis; LBP-09-10, 70 NRC 145 (2009); LBP-10-15, 72 NRC 344 (2010)
- if petitioner relies upon 10 C.F.R. 2.310(d) in requesting a Subpart G proceeding, then petitioner must demonstrate, by reference to the contention, that its resolution necessitates resolution of material issues of fact relating to the occurrence of a past activity where the credibility of an eyewitness may reasonably be expected to be at issue and/or there are issues of the motive or intent of the party or eyewitness material to the resolution of the contested matter; LBP-09-10, 70 NRC 146 (2009)
- if petitioner relies upon 10 C.F.R. 2.310(d) in requesting a Subpart G proceeding, then petitioner must demonstrate, by reference to the contention, that its resolution necessitates resolution of material issues of fact which may best be determined through the use of the identified procedures; LBP-08-24, 68 NRC 758 n.383 (2008); LBP-10-15, 72 NRC 344 (2010)
- 10 C.F.R. 2.309(h)
- answers to requests for hearing and petitions to intervene are due 25 days after service of the request for hearing; LBP-08-5, 67 NRC 237 n.83 (2008)
- on remand, the portion of the record relevant to the ability to contribute to the development of a sound record is limited to the petition to intervene containing the request for discretionary intervention, and any responsive answers and replies; CLI-06-16, 63 NRC 722 (2006)
- only three pleadings can be filed as of right regarding standing and admissibility of contentions; CLI-08-19, 68 NRC 261 (2008)
- within 25 days after service of a motion and proposed contention, any other party may file an answer responding to all elements of the motion and contention, and within 7 days of service of the answer, the movant may file a reply; LBP-09-22, 70 NRC 647 n.21 (2009)
- 10 C.F.R. 2.309(h)(1)
- answers to revised contentions must be filed within 25 days of the filing of the contentions; CLI-07-18, 65 NRC 416 (2007)
- the Commission doubles the existing time permitted to file answers and replies in the high-level waste proceeding to 50 and 14 days, respectively; CLI-08-18, 68 NRC 249-50 (2008)
- whether a petitioner has met the regulatory requirements for Licensing Support Network compliance is a proper subject for challenge in an answer to an intervention petition; LBP-09-6, 69 NRC 386 (2009)
- 10 C.F.R. 2.309(h)(2)
- a petitioner may file a reply to any answer within 7 days after service of that answer; CLI-07-18, 65 NRC 416 (2007); LBP-07-4, 65 NRC 299 (2007)
- although interested governmental participants are afforded many rights and responsibilities with respect to participation in a proceeding, they are limited to participation on admitted contentions; LBP-09-6, 69 NRC 456 (2009)
- although NRC's rules of practice regarding motions do not provide for reply pleadings, the board presumes that for a reply to be timely it would have to be filed within 7 days of the date of service of the response it is intended to address; LBP-09-22, 70 NRC 648 n.23 (2009)

LEGAL CITATIONS INDEX

REGULATIONS

- once petitioners LSN compliance has been raised in an answer to an intervention petition, petitioner then has the opportunity to respond to the challenges in its reply; LBP-09-6, 69 NRC 386 (2009)
- petitioner may file a reply to any answer to a hearing petition within 7 days after service of that answer; LBP-08-2, 67 NRC 67 n.8 (2008); LBP-08-3, 67 NRC 98 n.7 (2008); LBP-08-26, 68 NRC 918 (2008)
- the Commission doubles the existing time permitted to file answers and replies in the high-level waste proceeding to 50 and 14 days, respectively; CLI-08-18, 68 NRC 249-50 (2008)
- 10 C.F.R. 2.309(h)(3)
- although interested governmental participants are afforded many rights and responsibilities with respect to participation in a proceeding, they are limited to participation on admitted contentions; LBP-09-6, 69 NRC 456 (2009)
- 10 C.F.R. 2.309(i)
- there is no requirement that a board consider the admissibility of petitioner's other contentions when the board has already determined that petitioner has standing and has proffered at least one admissible contention; LBP-07-5, 65 NRC 359 (2007)
- within 45 days after the filing of answers and replies the presiding officer must issue a decision on each request for hearing/petition to intervene, absent an extension from the Commission; CLI-07-20, 65 NRC 501 (2007); LBP-07-5, 65 NRC 359 (2007)
- 10 C.F.R. 2.310
- an order selecting a hearing procedure may be appealed by any party on the question as to whether the selection of the particular hearing procedures was in clear contravention of the criteria set forth in this section; CLI-09-7, 69 NRC 279 (2009)
- reference to the term "hearing" suggests that it means an evidentiary hearing; LBP-08-23, 68 NRC 684 (2008)
- upon admission of a contention, the board must identify the specific hearing procedures to be used; LBP-10-15, 72 NRC 344 n.98 (2010)
- 10 C.F.R. 2.310(a)
- a materials license amendment proceeding may be held under Subpart L but the provisions of Subpart G may be used in any other proceeding as ordered by the Commission; CLI-09-12, 69 NRC 572 (2009)
- if no particular procedure is compelled, the board must exercise its discretion and select the hearing procedure most appropriate for the newly admitted contentions; LBP-10-15, 72 NRC 344 (2010); LBP-10-16, 72 NRC 442 (2010)
- the permissive term "may" is used in describing a board's authority to select the appropriate hearing procedures; LBP-08-24, 68 NRC 759 n.390 (2008)
- there is no mandatory or automatic default to Subpart L procedures for contentions in license renewal proceedings; LBP-07-15, 66 NRC 272 (2007)
- upon admission of a contention the board must identify the specific hearing procedures to be used; LBP-09-10, 70 NRC 144-45 (2009)
- upon granting a hearing request in a license renewal proceeding, a licensing board must determine the specific hearing procedures to be used in the proceeding; LBP-06-20, 64 NRC 202 (2006); LBP-07-15, 66 NRC 272 (2007)
- use of the permissive term, "may," indicates that licensing boards have some discretion in determining whether to hold hearings under Subpart L or Subpart G; LBP-08-6, 67 NRC 342-43 (2008)
- use of the term "may" in describing board options in selecting the appropriate hearing procedures, instead of the mandatory "shall," indicates that even if a petitioner fails to demonstrate that Subpart G procedures are required, the board "may" still find that the use of Subpart G procedures is more appropriate than the use of Subpart L procedures for a given contention; LBP-06-20, 64 NRC 204 (2006)
- 10 C.F.R. 2.310(b)
- NRC's approach to the scope of discovery is similar to that of the Federal Rules of Civil Procedure; LBP-06-25, 64 NRC 376 (2006)
- 10 C.F.R. 2.310(b)-(h)
- if a contention does not fall within one of the categories listed in this section for specific situations, proceedings may be conducted under the procedures of Subpart L; LBP-10-15, 72 NRC 344 (2010)
- specific situations where a certain procedure is mandated or available are enumerated; LBP-09-10, 70 NRC 145-46 (2009)

LEGAL CITATIONS INDEX

REGULATIONS

- 10 C.F.R. 2.310(d)
a motion and proposed new contention may address the selection of the appropriate hearing procedure for the proposed new contention; LBP-09-22, 70 NRC 648 (2009)
boards determine which hearing procedure to use on a contention-by-contention basis; LBP-09-10, 70 NRC 145 (2009); LBP-10-15, 72 NRC 344 (2010)
petitioner requesting a Subpart G hearing must demonstrate, by reference to the contention and the bases provided and the specific procedures in Subpart G of Part 2, that resolution of the contention necessitates resolution of material issues of fact which may be best determined through the use of the identified procedures; LBP-08-24, 68 NRC 758 n.383 (2008); LBP-09-10, 70 NRC 146 (2009); LBP-09-22, 70 NRC 646-47 (2009)
petitioner's assertion that licensee and its parent company are not trustworthy does not satisfy the Subpart G hearing requirement; CLI-09-7, 69 NRC 243 (2009)
Subpart G procedures are appropriate in license renewal proceedings only where the credibility of an eyewitness may reasonably be expected to be at issue and/or the motive or intent of the party or eyewitness is material to the resolution of the contested matter; CLI-09-7, 69 NRC 242-43 (2009); LBP-08-24, 68 NRC 759 (2008); LBP-10-15, 72 NRC 344 (2010)
upon granting a hearing request in a license renewal proceeding, a licensing board must determine the specific hearing procedures to be used in the proceeding; LBP-06-20, 64 NRC 202 (2006)
- 10 C.F.R. 2.310(h)(1)
if a hearing on a contention is expected to take no more than 2 days to complete, the board can impose the Subpart N procedures for expedited proceedings with oral hearings specified by 10 C.F.R. 2.1400-1407; LBP-09-10, 70 NRC 145 n.85 (2009); LBP-10-15, 72 NRC 343 n.95 (2010); LBP-10-16, 72 NRC 442 (2010)
- 10 C.F.R. 2.311
a requester may challenge NRC Staff's or Office of Administration's adverse determination with respect to access to safeguards information by filing a request for interlocutory review; CLI-10-4, 71 NRC 81 (2010)
appeals of adverse decisions with respect to access to safeguards information must be made pursuant to this section; CLI-09-15, 70 NRC 26, 27 (2009)
interlocutory review of the presiding officer's decision will be granted where the decision either threatens the party adversely affected by it with immediate and serious irreparable impact which, as a practical matter, could not be alleviated through a petition for review, or affects the basic structure of the proceeding in a pervasive or unusual manner; CLI-09-9, 69 NRC 365 (2009)
license applicants may appeal contention admissibility rulings within 10 days after a board grants a petition to intervene, but only if the license applicant argues the petition should have been wholly denied; CLI-06-25, 64 NRC 129 (2006)
litigant may challenge a presiding officer's adverse decision on access to SUNSI by seeking Commission review; LBP-09-5, 69 NRC 307 (2009)
regulations governing appeals from the denial of intervention provide for a notice of appeal with a supporting brief, and for a brief opposing the appeal; CLI-06-9, 63 NRC 439 (2006)
reply briefs on appeals of board decisions denying intervention are not allowed; CLI-06-10, 63 NRC 458 n.41 (2006)
the right to interlocutory appeal of contention rulings allows applicant or NRC Staff to immediately appeal the admission of all of the contentions, but denies petitioners the right to immediately appeal the denial of any of the contentions; LBP-09-10, 70 NRC 147 n.89 (2009)
this section is not applicable to the board's refusal to supplement the basis of intervenor's contention or to add new contentions because the section applies only where a board decision rules on a request for hearing, petition to intervene, or selection of hearing procedures; CLI-06-24, 64 NRC 125 (2006)
where intervenors have filed new contentions based on a supplement to the COL application, in advance of a full board ruling on the original contentions, no appeal lies until the board acts on all contentions, both the original and the newly filed ones; CLI-09-18, 70 NRC 862 (2009)
within 10 days after service of the Memorandum and Order, an appeal can be taken to the Commission on the question whether the petition to intervene should have been denied in its entirety; LBP-08-11, 67 NRC 495 (2008)

LEGAL CITATIONS INDEX
REGULATIONS

- 10 C.F.R. 2.311(a)
a notice of appeal must be accompanied by a brief; CLI-06-6, 63 NRC 163 (2006)
an appeal filed several months after the 10-day deadline is dismissed as untimely; CLI-06-25, 64 NRC 129 (2006)
responses to any appeal are due within 10 days after service of the appeal; LBP-08-11, 67 NRC 495 (2008)
the Commission may reject an appeal summarily for noncompliance with the formatting requirements of this section; CLI-08-17, 68 NRC 235 n.18 (2008)
- 10 C.F.R. 2.311(a)(3)
interlocutory appeal to the Commission of certain rulings relating to sensitive unclassified nonsafeguards information is authorized; LBP-10-2, 71 NRC 199 (2010)
- 10 C.F.R. 2.311(b)
appeal of a board decision denying a petition to intervene is permitted; CLI-06-24, 64 NRC 119 (2006); CLI-07-25, 66 NRC 104 (2007); CLI-08-7, 67 NRC 191 (2008); CLI-08-17, 68 NRC 234 (2008); CLI-10-1, 71 NRC 4 (2010)
in situations in which a board denies a petition to intervene in its entirety or grants a petition to intervene that, according to an opposing litigant, should have been denied in its entirety, the losing litigant has a right to Commission review; CLI-09-6, 69 NRC 137 n.37 (2009)
petitioners have 10 days to appeal an order denying a petition to intervene and/or request for hearing; CLI-10-26, 72 NRC 475 n.5 (2010)
- 10 C.F.R. 2.311(b)-(d)
appeals as of right are permitted in three circumstances only; CLI-07-2, 65 NRC 11 (2007)
- 10 C.F.R. 2.311(c)
an applicant has the right to file an interlocutory appeal of board orders admitting contentions, but only if the appeal challenges the admissibility of all admitted contentions; CLI-06-13, 63 NRC 509 n.3 (2006)
an interested state may introduce evidence, interrogate witnesses where cross-examination by the parties is permitted, advise the Commission without requiring the representative to take a position with respect to the issue, file proposed findings in those proceedings where findings are permitted, and petition for review by the Commission with respect to the admitted contentions; LBP-06-20, 64 NRC 205 (2006)
an interested state or local governmental body which has not been admitted as a party under section 2.309 shall be afforded a reasonable opportunity to participate in a hearing; LBP-09-2, 69 NRC 95 (2009)
an order denying a petition to intervene and/or request for hearing may be appealed to the Commission on the question of whether the petition and/or request should have been granted; CLI-10-20, 72 NRC 188 (2010)
any interested state, local governmental body, and affected, federally recognized Indian tribe that has not been admitted as a party under 10 C.F.R. 2.309 will be given a reasonable opportunity to participate in any hearing; LBP-06-20, 64 NRC 209 (2006)
in situations in which a board denies a petition to intervene in its entirety or grants a petition to intervene that, according to an opposing litigant, should have been denied in its entirety, the losing litigant has a right to Commission review; CLI-09-6, 69 NRC 137 n.37 (2009); CLI-10-16, 71 NRC 489 (2010)
petitioners have 10 days to appeal an order denying a petition to intervene and/or request for hearing; CLI-10-26, 72 NRC 475 n.5 (2010)
petitioners have an automatic right to appeal a board decision wholly denying a petition to intervene; CLI-10-9, 71 NRC 253 (2010); CLI-10-12, 71 NRC 322 (2010)
the representative of an interested state shall identify those contentions on which it will participate in advance of any hearing held; LBP-06-20, 64 NRC 209 (2006)
where the NRC Staff or the license applicant argues that the board ought to have rejected all contentions, an appeal lies; CLI-06-24, 64 NRC 119 (2006)
- 10 C.F.R. 2.311(d)
an immediate right to appeal a board ruling selecting a hearing procedure is provided; CLI-09-12, 69 NRC 542 n.19 (2009)
the limit for appealing a board's ruling on selection of hearing procedures is 10 days; CLI-09-7, 69 NRC 279 (2009)

LEGAL CITATIONS INDEX
REGULATIONS

- 10 C.F.R. 2.311(d)(1)
an appeal as of right from a board's ruling on an intervention petition is permitted upon denial of a petition to intervene and/or request for hearing on the question as to whether it should have been granted or upon the granting of a petition to intervene and/or request for hearing, on the question as to whether it should have been wholly denied; CLI-10-16, 71 NRC 489 (2010)
an exception to the general policy limiting interlocutory review permits an appeal of a board's ruling on contention admissibility when a board grants a petition to intervene following consideration of the full petition; CLI-09-18, 70 NRC 861 (2009)
there is an automatic right to appeal a licensing board standing and contention admissibility decision on the issue of whether the request for hearing or petition to intervene should have been wholly denied; CLI-09-22, 70 NRC 933 (2009)
to be appealable, a disputed order must dispose of the entire petition so that a successful appeal by a nonpetitioner will terminate the proceeding as to the appellee petitioner; CLI-09-18, 70 NRC 861 (2009)
with respect to an applicant's appeal, applicant must contend that, after considering all pending contentions, the board has erroneously granted a hearing to the petitioner; CLI-09-18, 70 NRC 861-62 (2009)
- 10 C.F.R. 2.311(d)(2)
an appeal as of right by the NRC Staff is permitted on the question of whether a request for access to sensitive unclassified non-safeguards information should have been denied in whole or in part; CLI-10-24, 72 NRC 461 (2010)
interlocutory appeal to the Commission of certain rulings relating to sensitive unclassified nonsafeguards information is authorized; LBP-10-2, 71 NRC 199 (2010)
- 10 C.F.R. 2.311(e)
an appeal must be filed with the Commission no later than 10 days after issuance of the order selecting a hearing procedure; CLI-09-7, 69 NRC 279 (2009)
an appeal of an order selecting a hearing procedure is permitted on the question as to whether the selection of the particular hearing procedures was in clear contravention of the criteria set forth in section 2.310; CLI-10-16, 71 NRC 489 n.13 (2010)
- 10 C.F.R. 2.313(b)
licensing board judges remain under a continuing obligation to withdraw if a ground for disqualification arises; CLI-10-22, 72 NRC 207 (2010)
- 10 C.F.R. 2.313(b)(2)
if a licensing board member declines to grant a party's recusal motion, the motion is referred to the Commission to determine the sufficiency of the grounds alleged; CLI-10-22, 72 NRC 203 (2010)
- 10 C.F.R. 2.314
Notice of Appearance of a tribal official who is an attorney in good standing is sufficient in itself for him to represent the tribe; LBP-08-26, 68 NRC 913 (2008)
- 10 C.F.R. 2.314(a)
parties and their representatives are expected to conduct themselves as they should before a court of law; LBP-10-21, 72 NRC 638 n.6 (2010)
- 10 C.F.R. 2.314(b)
failure of an organizational participant to have a representative provide an appearance notice might provide cause for an appropriate sanction for failure to properly prosecute its litigation, but such a failure does not fall into the same category as failure to support an intervention petition with affidavits providing necessary information regarding the basis for representational standing; LBP-10-7, 71 NRC 412 (2010)
the distinction between representation by an attorney and representation by a nonattorney is discussed; LBP-08-26, 68 NRC 913 (2008)
- 10 C.F.R. 2.314(c)
dismissal due to counsel's malfeasance is a logical extension of the board's disciplinary authority to reprimand, censure, or suspend from a proceeding any party or representative who refuses to comply with its directions; CLI-08-29, 68 NRC 900-01 (2008)
- 10 C.F.R. 2.315
a petitioner, including a potential party given access to the Licensing Support Network, may not be granted status as an interested governmental participant under section 2.315 if the petitioner cannot

LEGAL CITATIONS INDEX

REGULATIONS

- demonstrate substantial and timely compliance with the requirements in section 2.1003 at the time of the request for participation in the high-level waste proceeding; CLI-08-25, 68 NRC 500 (2008)
- an interested governmental entity may request the Commission to suspend all or any part of any licensing proceeding to which the petitioner is a party pending disposition of the petition for rulemaking; CLI-07-3, 65 NRC 22 n.37 (2007)
- 10 C.F.R. 2.315(a)
- any person who does not wish, or is not qualified, to become a party to the proceeding may request permission to make a limited appearance; CLI-09-15, 70 NRC 9 (2009); CLI-10-4, 71 NRC 63 (2010)
- when boards conduct limited appearance sessions, in which members of the general public may make oral statements to the board, such sessions are generally conducted in person near the site; LBP-08-23, 68 NRC 682-83 (2008)
- 10 C.F.R. 2.315(c)
- a state could seek to have licensing proceedings suspended pending an NRC decision on its rulemaking petition, if it participated in the proceedings as an interested state; CLI-09-10, 69 NRC 524 (2009)
- a state, county, municipality, federally recognized Indian tribe, or agencies thereof, may seek to participate in a hearing as a nonparty; CLI-09-15, 70 NRC 9 (2009); CLI-10-4, 71 NRC 63 (2010)
- a stay of the close of hearings in both license renewal proceedings for 14 days following the date of issuance of mandate is ordered to afford a state the opportunity to request participant status under this section; CLI-08-9, 67 NRC 354, 355 (2008)
- although interested governmental entities would not have a formal role in a proceeding absent the admission of parties and contentions, boards expect that such entities would be kept appropriately apprised of the other participants' settlement efforts; LBP-09-23, 70 NRC 670 n.33 (2009)
- although interested governmental participants are afforded many rights and responsibilities with respect to participation in a proceeding, they are limited to participation on admitted contentions; LBP-09-6, 69 NRC 456 (2009)
- an interested local governmental body may introduce evidence, interrogate witnesses in circumstances where cross-examination by the parties is allowed, advise the Commission without being required to take a position on any issue, file proposed findings where such are allowed, and seek Commission review on admitted contentions; LBP-08-24, 68 NRC 715 (2008)
- an interested local governmental body that is not a party to the proceeding must be accorded a reasonable opportunity to participate, through a single representative, in the hearing of one or more of the admitted contentions; LBP-07-5, 65 NRC 345 (2007); LBP-08-13, 68 NRC 59 (2008); LBP-08-15, 68 NRC 304 (2008); LBP-08-21, 68 NRC 560 (2008); LBP-08-24, 68 NRC 715 (2008)
- an interested state that has not been admitted as a party will be afforded a reasonable opportunity to participate in a hearing; LBP-06-7, 63 NRC 227 n.37 (2006)
- because a petition to intervene was wholly denied, the request of a governmental office to participate in the proceeding as an interested governmental entity is denied as moot; LBP-10-6, 71 NRC 385 n.107 (2010)
- court ordered a stay of the close of hearings in license renewal proceedings to afford the Commonwealth an opportunity to request participant status as an interested state; CLI-10-14, 71 NRC 468 n.105 (2010)
- except in a proceeding under section 52.103, the requestor/petitioner may file a reply to any answer, but no other written answers or replies will be entertained; LBP-09-6, 69 NRC 456 (2009)
- governmental entities (including counties and municipalities) are accorded the right to participate in adjudicatory proceedings without having to obtain party status; LBP-07-5, 65 NRC 359 (2007)
- Indian tribes are entitled to a reasonable opportunity to participate in NRC proceedings; LBP-08-6, 67 NRC 266 (2008)
- state petitioner who has not submitted an admissible contention of its own is barred from adopting the contentions of any other party, but may participate as an interested state; LBP-08-13, 68 NRC 162 (2008)
- state utility commissions may be allowed to participate as nonparty interested states; LBP-08-15, 68 NRC 304 n.44 (2008)
- the phrase "federally recognized Indian tribe" was added to the regulation in order to comply with Executive Order 13084; LBP-09-13, 70 NRC 184-85 (2009)

LEGAL CITATIONS INDEX
REGULATIONS

- the presiding officer must afford a reasonable opportunity for participation to an interested state, local government body (county, municipality or other subdivision), and affected, federally recognized Indian tribe that has not been admitted as a party under section 2.309; CLI-07-20, 65 NRC 503 n.19 (2007)
- the representative of an interested local governmental body must identify those contentions on which it will participate in advance of any hearing held; LBP-08-24, 68 NRC 715 (2008)
- 10 C.F.R. 2.315(d)
- an amicus brief must be filed by the same deadline as the brief of the party whose side the amicus brief supports, unless the Commission provides otherwise; CLI-08-22, 68 NRC 359 (2008); LBP-08-6, 67 NRC 267 (2008)
- denial of a motion for discretionary intervention does not eliminate all possibility of petitioners' participation in the litigation; CLI-06-16, 63 NRC 722 (2006)
- permission to file an amicus brief is at the discretion of the Commission; CLI-08-22, 68 NRC 359 (2008)
- petitioners may protect their interests by participating as appropriate, as amici curiae; CLI-10-12, 71 NRC 327 n.50 (2010)
- this general rule on amicus briefs, as a formal matter, applies only to petitions for review filed under 10 C.F.R. 2.341 or to matters taken up by the Commission sua sponte, not to appeals filed under 10 C.F.R. 2.1015; CLI-08-22, 68 NRC 359 (2008)
- this section applies to briefs filed before the Commission, not to briefs filed before licensing boards; LBP-08-6, 67 NRC 266 (2008)
- 10 C.F.R. 2.316
- licensing boards have authority to further define admitted contentions when redrafting would clarify the scope of the contention; LBP-07-3, 65 NRC 255 (2007); LBP-08-16, 68 NRC 386 (2008)
- 10 C.F.R. 2.318(a)
- a proceeding commences when a notice of hearing or a notice of proposed action is issued; CLI-08-14, 67 NRC 406 (2008)
- dismissal of one contention on mootness grounds would not terminate a case where the board had expressly retained jurisdiction to decide whether to admit another contention; LBP-09-27, 70 NRC 997 (2009)
- 10 C.F.R. 2.319
- a presiding officer has all the powers necessary to promote efficiency and ensure a fair hearing process; LBP-06-16, 63 NRC 744 (2006)
- a request for briefs on legal issues is one of the many tools available to a presiding officer generally in the conduct of a proceeding; CLI-09-14, 69 NRC 591 (2009)
- boards are responsible for managing the proceedings before them and should be granted appropriate discretion to determine the best way to approach their job, particularly where they are engaged in an essentially new process where the agency lacks recent experience; CLI-06-20, 64 NRC 19 (2006)
- boards have the duty to conduct a fair and impartial hearing according to law, to take appropriate action to control the prehearing and hearing process, to avoid delay, and to maintain order; LBP-09-22, 70 NRC 640 (2009)
- cross-examination occurs virtually automatically in Subpart G hearings, subject to normal judicial management and the requirement to file a cross-examination plan; LBP-09-10, 70 NRC 145 (2009); LBP-10-15, 72 NRC 344 (2010)
- dismissal of a party falls within the spectrum of sanctions available to the boards to assist in the management of proceedings, although dismissal should be reserved for severe cases; CLI-08-29, 68 NRC 900 (2008)
- if a party believes that stipulations or admissions would materially expedite or facilitate the proceeding, the party is encouraged to propose such a course to the board directly, and the board will act accordingly; CLI-06-5, 63 NRC 128 n.15 (2006)
- it is the board's responsibility to conduct a fair and impartial hearing according to law, to take appropriate action to control the prehearing and hearing process, and to maintain order; CLI-08-7, 67 NRC 192 (2008)
- licensing boards have authority to further define admitted contentions when redrafting will clarify the scope of the contention; LBP-07-3, 65 NRC 255 (2007); LBP-08-16, 68 NRC 386 (2008)
- licensing boards have authority to regulate the course of the proceeding, and the Commission generally defers to boards on case management decisions; CLI-10-28, 72 NRC 554 (2010)

LEGAL CITATIONS INDEX
REGULATIONS

- licensing boards have authority to set a proceeding's schedule and to ensure compliance with that schedule; LBP-10-21, 72 NRC 635 (2010)
- 10 C.F.R. 2.319(d)
although the Federal Rules of Evidence are not mandated for NRC adjudicatory proceedings, the Commission has endorsed their use as guidance for the boards with the express proviso that boards must apply the Part 2 rules with greater flexibility than the FRE; LBP-12-23, 72 NRC 705-06 (2010)
decisions on evidentiary questions fall within licensing boards' authority to regulate hearing procedures; CLI-10-5, 71 NRC 99 (2010); CLI-10-18, 72 NRC 73 (2010)
- 10 C.F.R. 2.319(e)
boards are authorized to restrict irrelevant, immaterial, unreliable, duplicative or cumulative evidence; LBP-09-30, 70 NRC 1046 (2009)
- 10 C.F.R. 2.319(g)
the presiding officer has the power to regulate the course of the hearing and the conduct of participants; CLI-08-29, 68 NRC 900 (2008)
- 10 C.F.R. 2.319(i)
to enable presiding officers to fulfill their duty, they have been given broad authority to examine witnesses at evidentiary hearings; CLI-10-17, 72 NRC 47 (2010)
- 10 C.F.R. 2.319(j)
boards are authorized to hold prehearing conferences to simplify or clarify the issues for hearing, after which they may admit a revised contention, as long as the revised contention does not add material not raised by the intervenor to make it admissible; LBP-10-14, 72 NRC 127 n.171 (2010)
NRC rules of procedure authorize boards to hold prehearing conferences for the purposes of simplifying or clarifying the issues for hearing, after which a board might admit a revised contention; CLI-09-12, 69 NRC 553 (2009)
the presiding officer is authorized to hold conferences before or during the hearing for settlement, for simplification of contentions, or any other proper purpose; LBP-08-11, 67 NRC 483 (2008)
- 10 C.F.R. 2.319(k)
licensing boards have the authority to control the schedule for a proceeding to ensure that intervenors have adequate time to prepare new or amended contentions in response to new information; LBP-10-17, 72 NRC 515-16 (2010)
- 10 C.F.R. 2.319(l)
given participants' settlement agreement, a board sees no cause for it to attempt to obtain Commission avowal of the renoticing process contemplated by the participants, either by way of a Staff inquiry made at the Board's direction or via a certified question; LBP-09-23, 70 NRC 668 n.27 (2009)
licensing boards must promptly certify to the Commission all novel legal or policy issues that would benefit from early Commission consideration should such issues arise in the proceeding; CLI-09-15, 70 NRC 11 (2009); CLI-10-4, 71 NRC 66 (2010)
outside the context of petitions for interlocutory review, the Commission may also take interlocutory review of questions or rulings that a licensing board refers to the Commission; CLI-07-1, 65 NRC 4 n.10 (2007)
the Commission may take interlocutory review of questions or rulings that a licensing board refers to the Commission; CLI-09-6, 69 NRC 132 n.13 (2009)
- 10 C.F.R. 2.323
a party in the high-level waste proceeding who files a motion must certify that he or she has made a reasonable effort to consult with counsel for the other parties in an effort to resolve the matter in advance of filing the motion; CLI-08-25, 68 NRC 504 (2008)
all motions, including a motion for leave to file an amicus brief, are required to include a certification that the sponsor of the motion has made a sincere effort to contact the other parties and to resolve the issues raised in the motion; CLI-08-22, 68 NRC 359 (2008)
because of apparent electronic complications and the lack of a challenge to intervenors' reply document as late, the board treats a late filing as a valid reply; LBP-10-9, 71 NRC 501 n.18 (2010)
motions filed under this section are not a legitimate means to bring challenges to board decisions to the Commission; CLI-10-28, 72 NRC 554 n.2 (2010)

LEGAL CITATIONS INDEX

REGULATIONS

- petitioners' requests that do not fit cleanly within any of the procedures described within the rules of practice are treated as general motions brought under the procedural requirements of this section; CLI-08-23, 68 NRC 476 (2008)
- within 25 days after service of a motion and proposed contention, any other party may file an answer responding to all elements of the motion and contention, and within 7 days of service of the answer, the movant may file a reply; LBP-09-22, 70 NRC 647 (2009)
- 10 C.F.R. 2.323(a)
- a reply is due within 7 days after the submission of a response to a summary disposition motion rather than the 10 days generally provided for a motion; LBP-08-2, 67 NRC 67 n.8 (2008); LBP-08-3, 67 NRC 98 n.7 (2008)
- any motion must be filed within 10 days of the occurrence or circumstance from which the motion arises, and any movant must contact other parties prior to filing the motions; LBP-08-6, 67 NRC 266 (2008)
- dispositive motions may be filed 20 days after the occurrence or circumstance from which the motion arises, rather than the 10-day time frame, provided that the moving party commences sincere efforts to contact and consult all other parties within 10 days of the occurrence or circumstance, and the accompanying certification so states; LBP-09-22, 70 NRC 652 (2009)
- given the significant effort involved in identifying new information, assembling the required expertise, and then drafting a contention that satisfies section 2.309(f)(1), it would be inappropriate to impose the very short 10-day rule on the filing of new contentions; LBP-06-14, 63 NRC 574 (2006)
- if parties believe that additional time for consultation may be productive, either on a specific dispute or more generally, they are encouraged to advise the board and move for the enlargement of the 10-day time frame; LBP-06-3, 63 NRC 92 n.12 (2006)
- motions are to be filed within 10 days of the event or circumstance from which they arise; CLI-06-2, 63 NRC 18 n.36 (2006); LBP-06-10, 63 NRC 333 (2006); LBP-12-23, 72 NRC 714 n.34 (2010)
- motions must be initially addressed to the presiding officer when a proceeding is pending; CLI-08-23, 68 NRC 476 (2008)
- motions to compel or challenges regarding the adequacy of any mandatory disclosure or hearing file, redactions, or the validity of any claim that a document is privileged or protected shall be filed within 10 days after the occurrence or circumstance from which the motion arises; LBP-09-22, 70 NRC 644 (2009)
- 10 C.F.R. 2.323(b)
- a motion to strike was rejected on the grounds that counsel failed to comply with the certification requirements regarding consultation with opposing counsel and also failed to state with particularity the grounds for the motion; CLI-08-29, 68 NRC 902 n.12 (2008)
- a person who has not been admitted as a party to a proceeding is not entitled to make a motion in an ongoing proceeding; CLI-10-10, 71 NRC 285 n.20 (2010)
- although a court can act to order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter, there is no explicit mention of such a motion in NRC's Rules of Practice; LBP-08-2, 67 NRC 66 (2008); LBP-08-3, 67 NRC 97 (2008)
- although a summary disposition movant has no right to reply to an answer to its motion, movant could have requested the opportunity to respond and to correct the record if the opponent's allegation was plainly and factually incorrect; CLI-06-5, 63 NRC 123 n.10 (2006)
- any motion must be filed within 10 days of the occurrence or circumstance from which the motion arises, and any movant must contact other parties prior to filing the motions; LBP-08-6, 67 NRC 266 (2008)
- any motion, other than one made orally on the record during a hearing or as otherwise directed by the presiding officer, must contain a certification that the movant has made a sincere effort to contact the other parties and resolve the matter, and that this effort was unsuccessful; LBP-07-4, 65 NRC 297 n.54 (2007)
- discussion and exchange of information between the parties is encouraged, so that if filing a motion becomes necessary, the parties can at least inform the board of what facts remain in contention; LBP-09-6, 69 NRC 448 (2009)
- if the attorney or representative of a party is contacted pursuant to the consultation requirement, then that person (or his or her alternate) must make a sincere effort to make himself or herself available to listen and to respond to the moving party's explanation, and to resolve the factual and legal issues raised in the motion; LBP-09-22, 70 NRC 649-50 (2009)

LEGAL CITATIONS INDEX

REGULATIONS

- it is inconsistent with the dispute avoidance/resolution purposes of this section, and thus insufficient, for the contacted attorney or representative to fail or refuse to consider the substance of the consultation attempt, or for the party to respond that it takes no position on the motion (or issues) and that it reserves the right to file a response to the motion when it is filed; LBP-09-22, 70 NRC 650 (2009)
- motions must state with particularity the grounds and the relief sought, be accompanied by any affidavits or other evidence relied on, and, as appropriate, a proposed form of order; CLI-06-10, 63 NRC 454 n.8 (2006)
- motions will be rejected if they do not include certification by the attorney or representative of the moving party that they have made a sincere effort to contact the other parties in the proceeding, to explain to them the factual and legal issues raised in the motion, and to resolve those issues; CLI-06-5, 63 NRC 128 (2006); CLI-06-9, 63 NRC 439 (2006); CLI-06-10, 63 NRC 454 n.8 (2006); CLI-08-23, 68 NRC 475 (2008); LBP-09-22, 70 NRC 649 (2009); CLI-10-10, 71 NRC 285 n.20 (2010)
- prior to filing a summary disposition motion, movant must make a sincere effort to resolve the issues raised in the motion; CLI-06-5, 63 NRC 120, 122, 128, 129 (2006)
- 10 C.F.R. 2.323(c)
- a moving party has no right to reply except as permitted by the presiding officer; CLI-08-23, 68 NRC 475-76 n.59 (2008); LBP-08-1, 67 NRC 51 n.14 (2008)
- because of the significance of the issues at hand, DOE was permitted to reply to the answers to its motion to withdraw, a right to which it is not entitled under the regulations; LBP-10-11, 71 NRC 637 n.106 (2010)
- except for a motion to file a new or amended contention, or where there are compelling circumstances, movant has no right to reply to an answer or respond to a motion; LBP-09-22, 70 NRC 648 (2009)
- permission to file a reply to a response to a motion may be granted in compelling circumstances, such as when the moving party could not reasonably anticipate response arguments; LBP-08-2, 67 NRC 67 n.8 (2008); LBP-08-3, 67 NRC 98 n.7 (2008)
- the 10-day motions deadline does not apply to the adoption of contentions because simple notice suffices for adoption of contentions; LBP-06-20, 64 NRC 207 n.81 (2006)
- when reply briefs are permitted, NRC rules set strict conditions on their filing; CLI-08-12, 67 NRC 393 (2008)
- 10 C.F.R. 2.323(d)
- all parties are obligated, in their filings, to ensure that their arguments are supported by legal authority; LBP-06-7, 63 NRC 202 n.9 (2006)
- 10 C.F.R. 2.323(e)
- because deferral of the consideration of the balance of petitioner's contentions might prejudice parties' legitimate interests, they will be subject to the filing of a timely motion for reconsideration; LBP-07-5, 65 NRC 362 (2007)
- motions for reconsideration are appropriately considered under this section; CLI-10-9, 71 NRC 252 (2010)
- motions for reconsideration are limited to 10 pages; CLI-07-22, 65 NRC 527 (2007)
- motions for reconsideration may not be filed except upon leave of the presiding officer or the Commission, upon a showing of compelling circumstances, such as the existence of a clear and material error in a decision, which could not have reasonably been anticipated, that renders the decision invalid; CLI-06-27, 64 NRC 400 (2006); CLI-07-13, 65 NRC 214 (2007); CLI-09-8, 69 NRC 328 n.48 (2009); CLI-10-9, 71 NRC 252 (2010); LBP-08-23, 68 NRC 681 (2008)
- motions for reconsideration may not be filed except upon leave of the adjudicatory body that rendered the decision; CLI-10-9, 71 NRC 252 (2010)
- motions for reconsideration must be filed within 10 days of the action for which reconsideration is requested; CLI-09-8, 69 NRC 328 n.48 (2009); CLI-10-9, 71 NRC 252 n.35 (2010)
- motions for reconsideration will be denied if they point to no compelling circumstances warranting reconsideration; CLI-10-10, 71 NRC 282 (2010)
- 10 C.F.R. 2.323(f)
- a ruling admitting a contention that raised a novel legal or policy question regarding the status of depleted uranium as low-level waste is referred to the Commission; LBP-06-15, 63 NRC 605 (2006)
- decisions that involve significant and novel issues, the resolution of which would materially advance the orderly disposition of proceedings, should be referred to the Commission; CLI-09-13, 69 NRC 577 (2009); CLI-09-15, 70 NRC 11 (2009); CLI-09-21, 70 NRC 930 n.15 (2009); CLI-10-4, 71 NRC 66

LEGAL CITATIONS INDEX

REGULATIONS

- (2010); LBP-08-16, 68 NRC 415, 420, 429 (2008); LBP-08-17, 68 NRC 436, 445, 458 (2008); LBP-10-20, 72 NRC 608-09 (2010)
- multiple reactors, multiple licensees, and multiple numeric dose limits involve some novel issues that merit Commission consideration; LBP-07-9, 65 NRC 625 (2007)
- the Commission may take interlocutory review of questions or rulings that a licensing board certifies to the Commission; CLI-09-6, 69 NRC 132 n.13 (2009)
- 10 C.F.R. 2.323(f)(1)
- a decision may be referred to the Commission if it raises significant and novel legal or policy issues, and resolution of the issues would materially advance the orderly disposition of the proceeding; CLI-09-3, 69 NRC 72 (2009); CLI-09-6, 69 NRC 134 n.19 (2009); LBP-09-18, 70 NRC 407 (2009)
- licensing boards are to refer novel issues of law to the Commission; LBP-10-15, 72 NRC 273 (2010)
- outside the context of petitions for interlocutory review, the Commission may also take interlocutory review of questions or rulings that a licensing board certifies to the Commission; CLI-07-1, 65 NRC 4 n.10 (2007)
- the standard in this section does not apply to litigants' petitions for interlocutory review; CLI-09-6, 69 NRC 134 n.19 (2009)
- 10 C.F.R. 2.323(h)
- a party seeking to challenge NRC Staff's claim of privilege or protected status may file a motion to compel production of the document; CLI-10-24, 72 NRC 463 (2010)
- 10 C.F.R. 2.325
- applicant bears the burden of proof as the proponent of the license; LBP-09-7, 69 NRC 635 (2009); LBP-09-10, 70 NRC 101 (2009)
- applicant has the burden of persuasion on whether its test program assures that all testing required to demonstrate that structures, systems, and components will perform satisfactorily in service is identified and performed; LBP-07-2, 65 NRC 167 (2007)
- applicant has the burden of proving that it has met the reasonable assurance standard by a preponderance of the evidence; LBP-08-25, 68 NRC 788 (2008)
- if it seeks to withhold a document from a party or the public, or to bar a party or member of the public from attending any adjudicatory proceeding before a licensing board, NRC Staff must carry the burden of proving that the document or situation fits one of FOIA's specifically enumerated exceptions; LBP-10-2, 71 NRC 198 (2010)
- proponent of a protective order shoulders burden of proof; LBP-10-2, 71 NRC 198 (2010)
- Staff has the burden of proof to demonstrate the adequacy of the final environmental impact statement; LBP-06-8, 63 NRC 250 (2006)
- summary disposition movant bears the burden of demonstrating that there is no genuine issue as to any material fact; LBP-10-20, 72 NRC 579 (2010)
- the burden of proof rests on the movant; LBP-08-5, 67 NRC 209 (2008)
- the party supporting abeyance of a proceeding carries the burden of proof and must make at least some showing of potential detrimental effect on the pending criminal case; CLI-06-12, 63 NRC 502 (2006)
- the proponent of summary disposition bears the burden of demonstrating that there is no genuine issue as to any material fact; CLI-06-5, 63 NRC 121 (2006)
- 10 C.F.R. 2.326
- a presiding officer considering environmental contentions in the high-level waste proceeding should apply NRC reopening procedures and standards in this section to the extent possible; CLI-08-25, 68 NRC 503 (2008)
- a proceeding will remain open during the pendency of a remand, during which time, petitioners are free to submit a motion to reopen the record should they seek to address any genuinely new issues related to the license renewal application that previously could not have been raised; CLI-10-17, 72 NRC 10 n.17 (2010)
- an exceptionally grave issue may be considered in the discretion of the presiding officer even if untimely presented; LBP-08-12, 68 NRC 33 n.3 (2008)
- because petitioners' motion to reopen fails to satisfy the requirements of paragraphs (a)(2) and (a)(3) of this section, the board need not consider whether it satisfies the requirements of paragraphs (a)(1) and (d) for reopening the record; LBP-08-12, 68 NRC 25 n.20 (2008)
- criteria governing motions to reopen are discussed; CLI-09-7, 69 NRC 286 (2009)

LEGAL CITATIONS INDEX
REGULATIONS

- if, within 60 days after pertinent information that would support the framing of a contention first becomes available, intervenors submit a particularized and otherwise admissible contention regarding the construction of the facility, then the contention will be deemed timely without the need to satisfy the balancing test for reopening the record; CLI-09-2, 69 NRC 59 (2009)
- in the circumstances of the high-level waste proceeding, the criteria and procedures of this section are either irrelevant or redundant; LBP-09-6, 69 NRC 401 (2009)
- it is not applicant's or NRC Staff's burden to defeat a motion to reopen, but rather is petitioner's burden, through its motion to reopen and in its accompanying affidavit, to demonstrate that the motion should be granted; CLI-08-28, 68 NRC 674 (2008)
- licensing boards may grant a motion to reopen only if the demanding requirements of this section are satisfied; LBP-08-12, 68 NRC 9 (2008)
- motions to reopen a closed case for the consideration of a new contention must address the requirements of this section as well as two other regulations; LBP-10-19, 72 NRC 534, 535 (2010)
- petitioners are free to submit a motion to reopen the record should they seek to address any genuinely new issues related to a license renewal application that previously could not have been raised; LBP-10-19, 72 NRC 533 (2010)
- the goal of this section is to maintain "finality" of the hearing process while still enabling participants to bring to light new post-hearing information concerning significant safety situations; LBP-08-12, 68 NRC 42 (2008)
- the presiding officer in the high-level waste proceeding shall resolve disputes concerning adoption of the DOE environmental impact statement by using, to the extent possible, the criteria and procedures that are followed in ruling on motions to reopen; LBP-09-6, 69 NRC 393 (2009)
- the standards governing motions to reopen are described; CLI-08-28, 68 NRC 667-68 (2008)
- until a license issues, the Commission must entertain motions to reopen the adjudicatory record, albeit under NRC's strict regulatory standards; CLI-06-3, 63 NRC 24 (2005)
- 10 C.F.R. 2.326(a)
- a motion to reopen that does not satisfy the pleading requirements is denied; CLI-06-4, 63 NRC 37, 38 (2006)
- motions to reopen must be timely; CLI-09-7, 69 NRC 287 (2009)
- motions to reopen must raise a significant safety or environmental issue; CLI-09-7, 69 NRC 288 (2009)
- petitioner's "placeholder" motion does not eliminate the requirement to file a motion to reopen the record; CLI-09-5, 69 NRC 119 (2009)
- proponents of motions to reopen the record must satisfy a multifactor test; LBP-08-12, 68 NRC 15 (2008)
- the threshold for reopening a closed record is high; CLI-06-3, 63 NRC 22 (2005)
- timeliness of a motion to reopen depends on what or when the trigger occurred that provided the footing for the new contention and whether the motion was timely filed after that trigger event; LBP-10-21, 72 NRC 644 (2010)
- 10 C.F.R. 2.326(a)(1)
- a newly proffered contention submitted after the close of the record must meet timeliness standards as well as the requirements of section 2.309(c); LBP-08-12, 68 NRC 28, 30-31, 40 (2008)
- although a motion to reopen must be timely, an exceptionally grave issue may be considered even if the motion is not timely; CLI-09-5, 69 NRC 124 (2009); LBP-10-19, 72 NRC 547 n.20 (2010)
- to reopen a closed record, movant must show that its motion is timely; CLI-09-5, 69 NRC 124 (2009)
- where a motion to reopen to introduce a new contention founded on several of the initial criteria, the board found it unnecessary to analyze all of the other factors; LBP-10-19, 72 NRC 531-32 (2010)
- 10 C.F.R. 2.326(a)(1)-(3)
- motions to reopen a closed record must be timely, address a significant safety or environmental issue, and demonstrate that a materially different result would have been likely; LBP-10-19, 72 NRC 535, 544, 545, 552 (2010)
- motions to reopen a closed record to consider additional evidence will not be granted unless the criteria of this section are satisfied; LBP-08-12, 68 NRC 15 (2008); LBP-10-21, 72 NRC 642-43 (2010)
- 10 C.F.R. 2.326(a)(2)
- a motion to reopen must address a significant safety or environmental issue; CLI-08-23, 68 NRC 486 (2008); LBP-08-12, 68 NRC 16 (2008)

LEGAL CITATIONS INDEX
REGULATIONS

- affidavits must provide sufficient information to support a prima facie showing that a deficiency exists in the license renewal application and the deficiency presents a significant safety issue; LBP-08-12, 68 NRC 17 (2008)
- an exceptionally grave issue may be considered in the discretion of the presiding officer, if it addresses a significant safety or environmental issue; CLI-09-5, 69 NRC 124 (2009)
- given that a motion to reopen fails to satisfy section 2.326(a)(1) and (3), it is unnecessary to decide this significance prong of the regulation; LBP-10-19, 72 NRC 549 (2010)
- 10 C.F.R. 2.326(a)(3)
- a decision by NRC Staff to revise the final safety evaluation report to account for applicant's confirmatory analysis would not, standing alone, be a materially different result that justifies reopening the record, because it would neither change the outcome of the renewal proceeding nor impose a different licensing condition on applicant; LBP-08-12, 68 NRC 28 n.24 (2008)
- a successful motion to reopen must establish that a materially different result would have been likely had the results of new evidence been before the board when the board made its original findings; CLI-08-23, 68 NRC 486 (2008); LBP-08-12, 68 NRC 22 nn.16 & 17 (2008); CLI-09-7, 69 NRC 290 (2009)
- an exceptionally grave issue may be considered in the discretion of the presiding officer, if a materially different result would be or would have been likely had the newly proffered evidence been considered initially; CLI-09-5, 69 NRC 124 (2009)
- movant must show that it is more probable than not that it would have prevailed on the merits of the proposed new contention; LBP-10-19, 72 NRC 549 (2010)
- that petitioners have not had the opportunity to examine licensee's underlying safety analysis does not obviate petitioners' burden to demonstrate the likelihood of a materially different result; LBP-08-12, 68 NRC 24 (2008)
- the term "likely" is construed to be synonymous with "probable" or "more likely than not"; LBP-08-12, 68 NRC 22 n.16 (2008)
- when a reopening motion is untimely, the section 3.326(a)(1) "exceptionally grave circumstances" test supplants the "significant issue" standard under section 2.326(a)(2); LBP-10-21, 72 NRC 646 n.16 (2010)
- where a motion to reopen a proceeding to introduce a new contention founded on several of the initial criteria, the board found it unnecessary to analyze all of the other factors; LBP-10-19, 72 NRC 531-32 (2010)
- 10 C.F.R. 2.326(b)
- a dissenting judicial opinion cannot substitute for the affidavit required by this section; CLI-08-28, 68 NRC 672 n.55 (2008)
- a motion to reopen must be accompanied by affidavits that set forth the factual and/or technical bases for the movant's claim that the criteria of paragraph (a) of this section have been satisfied, including addressing each of the reopening criteria separately with a specific explanation of why it has been met; CLI-06-4, 63 NRC 37 (2006); CLI-08-23, 68 NRC 486 (2008); CLI-09-5, 69 NRC 124 n.48 (2009); LBP-08-12, 68 NRC 15, 16, 17, 22 n.16, 33 (2008); LBP-10-19, 72 NRC 535, 544 (2010); LBP-10-21, 72 NRC 643, 646-47 (2010)
- affidavits supporting motions to reopen must be given by competent individuals with knowledge of the facts alleged, or by experts in the disciplines appropriate to the issues raised; LBP-08-12, 68 NRC 17 (2008)
- affidavits supporting motions to reopen must separately address each of the criteria set forth in section 2.326(a)(1)-(3); LBP-10-19, 72 NRC 535 (2010)
- an expert's failure to testify as to the consequence of an alleged safety issue fails to adequately provide the factual and/or technical bases for a motion to reopen; LBP-08-12, 68 NRC 19 n.12 (2008)
- bare assertions and speculation do not supply the requisite support for a motion to reopen; CLI-09-7, 69 NRC 287 (2009)
- evidence contained in affidavits must be relevant, material, and reliable; LBP-08-12, 68 NRC 16 (2008)
- failure to provide the evidentiary support regarding an alleged deficiency in a license renewal application is fatal to petitioners' effort to present a significant safety issue; LBP-08-12, 68 NRC 17 n.11 (2008)

LEGAL CITATIONS INDEX
REGULATIONS

- if a party seeks to reopen a closed record and, in the process raises an issue that was not an admitted contention in the initial proceeding, it must demonstrate that raising this issue satisfies the requirements for a late-filed contention; CLI-06-4, 63 NRC 37, 38 (2006)
- motions to reopen must be accompanied by affidavits of qualified experts presenting the factual and/or technical bases for the claim that there is a significant safety issue, together with evidence that satisfies admissibility standards; CLI-09-7, 69 NRC 287 (2009)
- the affidavit supporting a motion to reopen must provide sufficient information to support a prima facie showing that a deficiency exists in the license renewal application and the deficiency presents a significant safety issue; LBP-08-12, 68 NRC 33 (2008)
- the reopening standards as well as the late intervention standards must be met when an entirely new issue is sought to be introduced after the closing of the record; CLI-09-5, 69 NRC 124 (2009)
- 10 C.F.R. 2.326(d)
- if a motion to reopen relates to a contention not previously in controversy among the parties, movant must meet the late-filing requirements of section 2.309(c)(1)(i)-(viii); CLI-08-28, 68 NRC 668 (2008); CLI-09-5, 69 NRC 125 (2009); LBP-08-12, 68 NRC 15 (2008); LBP-10-19, 72 NRC 535 (2010); LBP-10-21, 72 NRC 643, 647 (2010)
- the board is to consider the Staff's projected schedule for completion of its safety and environmental evaluations in developing the hearing schedule; LBP-09-3, 69 NRC 165 (2009)
- 10 C.F.R. 2.327(a)
- reference to the term "hearing" suggests that it means an evidentiary hearing; LBP-08-23, 68 NRC 684 (2008)
- 10 C.F.R. 2.327(c)
- the public is entitled to copies of the transcripts of all hearings; LBP-10-2, 71 NRC 198, 208 (2010)
- 10 C.F.R. 2.328
- all NRC hearings are to be public except as requested under section 181 of the Atomic Energy Act or otherwise ordered by the Commission; LBP-08-23, 68 NRC 684 (2008); LBP-10-2, 71 NRC 197-98 (2010); LBP-10-5, 71 NRC 336 (2010)
- 10 C.F.R. 2.329
- licensing boards have authority to further define admitted contentions when redrafting will clarify the scope of the contention; LBP-07-3, 65 NRC 255 (2007); LBP-08-16, 68 NRC 386 (2008)
- 10 C.F.R. 2.329(c)(1)
- a prehearing conference may be held for simplification, clarification, and specification of the issues; CLI-09-12, 69 NRC 553 (2009); LBP-08-11, 67 NRC 483 (2008)
- boards are authorized to hold prehearing conferences to simplify or clarify the issues for hearing, after which they may admit a revised contention, as long as the revised contention does not add material not raised by the intervenor to make it admissible; LBP-10-14, 72 NRC 127 n.171 (2010)
- 10 C.F.R. 2.331
- a request for briefs on legal issues is one of the many tools available to a presiding officer generally in the conduct of a proceeding; CLI-09-14, 69 NRC 591 (2009)
- although licensing boards frequently hold oral argument on contention admissibility, a board may elect to dispense with it entirely; LBP-08-23, 68 NRC 683 (2008)
- presiding officers always have been entitled to question the parties' counsel at oral argument hearings; CLI-10-17, 72 NRC 47 (2010)
- 10 C.F.R. 2.332
- a request for briefs on legal issues is one of the many tools available to a presiding officer generally in the conduct of a proceeding; CLI-09-14, 69 NRC 591 (2009)
- licensing boards are required to use the applicable techniques specified in this section to ensure prompt and efficient resolution of contested issues; CLI-09-15, 70 NRC 13 (2009)
- licensing boards have authority to set a proceeding's schedule and to ensure compliance with that schedule; LBP-10-21, 72 NRC 635 (2010)
- 10 C.F.R. 2.332(a)
- boards have an obligation to establish a case scheduling order, and to advise the Commission of any significant delay in meeting major activities set forth in the hearing schedule; CLI-09-17, 70 NRC 309 (2009)

LEGAL CITATIONS INDEX
REGULATIONS

- the initial scheduling order must be issued as soon as practicable after the request for hearing is granted; LBP-09-22, 70 NRC 640-41 (2009)
- 10 C.F.R. 2.332(c)(1)-(5)
an initial scheduling order is designed to ensure proper case management of this proceeding; LBP-09-22, 70 NRC 640 (2009)
- 10 C.F.R. 2.332(d)
adjudicatory hearings are generally postponed for many months or even years while the board waits for the NRC Staff to issue the final safety evaluation report and the final environmental impact statement; LBP-06-14, 63 NRC 573 (2006)
- commencement of evidentiary hearings on environmental issues is prohibited until after the final environmental impact statement is issued; LBP-07-3, 65 NRC 277 (2007); LBP-09-22, 70 NRC 654 n.31 (2009)
- discovery against NRC Staff on safety or environmental issues should be suspended until the Staff has issued the safety evaluation report or environmental impact statement, respectively, unless the presiding officer finds that the commencement of discovery against the NRC Staff (as otherwise permitted) before the publication of the pertinent document will not adversely affect completion of the document and will expedite hearing; CLI-07-17, 65 NRC 393-94 (2007)
- even an uncontested, mandatory hearing cannot be held until after the NRC Staff completes its environmental and safety reviews of the application; LBP-07-9, 65 NRC 552 (2007)
- evidentiary hearings on admitted contentions await the Staff's later issuance of key analytical documents; LBP-08-11, 67 NRC 506 n.23 (2008)
- licensing boards have authority to apply designations to contentions; LBP-07-10, 66 NRC 25 n.15 (2007)
- the board is to consider the Staff's projected schedule for completion of its safety and environmental evaluations in developing the hearing schedule to ensure that the hearing schedule does not adversely impact the Staff's ability to complete its reviews in a timely manner; LBP-07-3, 65 NRC 275 (2007); LBP-08-16, 68 NRC 426 (2008)
- the presiding officer or licensing board has discretion to accelerate the merits hearing on safety issues, but not on environmental issues; CLI-07-17, 65 NRC 393 (2007)
- 10 C.F.R. 2.333
a request for briefs on legal issues is one of the many tools available to a presiding officer generally in the conduct of a proceeding; CLI-09-14, 69 NRC 591 (2009)
- the licensing board is required to use the applicable techniques specified in this section to ensure prompt and efficient resolution of contested issues; CLI-09-15, 70 NRC 13 (2009)
- 10 C.F.R. 2.334
licensing boards have authority to implement a hearing schedule for the proceeding; LBP-10-21, 72 NRC 635 (2010)
- the licensing board is required to use the applicable techniques specified in this section to ensure prompt and efficient resolution of contested issues; CLI-09-15, 70 NRC 13 (2009)
- 10 C.F.R. 2.334(c)
boards have an obligation to establish a case scheduling order and to advise the Commission of any significant delay in meeting major activities set forth in the hearing schedule; CLI-09-17, 70 NRC 309 (2009)
- 10 C.F.R. 2.335
a claim that the Commission is required to promulgate a more stringent standard for radionuclides is an inadmissible challenge to the agency's rules; LBP-08-15, 68 NRC 332 (2008); LBP-08-16, 68 NRC 397 (2008)
- a contention is not an impermissible challenge to agency regulations merely because the applicant and the Staff believe the regulations have been satisfied; LBP-06-12, 63 NRC 405-06 (2006)
- a contention that attacks a Commission rule, or that seeks to litigate a matter that is, or clearly is about to become, the subject of a rulemaking, is inadmissible; CLI-09-7, 69 NRC 291 (2009); LBP-06-1, 63 NRC 59-60 (2006); LBP-06-4, 63 NRC 108 (2006); LBP-07-3, 65 NRC 252 (2007); LBP-07-10, 66 NRC 22 (2007); LBP-08-16, 68 NRC 383 (2008); LBP-08-21, 68 NRC 587 (2008); LBP-09-3, 69 NRC 152 (2009); LBP-09-18, 70 NRC 403 (2009); LBP-10-7, 71 NRC 419 (2010); LBP-10-16, 72 NRC 437-48 (2010)

LEGAL CITATIONS INDEX

REGULATIONS

- a contention that challenges applicant's reliance on a pending design certification fundamentally on procedural grounds constitutes an impermissible challenge to NRC regulations that allow the procedure applicant has chosen; LBP-08-17, 68 NRC 443 (2008); LBP-08-21, 68 NRC 569 (2008)
- a petitioner may, within the adjudicatory context, submit a request for waiver of a rule; LBP-06-23, 64 NRC 354 (2005); LBP-07-4, 65 NRC 305 (2007)
- absent a rule waiver, Category 1 issues cannot be addressed in a license renewal proceeding; LBP-06-20, 64 NRC 158 (2006); LBP-08-13, 68 NRC 67 (2008)
- absent a rule waiver request, contentions that challenge NRC regulations are inadmissible; LBP-08-15, 68 NRC 336 (2008); LBP-08-16, 68 NRC 390, 396, 416, 423 (2008)
- absent an adequately supported request to waive the application of section 51.53(b), the board is bound by it; LBP-09-26, 70 NRC 977 (2009)
- challenges to findings in a generic environmental impact statement are not admissible absent a waiver of the NRC's generic finding; CLI-07-3, 65 NRC 16 (2007)
- challenges to the Waste Confidence Rule are prohibited; LBP-08-23, 68 NRC 686 (2008); LBP-09-10, 70 NRC 113 (2009)
- if a certified design is referenced in a COL proceeding, in the absence of a petition for a waiver under this section, the Commission will treat the certified design as resolving all matters that could have been raised during the rulemaking process in which the certified design was reviewed and approved; LBP-08-16, 68 NRC 374 (2008)
- if petitioner believes there is reason to depart from the license renewal generic environmental impact statement and related regulations, its remedy is a petition for rulemaking to modify the rules or a petition for a waiver of the rules based on special circumstances; CLI-07-8, 65 NRC 133 (2007)
- in addressing a petition for a rule waiver, the board, in lieu of holding oral argument to obtain answers to its questions, poses questions to NRC Staff about the waiver petition; LBP-09-29, 70 NRC 1037 (2009)
- intervenor may petition the Commission for permission to challenge a rule, but must make a showing of special circumstances; LBP-10-9, 71 NRC 525 n.147 (2010)
- petitioners may seek a waiver of the application of the waste classification rule; LBP-06-8, 63 NRC 267 (2006)
- petitioners with new and significant information challenging a Category 1 finding could seek a waiver of the generic rule or petition for rulemaking if there are particular plant- or site-specific circumstances that render the generic analysis inapplicable; CLI-10-14, 71 NRC 475 (2010)
- request for waiver is required for contentions that challenges the Commission's regulations; LBP-08-21, 68 NRC 562, 569, 571, 587 (2008)
- the vehicle by which a petitioner may seek to raise issues that would otherwise be beyond the scope of a license renewal proceeding is discussed; LBP-07-11, 66 NRC 79 n.163 (2007)
- within the adjudicatory context, petitioner may submit a request for waiver of a rule; LBP-07-11, 66 NRC 58 (2007)
- without a waiver, a challenge to the current NRC dose limit regulations is impermissible in a license renewal adjudication; LBP-06-23, 64 NRC 345 (2006)
- 10 C.F.R. 2.335(a)
- a contention that challenges a Commission rule or regulation is outside the scope of the proceeding because, absent a waiver, no rule or regulation of the Commission is subject to attack in any adjudicatory proceeding; CLI-07-3, 65 NRC 18 n.15 (2007); CLI-07-16, 65 NRC 383 (2007); CLI-08-15, 68 NRC 3-4 (2008); CLI-09-20, 70 NRC 923 (2009); LBP-06-20, 64 NRC 149 (2006); LBP-06-22, 64 NRC 246-47 (2006); LBP-06-23, 64 NRC 354 (2005); LBP-07-3, 65 NRC 267 (2007); LBP-07-4, 65 NRC 305 (2007); LBP-07-5, 65 NRC 361 (2007); LBP-07-11, 66 NRC 57 (2007); LBP-07-14, 66 NRC 196 (2007); LBP-07-16, 66 NRC 289 (2007); LBP-08-9, 67 NRC 430, 431 (2008); LBP-08-13, 68 NRC 64, 99, 185 (2008); LBP-08-14, 68 NRC 287 (2008); LBP-08-15, 68 NRC 312 (2008); LBP-08-16, 68 NRC 384 (2008); LBP-08-17, 68 NRC 440, 452 (2008); LBP-08-21, 68 NRC 587 (2008); LBP-08-26, 68 NRC 915, 916 (2008); LBP-09-10, 70 NRC 72-73, 144 n.84 (2009); LBP-09-16, 70 NRC 244 (2009); LBP-09-17, 70 NRC 326, 339 (2009); LBP-09-21, 70 NRC 599 (2009); LBP-09-26, 70 NRC 955-56 (2009); LBP-10-15, 72 NRC 278 (2010); LBP-10-16, 72 NRC 394-95 (2010); LBP-10-21, 72 NRC 651 (2010)

LEGAL CITATIONS INDEX

REGULATIONS

- a contention that seeks to impose new requirements on applicants and licensees is an impermissible challenge to the agency's regulations; LBP-09-26, 70 NRC 966 (2009)
- a license application will not be held in abeyance until the design certification rulemaking is completed; LBP-09-16, 70 NRC 269 (2009); LBP-09-18, 70 NRC 415 (2009)
- absent a showing of special circumstances, under 10 C.F.R. 2.335(b), waste confidence matters must be addressed through Commission rulemaking; LBP-09-4, 69 NRC 218 (2009)
- challenges to dose limits in NRC regulations are not appropriate for admission; LBP-08-6, 67 NRC 321 (2008)
- challenges to the adequacy of the NRC's groundwater restoration standards are impermissible; LBP-08-6, 67 NRC 316 (2008)
- in making the findings required for issuance of a combined license, the Commission shall treat as resolved those matters resolved in connection with the issuance or renewal of a design certification rule; LBP-10-21, 72 NRC 653 (2010)
- intervenor are precluded from challenging ASME inspection requirements in a combined license proceeding because NRC regulations directly incorporate ASME inspection requirements by reference; LBP-10-21, 72 NRC 656 (2010)
- low-level radioactive waste disposal contentions may not challenge Table S-3, consistent with NRC policy that regulations may not be the subject of collateral attack in an adjudication; CLI-10-2, 71 NRC 43 n.78 (2010)
- no regulation of the Commission concerning the licensing of production and utilization facilities is subject to attack by way of discovery, proof, argument, or other means in any adjudicatory proceeding; CLI-10-1, 71 NRC 11 (2010); LBP-09-10, 70 NRC 114 (2009); LBP-10-9, 71 NRC 525 n.146 (2010); LBP-10-14, 72 NRC 119 n.108 (2010)
- NRC regulations may not be attacked in individual NRC adjudicatory proceedings, unless the Commission waives the rule at issue for a particular proceeding, or the rule is changed or suspended due to a rulemaking review; CLI-09-3, 69 NRC 75 (2009); CLI-09-10, 69 NRC 524 (2009); LBP-09-6, 69 NRC 389 (2009)
- petitioners challenge to the one-fire assumption in the AP1000 design constitutes an impermissible challenge to Commission regulations; CLI-10-9, 71 NRC 255 (2010)
- petitioners' assertion that no exposure levels are safe is an impermissible challenge to the exposure limits set forth in the NRC's regulations; LBP-09-16, 70 NRC 284-85 (2009)
- petitioners' claim that applicant must pursue the prepayment method for decommissioning conflicts with the NRC guidance and rules and so is outside the permissible scope of the COL proceeding; LBP-09-21, 70 NRC 630 (2009)
- the contention that applicant cannot pass a financial test because the parent company is already committed to providing funding for the decommissioning of another site is an impermissible challenge to NRC regulations; LBP-09-18, 70 NRC 419 (2009)
- the exclusion applies only to a rule or regulation of the Commission, not to license conditions; LBP-08-6, 67 NRC 322 (2008)
- 10 C.F.R. 2.335(b)
- a rule can be waived in a particular license proceeding only when special circumstances are such that the application of the rule or regulation would not serve the purposes for which it was adopted; CLI-07-3, 65 NRC 18 n.15, 20 (2007); LBP-07-3, 65 NRC 268 (2007); LBP-08-21, 68 NRC 587 (2008)
- absent a waiver, a contention that constitutes a collateral attack on NRC regulations is inadmissible; CLI-09-3, 69 NRC 75 (2009); CLI-09-20, 70 NRC 923 (2009)
- any person may file a request for waiver of a regulation; LBP-06-10, 63 NRC 360 (2006)
- contentions that advocate more stringent requirements than the NRC rules impose or that otherwise seek to litigate a generic determination that the Commission has established by rulemaking, or that raise a matter that is or is about to become the subject of rulemaking are barred; LBP-08-17, 68 NRC 441 n.34 (2008); LBP-09-6, 69 NRC 389-90 (2009)
- if petitioner wishes to challenge a generic determination in an adjudicatory proceeding, it must seek and receive a waiver of the rule; LBP-08-26, 68 NRC 929 (2008)
- low-level radioactive waste disposal contentions may not challenge Table S-3, consistent with NRC policy that regulations may not be the subject of collateral attack in an adjudication; CLI-10-2, 71 NRC 43 n.78 (2010)

LEGAL CITATIONS INDEX

REGULATIONS

- request for waiver of application of 10 C.F.R. 51.53(b), 51.95(b), and 51.106(c) precluding consideration of need for power and alternative energy sources from a Part 50 operating license proceeding fails to provide the prima facie showing required; LBP-10-12, 71 NRC 660 (2010)
- requests for rule waiver or exception must be accompanied by an affidavit that identifies with particularity the special circumstances alleged to justify the waiver or exception requested; CLI-10-10, 71 NRC 284 (2010); LBP-08-17, 68 NRC 441 n.34 (2008); LBP-08-26, 68 NRC 929 n.168 (2008); LBP-09-6, 69 NRC 389 n.80 (2009); LBP-09-18, 70 NRC 407 (2009); LBP-10-12, 71 NRC 661 (2010); LBP-10-15, 72 NRC 279, 310 n.85 (2010)
- to support a contention challenging the Waste Confidence Rule, petitioner must request, and demonstrate any supporting reasons for, a waiver of the rule; CLI-10-9, 71 NRC 272 (2010)
- 10 C.F.R. 2.335(b)-(d)
petitioner has provided a prima facie showing that the relevant regulations should be waived; LBP-10-15, 72 NRC 273 (2010)
- 10 C.F.R. 2.335(c)
a petition for rule waiver and affidavit must set forth a prima facie case for the waiver, whereupon the presiding officer will certify the matter directly to the Commission for its consideration; CLI-10-10, 71 NRC 284 (2010)
- if a board rules that no prima facie showing has been made on a rule waiver request, then the board may not further consider the matter; CLI-10-29, 72 NRC 560 (2010); LBP-10-15, 72 NRC 279 (2010); LBP-10-22, 72 NRC 688 (2010)
- 10 C.F.R. 2.335(d)
boards must certify the matter of rule waiver to the Commission for a determination of whether the application of the regulation should be waived or an exception granted under the specific circumstances presented; LBP-10-12, 71 NRC 662 (2010)
- determination as to whether the criteria for exemption from or waiver of a rule are met and a waiver is warranted is the sole province of the Commission; LBP-10-15, 72 NRC 279 (2010)
- if a board concludes that petitioner has made a prima facie showing of special circumstances on a rule waiver request, then the board shall certify the matter directly to the Commission, which may grant or deny the waiver or make whatever determination it deems appropriate; LBP-10-15, 72 NRC 273, 279, 306 (2010); LBP-10-22, 72 NRC 688 (2010)
- immediate certification to the Commission is provided only when the board finds a prima facie case in favor of a waiver; CLI-08-27, 68 NRC 656 (2008)
- licensing board's role regarding rule waiver requests is limited to deciding whether the petitioner has made a prima facie showing that the criteria are satisfied; LBP-10-15, 72 NRC 279 (2010)
- 10 C.F.R. 2.336
applicant has control of a document if applicant has the practical ability to obtain it, albeit for a cost or fee, from the expert consulting firm that generated the document while performing work for the applicant; LBP-12-23, 72 NRC 711 (2010)
- because the sole contention in the proceeding is moot, the mandatory disclosure process for that contention is terminated; LBP-06-16, 63 NRC 745 (2006)
- discovery is not available until after a request for hearing or petition to intervene has been granted; CLI-08-28, 68 NRC 676 n.73 (2008)
- documents and information exchanged in the mandatory disclosures enter the adjudicatory record only if and when a party proffers the document or information as evidence for the evidentiary hearing; LBP-09-30, 70 NRC 1046 (2009)
- if and when testimony or a document is proffered as evidence, a party may object thereto, and the board will rule on the objection; LBP-09-30, 70 NRC 1046 (2009)
- it is not a ground for objection that the information sought will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence; LBP-09-30, 70 NRC 1046 (2009)
- like all discovery exchanges, mandatory disclosures cover a vast array of information, and documents that are not evidence need not meet the requirements of admissible evidence; LBP-09-30, 70 NRC 1046 (2009)

LEGAL CITATIONS INDEX

REGULATIONS

- mandatory disclosures required by this section consist of an exchange of prescribed information and documents between the litigants, and do not need to be submitted to the board; LBP-09-30, 70 NRC 1046 (2009)
- NRC's mandatory disclosure rules for Subpart L proceedings provide meaningful access to information from adverse parties in the form of a system of mandatory disclosure; CLI-09-12, 69 NRC 573 (2009)
- the discovery required by this section constitutes the totality of the discovery that may be obtained in informal proceedings; CLI-10-24, 72 NRC 462 (2010)
- the mandatory disclosure requirements are not an opportunity to relitigate the admissibility of a contention; LBP-09-30, 70 NRC 1046 (2009)
- the relevance standard of this section is even more flexible than the relevance standard of Fed. R. Evid. 401; LBP-12-23, 72 NRC 705 (2010)
- the term "document," includes computer models; LBP-12-23, 72 NRC 703 (2010)
- the term "document" is not limited to paper documents; LBP-12-23, 72 NRC 703 (2010)
- this is a discovery regulation, and the rules are clear that the scope of discovery is broader than the scope of admissible evidence; LBP-12-23, 72 NRC 706 (2010)
- unless and until a document or information is proffered into evidence, there is no basis for a party to object that the information it received in a mandatory disclosure was unreliable or otherwise not admissible as evidence; LBP-09-30, 70 NRC 1046 (2009)
- use of any proprietary information that is produced is strictly limited to the proceeding for which it is produced, and such information must be promptly returned at the close of this proceeding; LBP-12-23, 72 NRC 713 (2010)
- 10 C.F.R. 2.336(a)
- disclosure of trial experts is required within 30 days of the issuance of the order granting a request for hearing or petition to intervene; LBP-06-10, 63 NRC 372 n.17 (2006)
- parties other than the NRC Staff are required to disclose certain information relevant to the admitted contentions; CLI-10-24, 72 NRC 462 n.70 (2010)
- within 30 days of the board's ruling admitting contentions, the parties must automatically make certain mandatory disclosures; LBP-09-22, 70 NRC 642 (2009)
- 10 C.F.R. 2.336(a)(1)
- after the initial disclosure, if a party subsequently develops or obtains additional information or documents that meet the requirements of this section, then that party must promptly file a supplemental mandatory disclosure; LBP-09-30, 70 NRC 1045 (2009)
- disclosure of a nonwitness (e.g., an expert that the party consulted, but does not intend to use as a witness) is not required; LBP-09-30, 70 NRC 1045 (2009)
- disclosure of all witnesses is required, not just expert witnesses, upon whose opinion the party bases its claims and contentions and may rely upon as a witness; LBP-09-30, 70 NRC 1045 (2009)
- disclosure of information and documentation about the witness or his or her analysis or other authority if it is not then reasonably available is not required; LBP-09-30, 70 NRC 1045 (2009)
- disclosure of the name and telephone number of an expert witness, if this information is not known to the party, is not required; LBP-09-30, 70 NRC 1045 (2009)
- each witness is not required to generate an analysis, but rather must disclose the analysis or other authority upon which the witness bases his or her opinion; LBP-09-30, 70 NRC 1045 (2009)
- even if the term "contention," as used in this section must be read as pertaining only to formal contentions admitted under section 2.309(f)(1), the term "claim," is not so constrained, and can only be read in its normal sense; LBP-09-30, 70 NRC 1049 (2009)
- if the duty to make disclosures applied only to parties who have claims and contentions, it would create an unintended and invidious asymmetry in mandatory disclosures, which are the only form of discovery available in Subpart L proceedings; LBP-09-30, 70 NRC 1041 (2009)
- initial disclosures must be made within 30 days of the order granting a request for hearing, which is typically at least 18-24 months before the evidentiary hearing begins; LBP-09-30, 70 NRC 1045 (2009)
- intervenor's expert is not required to create a written analysis, but only disclose the written analysis or other documentary authority, if any, that exists and is reasonably available at the time of the disclosure; LBP-09-30, 70 NRC 1040-41, 1044-45, 1046 (2009)
- mandatory disclosures by parties include the disclosure of the name of any person, including any expert, upon whose opinion the party bases its claims and contentions and may rely upon as a witness, and a

LEGAL CITATIONS INDEX

REGULATIONS

- copy of the analysis or other authority upon which that person bases his or her opinion; LBP-09-22, 70 NRC 646 n.20 (2009); LBP-09-30, 70 NRC 1048 n.10 (2009)
- the mandatory disclosure requirement of this section is contrasted with the mandatory disclosure provision of 10 C.F.R. 2.704(b)(2); LBP-09-30, 70 NRC 1043 (2009)
- the phrase “claims and contentions” includes any assertion, statement, or argument, positive or negative, in support of an intervenor’s position or an applicant’s position, that is advanced by any party, and it is not limited to the formal “contentions” that meet the strict criteria of, and are admitted under, section 2.309(f)(1); LBP-09-30, 70 NRC 1049 (2009)
- the plain language of this regulation makes it clear that it applies to all parties; LBP-09-30, 70 NRC 1045 (2009)
- the term “contention” means simply a point or argument asserted or advanced by any party; LBP-09-30, 70 NRC 1049 (2009)
- there is no substantive standard that the analysis or other authority must meet; LBP-09-30, 70 NRC 1045 (2009)
- 10 C.F.R. 2.336(a)(2)(i)
- a party may comply by merely providing a description by category and location of all documents subject to mandatory disclosure; LBP-12-23, 72 NRC 714 n.31 (2010)
- availability, not possession, custody, or control, is the criterion for the NRC Staff’s mandatory disclosure responsibilities; LBP-12-23, 72 NRC 715 n.35 (2010)
- because applicant has the practical ability to obtain the groundwater models and supporting modeling information generated by its contractor during the contractor’s performance of work in support of applicant’s COLA, these documents are within applicant’s control for purposes of disclosure; LBP-12-23, 72 NRC 709-10 (2010)
- documents that are relevant to the admitted contentions must be disclosed; LBP-12-23, 72 NRC 705 (2010)
- each party must make the mandatory disclosures automatically without the need for a party to file a discovery request; LBP-12-23, 72 NRC 701 (2010)
- it would not be unduly burdensome or costly to require applicant to disclose models that are maintained under a quality assurance program relatively available for inspection and review by the NRC Staff; LBP-12-23, 72 NRC 714 (2010)
- mandatory disclosures in lieu of discovery, which apply to Subpart L proceedings, are wide-reaching, requiring parties other than the NRC Staff to provide a copy or description of all documents and data compilations in the possession, custody, or control of the party that are relevant to the contentions; CLI-09-12, 69 NRC 573 (2009)
- the disclosing party can either provide the other parties with an actual copy of the document or data compilation or can simply describe it and provide it if the other party requests it; LBP-12-23, 72 NRC 701 (2010)
- the scope of mandatory disclosure includes computer models, including the underlying data used in a computer analysis or simulation, the programs and programming methods, the software that embodies the computer program, and the model’s inputs and outputs; LBP-12-23, 72 NRC 704 (2010)
- the third test for mandatory disclosure is that the document must be in the party’s possession, custody, or control; LBP-12-23, 72 NRC 706 (2010)
- to rule that disclosure is limited to formal contractual deliverables would ignore practical reality and encourage applicants to draft consulting contracts to insulate themselves from the obligation to disclose critical computer modeling information; LBP-12-23, 72 NRC 710 (2010)
- within 30 days of admission of a contention, each party must disclose to the other parties all documents and data compilations in the possession, custody, or control of the party that are relevant to the contentions; LBP-12-23, 72 NRC 698, 701 (2010)
- 10 C.F.R. 2.336(a)(2)(iii)
- if a requested document or data compilation is publicly available, then a citation to the document and a description of where it may be publicly obtained is sufficient; LBP-12-23, 72 NRC 701, 711 (2010)
- 10 C.F.R. 2.336(a)(3)
- claims of privilege and identification of privileged materials must occur within the time provided for disclosing withheld materials; LBP-08-16, 68 NRC 426 n.23 (2008); LBP-09-3, 69 NRC 165 n.22 (2009)

LEGAL CITATIONS INDEX

REGULATIONS

- parties agree to waive the obligation to provide a privilege log; LBP-08-2, 67 NRC 61 n.3 (2008); LBP-08-3, 67 NRC 92 n.3 (2008)
- parties and NRC Staff must provide a list of documents otherwise required to be disclosed for which a claim of privilege or protected status is being made, together with sufficient information for assessing the claim of privilege or protected status of the documents; LBP-09-22, 70 NRC 643 (2009)
- 10 C.F.R. 2.336(a)-(b)
- the filing of a motion for reconsideration or an interlocutory appeal is not a basis for suspending mandatory disclosures or production of the hearing file; LBP-10-15, 72 NRC 346 (2010)
- 10 C.F.R. 2.336(b)
- a motion to compel NRC Staff to produce documents that Staff withheld from disclosure is denied because the documents qualify for deliberative process privilege and no showing was made that petitioner's immediate need for these documents outweighs the privilege; LBP-06-3, 63 NRC 88 (2006)
- discovery against NRC Staff is governed by this section; CLI-09-15, 70 NRC 12 (2009)
- NRC Staff must make disclosures that include not only information relevant to the contentions, but all documents supporting the Staff's review of the application that is the subject of the proceeding; CLI-09-12, 69 NRC 573 n.175 (2009)
- NRC Staff shall comply with discovery requests no later than 30 days after the licensing board order admitting contentions and shall update the information at the same time as the issuance of the safety evaluation report or final environmental impact statement, and, subsequent to the publication of the SER and FEIS, as otherwise required by the Commission's regulations; CLI-09-15, 70 NRC 12 (2009)
- NRC Staff's disclosure obligations are not tied to the admitted contentions, but rather, it must make available documents that relate to the application and its review as a whole; CLI-10-24, 72 NRC 462 n.70 (2010)
- within 30 days of the board's ruling admitting contentions, NRC Staff must automatically make certain mandatory disclosures; LBP-09-22, 70 NRC 642 (2009)
- 10 C.F.R. 2.336(b)(3)
- availability, not possession, custody, or control, is the criterion for the NRC Staff's mandatory disclosure responsibilities; LBP-12-23, 72 NRC 715 n.35 (2010)
- disclosures that NRC Staff must make after issuance of the order granting leave to intervene are described; CLI-10-24, 72 NRC 463 (2010)
- if and when NRC Staff relies on a document, then the Staff itself is also obliged to disclose the document, to the extent it is available; LBP-12-23, 72 NRC 715 (2010)
- NRC Staff is expected to identify the final version of its guidance document in its next mandatory disclosure update; CLI-10-25, 72 NRC 472 n.20 (2010)
- NRC Staff is required to disclose all documents supporting its review of the application or proposed action that is the subject of the proceeding; CLI-10-24, 72 NRC 464 (2010); CLI-10-25, 72 NRC 472 n.17 (2010)
- 10 C.F.R. 2.336(b)(5)
- claims of privilege and identification of privileged materials must occur within the time provided for disclosing withheld materials; LBP-08-16, 68 NRC 426 n.23 (2008)
- for documents that are otherwise discoverable, but for which there is a claim of privilege or protected status, NRC Staff must list them and provide sufficient information for assessing their privilege or protected status; CLI-10-24, 72 NRC 463, 464, 465 n.82 (2010)
- parties agree to waive the obligation to provide a privilege log; LBP-08-2, 67 NRC 61 n.3 (2008); LBP-08-3, 67 NRC 92 n.3 (2008)
- parties and NRC Staff must provide a list of documents otherwise required to be disclosed for which a claim of privilege or protected status is being made, together with sufficient information for assessing the claim of privilege or protected status of the documents; LBP-09-22, 70 NRC 643 (2009)
- should the Staff seek to withhold a guidance document under a claim of privilege or protected status, the document must be identified as required in this section; CLI-10-25, 72 NRC 472 n.20 (2010)
- the claim and identification of privileged materials must occur within the time provided for disclosing withheld materials; LBP-09-3, 69 NRC 165 n.22 (2009)
- when materials are withheld from discovery, sufficient information for assessing the claim of privilege or protected status of the documents must be provided to the requesting party; LBP-06-25, 64 NRC 379 n.35 (2006)

LEGAL CITATIONS INDEX

REGULATIONS

- when Staff has withheld documents that it asserts are privileged or protected, if the opponent's allegation was plainly and factually incorrect, these "otherwise discoverable documents" are listed on privilege logs; LBP-06-3, 63 NRC 88 (2006)
- 10 C.F.R. 2.336(d)
- because of the security-related SUNSI categorization of a Staff guidance document used to assess an application's compliance with NRC rules, NRC Staff would not have to produce the document but would be required to identify the document as part of its continuing duty of disclosure; CLI-10-24, 72 NRC 464 (2010)
- if an expert witness is subsequently selected, or any analysis or other authority is subsequently amended or newly developed, then this information must be promptly disclosed; LBP-09-30, 70 NRC 1048 n.10 (2009)
- mandatory disclosures are updated every month; LBP-12-23, 72 NRC 698 (2010)
- NRC Staff is expected to identify the final version of its guidance document in its next mandatory disclosure update; CLI-10-25, 72 NRC 472 n.20 (2010)
- parties and NRC Staff have a continuing duty to update their mandatory disclosures; LBP-09-22, 70 NRC 643 (2009)
- 10 C.F.R. 2.336(e)
- if NRC Staff docketed DOE's license application and a hearing ensues, the presiding officer may impose appropriate sanctions for any failure to fully comply with Licensing Support Network requirements; CLI-08-22, 68 NRC 358 (2008)
- 10 C.F.R. 2.336(e)(1)
- a board may impose sanctions including dismissal of the specific contentions, dismissal of the adjudication, or dismissal of the application for any continuing unexcused failure to make the required mandatory disclosures; CLI-09-12, 69 NRC 573 (2009); LBP-09-30, 70 NRC 1050 (2009)
- 10 C.F.R. 2.336(e)(2)
- if any party attempts to include exhibits that were not disclosed in the mandatory disclosures, thus making it impossible for the other parties to examine the reliability of that information, then the board may prohibit the admission of this new evidence into the record; LBP-09-30, 70 NRC 1043 (2009)
- sanctions are available against any party that fails to provide any document or witness name; LBP-09-30, 70 NRC 1050 (2009)
- 10 C.F.R. 2.336(g)
- if the duty to make disclosures applied only to parties who have claims and contentions, it would create an unintended and invidious asymmetry in mandatory disclosures, which are the only form of discovery available in Subpart L proceedings; LBP-09-30, 70 NRC 1041 (2009)
- in a Subpart L proceeding, mandatory disclosure is the only form of discovery allowed, and all other forms are expressly prohibited; LBP-12-23, 72 NRC 702 (2010)
- in a Subpart L proceeding, the mandatory disclosure provisions of this section apply; CLI-10-24, 72 NRC 462 (2010); CLI-10-25, 72 NRC 471 (2010)
- 10 C.F.R. 2.337(a)
- all affidavits are expected to be relevant, material, and reliable; LBP-09-6, 69 NRC 402 (2009)
- relevant, material, and reliable evidence of a significant safety issue in the form of expert affidavit, Staff reports, and statements by the Commission and the NRC must be provided to support a motion to reopen; LBP-08-12, 68 NRC 16, 35 (2008)
- 10 C.F.R. 2.337(f)
- a board rested its findings regarding a contention, in part, on certain facts that it officially noticed; CLI-10-17, 72 NRC 6 n.12 (2010)
- for proximity-based standing, distance from a facility can be verified using the Google Maps distance measurement tool; LBP-09-3, 69 NRC 150 n.3 (2009); LBP-10-1, 71 NRC 177 (2010); LBP-10-7, 71 NRC 411 n.4 (2010)
- for purposes of the mandatory/uncontested portion of an early site permit proceeding, the board takes official notice of publicly available documents associated with NRC Staff's safety and environmental reviews; LBP-09-19, 70 NRC 454 n.5 (2009)
- the board takes official notice of parts of the license renewal application that were not introduced into evidence because they provide factual information; LBP-08-25, 68 NRC 865, 896 n.122 (2008)

LEGAL CITATIONS INDEX

REGULATIONS

- 10 C.F.R. 2.338
NRC has a longstanding policy of encouraging the fair and reasonable settlement of contested licensing proceedings; CLI-06-18, 64 NRC 7 (2006); LBP-06-18, 63 NRC 835 (2006)
settlement agreements must comply with agency regulations and be in the public interest; LBP-06-26, 64 NRC 432 (2006)
there are agreements on lesser matters (e.g., scope of a contention, resolution of evidentiary objections, withdrawal of a particular argument) that do not rise to the level of settlement agreements; LBP-06-18, 63 NRC 839 n.17 (2006)
this new provision added in 2004 consolidates and amplifies the previous rules pertaining to settlement; LBP-06-18, 63 NRC 835 (2006)
- 10 C.F.R. 2.338(a)
parties may either submit a proposed settlement to the board or submit a request for alternative dispute resolution to the board; LBP-06-18, 63 NRC 836, 839 (2006)
- 10 C.F.R. 2.338(b)
although a mechanism for the use of alternative dispute resolution is provided, the regulation is not restricted to the subject of alternative dispute resolution; LBP-06-18, 63 NRC 839 (2006)
parties are allowed to request, by joint motion, the appointment of a settlement judge to conduct settlement negotiations or to refer the proceeding to alternative dispute resolution; LBP-06-18, 63 NRC 836 n.13 (2006)
- 10 C.F.R. 2.338(c)-(i)
nothing in the language or regulatory history of this regulation suggests that its application is limited to settlement agreements reached via a settlement judge or alternative dispute resolution; LBP-06-18, 63 NRC 839 (2006)
- 10 C.F.R. 2.338(e)
a board is authorized to impose additional requirements as part of a settlement; LBP-06-18, 63 NRC 836 (2006)
given participants' settlement agreement, a board sees no cause for it to attempt to obtain Commission avowal of the renoticing process contemplated by the participants, either by way of a Staff inquiry made at the board's direction or via a certified question; LBP-09-23, 70 NRC 668 n.27 (2009)
- 10 C.F.R. 2.338(g)
although a party's submission does not use the exact phrases suggested in the regulation, the requirements are satisfied because the submission constitutes a written agreement between the parties that was submitted for the board's imprimatur; LBP-06-18, 63 NRC 841-42 (2006)
certain form requirements are mandated for a settlement agreement; LBP-06-18, 63 NRC 836 (2006)
only the parties consenting to a settlement must file the settlement with the board; CLI-06-18, 64 NRC 7 (2006)
- 10 C.F.R. 2.338(g)-(h)
finding that a settlement agreement is consistent with the content and form requirements and is in the public interest, the board approves the agreement and terminates the contested hearing; LBP-09-23, 70 NRC 663 (2009)
upon review of a settlement agreement and the clarification that parties provided, the board finds that the terms of a proposed settlement agreement satisfy the regulatory requirements; LBP-10-18, 72 NRC 524 (2010)
- 10 C.F.R. 2.338(h)
certain content requirements are mandated for a settlement agreement; LBP-06-18, 63 NRC 836 (2006); LBP-09-23, 70 NRC 670 (2009)
requirements are satisfied by a memorandum of understanding addendum that concedes that the board has jurisdiction over the parties and over the subject matter of the addendum and waives all further procedural steps before the board, all rights to challenge or contest the validity of the board's order, and all rights to seek judicial review or otherwise contest the validity of the order; LBP-06-18, 63 NRC 842 (2006)
- 10 C.F.R. 2.338(i)
a notice of hearing having been issued by the Commission in a combined license proceeding, the board has jurisdiction to approve a settlement agreement; LBP-09-23, 70 NRC 670 n.34 (2009)

LEGAL CITATIONS INDEX
REGULATIONS

- finding that a settlement agreement is consistent with the content and form requirements and is in the public interest, the board approves the agreement and terminates this contested hearing; LBP-09-23, 70 NRC 663 (2009)
- no particular process is specified for boards to use in determining whether to allow the adjudication of a contention contesting whether a settlement is required in the public interest; LBP-06-18, 63 NRC 837 (2006)
- settlement agreements must comply with agency regulations and be in the public interest; LBP-06-26, 64 NRC 433 (2006)
- settlement shall be subject to approval by a board, which may order such adjudication of the issues as it may deem to be required in the public interest; LBP-06-18, 63 NRC 837 (2006); LBP-06-21, 64 NRC 220 (2006)
- the board exercised its authority to request clarification from the parties regarding the extent that a proposed settlement agreement called upon licensee to take specific measures to avoid repetition of the storage drum mislabeling and insufficient operator training that led to a hydrofluoric acid spill event; LBP-10-18, 72 NRC 522 (2010)
- where a hearing request was granted, but no actual notice of hearing was issued, the board approves a settlement agreement; LBP-06-2, 63 NRC 81 n.1 (2006)
- 10 C.F.R. 2.340(a)
- a board may examine an issue sua sponte only where the Commission approves such examination and decision upon referral of the question to the Commission; LBP-06-18, 63 NRC 840 (2006)
- corrective redrafting of a discretionary intervention petitioner's contention is tantamount to raising a new issue sua sponte without the required prior permission from the Commission; CLI-06-16, 63 NRC 721 (2006)
- matters not put into controversy by the parties will be examined and decided by the presiding officer only where he or she determines that a serious safety, environmental, or common defense and security matter exists, and the Commission approves such an examination and decision upon referral of the question by the presiding officer; LBP-06-18, 63 NRC 843 (2006)
- the bar against corrective redrafting is particularly compelling in the context of a request for discretionary intervention because a board rewrite of contentions undermines the very basis for granting discretionary intervention, i.e., the Petitioner's demonstrated ability to contribute to the record; CLI-06-16, 63 NRC 721 (2006)
- 10 C.F.R. 2.340(f)
- an initial decision authorizing a construction permit is considered stayed pending Commission action; CLI-07-12, 65 NRC 205 (2007); LBP-07-9, 65 NRC 549, 616, 628, 629 (2007)
- an initial decision directing the issuance or amendment of a limited work authorization or an early site permit is immediately effective upon issuance unless the presiding officer finds that good cause has been shown by a party why the initial decision should not become immediately effective; LBP-09-19, 70 NRC 460 (2009)
- before an early site permit can be made effective, the Commission must review and approve the licensing board's initial decision authorizing its issuance; CLI-07-7, 65 NRC 122 (2007); CLI-07-23, 66 NRC 35 (2007); CLI-07-27, 66 NRC 220 (2007)
- 10 C.F.R. 2.340(f)(2)
- before an early site permit can be made effective, the Commission must review and approve the Atomic Safety and Licensing Board's initial decision authorizing its issuance; CLI-07-4, 65 NRC 24 (2007)
- 10 C.F.R. 2.341
- litigants in NRC proceedings cannot raise entirely new arguments in a reply brief or on appeal; CLI-07-25, 66 NRC 106 n.26 (2007)
- 10 C.F.R. 2.341(a)(1)
- interlocutory review is permitted at the Commission's discretion only upon a showing that the issue for which interlocutory review is sought threatens the party adversely affected by it with immediate and serious irreparable impact or affects the basic structure of the proceeding in a pervasive or unusual manner; CLI-10-16, 71 NRC 489 (2010)
- 10 C.F.R. 2.341(a)(2)
- the sua sponte review process applies to a board's determinations on settlement agreements, and affords the Commission the opportunity to correct any participant or board misapprehensions regarding the

LEGAL CITATIONS INDEX
REGULATIONS

- renoticing process or any other items contemplated in the settlement agreement; LBP-09-23, 70 NRC 668 n.27 (2009)
- 10 C.F.R. 2.341(b)
given that the board recently issued an Initial Decision resolving all of the contentions in the case, the Commission can discern no compelling reason to take the extraordinary action of stepping in at this late stage to take up the case, but parties will have the opportunity to petition for review of the board's rulings; CLI-09-19, 70 NRC 864 (2009)
petitioners will have an opportunity to appeal a board's contention admissibility rulings at the end of the case; CLI-09-9, 69 NRC 365 (2009)
- 10 C.F.R. 2.341(b)(1)
because the board's declining to refer petitioners' request for a stay of construction to the Commission is the equivalent of the direct denial of a stay motion, a petition for review may be filed; LBP-08-11, 67 NRC 495 (2008)
filing of a petition for review is mandatory for a party to exhaust its administrative remedies before seeking judicial review; LBP-07-2, 65 NRC 192 (2007); LBP-09-9, 70 NRC 49 (2009)
petitions for review are allowed after a full or partial initial decision, which are considered "final" decisions; CLI-08-2, 67 NRC 34 (2008)
this rule provides standards for review of final board decisions (full or partial initial decisions); CLI-08-7, 67 NRC 191 (2008)
this section provides for discretionary Commission review of a presiding officer's initial decision; CLI-10-17, 72 NRC 11 (2010)
- 10 C.F.R. 2.341(b)(2)
petitions for review may not exceed 25 pages; CLI-10-17, 72 NRC 45-46 n.247 (2010)
- 10 C.F.R. 2.341(b)(3)
when reply briefs are permitted, NRC rules provide explicitly for their filing; CLI-08-12, 67 NRC 393 (2008)
- 10 C.F.R. 2.341(b)(4)
a petition for review may be granted in the Commission's discretion; CLI-10-11, 71 NRC 290 n.8 (2010)
grant of petitions for review is discretionary and five factors are weighed; CLI-09-7, 69 NRC 259 (2009)
petition for review satisfies subsections (ii), (iii), and (v) of the standards for review because the challenged portions of the initial decision address significant issues of law and policy that lack governing precedent and raise issues that could affect other license renewal determinations; CLI-10-17, 72 NRC 13 (2010)
review of final initial decisions is granted on a discretionary basis, giving due weight to petitioner's showing that there is a substantial question with respect to one or more of the considerations in this section; CLI-10-18, 72 NRC 72 (2010)
the Commission may take discretionary review of a licensing board's initial decision; CLI-10-23, 72 NRC 219 (2010)
the Commission will consider a petition for review if it raises a substantial question with respect to one or more of the five paragraphs of this section; CLI-10-17, 72 NRC 11 (2010)
the criteria to be considered by the Commission for discretionary grant of a petition for review are described; CLI-08-28, 68 NRC 667 (2008)
the showing that petitioner must make for grant of a review on a discretionary basis is discussed; CLI-10-5, 71 NRC 98, 99, 101, 105, 106 (2010)
this procedural rule applies to cases docketed after February 13, 2004, and is substantially equivalent to former section 2.786; CLI-06-1, 63 NRC 3 n.5 (2006)
this regulation applies to petitions for review of a full or partial initial decision, and does not establish a right to petition for review of interlocutory orders; CLI-06-18, 64 NRC 4 (2006)
- 10 C.F.R. 2.341(b)(4)(i)
board factual findings that are not clearly erroneous or its legal conclusions that are not contrary to law will not be overturned; CLI-06-15, 63 NRC 690 (2006)
materiality is a requirement for any fact-based argument in a petition for review; CLI-10-17, 72 NRC 30 n.171 (2010)

LEGAL CITATIONS INDEX
REGULATIONS

- 10 C.F.R. 2.341(b)(4)(i)-(v)
petitions for review will be granted at the Commission's discretion, giving due weight to the existence of a substantial question with respect to the five considerations of this section; CLI-10-14, 71 NRC 453 (2010)
- 10 C.F.R. 2.341(b)(4)(ii)
board factual findings that are not clearly erroneous or its legal conclusions that are not contrary to law will not be overturned; CLI-06-15, 63 NRC 690 (2006)
Staff's petition for review is granted on the grounds that the Staff has demonstrated substantial questions as to the Board's correct application of NEPA jurisprudence, and as to whether certain actions taken by the board constituted prejudicial procedural error; CLI-10-18, 72 NRC 73 (2010)
- 10 C.F.R. 2.341(b)(4)(iii)
the Commission grants review because of concern that the board (and the underlying final environmental impact statement) may not have fully explored potential long-term effects from disposal of depleted uranium, whose radiological hazard gradually increases over time; CLI-06-15, 63 NRC 690 (2006)
the Commission takes review of a board decision to clarify important issues raised in the petitions; CLI-06-22, 64 NRC 40 (2006)
- 10 C.F.R. 2.341(b)(4)(iv)
petitioner's argument regarding rejection of its contention satisfies the prejudicial procedural error standard for review; CLI-10-17, 72 NRC 13 (2010)
Staff's petition for review is granted on the grounds that the Staff has demonstrated substantial questions as to the board's correct application of NEPA jurisprudence, and as to whether certain actions taken by the board constituted prejudicial procedural error; CLI-10-18, 72 NRC 73 (2010)
where a board asked questions pertinent to clarifying its understanding of the relevant, material issues in a proceeding, there is no prejudicial procedural error justifying review; CLI-09-7, 69 NRC 280 (2009)
- 10 C.F.R. 2.341(b)(4)(v)
the Commission grants review because of concern that the board (and the underlying final environmental impact statement) may not have fully explored potential long-term effects from disposal of depleted uranium, whose radiological hazard gradually increases over time; CLI-06-15, 63 NRC 690 (2006)
the Commission has discretion to take review for any other consideration that the Commission may deem to be in the public interest; CLI-09-7, 69 NRC 263 (2009)
- 10 C.F.R. 2.341(b)(6)
grant of review is prohibited where a petitioner has simultaneously filed for reconsideration before the board; CLI-06-24, 64 NRC 126 n.82 (2006)
- 10 C.F.R. 2.341(c)(2)
appeals and any answers shall conform to the requirements of this section; LBP-08-11, 67 NRC 495 (2008)
the Commission may reject an appeal summarily for noncompliance with the formatting requirements of this section; CLI-08-17, 68 NRC 235 n.18 (2008)
- 10 C.F.R. 2.341(d)
a motion for reconsideration will be granted only upon a showing of compelling circumstances, such as a clear and material error, which could not have been reasonably anticipated and that renders the decision invalid; CLI-10-15, 71 NRC 480 (2010)
- 10 C.F.R. 2.341(f)
challenges to board rulings on late-filed contentions normally fall under the rules for interlocutory review; CLI-09-18, 70 NRC 862 (2009)
in cases where an appeal does not lie, the Commission has discretion in limited circumstances to grant interlocutory review at the request of a party; CLI-06-24, 64 NRC 119 (2006)
intervenor's appeal is rejected for failure to meet interlocutory review standards; CLI-09-7, 69 NRC 242 (2009)
novel issues warrant referral to the Commission for their immediate consideration; LBP-08-16, 68 NRC 415, 420, 429 (2008)
petitioner must show that the issue for which interlocutory review is sought threatens the party adversely affected by it with immediate and serious irreparable impact which, as a practical matter, could not be alleviated through a petition for review of the presiding officer's final decision, or affects the basic structure of the proceeding in a pervasive or unusual manner; CLI-06-24, 64 NRC 126 (2006)

LEGAL CITATIONS INDEX
REGULATIONS

- the Commission will review a referred ruling only if it raises significant and novel legal or policy issues, and resolution of the issues would materially advance the orderly disposition of the proceeding; CLI-09-13, 69 NRC 577 (2009)
- 10 C.F.R. 2.341(f)(1)
- discretionary interlocutory review is allowed only when a licensing board certifies a ruling or refers a question, or when an interlocutory board ruling creates immediate and serious irreparable impact or affects the basic structure of the proceeding in a pervasive or unusual manner; CLI-06-18, 64 NRC 4 (2006)
- rulings may be referred to the Commission if they raise significant and novel legal or policy issues, the resolution of which would materially advance the orderly disposition of the proceeding; CLI-07-1, 65 NRC 4 (2007); CLI-09-3, 69 NRC 72 (2009); CLI-09-21, 70 NRC 930 (2009); LBP-09-16, 70 NRC 251 (2009); LBP-09-18, 70 NRC 407 (2009); LBP-09-26, 70 NRC 979 (2009); LBP-10-20, 72 NRC 608-09 (2010)
- 10 C.F.R. 2.341(f)(2)
- a party may pursue interlocutory appeal only where the ruling affects the basic structure of the proceeding in a pervasive or unusual manner or threatens the party adversely affected by it with immediate, serious, and irreparable harm that could not be alleviated through a petition for review of the board's final decision; CLI-08-2, 67 NRC 34 (2008); CLI-08-7, 67 NRC 191 (2008)
- because petitioners were granted a hearing, their appeal is treated as a request for interlocutory review; CLI-09-9, 69 NRC 365 (2009)
- because the board's declining to refer petitioners' request for a stay of construction to the Commission is the equivalent of the direct denial of a stay motion, a petition for review may be filed; LBP-08-11, 67 NRC 495 (2008)
- for purpose of interlocutory review, a board decision is "pervasive" and "unusual" when it stops the entire proceeding in its tracks; CLI-06-12, 63 NRC 500 (2006)
- interlocutory review is permitted at the Commission's discretion only upon a showing that the issue for which interlocutory review is sought threatens the party adversely affected by it with immediate and serious irreparable impact or affects the basic structure of the proceeding in a pervasive or unusual manner; CLI-06-12, 63 NRC 500 (2006); CLI-07-2, 65 NRC 12 (2007); CLI-09-6, 69 NRC 131, 132 (2009); CLI-10-13, 71 NRC 388 n.6 (2010); CLI-10-16, 71 NRC 489 (2010); CLI-10-30, 72 NRC 568 (2010); LBP-09-10, 70 NRC 147 n.89 (2009)
- it is within Commission discretion to grant interlocutory review; CLI-10-29, 72 NRC 560 (2010); CLI-10-30, 72 NRC 568 (2010)
- once a petition to intervene and request for hearing have been granted and contentions are admitted for hearing, appeals of board rulings on new or amended contentions are treated under this section, regardless of the subject matter of those contentions; CLI-10-16, 71 NRC 490 (2010)
- petitions for interlocutory review should address the standards of this section; CLI-10-28, 72 NRC 554 n.2 (2010)
- showing necessary for grant of a petition for interlocutory review is described; CLI-10-29, 72 NRC 560 (2010)
- the mere potential for legal error does not justify interlocutory review; CLI-08-2, 67 NRC 35 (2008)
- where regulations do not provide a right to appeal an interlocutory order, the Commission treats an "appeal" as a petition for interlocutory review; CLI-06-12, 63 NRC 500 (2006)
- 10 C.F.R. 2.341(f)(2)(i)
- a petition seeking review of an order granting or denying an abeyance motion meets NRC's standard for interlocutory review because the appealed order would have an immediate and serious irreparable impact which, as a practical matter, could not be alleviated through a petition for review of the presiding officer's final decision; CLI-07-6, 65 NRC 115 (2007)
- interlocutory review is warranted if contested orders will have a pervasive and unusual effect on the litigation; CLI-06-20, 64 NRC 20 (2006)
- 10 C.F.R. 2.341(f)(2)(i)-(ii)
- discretionary interlocutory review is allowed only when a licensing board certifies a ruling or refers a question, or when an interlocutory board ruling creates immediate and serious irreparable impact or affects the basic structure of the proceeding in a pervasive or unusual manner; CLI-06-18, 64 NRC 4 (2006)

LEGAL CITATIONS INDEX
REGULATIONS

- petitioner must demonstrate that the licensing board's ruling at issue either threatens the party adversely affected by it with immediate and serious irreparable impact which, as a practical matter, could not be alleviated through a petition for review of the presiding officer's final decision or affects the basic structure of the proceeding in a pervasive or unusual manner; CLI-07-1, 65 NRC 4 n.10 (2007)
- 10 C.F.R. 2.341(f)(2)(ii)
interlocutory review may be granted if the challenged order affects the basic structure of the proceeding in a pervasive or unusual manner; CLI-09-2, 69 NRC 61 (2009)
- 10 C.F.R. 2.342
although a request for suspension of a proceeding does not fit cleanly into NRC procedural rules for stays, the Commission exercises discretion and consider petitioner's request; CLI-10-17, 72 NRC 10 n.32 (2010)
- 10 C.F.R. 2.342(a)
a party must file a stay application within 10 days after service of the decision; LBP-08-11, 67 NRC 491 n.77 (2008)
this section, by its terms, applies to a stay of a decision or action of a presiding officer or licensing board and therefore does not apply to NRC's approval of a states application to become an Agreement State; CLI-10-8, 71 NRC 147 (2010)
- 10 C.F.R. 2.342(e)
factors that influence the grant of a stay are addressed; LBP-08-11, 67 NRC 491 (2008)
in deciding whether to grant a stay, the Commission considers whether the moving party has made a strong showing that it is likely to prevail on the merits, whether the party will be irreparably injured unless a stay is granted, whether the granting of a stay would harm the other parties, and where the public interest lies; CLI-09-23, 70 NRC 936 (2009)
motions to stay the effect of a board decision pending appeal are allowed; CLI-08-13, 67 NRC 399 (2008)
to obtain a stay, a party must meet the standards of likelihood of success on the merits, irreparable harm, absence of harm to others, and the public interest; CLI-06-8, 63 NRC 237 (2006)
- 10 C.F.R. 2.343
the Commission has discretion to allow oral argument upon the request of a party made in a petition for review, brief on review, or upon its own initiative; CLI-10-9, 71 NRC 251 (2010)
- 10 C.F.R. 2.345(b)
a petitioner cannot satisfy standing requirements by offering a vague claim of 50-mile proximity in an initial petition and later using a petition for reconsideration to fill in gaps with more specific information that was available all along; CLI-07-21, 65 NRC 522 (2007)
reconsideration is undertaken only when a party shows a compelling circumstance, such as the existence of a clear and material error in a decision, which could not have reasonably been anticipated and that renders the decision invalid; CLI-06-27, 64 NRC 400 (2006); CLI-07-21, 65 NRC 521 (2007); CLI-07-22, 65 NRC 527 (2007)
- 10 C.F.R. 2.346
whether the reopening standard is met requires a legal determination that is not within the scope of the Secretary's limited authority; CLI-09-5, 69 NRC 121 n.26 (2009)
- 10 C.F.R. 2.346(h)
on the basis of an attorney's previous disregard of the NRC's practices and procedures, the Commission may order the Office of the Secretary to screen all filings bearing the offender's signature and not to accept or docket them unless they meet all procedural requirements; CLI-06-4, 63 NRC 39 (2006)
- 10 C.F.R. 2.346(i)
the Secretary of the Commission has authority to refer a motion to the board for any action the board deems appropriate; CLI-09-5, 69 NRC 118 (2009)
- 10 C.F.R. 2.390
boards have looked to FOIA cases and the balancing tests they employ for guidance on issues of public disclosure; LBP-06-25, 64 NRC 380 (2006)
handling of confidential commercial or financial (proprietary) information that has been submitted to the agency is governed by this section; CLI-10-24, 72 NRC 454 n.11 (2010)
if it seeks to withhold a document from a party or the public, or to bar a party or member of the public from attending any adjudicatory proceeding before a licensing board, NRC Staff must carry the burden

LEGAL CITATIONS INDEX

REGULATIONS

- of proving that the document or situation fits one of FOIA's specifically enumerated exceptions; LBP-10-2, 71 NRC 198 (2010)
- if litigation over a contention brings into play financial or other information that has been designated as nonpublic, petitioners must request that the board issue a protective order that permits access; LBP-08-16, 68 NRC 422 (2008)
- if petitioners believe that information that would provide the basis for their contentions is being withheld from public disclosure improperly, they may contest applicant's assertion about its proprietary nature; LBP-08-16, 68 NRC 411 (2008)
- NRC implements and repeats the FOIA obligation that, with nine enumerated exceptions, each agency make copies of all records available to the public; LBP-10-2, 71 NRC 197 (2010)
- proponent of a protective order shoulders the burden of proof; LBP-10-2, 71 NRC 198 (2010)
- the scope of a board's review of Staff's denial of access to SUNSI does not extend to whether the information sought by the requesters is properly characterized as SUNSI; LBP-09-5, 69 NRC 310 n.5 (2009)
- 10 C.F.R. 2.390(a)(1)
classified information is exempt from disclosure; LBP-10-2, 71 NRC 198 n.20 (2010)
- 10 C.F.R. 2.390(a)(1), (3), and (4)
parties and NRC Staff must produce, as part of their mandatory disclosures, privilege logs covering documents claimed to qualify for protected status as security-related information or as proprietary documents; LBP-09-22, 70 NRC 643 (2009)
- 10 C.F.R. 2.390(a)(3)
the duty to make all documents available does not apply to records specifically exempted from disclosure by statute; LBP-10-2, 71 NRC 198 n.20 (2010)
- 10 C.F.R. 2.390(a)(5)
NRC interagency or intra-agency memoranda or letters that would not be available by law to a party are exempt from public disclosure; LBP-06-25, 64 NRC 380 (2006)
- 10 C.F.R. 2.390(a)(7)(iii)
documents that are exempt from public inspection are specified; LBP-06-25, 64 NRC 386 (2006)
- 10 C.F.R. 2.390(b)
applicant requested that its mitigative strategies report be withheld from public disclosure because it contained security-related information; CLI-10-24, 72 NRC 456 (2010)
material submitted as confidential financial information may be withheld from public disclosure; CLI-07-18, 65 NRC 415 (2007)
- 10 C.F.R. 2.390(b)(1)(ii)
an affidavit must provide the basis for the withholding and a specific statement of the harm that would result if the information sought to be withheld is disclosed to the public, applicable to those seeking protection for documents being submitted to the agency; LBP-06-25, 64 NRC 383 (2006)
- 10 C.F.R. 2.390(b)(6)
documents withheld from general public inspection may still be made available under protective order, as appropriate, to persons directly concerned; CLI-06-10, 63 NRC 461 (2006); CLI-10-24, 72 NRC 463 (2010)
licensing boards have authority to hold in camera hearings; LBP-10-5, 71 NRC 336 n.27 (2010)
parties may propose creation of a public copy of the transcript of a closed hearing, with appropriate redactions for protected information; LBP-10-5, 71 NRC 338 (2010)
- 10 C.F.R. 2.390(d)
although the NRC public website states that SUNSI encompasses a wide variety of categories (e.g., personnel privacy, attorney-client privilege, confidential source), there is no legal basis for sweeping aside the well-established and long-recognized privileges such as the Privacy Act, 5 U.S.C. § 552(a), and the attorney-client privilege; LBP-10-2, 71 NRC 200 n.29 (2010)
applicant requested that its mitigative strategies report be withheld from public disclosure because it contained security-related information; CLI-10-24, 72 NRC 456 (2010)
documents that qualify as exempt from FOIA disclosure as sensitive unclassified nonsafeguards information are described; LBP-10-2, 71 NRC 199 (2010)

LEGAL CITATIONS INDEX
REGULATIONS

- Staff's designation of its own material as sensitive unclassified nonsafeguards information is inconsistent with SUNSI's purported objective of protecting licensee or applicant data; LBP-10-2, 71 NRC 200 N.30 (2010)
- 10 C.F.R. 2.390(d)(1)
certain information may be withheld from public disclosure, including, for example, trade secrets and other confidential financial information, or information that concerns applicant's physical protection, classified matter protection, or material control and accounting program that is otherwise not designated as safeguards information or classified as national security information or restricted data; CLI-06-10, 63 NRC 459 (2006)
- legal authority exists for nondisclosure and protection of security-related information concerning the physical protection of nuclear power plants; LBP-10-5, 71 NRC 337 (2010)
- 10 C.F.R. 2.390(f)
if a board determines that the party is entitled to obtain access to a document that has been claimed as privileged or protected, the board may issue a protective order as necessary to prevent public disclosure of the document; CLI-10-24, 72 NRC 463 (2010)
- 10 C.F.R. Part 2, Subpart F
an applicant may obtain early partial decisions on site suitability issues for prospective construction permit sites; LBP-07-9, 65 NRC 561, 562, 626 (2007)
- 10 C.F.R. 2.606(b)(2)
the main differences between an early partial decision and an early site permit are that the early partial decision lasts only 5 years and resolves only those site suitability issues that the applicant specifically asks to resolve, whereas the early site permit lasts for 20 years and once it is issued it covers the site; LBP-07-9, 65 NRC 562 (2007)
- 10 C.F.R. Part 2, Subpart G
a completed Form SF-85, "Questionnaire for Non-Sensitive Positions" is required for each individual who would have access to safeguards information; CLI-09-15, 70 NRC 23 (2009)
- under these procedures, parties are permitted to propound interrogatories, take depositions, and cross-examine witnesses without leave of the board; LBP-09-10, 70 NRC 145 (2009)
- 10 C.F.R. 2.700
a materials license amendment proceeding may be held under Subpart L but the provisions of Subpart G may be used in any other proceeding as ordered by the Commission; CLI-09-12, 69 NRC 572 (2009)
- if there is any conflict between the provisions of Subpart G and those set forth in Subpart C of this part, the provisions of Subpart G control; LBP-09-1, 69 NRC 47 (2009)
- rationale for presiding officer's recommendation on use of Subpart G procedures for materials license amendment proceeding is discussed; LBP-09-1, 69 NRC 47 (2009)
- requirements for applying Subpart G to a particular proceeding are set out; CLI-09-7, 69 NRC 278 (2009)
- Subpart G hearing procedures apply only to certain enumerated types of proceedings, not including materials license amendment proceedings, but including any other proceeding as ordered by the Commission; LBP-09-1, 69 NRC 47 (2009)
- this rule explicitly applies to eyewitnesses, not expert witnesses; CLI-09-7, 69 NRC 279 (2009)
- traditional cross-examination is allowed under certain circumstances defined in this section; CLI-09-7, 69 NRC 278 (2009)
- 10 C.F.R. 2.702(a)
a non-expert witness who was identified as the source of information but who had been removed from applicant's witness list could have been subjected to discovery and compelled to provide testimony before the board; LBP-06-15, 63 NRC 662 (2006)
- 10 C.F.R. 2.704(a)
all parties, except NRC Staff, shall make the mandatory disclosures required within 45 days of the issuance of the licensing board order admitting contentions; CLI-09-15, 70 NRC 12 (2009); CLI-10-4, 71 NRC 66 (2010)
- 10 C.F.R. 2.704(a)(2)
parties must disclose all relevant documents in their possession, custody, or control; LBP-12-23, 72 NRC 706 (2010)

LEGAL CITATIONS INDEX
REGULATIONS

- 10 C.F.R. 2.704(b)
all parties, except NRC Staff, shall make the mandatory disclosures required within 45 days of the issuance of the licensing board order admitting contentions; CLI-09-15, 70 NRC 12 (2009); CLI-10-4, 71 NRC 66 (2010)
- 10 C.F.R. 2.704(b)(2)
for Subpart G proceedings, each expert witness is required to create, sign, and submit a written expert report; LBP-09-30, 70 NRC 1043 (2009)
- 10 C.F.R. 2.704(c)
no later than 30 days before the commencement of the hearing at which an issue is to be presented, all parties other than the NRC Staff shall make the required pretrial disclosures; CLI-09-15, 70 NRC 12 (2009); CLI-10-4, 71 NRC 66 (2010)
- 10 C.F.R. 2.705(b)
although 10 C.F.R. 2.709 deals with special procedural norms for discovery against the Staff, there is no reason to believe, as to substantive content, that its repeated use of the relevance concept was not intended to embrace the universal understanding of that concept that shapes the scope and definition of discoverable evidence in both the federal courts and NRC adjudications; LBP-06-25, 64 NRC 390 n.102 (2006)
- 10 C.F.R. 2.705(b)(1)
it is not a ground for objection that the information sought will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to discovery of admissible evidence; LBP-09-30, 70 NRC 1046 (2009); LBP-12-23, 72 NRC 706 (2010)
materials cannot generally be withheld as irrelevant if the request appears reasonably calculated to lead to the discovery of admissible evidence; LBP-06-25, 64 NRC 390 n.102 (2006)
NRC's approach to the scope of discovery is similar to that of the Federal Rules of Civil Procedure; LBP-06-25, 64 NRC 376 (2006)
where the privilege and the need may be equally weak, but the privilege can be protected by other means, full and open discovery is the norm, and privileges that stand in the way of truth are disfavored, and relevancy, not need, becomes the determinative standard; LBP-06-25, 64 NRC 395 (2006)
- 10 C.F.R. 2.705(b)(2)(iii)
disclosure is not required if the burden or expense of the proposed discovery outweighs its likely benefit; LBP-12-23, 72 NRC 714 n.33 (2010)
- 10 C.F.R. 2.705(c)
in making discovery determinations, the court weighs the need to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense against litigants' need for materials; LBP-06-25, 64 NRC 387 (2006)
privacy interests are defined using FOIA's language but their weight is tempered by the capability in the discovery process of making limited disclosure to a litigant under a protective order, as contrasted with making the FOIA-required unconditional release to a member of the public; LBP-06-25, 64 NRC 384 (2006)
- 10 C.F.R. 2.705(c)(3)(iii)
before the Office of Administration makes an adverse determination regarding a proposed recipient's trustworthiness and reliability for access to safeguards information, it must provide the proposed recipient any records that were considered in the determination, so that the proposed recipient will have an opportunity to correct or explain the record; CLI-09-15, 70 NRC 26 (2009); CLI-10-4, 71 NRC , 80 (2010)
- 10 C.F.R. 2.705(c)(3)(iv)
a requester may challenge an adverse determination with respect to access to safeguards information by filing a request for review; CLI-09-15, 70 NRC 26 (2009); CLI-10-4, 71 NRC 81 (2010)
- 10 C.F.R. 2.706
Federal Rules of Criminal Procedure do not automatically provide for discovery using interrogatories and depositions, but NRC rules do; CLI-06-12, 63 NRC 502 n.22 (2006)

LEGAL CITATIONS INDEX
REGULATIONS

- 10 C.F.R. 2.706(a)
a non-expert witness who was identified as the source of information but who had been removed from applicant's witness list could have been subjected to discovery and compelled to provide testimony before the board; LBP-06-15, 63 NRC 662 (2006)
- 10 C.F.R. 2.706(a)(8)
this section does not require appropriated funds to be used to provide special assistance just to intervenors; LBP-09-1, 69 NRC 44 n.136 (2009)
- 10 C.F.R. 2.707(a)(1)
a party may file a request for production of documents, and the party receiving such a request must produce any relevant document in its possession, custody, or control; LBP-12-23, 72 NRC 706 (2010)
- 10 C.F.R. 2.709
although this section deals with special procedural norms for discovery against NRC Staff, there is no reason to believe, as to substantive content, that its repeated use of the relevance concept was not intended to embrace the universal understanding of that concept that shapes the scope and definition of discoverable evidence in both the federal courts and NRC adjudications; LBP-06-25, 64 NRC 390 n.102 (2006)
discovery against NRC Staff is governed by this section; CLI-09-15, 70 NRC 12 (2009)
discovery against NRC Staff shall not commence until the issuance of the particular document, i.e., SER or EIS, unless the licensing board, in its discretion, finds that commencing discovery prior to issuance of those documents will expedite the hearing without adversely affecting the Staff's ability to complete its evaluation in a timely manner; CLI-09-15, 70 NRC 12 (2009); CLI-10-4, 71 NRC 66 (2010)
- 10 C.F.R. 2.709(a)(1)
NRC regulations provide procedures that should assist and guide boards in their approach in seeking testimony, additional witnesses, and documents; CLI-06-20, 64 NRC 25 (2006)
- 10 C.F.R. 2.709(d)
analysis of whether deliberative process privilege applies turns on three factors and the overriding-need test; LBP-06-25, 64 NRC 380 (2006)
once material is considered exempt from public disclosure, consideration must be given to that material's relevancy to the decision; LBP-06-25, 64 NRC 390 (2006)
the actual harm done by disclosure is weighed against the material's relevancy, the material's availability from other sources, and the need for the material; LBP-06-25, 64 NRC 392 (2006)
the four factors for determining the treatment, for discovery purposes, of privileged materials are the relevancy of the document, whether the document is exempt from disclosure under 10 C.F.R. 2.390, whether the document is necessary to a proper decision, and whether the document or information is reasonably obtainable from another source; LBP-06-25, 64 NRC 392 (2006)
the strength of the interest protected by the deliberative process privilege is balanced against the litigant's need for the material; LBP-06-25, 64 NRC 390 (2006)
- 10 C.F.R. 2.710
NRC standards governing summary disposition are based on those the federal courts apply to motions for summary judgment under Rule 56 of the Federal Rules of Civil Procedure; CLI-10-11, 71 NRC 297 (2010)
summary disposition is a procedure used when there are no genuine issues as to any material fact and the party is entitled to a decision as a matter of law; CLI-07-1, 65 NRC 9 (2007)
the licensing board shall not entertain motions for summary disposition unless the board finds that such motions, if granted, are likely to expedite the proceeding; CLI-09-15, 70 NRC 16 (2009); CLI-10-4, 71 NRC 70 (2010); LBP-09-22, 70 NRC 652 (2009)
the standard governing the grant of summary disposition is described; LBP-06-9, 63 NRC 307 (2006)
- 10 C.F.R. 2.710(a)
a party opposing summary disposition must counter any adequately supported material facts provided by the movant with its own separate, short, and concise statement of the material facts as to which it is contended there exists a genuine issue to be heard; LBP-10-8, 71 NRC 439-40 (2010)
following response by an opposing party to a summary disposition motion, no further supporting statements or responses will be entertained; LBP-08-2, 67 NRC 67 n.8 (2008); LBP-08-3, 67 NRC 98 n.7 (2008)

LEGAL CITATIONS INDEX
REGULATIONS

- if a summary disposition movant discusses a matter in its statement of undisputed facts, the board could view with skepticism any later argument by that movant that a response regarding that issue is outside the scope of the contention, particularly given the onus that is placed on an opposing party to respond to such a statement; LBP-08-2, 67 NRC 68 n.9 (2008); LBP-08-3, 67 NRC 98 n.8 (2008)
- opponent of summary disposition must counter any adequately supported material facts provided by the movant with its own separate, short, and concise statement of the material facts as to which it is contended there exists a genuine issue to be heard; LBP-08-1, 67 NRC 51 n.14 (2008); LBP-08-2, 67 NRC 63 (2008); LBP-08-3, 67 NRC 94 (2008)
- proponent of a summary disposition motion bears the burden of making the requisite showing by providing a separate, short, and concise statement of the material facts as to which the moving party contends that there is no genuine issue to be heard; LBP-08-2, 67 NRC 63 (2008); LBP-08-3, 67 NRC 94 (2008); LBP-10-8, 71 NRC 439 (2010)
- summary disposition may be entered with respect to all or any part of the matters involved in the proceeding if the motion, along with any appropriate supporting materials (including affidavits, discovery responses, and documents), shows that there is no genuine issue as to any material fact and that the moving party is entitled to a decision as a matter of law; LBP-10-8, 71 NRC 439 (2010)
- uncontroverted material factual assertions by the summary disposition movant shall be admitted; LBP-07-13, 66 NRC 140 n.7 (2007); LBP-08-2, 67 NRC 63 (2008); LBP-08-3, 67 NRC 94 (2008); LBP-10-8, 71 NRC 440 (2010)
- 10 C.F.R. 2.710(a)-(b)
- an opponent of a motion for summary disposition must respond to each of the “material facts” listed by the movant, admitting or denying each of them, and must set forth specific facts, by affidavit or otherwise, showing that there are genuine issues of fact; CLI-06-5, 63 NRC 128 n.15 (2006)
- 10 C.F.R. 2.710(b)
- a party opposing a motion for summary disposition may not rest upon mere allegations or denials, but must state specific facts showing that there is a genuine issue of fact for hearing; CLI-10-11, 71 NRC 297 (2010)
- for purposes of summary disposition, mere allegations, including speculative or bare conclusory statements by an expert, are insufficient; LBP-07-13, 66 NRC 144 (2007)
- if a summary disposition proponent meets its burden, an opponent must set forth specific facts showing that there is a genuine issue, and may not rely on mere allegations or denials; CLI-06-5, 63 NRC 122 (2006); LBP-07-12, 66 NRC 125 (2007); LBP-07-13, 66 NRC 131 (2007)
- specificity and support are required for the positions parties take in their filings; LBP-07-13, 66 NRC 140 (2007)
- the conditions set out in section 2.309(f) serve as minimum specificity standards for showing that there is a genuine issue of fact; LBP-07-13, 66 NRC 140 n.6 (2007)
- 10 C.F.R. 2.710(c)
- as long as the admissibility requirements have been met, support for a contention may be viewed in a light that is favorable to the petitioner, and inferences that can be drawn from evidence may be construed in favor of the petitioner; LBP-06-20, 64 NRC 150 (2006); LBP-06-23, 64 NRC 356 (2005)
- burdens on proponents and opponents of summary disposition are discussed; LBP-07-12, 66 NRC 126 n.61 (2007)
- if it appears from the affidavits of a party opposing a motion for summary disposition or other dispositive motion that the opposing party cannot, for reasons stated, present by affidavit facts essential to justify the party’s opposition, the board may refuse the application for summary disposition or may order a continuance as may be necessary or just; LBP-07-13, 66 NRC 131 (2007); LBP-09-22, 70 NRC 653 (2009)
- the contention admissibility threshold is less than is required at the summary disposition stage; LBP-07-16, 66 NRC 288 (2007); LBP-08-13, 68 NRC 63 (2008)
- 10 C.F.R. 2.710(d)(2)
- applicant may challenge an expert opinion in the disclosure stage, via a motion for summary disposition, if it can show that there is no genuine issue as to any material fact and that it is entitled to a decision as a matter of law; LBP-09-30, 70 NRC 1048 (2009)
- in an evidentiary hearing, the board may weigh competing evidence and expert opinion and may resolve/decide factual disputes, whereas this is not possible when ruling on motions for summary

LEGAL CITATIONS INDEX
REGULATIONS

- disposition, which are restricted to situations where there is no genuine issue as to any material fact; LBP-09-22, 70 NRC 651 (2009)
- movant shall be granted summary disposition if the filings in the proceeding together with the statements of the parties and the affidavits show that there is no genuine issue as to any material fact and that movant is entitled to a decision as a matter of law; CLI-06-5, 63 NRC 121 (2006); CLI-10-11, 71 NRC 297 (2010); LBP-07-12, 66 NRC 125 (2007); LBP-07-13, 66 NRC 138, 140 n.5 (2007); LBP-08-2, 67 NRC 64 (2008); LBP-08-3, 67 NRC 94 (2008); LBP-08-7, 67 NRC 371 (2008); LBP-09-15, 70 NRC 212 n.36 (2009); LBP-10-8, 71 NRC 439 (2010)
- proponents of summary disposition motions must show that there are no genuine issues of material fact in dispute and that movant is entitled to a decision as a matter of law; CLI-06-5, 63 NRC 121, 122, 124 (2006); CLI-07-1, 65 NRC 7 n.25 (2007); LBP-10-20, 72 NRC 579, 586, 590 (2010)
- the contention admissibility threshold is less than is required at the summary disposition stage; LBP-09-26, 70 NRC 955 n.62 (2009)
- where a material factual disputes still exist regarding the adequacy of the ER/DEIS, making a grant of summary disposition would be improper; LBP-08-2, 67 NRC 76 (2008)
- where applicant's amended license application has eliminated the dispute, there remains no genuine dispute of material fact and applicant is entitled to summary disposition as a matter of law; LBP-06-24, 64 NRC 364 (2006)
- 10 C.F.R. 2.711(c)
cross-examination occurs virtually automatically in Subpart G hearings, subject to normal judicial management and the requirement to file a cross-examination plan; LBP-09-10, 70 NRC 145 (2009); LBP-10-15, 72 NRC 344 (2010)
- 10 C.F.R. 2.711(e)
all affidavits are expected to be relevant, material, and reliable; LBP-09-6, 69 NRC 402 (2009)
- 10 C.F.R. 2.714
although the Commission's procedural rules for adjudications were revised, case law interpreting this prior section remains relevant; LBP-07-11, 66 NRC 51 n.17 (2007); LBP-08-6, 67 NRC 270-71 n.112 (2008)
- 10 C.F.R. 2.714(a)(1)
under pre-2004 rules, five factors must be balanced before a petition to admit a late-filed contention can be granted; CLI-08-1, 67 NRC 6 (2008); CLI-08-8, 67 NRC 197 (2008)
- 10 C.F.R. 2.714(a)(3)
prior to adoption of the Part 2 revision in February 2004, petitioners were allowed to amend and supplement their petitions within certain time periods as a matter of right in NRC adjudicatory proceedings; LBP-06-10, 63 NRC 354 n.156 (2006)
- 10 C.F.R. 2.714(a)(3), (b)(1)
the current version of the rules no longer incorporates these provision, which permitted the supplementation of petitions and the filing of contentions after the original filing of petitions; LBP-07-4, 65 NRC 303 n.95 (2007); LBP-07-11, 66 NRC 56 n.45 (2007)
- 10 C.F.R. 2.714(b)(1)
under the 2004 Part 2 revisions to this section, contentions are now required to be included with, rather than being submitted sometime subsequent to the filing of, the intervention petition; LBP-06-10, 63 NRC 354 n.156 (2006); LBP-10-1, 71 NRC 188 n.4 (2010)
- 10 C.F.R. 2.714(b)(2)
even if the late-filed contention criteria are satisfied under the pre-2004 rules, proposed contentions still must meet the admissibility standards of this section; CLI-08-1, 67 NRC 8 (2008)
pleading requirements for contentions are described; CLI-08-1, 67 NRC 8 (2008)
- 10 C.F.R. 2.714(b)(2)(iii)
this NEPA-related provision was retained in the 2004 rule change; LBP-10-1, 71 NRC 186 (2010)
a contention that fails to identify a genuine dispute on a material issue of law or fact within the scope of the proceeding must be rejected; CLI-08-1, 67 NRC 10 (2008)
- 10 C.F.R. 2.714(d)(2)
petitioner must show a genuine dispute of material fact or law; CLI-08-1, 67 NRC 28 (2008)
- 10 C.F.R. 2.714(d)(2)(i)
a contention shall not be admitted if the pleading requirements are not satisfied; CLI-08-1, 67 NRC 8 (2008)

LEGAL CITATIONS INDEX
REGULATIONS

- 10 C.F.R. 2.714(d)(2)(ii)
a contention shall not be admitted if the contention, even if proven, would not entitle the petitioner to relief; CLI-08-1, 67 NRC 8 (2008)
- 10 C.F.R. 2.714(e)
if the presiding officer determines that any of the admitted contentions constitute pure issues of law, those contentions must be decided on the basis of briefs or oral argument according to a schedule determined by the presiding officer; LBP-09-6, 69 NRC 422 (2009)
- 10 C.F.R. 2.714a
interlocutory review of the presiding officer's decision will be granted where the decision either threatens the party adversely affected by it with immediate and serious irreparable impact which, as a practical matter, could not be alleviated through a petition for review, or affects the basic structure of the proceeding in a pervasive or unusual manner; CLI-09-9, 69 NRC 365 (2009)
- 10 C.F.R. 2.715(c)
an advisory body that lacks executive or legislative responsibilities is so far removed from having the representative authority to speak and act for the public that it does not qualify as a governmental entity; CLI-07-18, 65 NRC 412 n.37 (2007)
nonparty interested state status has been granted to state utility commissions; LBP-08-15, 68 NRC 304 n.44 (2008); LBP-09-16, 70 NRC 291 n.190 (2009)
- 10 C.F.R. 2.717, 2.718
the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel shall designate an administrative judge to sit as presiding officer; CLI-08-1, 67 NRC 26 (2008)
- 10 C.F.R. 2.730(f) (1973) (rescinded)
a licensing board referral of an order is unacceptable if it fails to satisfy the standards applicable to such referrals, including whether prompt appellate review is necessary to prevent detriment to the public interest or unusual delay or expense; CLI-09-6, 69 NRC 134 (2009)
- 10 C.F.R. 2.734
until a license issues, the Commission must entertain motions to reopen the adjudicatory record, albeit under NRC's strict regulatory standards; CLI-06-3, 63 NRC 24 (2005)
- 10 C.F.R. 2.734(a)
the threshold for reopening a closed record is high; CLI-06-3, 63 NRC 22 (2005)
to reopen a closed record, new information must raise a significant environmental or safety issue and a materially different result must be likely as a result of the new evidence; CLI-06-3, 63 NRC 25 (2005)
- 10 C.F.R. 2.740
discovery, including interrogatories, requests for admissions, and requests for production of documents in Subpart K proceedings are governed by the general provisions of this section, except that oral depositions will be permitted only upon a showing of compelling need and with appropriate security precautions; CLI-08-1, 67 NRC 25 (2008)
- 10 C.F.R. 2.740a(h)
payments from the NRC to an intervenor's expert witness are not barred by section 502 of the Energy and Water Development Appropriations Act; LBP-09-1, 69 NRC 44 n.136 (2009)
- 10 C.F.R. 2.749(a) (2003)
parties responding to summary disposition motions may interpose additional "factual" information by way of affidavits and other submissions; LBP-08-2, 67 NRC 67 n.8 (2008); LBP-08-3, 67 NRC 98 n.7 (2008)
- 10 C.F.R. 2.749(a), (d)
summary disposition may be entered with respect to any matter (or all of the matters) in a proceeding if the motion, along with any appropriate supporting material, shows that there is no genuine issue as to any material fact and that the moving party is entitled to a decision as a matter of law; LBP-06-9, 63 NRC 307 (2006)
- 10 C.F.R. 2.758
the vehicle by which a petitioner may seek to raise issues that would otherwise be beyond the scope of a license renewal proceeding is discussed; LBP-07-11, 66 NRC 79 n.163 (2007)
- 10 C.F.R. 2.759
the Commission recognizes that the public interest may be served through settlement of particular issues in a proceeding or the entire proceeding; LBP-06-18, 63 NRC 836 n.13 (2006)

LEGAL CITATIONS INDEX
REGULATIONS

- 10 C.F.R. 2.771(a)
NRC practice is that petitions for reconsideration be filed within 10 days of the decision; CLI-08-5, 67 NRC 176 (2008)
- 10 C.F.R. 2.771(b)
a petition for reconsideration will be granted upon a showing of compelling circumstances, such as the existence of a clear and material error in a decision, which could not have been reasonably anticipated; CLI-08-5, 67 NRC 176 (2008)
this rule applies when the original proceeding was noticed prior to February 13, 2004; CLI-06-27, 64 NRC 400 n.5 (2006)
- 10 C.F.R. 2.786
for cases docketed prior to February 13, 2004, the previous procedural rules continue to apply; CLI-06-29, 64 NRC 419 n.2 (2006)
this procedural rule still applies to cases docketed prior to February 13, 2004; CLI-06-1, 63 NRC 3 n.5 (2006)
- 10 C.F.R. 2.786(b)
a party wishing to challenge a partial initial decision before the Commission must file a petition for review within 15 days after service of the decision; LBP-06-1, 63 NRC 79 (2006)
- 10 C.F.R. 2.786(b)(1)
the Commission has discretion to grant a petition for review, giving due weight to the existence of a substantial question with respect to any of the five grounds; CLI-06-11, 63 NRC 485 (2006)
the filing of a petition for review is mandatory for a party seeking to exhaust its administrative remedies before seeking judicial review; LBP-06-1, 63 NRC 79 (2006)
- 10 C.F.R. 2.786(b)(3)
any other party to a proceeding may, within 10 days after service of a petition for review, file an answer supporting or opposing Commission review; LBP-06-1, 63 NRC 79 (2006)
- 10 C.F.R. 2.786(b)(4)
a petition for review must identify any clearly erroneous factual finding, significant legal error, or any other reason warranting plenary review; CLI-06-1, 63 NRC 3 (2006); CLI-06-29, 64 NRC 418 (2006)
the Commission's denial of review is not a decision on the merits, but simply indicates that the appealing party identified no clearly erroneous factual finding or important legal error requiring Commission correction; LBP-06-1, 63 NRC 59 n.15 (2006)
- 10 C.F.R. 2.786(b)(4)(ii)
a presiding officer's ruling that is without governing precedent is appropriate for review; CLI-06-7, 63 NRC 166 (2006)
- 10 C.F.R. 2.786(b)(4)(iii)
when a substantial and important question of law is presented, Commission review is appropriate; CLI-06-7, 63 NRC 166 (2006)
- 10 C.F.R. 2.786(g)
under an earlier version of the agency's rules, stay motions are appealable; LBP-08-11, 67 NRC 495 (2008)
- 10 C.F.R. 2.790(a)(4), (b)
financial information relevant to the expected costs of plant operation and maintenance would have been available to petitioners but for its being submitted to the NRC as confidential commercial and financial information; CLI-10-24, 72 NRC 466 (2010)
- 10 C.F.R. 2.802
a petitioner that seeks to express a personal view regarding the direction of regulatory policy may submit a petition for rulemaking; LBP-06-20, 64 NRC 149 (2006)
any person may file a petition for rulemaking to address any perceived post-licensing problems that may present themselves; LBP-08-22, 68 NRC 652 n.295 (2008); LBP-10-22, 72 NRC 690 (2010)
challenges to the adequacy of Table S-3, which was initially prepared more than 25 years ago, may be made through a petition for rulemaking; LBP-08-17, 68 NRC 444-45 (2008)
if a licensee wishes to challenge the compatibility category that is assigned to a particular regulation (including the license termination rule), it may do so at any time through submission of a petition for rulemaking; CLI-10-8, 71 NRC 153, 157 (2010)

LEGAL CITATIONS INDEX
REGULATIONS

- if a petitioner wishes to challenge, or raise concerns about, a facility's emergency preparedness program relating to spent fuel accidents, it may petition for rulemaking; LBP-06-7, 63 NRC 202 n.9 (2006)
- if petitioner believes that current NRC regulations are inadequate, the venue for raising such a concern is a petition for rulemaking; LBP-08-13, 68 NRC 126 (2008)
- if petitioner believes there is reason to depart from the license renewal generic environmental impact statement and related regulations, its remedy is a petition for rulemaking to modify the rules or a petition for a waiver of the rules based on special circumstances; CLI-07-3, 65 NRC 16 (2007); CLI-07-8, 65 NRC 133 (2007)
- if petitioners believe that the specification for climate change no longer provides a reasonable basis for demonstrating compliance based on new scientific evidence, they can petition NRC to amend the rules; LBP-10-22, 72 NRC 689 (2010)
- if petitioners wish to propose security measures in addition to those laid out in a Staff enforcement order, their remedy is to ask NRC to institute a rulemaking to impose broader security measures; CLI-10-3, 71 NRC 53 n.21, 54 n.29 (2010)
- interested parties may ask the Commission to issue, rescind, or amend a regulation; CLI-08-13, 67 NRC 401 (2008)
- once a proceeding has been closed, petitioners will still have the opportunity to raise issues by using NRC rulemaking procedures; CLI-10-17, 72 NRC 10 n.17 (2010)
- only a party to the proceedings, or an interested governmental entity participating under 10 C.F.R. 2.315, may file a request to stay proceedings pending a rulemaking; CLI-07-13, 65 NRC 215 (2007)
- outside the adjudicatory context, a petitioner may file a petition for rulemaking; LBP-07-4, 65 NRC 305 (2007); LBP-07-11, 66 NRC 58 (2007)
- petition for rulemaking is denied because it did not provide any new information that was not previously considered by the NRC; DD-08-2, 68 NRC 341 (2008)
- the appropriate procedure to raise a challenge to NRC rules is to file a petition for rulemaking; LBP-09-17, 70 NRC 345-46 (2009)
- to the extent that intervenors disagree with a regulation, their recourse is to petition the Commission for rulemaking to change it; LBP-06-1, 63 NRC 60 (2006)
- 10 C.F.R. 2.802(d)
- a participant in an ongoing adjudicatory proceeding that has filed a rulemaking petition should be provided an opportunity to seek a stay of the adjudication pending a resolution of the rulemaking petition; LBP-08-16, 68 NRC 424 n.21 (2008)
- a petitioner who has filed a petition for rulemaking may ask the Commission to suspend all or any part of any licensing proceeding to which the petitioner is a party, pending disposition of the petition for rulemaking; CLI-07-3, 65 NRC 22 n.37 (2007)
- an interested state may petition to suspend proceedings; CLI-08-9, 67 NRC 355-56 (2008)
- the purpose of obtaining "interested state" status was so that a state could request a suspension of the license renewal proceeding; LBP-08-25, 68 NRC 783 n.13 (2008)
- 10 C.F.R. 2.804, 2.805
- concerns relating specifically to the AP1000 reactor design amendment may be raised by filing comments on the proposed rule when it is issued; LBP-08-17, 68 NRC 443 (2008)
- 10 C.F.R. Part 2, Subpart I
- classified information is exempt from disclosure; LBP-10-2, 71 NRC 198 n.20 (2010)
- 10 C.F.R. 2.900 *et seq.*
- nothing in NRC's procedural hearing rules requires greater disclosure of the agency's environmental analysis; CLI-08-26, 68 NRC 523 (2008)
- 10 C.F.R. 2.905
- access to classified information for introduction into a proceeding or for the preparation of a party's case is controlled by this section; CLI-08-21, 68 NRC 353 n.9 (2008)
- 10 C.F.R. 2.905(h)(2)
- Commission authority to direct the Department of Energy to disclose classified information to cleared representatives of Nevada over DOE's objection as the originating agency is disputed; CLI-08-21, 68 NRC 352 (2008)

LEGAL CITATIONS INDEX
REGULATIONS

- 10 C.F.R. 2.907
NRC Staff must file a notice of intent if, at the time of publication of Notice of Hearing, it appears that it will be impracticable for the Staff to avoid the introduction of restricted data or national security information into a proceeding; CLI-10-4, 71 NRC 75 (2010)
- 10 C.F.R. 2.907(a)
NRC Staff must include a notice of intent to introduce classified information in the notice of hearing, if it would be impracticable to avoid such introduction; CLI-08-21, 68 NRC 353 n.9 (2008)
- 10 C.F.R. 2.907(b)
a party filing a response to a notice of hearing must state in its answer its intent to introduce classified information into the proceeding, if it appears to the party that it will be impracticable to avoid such introduction; CLI-08-21, 68 NRC 353 n.9 (2008)
- 10 C.F.R. Part 2, Subpart J
electronic production, filing, and service of all documents are required in the high-level waste proceeding; CLI-08-25, 68 NRC 499 (2008)
in ruling on a petition to intervene in high-level waste proceeding, the presiding officer shall consider any failure of the petitioner to participate as a potential party in the pre-license application phase; CLI-08-25, 68 NRC 499 (2008)
“party” is defined to include, among others, any affected unit of local government; LBP-08-10, 67 NRC 458 (2008)
this subpart does not take precedence over certain other Commission regulations, including section 2.309; LBP-08-10, 67 NRC 458 (2008)
- 10 C.F.R. 2.1001
“basic licensing documents” are not automatically considered “documentary material,” although some may qualify as such if they meet the definition of any of the three classes of documentary material; CLI-06-5, 63 NRC 153 (2006)
categories of “documentary material” are described; CLI-08-12, 67 NRC 389 (2008)
“circulated drafts” are nonfinal documents circulated for supervisory concurrence or signature in which the original author or others in the concurrence process have not concurred; CLI-06-5, 63 NRC 147 (2006)
Class 3 documentary material must be “reports and studies” that are relevant to the issues listed in the topical guidelines, and the reports and studies must be relevant to the license application; CLI-06-5, 63 NRC 153 (2006)
documentary material includes any information upon which a party, potential party, or interested governmental participant intends to rely; LBP-08-1, 67 NRC 41 (2008)
“documentary material” includes three classes of information; CLI-06-5, 63 NRC 146 (2006)
“documentary material” is defined in this section; LBP-08-1, 67 NRC 47 (2008); LBP-09-6, 69 NRC 383 (2009); LBP-10-11, 71 NRC 645 n.152 (2010)
if the Commission had intended to require all drafts of Class 3 material to be available on the Licensing Support Network, there would be no “circulated draft” subset, and “circulated draft” certainly would not have merited a separate definition; CLI-06-5, 63 NRC 156 (2006)
it is within the framework of an exception to the general rule on the submission of final documents that the definition of circulated draft is properly examined; CLI-06-5, 63 NRC 158 (2006)
nonsupporting documentary material refers to any information that is known to, and in the possession of, or developed by the party that is relevant to, but does not support, that information or that party’s position in the proceeding; LBP-08-5, 67 NRC 213, 230 (2008)
“potential party,” means DOE, the NRC Staff, the State of Nevada, and any person or entity that meets the definition of “party,” “potential party,” or “interested governmental participant”; LBP-08-10, 67 NRC 451 n.1 (2008)
supporting documentary material is any information upon which a party intends to rely and/or to cite in support of its position in the proceeding for a construction authorization; LBP-08-5, 67 NRC 213, 218, 225, 227, 230, 231 n.73, 238 (2008)
the definition of party implies that local governments enjoy standing as of right; LBP-08-10, 67 NRC 458 (2008)
the Licensing Support Network is the combined system that makes documentary material available electronically to parties, potential parties, and interested governmental participants to a proceeding for a

LEGAL CITATIONS INDEX

REGULATIONS

- construction authorization for a high-level radioactive waste repository at a geologic repository operations area; CLI-06-5, 63 NRC 145 n.2 (2006)
- the meaning of the word “intends” in the phrase “intends to rely” in the first part of this section is interpreted; CLI-08-12, 67 NRC 389 (2008)
- the organizational unit within the NRC selected to be the LSN Administrator shall not be considered to be a party to the proceeding; CLI-06-5, 63 NRC 145 n.2 (2006)
- “topical guidelines” means the set of topics set forth in Regulatory Guide 3.69, which are intended to serve as guidance on the scope of documentary material; CLI-06-5, 63 NRC 147 n.12 (2006)
- whether a call memo was required to address the retention for LSN inclusion purposes of documentary material that does not support a party’s position is decided; LBP-08-5, 67 NRC 211 (2008)
- with respect to a petitioner, “in the proceeding” is a phrase that relates to the licensing proceeding, and not the pre-license application phase; LBP-08-5, 67 NRC 215 (2008)
- 10 C.F.R. 2.1003
- a person denied party or interested governmental participant status may request such status upon a showing of subsequent compliance with the requirements of this section; CLI-08-25, 68 NRC 500 n.1 (2008)
- a petitioner, including a potential party given access to the Licensing Support Network, may not be granted party status under section 2.309, or status as an interested governmental participant under section 2.315, if petitioner cannot demonstrate substantial and timely compliance with the requirements in this section at the time of the request for participation in the high-level waste proceeding; CLI-08-25, 68 NRC 500 (2008)
- DOE’s certification started the clock for certification of documentary materials by the NRC Staff and by other potential parties; CLI-08-12, 67 NRC 389 (2008)
- obligations and timetable for production of documentary material on the Licensing Support Network by petitioners are outlined in this section; LBP-09-6, 69 NRC 382 (2009)
- participants must make their documentary materials available in accordance with the schedule and requirements set out in this regulation; CLI-06-5, 63 NRC 147 (2006)
- potential parties other than NRC Staff, interested governmental participants, and parties must make available all documentary material no later than 9 days after the DOE certification of compliance; CLI-08-22, 68 NRC 357 (2008)
- the purpose of this regulation is to define the availability of material, not to provide definitions of types of materials; CLI-06-5, 63 NRC 153 (2006)
- 10 C.F.R. 2.1003(a)
- DOE must make all of its documentary material available on the Licensing Support Network, and to so certify to the PAPO Board, at least 6 months before DOE files its application to construct the HLW geologic repository at Yucca Mountain; CLI-06-5, 63 NRC 147 (2006); CLI-08-12, 67 NRC 388 (2008); LBP-08-1, 67 NRC 39, 50 (2008)
- DOE’s certification that it had made all of its then extant documentary material available on the NRC’s Licensing Support Network triggered the obligation of other potential parties to make their documentary material available on the LSN within 90 days; LBP-08-1, 67 NRC 39 (2008); LBP-08-5, 67 NRC 206, 218, 226, 237 (2008)
- exclusion to this requirement is documentary material created after the time of initial certification; CLI-08-12, 67 NRC 388 (2008)
- NRC Staff has 30 days to provide its documentary material; CLI-08-22, 68 NRC 357 (2008)
- 10 C.F.R. 2.1003(a)(1)
- a party may exclude duplicates where the documentary material has already been made available by the potential party that originally created the document; LBP-08-5, 67 NRC 231 n.74 (2008)
- DOE, in its initial certification, must make available all documentary material generated by, or at the direction of, or acquired by DOE; LBP-08-1, 67 NRC 40 (2008)
- potential parties must produce all documentary material generated by or acquired by them; LBP-08-1, 67 NRC 42 (2008)
- the duty to produce documentary material only applies to extant documents; LBP-08-1, 67 NRC 45 (2008)
- the requirements of this regulation apply equally to all potential parties; LBP-08-1, 67 NRC 48 (2008)

LEGAL CITATIONS INDEX
REGULATIONS

- 10 C.F.R. 2.1003(a)(2)
the duty to produce graphic-oriented material is stated in the past tense, and thus applies only to documents in existence at the date of certification; LBP-08-1, 67 NRC 42 (2008)
- 10 C.F.R. 2.1003(b)
exclusions to the duty to produce documentary material include preliminary drafts, basic licensing documents generated by DOE, and any additional material created after the time of initial certification; LBP-08-1, 67 NRC 46-47 (2008)
responsibility for placing certain items, including the license application, on the Licensing Support Network is spelled out; CLI-06-5, 63 NRC 147 (2006)
responsibility is assigned for the placement of certain items on the Licensing Support Network, but this is not the same as classifying all such items as documentary material; CLI-06-5, 63 NRC 153 (2006)
the license application is not a Class 3 report or study, although the final application ultimately must be made available on the Licensing Support Network as a basic licensing document; CLI-06-5, 63 NRC 157 (2006)
- 10 C.F.R. 2.1003(e)
any documentary material that DOE creates after its initial certification must be made available in its monthly supplements; LBP-08-1, 67 NRC 50 (2008)
at the construction authorization stage of the proceeding, absent a credible factual challenge to the sufficiency of the production of documentary material, all that is now required are intervenors' monthly supplemental certifications; LBP-09-6, 69 NRC 442 (2009)
DOE and the other participants have a continuing duty to supplement the Licensing Support Network with any additional documentary material created after the time of initial certification; CLI-08-12, 67 NRC 391 (2008); LBP-08-1, 67 NRC 43, 48 (2008)
each party or potential party must continue to supplement the production of its documentary material on the Licensing Support Network; LBP-09-6, 69 NRC 383 (2009)
exclusion to this requirement is documentary material created after the time of initial certification; CLI-08-12, 67 NRC 388 (2008)
exclusions to the duty to produce documentary material include preliminary drafts, basic licensing documents generated by DOE, and any additional material created after the time of initial certification; LBP-08-1, 67 NRC 46-47 (2008)
"supplementation" with "any" additional documentary material created after initial certification is discussed; CLI-08-12, 67 NRC 389 (2008)
- 10 C.F.R. 2.1004
a board does not need to reach the question of the extent of discovery permissible if no request for any discovery has been made; LBP-08-5, 67 NRC 211 (2008)
- 10 C.F.R. 2.1009
as part of compliance with the LSN requirements, each petitioner must identify all its documentary material required by section 2.1003 and designate a responsible LSN official who can certify that to the best of his or her knowledge all such material has been made electronically available; LBP-10-11, 71 NRC 645 (2010)
the regulations are unclear as to whether header searchability is a prerequisite of certification; LBP-08-1, 67 NRC 52 (2008)
- 10 C.F.R. 2.1009(a)
each party or potential party shall establish specified procedures for implementing its Licensing Support Network production; LBP-09-6, 69 NRC 383 (2009)
- 10 C.F.R. 2.1009(a)(2)
DOE must certify that it has established procedures for implementing the requirements of section 2.1003, that it has trained its personnel to comply with these procedures, and that the documentary material specified in section 2.1003 has been made available; CLI-08-12, 67 NRC 389 (2008)
potential parties, interested governmental participants, and parties must certify that they have established procedures for implementing the requirements of section 2.1003, that they have trained their personnel to comply with these procedures, and that the documentary material specified in section 2.1003 has been made available; CLI-08-22, 68 NRC 357 (2008)

LEGAL CITATIONS INDEX

REGULATIONS

- 10 C.F.R. 2.1009(b)
anyone who wishes to intervene as a party in the high-level waste proceeding must establish that it has standing, be able to demonstrate substantial and timely Licensing Support Network compliance, and proffer at least one admissible contention; LBP-09-6, 69 NRC 381 (2009)
at the construction authorization stage of the proceeding, absent a credible factual challenge to the sufficiency of the production of documentary material, all that is now required are intervenors' monthly supplemental certifications; LBP-09-6, 69 NRC 442 (2009)
certification of LSN compliance should be a straightforward statement; LBP-09-6, 69 NRC 386-87 (2009)
DOE must certify that it has established procedures for implementing the requirements of section 2.1003, that it has trained its personnel to comply with these procedures, and that the documentary material specified in section 2.1003 has been made available; CLI-08-12, 67 NRC 389 (2008)
DOE must make all of its documentary material available on the Licensing Support Network, and to so certify to the PAPO Board, at least 6 months before DOE files its application to construct the HLW geologic repository at Yucca Mountain; LBP-08-1, 67 NRC 39 (2008)
DOE must update its certification at the time it submits the license application; CLI-08-12, 67 NRC 389 (2008); LBP-08-1, 67 NRC 43, 48 (2008)
DOE must update its document production when it submits its license application; LBP-08-1, 67 NRC 50 (2008)
each participant, starting with DOE, must certify to the completeness of the documentary material it has placed on the Licensing Support Network; CLI-06-5, 63 NRC 147 (2006)
each party or potential party shall certify to the pre-license application presiding officer board that the party or potential party has complied with the implementation procedures of section 2.1009(a)(2) and that to the best of his or her knowledge, the documentary material specified in section 2.1003 has been identified and made electronically available; LBP-09-6, 69 NRC 383 (2009)
potential parties, interested governmental participants, and parties must certify that they have established procedures for implementing the requirements of section 2.1003, that they have trained their personnel to comply with these procedures, and that the documentary material specified in section 2.1003 has been made available; CLI-08-22, 68 NRC 357 (2008)
- 10 C.F.R. 2.1012(a)
DOE must make all of its documentary material available on the Licensing Support Network, and to so certify to the PAPO Board, at least 6 months before DOE files its application to construct the HLW geologic repository at Yucca Mountain; LBP-08-1, 67 NRC 39 (2008)
the license application must be accompanied by an updated certification; LBP-08-1, 67 NRC 48 (2008)
- 10 C.F.R. 2.1012(b)(1)
a person denied party or interested governmental participant status may request such status upon a showing of subsequent compliance with the requirements of section 2.1003; CLI-08-25, 68 NRC 500 n.1 (2008)
a person may not be granted party status if it cannot demonstrate substantial and timely compliance with the requirements of section 2.1003 at the time it requests participation in the HLW licensing proceeding under section 2.309; CLI-08-25, 68 NRC 499 (2008); LBP-08-5, 67 NRC 237 (2008)
an affirmative demonstration of compliance with the Licensing Support Network requirements is not required in an intervention petition; LBP-09-6, 69 NRC 384, 449 (2009)
before petitioner can be granted party status in the high-level waste proceeding, it must be able to demonstrate substantial and timely compliance with the Licensing Support Network requirements; LBP-10-11, 71 NRC 644 (2010)
petitioner may not be granted party status in the high-level waste proceeding if it cannot demonstrate substantial and timely compliance with the requirements in 10 C.F.R. 2.1003 concerning the availability of documentary material on the Licensing Support Network; LBP-09-6, 69 NRC 382, 383, 450 (2009)
- 10 C.F.R. 2.1012(b)(2)
if petitioner fails to demonstrate substantial and timely compliance with the LSN requirements, it may later request party status upon a showing of subsequent compliance; LBP-10-11, 71 NRC 644 n.151 (2010)
if petitioner is found not to be in substantial and timely compliance with the Licensing Support Network requirements, that petitioner may request party status upon a subsequent showing of compliance,

LEGAL CITATIONS INDEX
REGULATIONS

- although any grant of a request is conditioned on accepting the status of the proceeding at the time of admission; LBP-09-6, 69 NRC 383, 448 (2009)
- 10 C.F.R. 2.1012(c)
an affirmative demonstration of compliance with the Licensing Support Network requirements is not required in an intervention petition; LBP-09-6, 69 NRC 384 (2009)
in reviewing an intervention petitioner's compliance with document filing requirements, boards also must find that a petitioner has complied with all applicable orders of the pre-license application presiding officer board; LBP-09-6, 69 NRC 383 (2009)
service is completed when the filer/sender receives electronic acknowledgment (delivery receipt) that the electronic submission has been placed in the recipient's electronic mailbox; CLI-08-25, 68 NRC 501 (2008)
- 10 C.F.R. 2.1013(c)(1)
a petition for leave to intervene, and all filings in the high-level waste proceeding, must be filed electronically; CLI-08-25, 68 NRC 500 (2008)
- 10 C.F.R. 2.1013(c)(1)(vi)
reference to an active, publicly accessible Internet universal resource locator should not be made without electronically attaching copies of the information being cited, as the content of such web sites may change or subsequently become inaccessible; LBP-08-10, 67 NRC 455-56 (2008)
- 10 C.F.R. 2.1015
NRC rules governing the high-level waste proceeding do not provide for interlocutory review; CLI-10-13, 71 NRC 388 n.6 (2010)
- 10 C.F.R. 2.1015(a)
no appeals may be taken from any presiding officer order or decision, except as otherwise permitted by the rule; CLI-10-10, 71 NRC 283 (2010)
- 10 C.F.R. 2.1015(b)
appeals may be taken from certain specified decisions of the pre-license application presiding officer and the presiding officer; CLI-10-10, 71 NRC 283 (2010)
Subpart J rules do not provide for the filing of reply briefs in the context of appeals from interlocutory decisions; CLI-08-12, 67 NRC 393 (2008)
- 10 C.F.R. 2.1015(c)
appeals of an initial decision or partial initial decision of the presiding officer are permitted; CLI-10-10, 71 NRC 283 (2010)
Subpart J rules permit reply briefs in connection with appeals from initial or partial initial decisions of the presiding officer; CLI-08-12, 67 NRC 393 (2008)
- 10 C.F.R. 2.1015(d)
the board may refer certain rulings to the Commission, and certain participants in the proceeding may request that the presiding officer certify to the Commission rulings not otherwise immediately appealable pursuant to section 2.1015(b); CLI-10-10, 71 NRC 283 (2010)
- 10 C.F.R. 2.1018
a board does not need to reach the question of the extent of discovery permissible if no request for any discovery has been made; LBP-08-5, 67 NRC 211 (2008)
even after DOE tenders the license application, it must continue to supplement its documentary material, and discovery will continue for approximately 2 more years; LBP-08-1, 67 NRC 50 (2008)
- 10 C.F.R. 2.1018(a)
parties are prohibited from using interrogatories and depositions during the pre-license application period, absent special dispensation; LBP-08-5, 67 NRC 225 n.62 (2008)
- 10 C.F.R. 2.1018(a)(1)(v)
proponent of a motion to strike may pursue discovery to support its suspicions, may request any relief from the board with respect to conducting discovery, or may seek an extension of time to gather support for its motion or to conduct discovery before filing its motion within the time limit; LBP-08-5, 67 NRC 210 (2008)
- 10 C.F.R. 2.1019
even after DOE tenders the license application, it must continue to supplement its documentary material, and discovery will continue for approximately 2 more years; LBP-08-1, 67 NRC 50 (2008)

LEGAL CITATIONS INDEX
REGULATIONS

- 10 C.F.R. 2.1021(a) & (d)
the Commission extends the period for the First Prehearing Conference from 8 to 16 days after the deadline for filing replies, and to extend the period for issuance of the First Prehearing Conference Order from 30 to 60 days after the First Prehearing Conference; CLI-08-18, 68 NRC 250 (2008)
- 10 C.F.R. 2.1023(c)(2)
the presiding officer has no authority or duty to resolve uncontested issues in the high-level waste proceeding; CLI-08-25, 68 NRC 503 (2008)
- 10 C.F.R. 2.1025
presiding officers have authority to dispose of certain issues on the pleadings; CLI-09-14, 69 NRC 591 n.65 (2009)
- 10 C.F.R. 2.1026(b) & (c)
the presiding officer may grant extensions of time for individual milestones for the participants' filings, and may delay its own issuances for up to 30 days beyond the date of the milestone set in the hearing schedule; CLI-08-18, 68 NRC 248 n.11 (2008)
- 10 C.F.R. 2.1027
in any initial decision on the application for construction authorization for the high-level waste repository, the presiding officer shall make findings of fact and conclusions of law on, and otherwise give consideration to, only material issues put into controversy by the parties and determined to be litigable in the proceeding; CLI-08-25, 68 NRC 503 (2008)
the presiding officer has no authority or duty to resolve uncontested issues in the high-level waste proceeding; CLI-08-25, 68 NRC 503 (2008)
- 10 C.F.R. 2.1101
Subpart K procedures apply where invoked by a party; CLI-08-1, 67 NRC 5 (2008)
- 10 C.F.R. 2.1115(b)
the presiding officer is required to issue a written order based on due consideration of the parties' oral arguments and written filings; CLI-08-26, 68 NRC 513 (2008)
- 10 C.F.R. Part 2, Subpart L
this part is applicable to cases that were noticed before February 13, 2004; LBP-06-19, 64 NRC 60 (2006)
under these informal procedures, discovery is prohibited except for specified mandatory disclosures under 10 C.F.R. 2.336(f), (a), and (b) and the mandatory production of the hearing file under section 2.1203(a); LBP-09-10, 70 NRC 145 (2009)
- 10 C.F.R. 2.1200
a materials license amendment proceeding may be held under Subpart L but the provisions of Subpart G may be used in any other proceeding as ordered by the Commission; CLI-09-12, 69 NRC 572 (2009)
- 10 C.F.R. 2.1202(a)
NRC is expressly authorized to grant license amendments, and to make them immediately effective, in advance of the holding and completion of any required hearing, as long as the NRC determines that the amendment involves no significant hazards consideration; CLI-06-8, 63 NRC 238 (2006)
Staff action on a licensing application is effective upon issuance, except in the case of power reactor license amendments, where there are significant hazards considerations; CLI-06-8, 63 NRC 237 (2006)
Staff is to issue its approval or denial of an application promptly once it completes its own review of the application, notwithstanding the pendency of any hearing; CLI-06-8, 63 NRC 237 (2006); CLI-09-5, 69 NRC 122 (2009)
Staff may issue a license amendment despite the pendency of a hearing; CLI-07-20, 65 NRC 501 (2007)
- 10 C.F.R. 2.1202(b)(2)
in a Subpart L proceeding, the Staff elects whether or not to be a party to some or all contentions; CLI-07-20, 65 NRC 501 n.8 (2007)
- 10 C.F.R. 2.1203
because the sole contention in the proceeding is moot, the mandatory disclosure process for that contention is terminated; LBP-06-16, 63 NRC 745 (2006)
NRC Staff must maintain a hearing file; CLI-09-12, 69 NRC 573 n.175 (2009)
Staff's disclosure obligations are not tied to the admitted contentions, but rather, it must make available documents that relate to the application and its review as a whole; CLI-10-24, 72 NRC 462 n.70 (2010)

LEGAL CITATIONS INDEX

REGULATIONS

- 10 C.F.R. 2.1203(a)
in Subpart L proceedings, NRC Staff must produce a hearing file and make it available to all parties; LBP-09-22, 70 NRC 642 (2009)
the filing of a motion for reconsideration or an interlocutory appeal is not a basis for suspending mandatory disclosures or production of the hearing file; LBP-10-15, 72 NRC 346 (2010)
- 10 C.F.R. 2.1203(c)
NRC Staff has a continuing duty to update the hearing file; LBP-09-22, 70 NRC 643 (2009)
- 10 C.F.R. 2.1203(d)
if the duty to make disclosures applied only to parties who have claims and contentions, it would create an unintended and invidious asymmetry in mandatory disclosures, which are the only form of discovery available in Subpart L proceedings; LBP-09-30, 70 NRC 1041 (2009)
in Subpart L proceedings, discovery is generally prohibited except for specified mandatory disclosures under 10 C.F.R. 2.336(f), (a), and (b) and the mandatory production of the hearing file under 10 C.F.R. 2.1203(a); LBP-09-10, 70 NRC 145 (2009); LBP-10-15, 72 NRC 343 (2010); LBP-10-16, 72 NRC 442 (2010)
in Subpart L proceedings, mandatory disclosure is the only form of discovery allowed, and all other forms are expressly prohibited; LBP-12-23, 72 NRC 702 (2010)
in Subpart L proceedings, the Commission looks to the mandatory disclosure provisions of 10 C.F.R. 2.336; CLI-10-24, 72 NRC 462 (2010); CLI-10-25, 72 NRC 471 (2010)
- 10 C.F.R. 2.1204(b)
a board has discretion to allow parties to cross-examine witnesses in Subpart L proceedings if the board deems this practice necessary to establish an adequate record; LBP-08-24, 68 NRC 760 (2008)
in Subpart L proceedings, a party seeking to conduct cross-examination must file a written motion and obtain leave of the board; CLI-09-12, 69 NRC 572 n.173 (2009); LBP-08-24, 68 NRC 760 n.395 (2008); LBP-09-10, 70 NRC 145 (2009); LBP-10-15, 72 NRC 344 (2010)
no later than 30 days after service of materials, all parties shall file any motions or requests to permit that party to conduct cross-examination of a specified witness or witnesses, together with the associated cross-examination plans; LBP-09-22, 70 NRC 656 (2009)
- 10 C.F.R. 2.1204(b)(3)
as a party, a state may offer evidence and, where necessary to ensure the development of an adequate record, may be allowed to interrogate witnesses; LBP-06-20, 64 NRC 205 (2006)
cross-examination by the parties is allowed in Subpart L proceedings only when the presiding officer decides that such cross-examination is necessary to ensure an adequate record for decision; CLI-09-7, 69 NRC 248 (2009); CLI-09-12, 69 NRC 572 n.173 (2009); LBP-06-20, 64 NRC 203 (2006); LBP-09-22, 70 NRC 651 (2009)
NRC's new contention admission procedures comply with the relevant provisions of the Administrative Procedure Act and the Commission has furnished an adequate explanation for the changes; LBP-07-4, 65 NRC 303 n.96 (2007)
the grant of cross-examination to situations where it is necessary to ensure the development of an adequate record for decision is consistent with the statutory requirement that state representatives be given a reasonable opportunity to interrogate witnesses; LBP-06-20, 64 NRC 204 (2006)
the opportunity for cross-examination under this section is equivalent to the opportunity for cross-examination under the Administrative Procedure Act, 5 U.S.C. § 556(d); LBP-06-20, 64 NRC 203 (2006); LBP-07-4, 65 NRC 303 n.96 (2007); LBP-08-6, 67 NRC 343 n.581 (2008)
- 10 C.F.R. 2.1205
challenges to the merits of contentions must await either motions for summary disposition or an evidentiary hearing; LBP-07-5, 65 NRC 362 (2007)
in an evidentiary hearing, the board may weigh competing evidence and expert opinion and may resolve/decide factual disputes, whereas this is not possible when ruling on motions for summary disposition, which are restricted to situations where there is no genuine issue as to any material fact; LBP-09-22, 70 NRC 651 (2009)
summary disposition is a procedure used when there are no genuine issues as to any material fact and the party is entitled to a decision as a matter of law; CLI-07-1, 65 NRC 9 (2007)
- 10 C.F.R. 2.1205(a)
summary disposition motions are permitted in Subpart L proceedings; LBP-07-12, 66 NRC 124 (2007)

LEGAL CITATIONS INDEX

REGULATIONS

- 10 C.F.R. 2.1205(b)
a properly supported request to reply to a summary disposition response would seem to be a reasonable candidate for a favorable board discretionary decision permitting the filing; LBP-08-2, 67 NRC 67 n.8 (2008); LBP-08-3, 67 NRC 98 n.7 (2008)
an answer supporting or opposing a motion for summary disposition or other dispositive motion shall be filed within 20 days after service of the motion; LBP-09-22, 70 NRC 653 (2009)
- 10 C.F.R. 2.1205(c)
if the presiding officer determines from affidavits filed by the party opposing summary disposition that the opposing party cannot present by affidavit the facts essential to justify its opposition, the presiding officer may order a continuance to permit such affidavits to be obtained, or may take other appropriate action; LBP-07-13, 66 NRC 131 (2007)
movant must show that the matter entails no genuine issue as to any material fact and that movant is entitled to a decision as a matter of law; CLI-06-5, 63 NRC 119, 121, 122, 124 (2006); LBP-10-20, 72 NRC 586, 590 (2010)
to decide summary disposition motions in Subpart L proceedings, licensing boards apply the standards of Subpart G, which are set forth in 10 C.F.R. 2.710(d)(2); LBP-07-12, 66 NRC 124 (2007); LBP-08-2, 67 NRC 61 n.3 (2008); LBP-08-3, 67 NRC 94 (2008); LBP-09-15, 70 NRC 211-12 n.36 (2009); LBP-10-8, 71 NRC 439 (2010); LBP-10-20, 72 NRC 579 (2010)
where applicant's amended license application has eliminated the dispute, there remains no genuine dispute of material fact and applicant is entitled to summary disposition as a matter of law; LBP-06-24, 64 NRC 364 (2006)
- 10 C.F.R. 2.1205(h)
determination of admissibility of "areas of concern" based upon a standard of "germaneness" was revised in 2004 in favor of the stricter contention pleading requirements of 10 C.F.R. 2.309(f)(1)(i)-(vi); LBP-06-12, 63 NRC 406 (2006)
- 10 C.F.R. 2.1206
once a hearing is granted under Subpart L, an informal oral hearing on the merits is required except in the limited circumstances described in this rule; CLI-10-18, 72 NRC 94 (2010)
- 10 C.F.R. 2.1207
in accordance with Subpart L procedures, witness panels may be questioned in areas that, in the board's judgment, require additional clarification, and parties may be asked to provide proposed written questions both before and during the hearing in order to assist the board in its questioning; CLI-09-7, 69 NRC 248 (2009)
NRC regulations provide procedures that should assist and guide boards in their approach in seeking testimony, additional witnesses, and documents; CLI-06-20, 64 NRC 25 (2006)
- 10 C.F.R. 2.1207(a)(1)
documents and information exchanged in the mandatory disclosures enter the adjudicatory record only if and when a party proffers the document or information as evidence for the evidentiary hearing; LBP-09-30, 70 NRC 1046 (2009)
- 10 C.F.R. 2.1207(a)(2)
no later than 20 days after service of materials, the parties and the NRC Staff shall file their written responses, rebuttal testimony with supporting affidavits, and rebuttal exhibits, on a contention-by-contention basis; LBP-09-22, 70 NRC 655 (2009)
- 10 C.F.R. 2.1207(a)(3)
parties have an opportunity to propose questions that the presiding officer may propound to persons sponsoring testimony; CLI-09-12, 69 NRC 572 n.173 (2009)
- 10 C.F.R. 2.1207(a)(3)(i) & (ii)
no later than 30 days after service of materials, all parties and NRC Staff shall file proposed questions for the board to consider propounding to the direct or rebuttal witnesses; LBP-09-22, 70 NRC 655 (2009)
- 10 C.F.R. 2.1207(a)(3)(iii)
proposed questions, submitted by the parties, for the board, that were originally filed under seal with the board, will be made public in a separate issuance; LBP-08-4, 67 NRC 113 n.52 (2008)
the board shall provide all proposed questions to the Commission's Secretary for inclusion in the official record of the proceeding; LBP-07-17, 66 NRC 338 n.16 (2007)

LEGAL CITATIONS INDEX
REGULATIONS

- 10 C.F.R. 2.1207(b)(2)
written testimony shall be under oath or by an affidavit so that it is suitable for being received into evidence directly, in exhibit form; LBP-09-22, 70 NRC 654-55 (2009)
- 10 C.F.R. 2.1207(b)(6)
in a Subpart L evidentiary hearing, the board may ask witnesses to appear in person and answer questions; LBP-09-22, 70 NRC 651 (2009)
in Subpart L hearings, board members ask witness panels questions in those areas that, in the board's judgment, require additional clarification; LBP-07-17, 66 NRC 338 (2007)
under Subpart L, the board has the principal responsibility to question the witnesses; LBP-09-10, 70 NRC 145 (2009); LBP-10-15, 72 NRC 343 (2010); LBP-10-16, 72 NRC 442 (2010)
- 10 C.F.R. 2.1208
as a party, a state may offer evidence and, where necessary to ensure the development of an adequate record, may be allowed to interrogate witnesses; LBP-06-20, 64 NRC 205 (2006)
if the board concludes that it has no questions for any witness concerning a particular contention, it will so advise the parties and will resolve that contention; LBP-09-22, 70 NRC 656 n.35 (2009)
- 10 C.F.R. 2.1208(b)
to enable presiding officers to fulfill their duty, they have been given broad authority to examine witnesses at evidentiary hearings; CLI-10-17, 72 NRC 47 (2010)
- 10 C.F.R. 2.1209
"close of the hearing" refers to the closing of the evidentiary record; CLI-08-9, 67 NRC 355 (2008)
failure of parties to raise matters in their proposed findings seemingly waives these items as grounds for a challenge to the final environmental impact statement; LBP-09-7, 69 NRC 651 n.12 (2009)
- 10 C.F.R. 2.1210(c)(3)
this section expressly provides for the circumstance in which a licensing action is taken prior to completion of a hearing; CLI-09-5, 69 NRC 122 n.29 (2009)
- 10 C.F.R. 2.1212
unless otherwise authorized by law, a party who wishes to seek judicial review of a decision must first seek Commission review; LBP-07-17, 66 NRC 370-71 n.59 (2007)
- 10 C.F.R. 2.1213
although a request for suspension of a proceeding does not fit cleanly into NRC procedural rules for stays, the Commission exercises discretion and consider petitioner's request; CLI-10-17, 72 NRC 10 n.32 (2010)
- 10 C.F.R. 2.1213(a)
a stay of the Staff's issuance of the license pending the outcome of the adjudicatory process for an irradiator must be sought within 5 days of issuance of the notice of the NRC staff's action; LBP-07-14, 66 NRC 208 (2007); LBP-08-11, 67 NRC 491 n.77 (2008)
- 10 C.F.R. 2.1213(d)
factors that influence the grant of a stay are addressed; LBP-08-11, 67 NRC 491 (2008)
- 10 C.F.R. 2.1233(c)
arguments that an intervenor fails to adequately develop are treated as waived; LBP-06-19, 64 NRC 76 n.21 (2006)
- 10 C.F.R. 2.1241
settlement in an informal proceeding must be approved by the presiding officer or the Commission as appropriate, in order to be binding in the proceeding; LBP-06-18, 63 NRC 836 n.13 (2006)
- 10 C.F.R. 2.1251(a)
if no party files a petition for review of a partial initial decision, and if the Commission does not sua sponte review it, the decision will constitute the final action of the Commission 30 days after its issuance; LBP-06-1, 63 NRC 79 (2006)
- 10 C.F.R. 2.1253
a party wishing to challenge a partial initial decision before the Commission must file a petition for review within 15 days after service of the decision; LBP-06-1, 63 NRC 79 (2006)
the filing of a petition for review is mandatory for a party seeking to exhaust its administrative remedies before seeking judicial review; LBP-06-1, 63 NRC 79 (2006)

LEGAL CITATIONS INDEX
REGULATIONS

- 10 C.F.R. 2.1306(b)(2)
the “issues” in license transfer proceedings constitute “contentions” under section 2.309(f) and must therefore meet the standards for admissibility set forth in that regulation; CLI-07-18, 65 NRC 405-06 n.7 (2007)
- 10 C.F.R. 2.1316
NRC Staff is not a party in license transfer cases; CLI-06-2, 63 NRC 12 (2006)
- 10 C.F.R. 2.1316(b), (c)
the Staff ordinarily does not participate as a party in the adjudicatory portion of license transfer proceedings; CLI-07-18, 65 NRC 406 n.8 (2007)
- 10 C.F.R. 2.1319(a)
the Commission may designate one or more Commissioners or any other person permitted by law to preside at a license transfer proceeding; CLI-07-18, 65 NRC 417 (2007)
- 10 C.F.R. 2.1327
license transfer applicants who have received Staff approval but are still awaiting the results of a Commission adjudication are free to act in reliance on the Staff’s order; CLI-08-19, 68 NRC 257 n.8 (2008)
- 10 C.F.R. 2.1400-.1407
if the hearing on a contention is expected to take no more than 2 days to complete, the Board can impose the Subpart N procedures for expedited proceedings with oral hearings; LBP-09-10, 70 NRC 145 n.85 (2009)
- 10 C.F.R. 2.1402(b)
selection of hearing procedures for contentions at the outset of a proceeding is not immutable because the availability of Subpart G procedures depends critically on whether the credibility of eyewitnesses is important in resolving a contention, and witnesses relevant to each contention are not identified until after contentions are admitted; LBP-09-10, 70 NRC 147 n.88 (2009); LBP-10-15, 72 NRC 345 n.99 (2010); LBP-10-16, 72 NRC 443 n.471 (2010)
- 10 C.F.R. Part 2, Appendix A, § I.a (2004)
although Appendix A was rescinded, the licensing board may still rely on it as an authoritative expression of the Commission’s policy; LBP-07-9, 65 NRC 554 n.23 (2007)
- 10 C.F.R. Part 2, Appendix B
late-filed contentions based on the Safety Evaluation Report and any necessary National Environmental Policy Act document should be filed within 30 days of the issuance of those documents; LBP-09-27, 70 NRC 1003 (2009)
- 10 C.F.R. Part 2, Appendix B, § II
a board’s conduct of a single hearing following completion of the NRC Staff’s environmental analysis is an approach fully consistent with NRC Model Milestones for informal hearings; CLI-06-18, 64 NRC 6 (2006)
initial scheduling order is to be issued within 55 days of board decision granting intervention and admitting contentions; LBP-09-22, 70 NRC 641 (2009)
- 10 C.F.R. Part 2, Appendix D
even after DOE tenders the license application, it must continue to supplement its documentary material, and discovery will continue for approximately 2 more years; LBP-08-1, 67 NRC 50 (2008)
hearing schedule milestones have been modified for the high-level-waste proceeding; CLI-08-25, 68 NRC 499 (2008)
modifications to the schedule for a hearing on the construction authorization application for a geologic repository at Yucca Mountain, currently codified in this Appendix, are proposed; CLI-08-18, 68 NRC 247 (2008)
- 10 C.F.R. Part 9, Subpart A
the scope of a board’s review of Staff’s denial of access to SUNSI does not extend to whether the information sought by the requesters is properly characterized as SUNSI; LBP-09-5, 69 NRC 310 n.5 (2009)
- 10 C.F.R. 9.15
NRC implements and repeats the FOIA obligation that, with nine enumerated exceptions, each agency make copies of all records available to the public; LBP-10-2, 71 NRC 197 (2010)

LEGAL CITATIONS INDEX
REGULATIONS

- 10 C.F.R. 9.19
even if a document contains information that is exempt from disclosure, FOIA mandates that any reasonably segregable portion of the record shall be provided to any person requesting such record after deletion of the portions that are exempt; LBP-10-2, 71 NRC 198 (2010)
- 10 C.F.R. 19.18
NRC may not disqualify attorneys representing multiple witnesses, unless it has concrete evidence that the attorney will obstruct and impede the investigation; CLI-08-11, 67 NRC 385 (2008)
- 10 C.F.R. Part 20
although additional reactors on a site might raise the TEDE to members of the public, total exposures to the public are capped; CLI-07-27, 66 NRC 252 (2007)
NRC expanded its definition of "background radiation," to include various anthropogenic sources as well as NORM, and to expressly exclude NRC-regulated sources; CLI-06-14, 63 NRC 517 (2006)
petitioner alleges that routine unprotected handling of an unshielded neutron source by licensed operators and uncontrolled access by untrained and unlicensed facility visitors to this neutron source violated ALARA requirements; DD-10-3, 72 NRC 175, 180, 182-83 (2010); DD-10-3, 72 NRC 171 (2010)
the consistency of the generic guidance in NUREG-1757 that applies the requirements governing restricted release with the text and intent of the regulations is discussed; CLI-09-1, 69 NRC 6 (2009)
until decommissioning is completed, a licensee must limit actions to those related to decommissioning and control access to restricted areas until they are suitable for release; CLI-09-1, 69 NRC 6 (2009)
whether a site is suitable for unrestricted or restricted release, the license is terminated upon the completion of decommissioning; CLI-09-1, 69 NRC 7 (2009)
- 10 C.F.R. 20.201(b)
each licensee must evaluate the extent of radiation hazards that may be present; DD-10-3, 72 NRC 180, 181 (2010)
- 10 C.F.R. 20.1002
the long-established regulatory history and precedent of Part 20 are extended to Part 63; LBP-10-22, 72 NRC 670 n.24 (2010)
- 10 C.F.R. 20.1003
ALARA is defined as every reasonable effort to maintain exposures to radiation as far below the dose limits in Part 20 as is practical consistent with the purpose for which the licensed activity is undertaken; CLI-09-14, 69 NRC 595 n.88 (2009); CLI-10-8, 71 NRC 156 (2010)
all source and byproduct materials, whether regulated by the Commission or not, should be excluded from background radiation and hence included in the total effective dose equivalent calculation; LBP-06-1, 63 NRC 51 (2006)
background radiation does not include radiation from source, byproduct, or special nuclear materials regulated by the Commission; CLI-06-14, 63 NRC 517 (2006)
"background radiation" is radiation from cosmic sources, naturally occurring radioactive material, including radon (except as a decay product of source or special nuclear material), and global fallout from the testing of nuclear explosive devices or from past nuclear accidents such as Chernobyl that contribute to background radiation and are not under the control of the licensee; LBP-06-1, 63 NRC 66, 69 n.28 (2006)
because surface spoilage is not byproduct material, its radiological emissions need not be excluded from background radiation; LBP-06-1, 63 NRC 65 (2006)
because the regulatory words "source, byproduct, [and] special nuclear materials" are followed by a clause that is applicable as much to the first and other words as to the last, the natural construction of the language demands that the clause be read as applicable to all; LBP-06-1, 63 NRC 58 (2006)
"byproduct material" is defined as the tailings or wastes produced by the extraction or concentration of uranium or thorium from ore processed primarily for its source material content; LBP-06-1, 63 NRC 64 (2006)
EPA has established radiation exposure standards under 40 C.F.R. Part 190, the applicability of which the Commission has acknowledged; LBP-09-19, 70 NRC 473 (2009)
in the context of radiation protection, ALARA means making every reasonable effort to maintain exposure to radiation as far below the dose limits set out in Part 20 as is possible, consistent with the licensed activity that is undertaken; LBP-07-6, 65 NRC 469 n.187 (2007)

LEGAL CITATIONS INDEX
REGULATIONS

- “member of the public” is any individual except when that individual is receiving an occupational dose; LBP-10-22, 72 NRC 670 n.24 (2010)
- “occupational dose” is defined; LBP-10-22, 72 NRC 670 n.24 (2010)
- radiation from surface spoilage is not excluded from background radiation; LBP-06-1, 63 NRC 54, 55, 58 n.14, 63, 69 (2006)
- “source material” is defined as uranium or thorium or any combination of the two in any physical or chemical form, or ores that contain, by weight, 0.05%, or more, of uranium, thorium, or any combination of uranium and thorium; LBP-06-1, 63 NRC 62 (2006)
- source material includes ores containing uranium or thorium in concentrations that the Commission determines to be significant; CLI-06-14, 63 NRC 517 n.38 (2006)
- special nuclear material includes plutonium, uranium-233, and enriched uranium; LBP-06-1, 63 NRC 56 n.12 (2006)
- surface spoilage is TENORM that emits background radiation, which is excluded from the TEDE calculation; LBP-06-1, 63 NRC 69 (2006)
- surface spoilage that contains uranium in any physical falls within the first definitional category of source material; LBP-06-1, 63 NRC 62 (2006)
- the ALARA obligation is defined; LBP-10-22, 72 NRC 669 n.21 (2010)
- the definition of “background radiation” does not require that radiation from surface spoil be excluded; CLI-06-7, 63 NRC 165 (2006)
- “total effective dose equivalent” is defined as the sum of the deep-dose equivalent (for external exposures) and the committed effective dose equivalent (for internal exposures); LBP-06-1, 63 NRC 50 n.4 (2006); LBP-06-19, 64 NRC 68 n.10 (2006); LBP-08-4, 67 NRC 126 n.143 (2008)
- 10 C.F.R. 20.1101
- if a COL or CP applicant chooses to pursue a new reactor design before the Commission has set specific standards applicable to that type of reactor, then the applicant will be required to demonstrate that its emissions will be ALARA pursuant to this section; CLI-07-27, 66 NRC 254 (2007)
- the elements of an acceptable ALARA program are discussed; LBP-07-6, 65 NRC 469 (2007)
- the occupational radiation protection measures that a uranium enrichment facility must address are discussed; LBP-07-6, 65 NRC 467 (2007)
- 10 C.F.R. 20.1101(b)
- applicant must have a program to achieve occupational doses and doses to members of the public that are as low as is reasonably achievable; LBP-10-20, 72 NRC 598 (2010)
- contention challenges an element of repository design that does not fall within the ambit of the required procedures and engineering controls of this section; LBP-10-22, 72 NRC 670 (2010)
- in the context of radiation protection, ALARA means making every reasonable effort to maintain exposure to radiation as far below the dose limits set out in Part 20 as is possible, consistent with the licensed activity that is undertaken; LBP-07-6, 65 NRC 469 (2007)
- licensees must use, to the extent practical, procedures and engineering controls based upon sound radiation protection principles to achieve occupational doses that are as low as reasonably achievable; CLI-09-14, 69 NRC 598 n.107 (2009); CLI-09-16, 70 NRC 37 (2009); LBP-10-22, 72 NRC 669 (2010)
- Part 63 licensee is required to use, to the extent practical, procedures and engineering controls based upon sound radiation protection principles to achieve occupational doses and doses to members of the public that are as low as is reasonably achievable; LBP-10-22, 72 NRC 669 (2010)
- plans or procedures are valid means by which radiation exposure may be controlled; LBP-10-20, 72 NRC 611 (2010)
- the purpose of the procedures and engineer controls in this section is to ensure ALARA occupational doses and doses to members of the public; LBP-10-22, 72 NRC 670 n.24 (2010)
- this section does not exist in isolation, but must be read in context; LBP-10-22, 72 NRC 671 (2010)
- 10 C.F.R. 20.1201
- dose limits are established for safe levels of exposure from normal operation of a nuclear power plant to both workers and members of the public; LBP-09-16, 70 NRC 284 (2009)
- 10 C.F.R. 20.1201(a)(1)
- NRC’s occupational dose limits for adults includes as one dose limit the total effective dose equivalent to 5 rems; CLI-08-1, 67 NRC 29 n.120 (2008)

LEGAL CITATIONS INDEX
REGULATIONS

- 10 C.F.R. 20.1201(a)(1)(i)
the total effective dose equivalent for adult occupational exposures is set at 5 rem; CLI-08-26, 68 NRC 517 n.45, 526 (2008)
- 10 C.F.R. 20.1201-20.1208
upper limitations on occupational doses are specified; CLI-09-16, 70 NRC 37 (2009)
- 10 C.F.R. 20.1201-20.1302
numerical limits for radiation exposure, including occupational dose limits and radiation dose limits for members of the public, are provided; LBP-09-19, 70 NRC 473 (2009)
- 10 C.F.R. Part 20, Subpart D
it is unclear how the various standards interact at multireactor sites, given that the standards are expressed in terms of different entities; CLI-07-27, 66 NRC 250 (2007)
- 10 C.F.R. 20.1301
because regulatory exposure limits are determined by concentration, one can reasonably conclude that potential doses due to the presence of depleted uranium from M101 spotting rounds are expected to be much less than general public exposure limits; LBP-10-4, 71 NRC 231 (2010)
challenges to dose limits in NRC regulations are not appropriate for admission under section 2.335(a); LBP-08-6, 67 NRC 321 (2008)
dose limits are established for safe levels of exposure from normal operation of a nuclear power plant to both workers and members of the public; LBP-09-16, 70 NRC 284 (2009)
each licensee and each licensed operation must comply with the annual dose limit of 100 mrem to members of the public and an effluent concentration limit specified in 10 C.F.R. Part 20, Appendix B, Table 2; LBP-07-9, 65 NRC 584 (2007)
- 10 C.F.R. 20.1301(a)
all licensees shall conduct operations so that the total effective dose equivalent to individual members of the public from the licensed operation will not exceed 0.1 rem (100 mrem) in a year; CLI-07-27, 66 NRC 250 (2007)
it is unclear how the various standards interact at multireactor sites, given that the standards are expressed in terms of different entities; CLI-07-27, 66 NRC 250 (2007)
- 10 C.F.R. 20.1301(a)(1)
a maximum dose from direct radiation that is conservatively estimated at 0.17 mrem is far below the 100-mrem annual dose limit permitted for members of the public; LBP-08-9, 67 NRC 446 n.143 (2008)
annual radiation exposure to the general public from in situ uranium mining operations must not exceed 0.1 rem; LBP-06-1, 63 NRC 46, 51, 55-56, 65 (2006)
applicant shall conduct operations so that the total effective dose equivalent to individual members of the public does not exceed 100 millirems per year; LBP-10-20, 72 NRC 598 (2010)
each licensee must conduct operations so that a member of the public does not receive a dose exceeding 0.1 rem in a year exclusive of the dose contributions from background radiation; CLI-06-14, 63 NRC 512 (2006)
if a COL or CP applicant chooses to pursue a new reactor design before the Commission has set specific standards applicable to that type of reactor, then the applicant will be subject to the existing requirement of this section; CLI-07-27, 66 NRC 253-54 (2007)
it is unclear how the various standards interact at multireactor sites, given that the standards are expressed in terms of different entities; CLI-07-27, 66 NRC 250 (2007)
licensed operations that will result in a TEDE to members of the public in excess of 0.1 rem per year are proscribed; LBP-06-19, 64 NRC 68 n.10, 72 n.16 (2006)
natural surface soils containing trace amounts of uranium and/or thorium constitute background radiation that is excluded from the total effective dose equivalent calculation; LBP-06-1, 63 NRC 53, 59, 69 (2006)
radiological air emissions caused by in situ leach mining operations should be included in the total effective dose equivalent calculation because they constitute a radiological emission from the licensed operation; LBP-06-1, 63 NRC 53 (2006)
some of NRC's radiation standards for members of the public apply on a per-license basis; LBP-07-9, 65 NRC 623 (2007)
surface spoilage is naturally occurring radioactive material whose emissions are background radiation that are excluded from the total effective dose equivalent calculation; LBP-06-1, 63 NRC 54, 68 (2006)

LEGAL CITATIONS INDEX
REGULATIONS

- the TEDE calculation is tied to radiation from licensed operations, and it expressly excludes preexisting background radiation; LBP-06-19, 64 NRC 69 (2006)
- the total effective dose equivalent calculation is tied to radiation from licensed operations, and it expressly excludes preexisting background radiation; CLI-06-14, 63 NRC 516 (2006); LBP-06-1, 63 NRC 50, 53, 54, 56 (2006)
- 10 C.F.R. 20.1301(e)
- applicant shall provide reasonable assurance that the annual dose equivalent to members of the public from planned discharges does not exceed 25 millirems to the whole body; LBP-10-20, 72 NRC 598 (2010)
- dose is considered to be a cumulative dose for all operations at a given site; CLI-07-27, 66 NRC 254 (2007)
- EPA's environmental radiation protection standard found in 40 C.F.R. 190.10, which imposes a stricter limit of 0.025 rem to any member of the public resulting from planned releases of radioactive effluents, is incorporated by reference; CLI-07-27, 66 NRC 250 (2007)
- gas-cooled nuclear power reactors are not subject to the stricter 25-mrem per-site limit; CLI-07-27, 66 NRC 251 (2007)
- licensees subject to the provisions of EPA's generally applicable environmental radiation standards in 40 C.F.R. Part 190 shall comply with those standards; LBP-09-19, 70 NRC 474 (2009)
- some radiation standards that NRC uses for members of the public appear to apply on a per-site basis; LBP-07-9, 65 NRC 623 (2007)
- this is the limiting standard, because a licensee within the uranium fuel cycle could not release the 100-mrem limit permitted by section 20.1301(a) without necessarily violating the 25-mrem limit of section 20.1301(e) that applies to the entire site; CLI-07-27, 66 NRC 251 (2007)
- this provision is neither reactor- nor site-specific, and applies to doses resulting from exposures to planned discharges of radioactive materials, except radon and its daughters, to the general environment from uranium fuel cycle operations; LBP-07-9, 65 NRC 584 (2007)
- this regulation applies only to light water reactors; CLI-07-27, 66 NRC 251 (2007)
- where a site contains uranium fuel cycle facilities, the TEDE is limited to 25 mrem per year; CLI-07-27, 66 NRC 252-53 (2007)
- 10 C.F.R. 20.1301-20.1302
- dose limits for individual members of the public are specified; CLI-09-16, 70 NRC 37 (2009)
- 10 C.F.R. 20.1302
- a substantial regulatory framework governs release limits on radioactive gases and requires calculations or measurements of radioactive releases; CLI-08-17, 68 NRC 243 n.70 (2008)
- each licensee and each licensed operation must comply with the annual dose limit of 100 mrem to members of the public and an effluent concentration limit specified in 10 C.F.R. Part 20, Appendix B, Table 2; LBP-07-9, 65 NRC 584 (2007)
- licensee's efforts to maintain compliance with dose limits for individual members of the public in light of radiological effluent release from a cracked spent fuel pool are described; DD-08-2, 68 NRC 346 (2008)
- 10 C.F.R. 20.1401(c)
- after completion of decommissioning, neither licensee nor the NRC retains any continuing obligation or jurisdiction, respectively, with respect to a site, unless new information shows that the Part 20 criteria were not met and the residual radioactivity remaining on the site could result in a significant threat to public health and safety; CLI-09-1, 69 NRC 7 (2009)
- 10 C.F.R. 20.1401(d)
- dose calculation period is provided; CLI-10-8, 71 NRC 158 (2010)
- 10 C.F.R. 20.1402
- dose limits for a site to be considered acceptable for unrestricted use are specified; CLI-10-8, 71 NRC 156 n.71 (2010); LBP-10-4, 71 NRC 231 (2010)
- 10 C.F.R. 20.1403
- a decommissioning plan for a restricted release site will be judged exclusively upon whether residual radioactivity levels will be as low as is reasonably achievable and the total effective dose equivalent to offsite human beings will be below 25 mrem; LBP-08-4, 67 NRC 115, 135, 143, 145 (2008)
- a site will be considered for restricted release if further reductions in residual radioactivity necessary to comply with the provisions of section 20.1402 would result in net public or environmental harm or

LEGAL CITATIONS INDEX
REGULATIONS

- need not be made because residual levels associated with the restricted conditions are as low as reasonably achievable; CLI-09-1, 69 NRC 6, 8 (2009)
- licensee ultimately must be able, with the aid of the site characterization submitted with its decommissioning plan, to establish that it will meet the requirements for restricted release; LBP-08-4, 67 NRC 132 (2008)
- restricted release criteria are provided; CLI-10-8, 71 NRC 158 (2010)
- the field sampling plan's analysis of waterways is intended to identify groundwater, possible cave, and surface water paths and to assess the contents of those waters to determine if depleted uranium is leaching or will leach off the site in quantities significant enough that humans might receive more than 25 mrems of total radioactive exposure from all of the site's pathways; LBP-08-4, 67 NRC 135 (2008)
- the groundwater, surface, and subsurface water monitoring program must assess whether depleted uranium will reach offsite humans through drinking water or the consumption of animals or plants that have in turn consumed water from the site in quantities significant enough that those offsite humans might receive more than 25 mrems of total radioactive exposure from all pathways per year; LBP-08-4, 67 NRC 143 (2008)
- there are no requirements for the decommissioning plan regarding chemical toxicity, the general harm that unexploded ordnance might pose, or even ecological contamination, except as these issues affect radioactivity levels and exposure to humans; LBP-08-4, 67 NRC 115, 125, 145 (2008)
- there is no requirement that the field sampling plan describe the collection of information needed for the decommissioning plan's environmental assessment or environmental impact statement; LBP-08-4, 67 NRC 125 (2008)
- 10 C.F.R. 20.1403(a)
- the unavailability of funding for decommissioning adequate to achieve unrestricted release of a site is not one of the conditions specified in this section; CLI-09-1, 69 NRC 9 (2009)
- 10 C.F.R. 20.1403(b)
- licensee has made provisions for legally enforceable institutional controls that provide reasonable assurance that the total effective dose equivalent from residual radioactivity distinguishable from background to the average member of the critical group will not exceed 25 mrem per year; LBP-08-4, 67 NRC 127 n.145 (2008)
- the regulatory limit of 25 mrem per year represents the value for the total effective dose equivalent; LBP-08-4, 67 NRC 126 n.143 (2008)
- 10 C.F.R. 20.1404
- a license is terminated even if the licensee decommissions the site in accordance with alternative decommissioning criteria pursuant to this section; CLI-09-1, 69 NRC 8 (2009)
- 10 C.F.R. Part 20, Subpart F
- each licensee must evaluate the extent of radiation hazards that may be present; DD-10-3, 72 NRC 180 (2010); DD-10-3, 72 NRC 171 (2010)
- 10 C.F.R. 20.1501
- licensee's actions to survey an abnormal radiological effluent release affecting groundwater conform to regulatory requirements; DD-08-2, 68 NRC 345-36 (2008)
- 10 C.F.R. 20.1601(a)
- use of conspicuously posted signs, in conjunction with the applicant's radiation work permit program, is an acceptable alternative; LBP-07-6, 65 NRC 469 (2007)
- 10 C.F.R. 20.1801
- licensee's onsite low-level radioactive waste storage facility must comply with requirements for security, occupational and public dose limits, and survey and monitoring, labeling, and reports and record retention; CLI-09-16, 70 NRC 37 n.20 (2009)
- 10 C.F.R. 20.1904
- a request for an exemption from radiation labeling requirements is approved; LBP-07-6, 65 NRC 467 (2007)
- 10 C.F.R. 20.1905(c)
- containers are exempted from labeling requirements if they are attended by an individual who takes the precautions necessary to prevent the exposure of individuals in excess of the established limits; LBP-07-6, 65 NRC 468 (2007)

LEGAL CITATIONS INDEX
REGULATIONS

- 10 C.F.R. 20.2001
a power reactor licensee could transfer low-level radioactive waste to another licensee that is licensed to accept and treat waste prior to disposal; LBP-09-4, 69 NRC 227 (2009)
- 10 C.F.R. 20.2002
applicant seeks an exemption from the disposal site requirements of 10 C.F.R. 30.3 and 70.3 to allow disposal of low-activity radioactive waste from the Hematite facility at a site near Grand View, Idaho, that is not licensed by the NRC; LBP-09-28, 70 NRC 1022 (2009)
- 10 C.F.R. 20.2003
fluids that meet the concentration limits and other requirements can be pumped to the sanitary sewer system; LBP-07-6, 65 NRC 480 (2007)
- 10 C.F.R. 20.2202, 20.2206(b)
recordkeeping and reporting commitments for occupational exposure to radiation exceeding the dose limits are described; LBP-07-6, 65 NRC 470 (2007)
- 10 C.F.R. Part 20, Appendix B, tbl. 2
if chelating agents are to be comingled in radioactive waste liquids or used to mitigate an accidental release, then they have to be specifically accounted for in the dose analyses; LBP-09-19, 70 NRC 545 (2009)
- 10 C.F.R. 30.4
a "curie" is the amount of radioactive material that disintegrates at the rate of 37 billion atoms per second; LBP-07-9, 65 NRC 579 n.63 (2007)
byproduct material is defined; LBP-10-16, 72 NRC 376 n.6 (2010)
- 10 C.F.R. 30.9
information submitted to an NRC inspector that is not complete and accurate in all material respects is a violation; LBP-09-12, 70 NRC 162-63 (2009)
- 10 C.F.R. 30.10
information submitted to an NRC inspector that is not complete and accurate in all material respects is a violation; LBP-09-12, 70 NRC 163 (2009)
- 10 C.F.R. 30.32
a license application must include information demonstrating that the equipment, facilities, and procedures to be used at the proposed facility are adequate to protect health and minimize danger to life and property; LBP-07-6, 65 NRC 439 (2007)
- 10 C.F.R. 30.33
in conducting their sufficiency review of safety matters, boards must determine whether the application and the record of the proceeding contain sufficient information, and the review of the application by the NRC Staff has been adequate, to support the required findings; LBP-07-6, 65 NRC 437 (2007)
- 10 C.F.R. 30.33(a)(2)
applicant's proposed equipment and facilities must be adequate to protect health and minimize danger to life or property; CLI-08-3, 67 NRC 161 (2008)
by determining that the potential threats posed by aircraft crash and natural phenomena do not warrant a siting review, NRC already determined that such siting analyses typically should be unnecessary for an applicant to show that its irradiator facility is adequately protective; CLI-08-3, 67 NRC 166-67 (2008)
if, in response to a petitioner's admitted safety contentions, applicant cannot demonstrate that the proposed facility is adequate to protect health and minimize danger to life or property, then NRC Staff would need to conduct additional analysis or require additional analysis by applicant; CLI-08-3, 67 NRC 169-70 (2008)
petitioner cannot, without more, merely invoke this general regulation to claim that a siting analysis must be performed; CLI-08-3, 67 NRC 168 (2008)
Staff's safety review must support a conclusion that a proposed irradiator would protect health and minimize danger to life or property; CLI-08-3, 67 NRC 160 (2008)
the Commission responds to the board's question whether this regulation requires a safety analysis of the risks asserted to be endemic (i.e., aircraft crashes and natural phenomena) to a proposed irradiator site at an airport; CLI-08-3, 67 NRC 153, 160 (2008)
the lack of a regulatory prohibition against siting an irradiator at an airport does not affirmatively establish that any airport location satisfies the general requirement that an irradiator facility be adequate to protect health and minimize danger to life or property; LBP-06-12, 63 NRC 419 (2006)

LEGAL CITATIONS INDEX
REGULATIONS

- to be admissible, a contention calling for an irradiator siting analysis must conform to all the requirements of section 2.309(f)(1), including providing sufficient basis to show that a siting analysis is necessary to determine that the facility will be adequate to protect health and minimize danger to life or property; CLI-08-3, 67 NRC 170 (2008)
- whether a safety analysis of the risks asserted to be endemic should be performed for a proposed irradiator site at an airport is questioned; CLI-07-26, 66 NRC 110 (2007)
- 10 C.F.R. 30.35
applicant has the burden of proof to demonstrate the adequacy of its license application; LBP-06-15, 63 NRC 602 (2006)
- applicants for a license to possess and use byproduct material and source material in excess of certain quantities must submit a proposed decommissioning funding plan with the license application; LBP-06-15, 63 NRC 623 n.21 (2006)
- to fulfill the financial assurance/decommissioning funding plan requirements and relevant guidance in NUREG-1757, agency licensing of an enrichment facility should be based on the cost estimates that would be applicable under the plausible strategy associated with the U.S. Department of Energy providing dispositioning services; LBP-06-15, 63 NRC 603 (2006)
- 10 C.F.R. 30.38
licensee shall specify the respects in which it desires its license to be amended and the grounds for the amendment; CLI-07-15, 65 NRC 232 (2007)
- 10 C.F.R. Part 30, Appendix A
neither market capitalization nor share price are variables to be used in the financial test for decommissioning funding; LBP-09-4, 69 NRC 197 (2009); LBP-09-15, 70 NRC 207 (2009)
- 10 C.F.R. Part 36
a contention calling for a siting safety analysis is not barred by the regulatory scheme; CLI-08-3, 67 NRC 167 (2008)
- the lack of site selection criteria in this part is intentional; CLI-08-3, 67 NRC 163 (2008)
- these regulations are intended to provide a formal, detailed, comprehensive set of requirements for irradiator licensing; CLI-08-3, 67 NRC 161 (2008)
- 10 C.F.R. 36.1(a)
licensees must satisfy all applicable state and local siting, zoning, land use, and building code requirements; CLI-08-3, 67 NRC 165-66 (2008)
- 10 C.F.R. 36.1(b)
Part 36 rules clearly were developed to serve as a standardized set of rules for both panoramic and underwater irradiators; CLI-08-3, 67 NRC 164 (2008)
- 10 C.F.R. 36.2
in panoramic irradiators, the irradiations are done in air in areas potentially accessible to personnel; CLI-08-3, 67 NRC 161 (2008)
- in underwater irradiators, both sources always remain shielded under water and humans do not have access to the sealed sources or the space subject to irradiation without entering the pool; CLI-08-3, 67 NRC 161 (2008)
- 10 C.F.R. 36.13
this section incorporates into the Part 36 irradiator regulations the general requirement from section 30.33(a)(2) that a facility be adequate to protect health and minimize danger to life or property; CLI-08-3, 67 NRC 161 (2008)
- 10 C.F.R. 36.13(c)
in the license application, an outline is required that describes the operating and emergency procedures in broad terms that specifically state the radiation safety aspects of the procedures rather than to require the complete operating and emergency procedures; LBP-06-12, 63 NRC 414, 415 n.54 (2006)
- 10 C.F.R. 36.37
licensees must have and follow emergency or abnormal event procedures, appropriate for the irradiator type, for a prolonged loss of electrical power; LBP-06-12, 63 NRC 414 (2006)
- 10 C.F.R. 36.39
the regulatory history of the design requirements discusses a lack of siting prohibitions for a different kind of irradiator sited near airports and within tidal wave risk areas; LBP-06-4, 63 NRC 111 (2006)

LEGAL CITATIONS INDEX
REGULATIONS

- 10 C.F.R. 36.39(c)
a design-based challenge involving a postulated cask drop on a sealed source is within the scope of, and material to, an irradiator licensing proceeding; LBP-06-12, 63 NRC 408 (2006)
- 10 C.F.R. 36.39(j)
panoramic irradiators to be built in seismic areas must have concrete shielding meeting the seismic design requirements of appropriate industry or local building codes; CLI-08-3, 67 NRC 164 n.49 (2008)
there are seismic-related design requirements for panoramic irradiators located in seismic zones, but no specific seismic design requirements for underwater irradiators; CLI-08-3, 67 NRC 164 n.55 (2008)
- 10 C.F.R. 36.53(b)(6)
a contention asserting that applicant's irradiator license application fails to describe the emergency procedures for a prolonged loss of electricity is admissible; LBP-06-12, 63 NRC 413-14 (2006)
- 10 C.F.R. 36.53(b)(6) & (9)
licensees must have emergency or abnormal event procedures for various events, including a prolonged loss of electricity and natural phenomena, such as an earthquake, a tornado, or flooding; CLI-08-3, 67 NRC 155 (2008)
- 10 C.F.R. 36.53(b)(9)
licensees must have and follow emergency procedures for natural phenomena, including flooding, or other phenomena as appropriate for the geographical location of the facility; LBP-06-12, 63 NRC 417, 418 (2006)
- 10 C.F.R. 36.67(c)
licensees must have and follow emergency or abnormal event procedures, appropriate for the irradiator type, for a prolonged loss of electrical power; LBP-06-12, 63 NRC 414 (2006)
- 10 C.F.R. 40.3
a person subject to the regulations of Part 40 may not possess radioactive material or any source material unless authorized in a specific or general license issued by the Commission under the regulations of this part; LBP-08-6, 67 NRC 338 (2008)
- 10 C.F.R. 40.4
because pyrochlore contains more than 0.05 wt % uranium and thorium, it is subject to NRC regulation as a source material; CLI-10-8, 71 NRC 144 (2010); LBP-07-5, 65 NRC 344 (2007)
"byproduct material" is defined as the tailings or wastes produced by the extraction or concentration of uranium or thorium from ore processed primarily for its source material content; LBP-06-1, 63 NRC 64 (2006); LBP-10-16, 72 NRC 376 n.6 (2010)
"corporation" is defined; LBP-08-6, 67 NRC 338 n.550 (2008); LBP-08-24, 68 NRC 751 n.340 (2008)
pyrochlore is subject to NRC regulation as a radioactive source material; LBP-08-8, 67 NRC 410-11 (2008)
"source material" is defined as uranium or thorium or any combination of the two in any physical or chemical form, or ores that contain, by weight, 0.05%, or more, of uranium, thorium, or any combination of uranium and thorium; LBP-06-1, 63 NRC 62 (2006); LBP-10-16, 72 NRC 376 n.6 (2010)
surface spoilage that contains uranium in any physical form falls within the first definitional category of source material; LBP-06-1, 63 NRC 62 (2006)
"unrefined and unprocessed ore" is defined as ore in its natural form prior to any processing, such as grinding, roasting or beneficiating, or refining; CLI-06-14, 63 NRC 512 (2006); LBP-06-1, 63 NRC 55 n.10, 62 (2006)
- 10 C.F.R. 40.6
except as specifically authorized by the Commission in writing, no interpretation of the meaning of the regulations in this part by any officer or employee of the Commission other than a written interpretation by the General Counsel will be recognized to be binding upon the Commission; LBP-08-6, 67 NRC 338 n.551 (2008)
- 10 C.F.R. 40.9
a claim of inadequacy in the organization of the application cannot be the basis for a contention; LBP-10-16, 72 NRC 410 (2010)
applicants must provide complete and accurate information, in recognition of NRC's need to receive complete, accurate, and timely communications from its applicants, which, in turn, enables NRC to to

LEGAL CITATIONS INDEX

REGULATIONS

- ensure that utilization of radioactive material is consistent with the health and safety of the public and the common defense and security; LBP-08-24, 68 NRC 745 (2008)
- violation of this section is subject to civil penalties and sanctions through an enforcement proceeding, but that does not mean that it is necessarily beyond consideration in a license proceeding; LBP-08-24, 68 NRC 745 (2008)
- 10 C.F.R. 40.9(a)
- information provided to NRC by applicant or licensee must be complete and accurate in all material respects; CLI-09-9, 69 NRC 359 n.146 (2009); LBP-09-1, 69 NRC 32 (2009)
- reliability of scientific evidence is verified by assessing whether the reasoning or methodology underlying the evidence is scientifically valid; LBP-08-24, 68 NRC 739 n.267 (2008)
- 10 C.F.R. 40.13
- licensing is unnecessary for unimportant quantities of source material; LBP-06-1, 63 NRC 62 (2006)
- 10 C.F.R. 40.13(a)
- a license is not required for the possession of ore in which the source material is less than 0.05% of the ore by weight; LBP-06-1, 63 NRC 62 (2006)
- 10 C.F.R. 40.13(b)
- a person is exempt from Part 40 licensing requirements to the extent that such person receives, possesses, uses, or transfers unrefined and unprocessed ore containing source material; LBP-06-1, 63 NRC 62 (2006)
- licensee's bare ownership of land containing radioactive mine spoil is not part of its NRC-licensed operation, and because licensee did not bring the material to the surface, it is not required to have an NRC license to possess source material in the form of unprocessed ore (so long as it does not process that ore); CLI-06-14, 63 NRC 516 (2006)
- mining spoil is not regulated by the Commission because Part 40 regulations exempt from regulations unimportant quantities of source material and because the spoil is unrefined and unprocessed ore; CLI-06-14, 63 NRC 518 (2006)
- "unrefined and unprocessed ore" is defined as ore in its natural form prior to any processing, such as grinding, roasting or beneficiating, or refining; LBP-06-1, 63 NRC 62 (2006)
- 10 C.F.R. 40.14
- an exemption can be granted if it is authorized by law and will not endanger life or property or the common defense and security, and is otherwise in the public interest; LBP-07-6, 65 NRC 445 (2007)
- an exemption from liability insurance requirements may be granted if NRC finds that the proposed exemption is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest; LBP-07-6, 65 NRC 463 (2007)
- because DOE has legal authority to indemnify a uranium enrichment facility licensee against claims arising from nuclear incidents, an exemption under the Commission's regulations is authorized by law; LBP-07-6, 65 NRC 464 (2007)
- 10 C.F.R. 40.31
- a license application must include information demonstrating that the equipment, facilities, and procedures to be used at the proposed facility are adequate to protect health and minimize danger to life and property; LBP-07-6, 65 NRC 439 (2007)
- 10 C.F.R. 40.31(h)
- this section applies to uranium mills, not to in situ leach facilities; LBP-10-16, 72 NRC 434 (2010)
- 10 C.F.R. 40.31(l)
- a license application that seeks authorization to use source material or SNM in a uranium enrichment facility must include the applicant's provisions for liability insurance; LBP-07-6, 65 NRC 462 (2007)
- 10 C.F.R. 40.32
- an affirmative finding by the Commission that issuance of a license for a uranium enrichment facility will not be inimical to the common defense and security is required; CLI-09-15, 70 NRC 19 (2009)
- in conducting their sufficiency review of safety matters, boards must determine whether the application and the record of the proceeding contain sufficient information, and the review of the application by the NRC Staff has been adequate, to support the required findings; LBP-07-6, 65 NRC 437 (2007)
- this section concerns the requirements for issuance of a license relating to source material; LBP-09-1, 69 NRC 29 (2009)

LEGAL CITATIONS INDEX
REGULATIONS

- 10 C.F.R. 40.32(d)
issues relating to threats to public health and safety and potential impacts on the environment arising out of water quality issues are within the scope of a license amendment proceeding; LBP-08-6, 67 NRC 320 (2008)
materials license regulations contain no express prohibition against foreign ownership, but require NRC Staff to make a finding that issuance of the license will not be inimical to the common defense and security; CLI-09-9, 69 NRC 360 (2009); CLI-09-12, 69 NRC 571 (2009); LBP-09-1, 69 NRC 29 n.72 (2009)
NRC Staff is required to consider whether renewing a license would be inimical to the common defense and security or the public health and safety; LBP-08-24, 68 NRC 747 (2008)
- 10 C.F.R. 40.32(e)
preconstruction monitoring and testing to establish background information is exempted from the prohibition on commencement of construction; LBP-10-16, 72 NRC 424 (2010)
- 10 C.F.R. 40.36
applicant has the burden of proof to demonstrate the adequacy of its license application; LBP-06-15, 63 NRC 602 (2006)
applicant must submit a decommissioning funding plan for its proposed facility; LBP-07-6, 65 NRC 449 (2007)
applicants for a license to possess and use byproduct material and source material in excess of certain quantities must submit a proposed decommissioning funding plan with the license application; LBP-06-15, 63 NRC 623 n.21 (2006)
to fulfill the financial assurance/decommissioning funding plan requirements and relevant guidance in NUREG-1757, agency licensing of an enrichment facility should be based on cost estimates that would be applicable under the plausible strategy associated with the U.S. Department of Energy providing dispositioning services; LBP-06-15, 63 NRC 603 (2006)
- 10 C.F.R. 40.36(d)
without an exemption, applicant is required to fully fund all of its estimated decommissioning costs at the time of licensing; LBP-07-6, 65 NRC 450 (2007)
- 10 C.F.R. 40.36(d) & (e)
prior to submitting a decommissioning plan, licensees must maintain funding assurances for decommissioning and periodically provide cost estimates for the decommissioning activities; LBP-06-27, 64 NRC 454 (2006)
- 10 C.F.R. 40.36(e)(4)
federal, state, or local government licensees must submit a statement of intent containing a cost estimate for decommissioning and an indication that funds for decommissioning will be obtained when necessary; LBP-06-27, 64 NRC 452 (2006)
- 10 C.F.R. 40.36(e)(5)
when a government entity is assuming custody and ownership of a site, the method for providing financial assurance for decommissioning is an arrangement that is deemed acceptable by such governmental entity; LBP-06-6, 63 NRC 179 (2006)
- 10 C.F.R. 40.38
neither a uranium enrichment facility nor a nuclear power plant may be owned, controlled, or dominated by a foreign entity; CLI-09-9, 69 NRC 359-360 n.151 (2009); LBP-08-24, 68 NRC 751 n.340 (2008)
the foreign ownership provisions of this section do not apply to in situ leach recovery licensees; CLI-09-12, 69 NRC 568 n.146 (2009)
the only corporation subject to the foreign ownership prohibitions of this section is the United States Enrichment Corporation; LBP-08-6, 67 NRC 338 (2008)
this section was promulgated to implement the USEC Privatization Act which amended the Atomic Energy Act of 1954, and applies exclusively to uranium enrichment facilities; LBP-09-1, 69 NRC 29 n.71 (2009)
- 10 C.F.R. 40.38(a)
a source material license may not be issued to a corporation if the Commission determines that the corporation is owned, controlled, or dominated by a foreign corporation; LBP-08-6, 67 NRC 337 (2008)

LEGAL CITATIONS INDEX
REGULATIONS

- 10 C.F.R. 40.42
consistency of the generic guidance in NUREG-1757 that applies the requirements governing license termination with the text and intent of the regulations is discussed; CLI-09-1, 69 NRC 6 (2009)
substantial delay in both submittal and approval of a decommissioning plan might involve a violation; LBP-08-8, 67 NRC 413 (2008)
the purpose of this rule is to reduce the potential risk to public health and the environment from radioactive material remaining for long periods of time at materials facilities after licensed activities have ceased; CLI-09-1, 69 NRC 8 (2009)
- 10 C.F.R. 40.42(a)(1)
when a renewal application is timely filed, the license is automatically extended by operation of law until final agency action is taken on the renewal request; LBP-09-13, 70 NRC 174 (2009)
- 10 C.F.R. 40.42(c)
with respect to possession, a Part 40 license continues in effect after expiration until decommissioning is completed; CLI-09-1, 69 NRC 6 (2009)
- 10 C.F.R. 40.42(d)
licensee must provide written notification to NRC Staff within 60 days and either begin decommissioning of the site or submit a decommissioning plan to the Staff within 12 months of the notification; LBP-08-8, 67 NRC 417 (2008)
this section is written in terms of releasing buildings or areas in accordance with NRC criteria; CLI-09-1, 69 NRC 9 (2009)
under certain conditions, the Commission may approve an alternative schedule for the submittal of a decommissioning plan; LBP-06-6, 63 NRC 168 (2006)
when licensee permanently ceases site activities, it must notify NRC in writing of that development and, within 12 months thereof, submit a decommissioning plan; LBP-06-6, 63 NRC 167-68 (2006); LBP-08-4, 67 NRC 115 n.63 (2008)
- 10 C.F.R. 40.42(f)
issues of timeliness and financial assurance are not included within the scope of materials license amendment proceedings for approval of an alternate schedule for submitting a decommissioning plan; LBP-06-27, 64 NRC 453 n.37 (2006)
- 10 C.F.R. 40.42(g)(1)
licensees are required to submit decommissioning plans to the NRC if required by license condition or if the procedures and activities necessary to carry out decommissioning have not been previously approved by the Commission and these procedures could increase potential health and safety impacts to workers or to the public; LBP-06-6, 63 NRC 167 (2006)
- 10 C.F.R. 40.42(g)(2)
a licensing board may modify or condition a license amendment; LBP-07-7, 65 NRC 513 (2007)
an alternate schedule for submittal of a decommissioning plan should be approved if it is necessary to the effective conduct of decommissioning operations, presents no undue risk from radiation, and is otherwise in the public interest; LBP-08-4, 67 NRC 114, 115 n.68, 125, 148 (2008)
application for approval of an alternate schedule for the submission of a decommissioning plan for a site containing expended depleted uranium munitions is approved; LBP-08-4, 67 NRC 106 (2008)
approval of an alternate schedule for submission of a decommissioning plan hinges upon a demonstration that prosecution of the alternative schedule as proposed by the licensee is necessary to the effective conduct of decommissioning operations; LBP-08-4, 67 NRC 114 (2008)
if licensee perceives a difficulty in meeting the deadline for submission of a revised decommissioning plan, it may request an extension of time from the Agreement State; CLI-10-8, 71 NRC 153 n.56 (2010)
in a request for an alternative schedule for submittal of a decommissioning plan, licensee is not required to provide new cost estimates for either site characterization activities or eventual decommissioning; LBP-06-6, 63 NRC 181 (2006)
in its review of licensee's Health and Safety Plan for site decommissioning, the only health-related concern the Staff must evaluate is whether the alternate schedule will present undue risk from radiation to the public health and safety; LBP-06-27, 64 NRC 451 (2006)

LEGAL CITATIONS INDEX

REGULATIONS

- in performing its safety evaluation of licensee's alternate schedule proposal, NRC Staff reviews the proposed field sampling plan to determine whether it satisfied the three criteria governing the grant of an alternate schedule request; LBP-06-27, 64 NRC 443 (2006)
- proper aquifer characterization is necessary to the effective conduct of decommissioning operations; LBP-06-27, 64 NRC 450 (2006)
- the board finds that the biota sampling component of the field sampling plan is sufficient to meet the criteria for a 5-year alternate schedule for submission of a decommissioning plan; LBP-08-4, 67 NRC 125 (2008)
- the scope of a materials license amendment proceeding is limited to whether licensee's proposal for characterizing the site during the schedule period is necessary to the effective conduct of decommissioning operations, will present no undue risk from radiation to the public health and safety, and is otherwise in the public interest; LBP-06-27, 64 NRC 448 (2006)
- to be granted, a request for an alternative schedule for submittal of a decommissioning plan must satisfy three criteria; LBP-06-6, 63 NRC 167, 168, 172, 176, 180, 181, 182 n.21, 183-84 (2006)
- to be granted, a request for an alternative schedule for submittal of a decommissioning plan must present no undue risk from radiation to the public health and safety; LBP-06-6, 63 NRC 180 (2006)
- to be granted, an alternate schedule for submission of a decommissioning plan must be necessary to the effective conduct of decommissioning operations; LBP-07-7, 65 NRC 509, 510, 516 (2007)
- 10 C.F.R. 40.42(g)(4)
when licensee submits its decommissioning plan, it will be required at that time to include a time estimate for the completion of decommissioning operations; LBP-06-27, 64 NRC 454 (2006)
- 10 C.F.R. 40.42(g)(4)(v)
licensees must include in their decommissioning plan an updated detailed cost estimate for decommissioning, comparison of that estimate with present funds set aside for decommissioning, and a plan for assuring the availability of adequate funds for completion of decommissioning; LBP-06-27, 64 NRC 453 (2006)
- 10 C.F.R. 40.42(h)(1)
licensees are required to complete decommissioning of the site as soon as practicable but no later than 24 months following the initiation of decommissioning except where the Commission approves a request for an alternative schedule; LBP-06-6, 63 NRC 175 n.11 (2006)
- 10 C.F.R. 40.42(i)
the Commission may approve an alternative schedule for completion of decommissioning; LBP-06-6, 63 NRC 175 (2006)
- 10 C.F.R. 40.45
in a materials license amendment or renewal proceeding the criteria set forth in section 40.32 are to be applied in considering an application; LBP-09-1, 69 NRC 29 (2009)
- 10 C.F.R. Part 40, Appendix A
concerns raised by petitioners related to the applicant's foreign ownership are potentially material to the safety and environmental requirements; LBP-08-6, 67 NRC 335 (2008)
- 10 C.F.R. Part 40, Appendix A, Criterion 2
byproduct material from in situ extraction operations must be disposed of at existing large mill tailings disposal sites; LBP-10-16, 72 NRC 434 (2010)
- 10 C.F.R. Part 40, Appendix A, Criterion 9
a surety arrangement for decommissioning funding is necessary as a prerequisite to operating, not a prerequisite to licensing; LBP-06-19, 64 NRC 96 n.36 (2006); LBP-10-16, 72 NRC 430 (2010)
applicant is required to establish a surety arrangement that ensures sufficient funds will be available for decommissioning and decontamination of an NRC-licensed source materials site; LBP-08-24, 68 NRC 755 (2008); LBP-10-16, 72 NRC 430 (2010)
surety arrangements are matters appropriately addressed after issuance of the license, and even after completion of a hearing; LBP-10-16, 72 NRC 430 (2010)
- 10 C.F.R. 42.40(g)(4)
acceptance of a decommissioning plan is based upon its conformity to the 25-mrem standard; LBP-08-4, 67 NRC 116 (2008)

LEGAL CITATIONS INDEX
REGULATIONS

- 10 C.F.R. 42.40(g)(4)(i)
a decommissioning plan must include a description of the conditions of the site or separate building or outdoor area sufficient to evaluate the acceptability of the plan; LBP-08-4, 67 NRC 114, 116 (2008)
- 10 C.F.R. Part 50
licensee requests that operating licenses for both units be amended to change the associated technical specifications to implement uprated power operation; LBP-07-10, 66 NRC 12 (2007)
NRC regulations have long contemplated issuance of a license amendment notwithstanding the pendency of an adjudicatory hearing, provided that the Staff makes certain required findings; CLI-09-5, 69 NRC 122 n.29 (2009)
the effects of dewatering during construction on the existing structures is reviewed during the COL stage; LBP-07-1, 65 NRC 48 (2007)
to provide decommissioning funding assurance, applicant must submit with its application a decommissioning report and certification that provides assurances that decommissioning funds are available to decommission the facility; LBP-09-4, 69 NRC 198 (2009)
- 10 C.F.R. 50.2
“decommission” means to remove a facility or site safely from service and reduce residual radioactivity to a level that permits release of the property for unrestricted use and termination of the license or release of the property under restricted conditions and termination of the license; LBP-09-15, 70 NRC 206 n.9 (2009)
“safety-related structures, systems, and components” is an NRC term of art defined in this section; CLI-10-14, 71 NRC 455 n.21 (2010)
the definition of safety-related structures, systems, and components is rooted in functions specified in section 54.4(a)(1)-(3); CLI-10-14, 71 NRC 462 (2010)
the definition, origin, and derivation of source terms are discussed; LBP-07-9, 65 NRC 586 n.75 (2007)
- 10 C.F.R. 50.5
engaging in deliberate misconduct that caused inaccurate and incomplete information to be provided to NRC concerning conditions at a reactor resulted in debarment from licensed activities for 5 years; LBP-09-11, 70 NRC 156 (2009)
knowledge of a fact requires not only an awareness of that fact but also an understanding or recognition of its significance; CLI-10-23, 72 NRC 222 (2010)
making material false statements in a matter within the NRC’s jurisdiction is a violation; CLI-06-16, 63 NRC 714 (2006)
- 10 C.F.R. 50.5(a)(2)
careless disregard in the execution of one’s duties does not amount to deliberate misconduct or a violation; LBP-09-24, 70 NRC 707 (2009)
no employee of a licensee may deliberately submit to NRC information that employee knows to be incomplete or inaccurate in some respect material to the NRC; CLI-06-19, 64 NRC 10 (2006); CLI-07-6, 65 NRC 114 (2007); CLI-10-23, 72 NRC 214 (2010); LBP-06-13, 63 NRC 532 (2006); LBP-09-24, 70 NRC 687, 707, 810 (2009)
the sole issue is whether a person knew the information was materially incomplete and inaccurate at the time it was submitted to the NRC; CLI-10-23, 72 NRC 222 n.48 (2010)
to prevail in establishing that the accused’s actions constituted a violation, Staff must demonstrate by a preponderance of the evidence that the accused had actual knowledge of the information associated with his actions and that he deliberately acted contrary to that knowledge; LBP-09-24, 70 NRC 706 (2009)
- 10 C.F.R. 50.5(c)(1)
deliberate misconduct refers to an intentional act or omission that the person knows would cause a licensee to be in violation of any rule; LBP-09-24, 70 NRC 707 (2009)
- 10 C.F.R. 50.7(f)
although not required by this regulation, settlement agreements that contain language reinforcing employees’ rights to raise safety concerns and communicate with the NRC avoid the possibility of being construed in a way that could be a violation; DD-10-1, 72 NRC 158 (2010)
nondisparagement clauses in retention bonus agreements are common in employment agreements and NRC should not interfere with these agreements unless it finds such a clause violates this regulation or is applied in a fashion that prevents or retaliates against an employee for engaging in protected activities such as communicating with the NRC; DD-10-1, 72 NRC 158, 162 (2010)

LEGAL CITATIONS INDEX
REGULATIONS

- the purpose of this section is to ensure that licensees do not enter into employment agreements that would prohibit, restrict, or otherwise discourage an employee or former employee from providing the NRC with information of regulatory significance; DD-10-1, 72 NRC 158 (2010)
- 10 C.F.R. 50.9
failure to document a falsified work order is a violation; LBP-08-14, 68 NRC 283-84 (2008)
Staff should not abandon all reliance on a license renewal applicant's regulatory obligation to submit complete and accurate information; CLI-08-23, 68 NRC 479 (2008)
- 10 C.F.R. 50.9(a)
a licensee employee who contributes to submission of information to the NRC that the employee knows is not complete or accurate in some material respect places the licensee in violation; LBP-09-24, 70 NRC 687, 707 (2009)
information provided to the Commission by an applicant for a license or required to be maintained by the applicant or the licensee shall be complete and accurate in all material respects; LBP-08-14, 68 NRC 284 n.8 (2008)
materially incorrect responses to the NRC's communications are violations; CLI-10-23, 72 NRC 217 (2010)
- 10 C.F.R. 50.9(b)
if it discovers any significant corrosion on the drywell shell, licensee is required to notify NRC Staff and take immediate corrective action, consistent with its current licensing basis, to ensure the plant presents no undue risk of harm to public health and safety; LBP-07-17, 66 NRC 367 n.55 (2007)
- 10 C.F.R. 50.10
an early site permit applicant may request that a limited work authorization be issued in conjunction with the ESP; LBP-09-19, 70 NRC 456 (2009)
- 10 C.F.R. 50.10(a)(1)
construction activities allowed under a limited work authorization are discussed; LBP-09-19, 70 NRC 498 (2009)
- 10 C.F.R. 50.10(a)(2)
preconstruction activities that do not require NRC approval are discussed; LBP-09-19, 70 NRC 498 (2009)
- 10 C.F.R. 50.10(d)(1)
the holder of a limited work authorization is permitted to drive pilings, conduct subsurface preparations, place backfill, concrete, or permanent retaining walls within an excavation, and install the foundation; LBP-09-16, 70 NRC 292 (2009)
- 10 C.F.R. 50.10(d)(3)(i)
a limited work authorization applicant must submit, as part of the safety analysis report for the LWA, design information related to activities within the scope of the requested LWA; LBP-09-19, 70 NRC 549 (2009)
- 10 C.F.R. 50.10(d)(3)(iii)
a limited work authorization authorizes activities for which either a construction permit or combined license is otherwise required, but the LWA application must include a plan for site redress that provides for restoration if the project is cancelled, the LWA is revoked, or a construction permit or combined license is denied; LBP-09-19, 70 NRC 499 (2009)
- 10 C.F.R. 50.10(d)-(g)
applicant is authorized to perform certain site preparation activities that would otherwise only be permitted following the issuance of a Part 50 construction permit or a Part 52 combined license; LBP-09-19, 70 NRC 498 (2009)
- 10 C.F.R. 50.10(e)
if applicant includes a satisfactory site redress plan, an early site permit holder may conduct certain site preparation activities under a limited work authorization; LBP-07-9, 65 NRC 550 n.5, 606 (2007); LBP-08-15, 68 NRC 307 n.58 (2008)
- 10 C.F.R. 50.10(e)(1)
an early site permit applicant may choose to submit a plan for redress of the site, which, if accepted as part of an approved ESP, would allow an applicant to perform certain preconstruction activities at the site, without additional authorization; LBP-06-28, 64 NRC 469 (2006)

LEGAL CITATIONS INDEX
REGULATIONS

- 10 C.F.R. 50.10(e)(1)(ii)
boards are to determine whether the site redress plan will adequately redress the activities performed under a limited work authorization should the activities be terminated by either the holder of the LWA or by Commission denial of any corresponding early site permit or combined license; LBP-09-19, 70 NRC 459 (2009)
- 10 C.F.R. 50.10(e)(1)(iii)
board authority to make findings on limited work authorizations is discussed; LBP-09-19, 70 NRC 459 (2009)
- 10 C.F.R. 50.10(f)
any activities undertaken under a limited work authorization are entirely at the risk of the applicant; LBP-09-19, 70 NRC 557 n.33 (2009)
- 10 C.F.R. 50.12
applicant would be permitted to obtain exemptions based on information submitted in its application and NRC Staff may rely on its analysis of applicant's original, surrendered construction permit application; CLI-10-6, 71 NRC 132 (2010)
if nonconforming conditions are identified, licensees of plants licensed to operate before January 1, 1979, may request an exemption from fire protection requirements of Part 50, Appendix R; DD-06-1, 63 NRC 139 (2006)
- 10 C.F.R. 50.12(a)
if applicant later decides not to reference a certified design, and instead proceeds with a site-specific design, any admissible issues would have to be addressed in the licensing adjudication; LBP-09-2, 69 NRC 100 (2009)
- 10 C.F.R. 50.17(c)
if a combined operating license or construction permit is never issued or ultimately denied, the ESP holder would be required to redress even limited site preparation activities and restore the site; LBP-07-9, 65 NRC 606 (2007)
- 10 C.F.R. 50.32
applicant would be permitted to incorporate information from its original construction permit application in a new application; CLI-10-6, 71 NRC 132 (2010)
- 10 C.F.R. 50.33(d)(3)
corporate applicants must provide place of incorporation, citizenship of directors and principal officers, and whether owned, controlled, or dominated by a foreign corporation in their application; LBP-08-24, 68 NRC 747 n.316 (2008); LBP-09-1, 69 NRC 33 (2009)
- 10 C.F.R. 50.33(f)
a licensee need not be an electric utility, but a non-electric utility license applicant must meet heightened financial qualifications; CLI-07-18, 65 NRC 415 (2007); LBP-07-4, 65 NRC 298 (2007)
applicant for a combined license is exempt from the obligation to provide an estimate of O&M costs; LBP-09-10, 70 NRC 82 (2009)
electric utilities are presumed to be financially qualified to operate nuclear power plants and thus the Commission has exempted them from NRC review of their financial qualifications to cover operational costs; LBP-08-17, 68 NRC 448 (2008)
the purpose of financial qualification requirements is to ensure the protection of public health and safety and the common defense and security and not to evaluate the financial wisdom of the proposed project; LBP-09-10, 70 NRC 83 (2009)
- 10 C.F.R. 50.33(f)(1)(iii)
petitioner's mere listing of various sections of the environmental report of the application cannot be said to bring the contention within scope; LBP-07-4, 65 NRC 315 (2007)
- 10 C.F.R. 50.33(f)(2)
an applicant seeking to renew or extend the term of an operating license for a power reactor need not submit the financial information that is required in an application for an initial license; LBP-07-4, 65 NRC 315 (2007)
- 10 C.F.R. 50.33(f)(3)
to demonstrate financial qualification, applicant for a combined license must show that it possesses funds or has reasonable assurance of obtaining funds necessary to cover estimated construction and fuel cycle costs; LBP-09-10, 70 NRC 82 (2009)

LEGAL CITATIONS INDEX

REGULATIONS

- 10 C.F.R. 50.33(g)
adequacy of applicant's control room and equipment design radiological protections, where the reactor is proposed to be located within the EPZ of an existing reactor, is an issue that is appropriate in a COLA or standard design certification proceeding; LBP-09-10, 70 NRC 112 (2009)
combined license applications must include emergency planning information for the emergency planning zone, generally consisting of an area within a 10-mile radius from the proposed reactor; LBP-09-10, 70 NRC 107 (2009)
the emergency planning zone is established based on safety considerations and is not intended for use as a boundary for assessing environmental impacts; LBP-09-16, 70 NRC 247 n.51 (2009)
the nontrivial increased risk of living within 50 miles of a proposed reactor constitutes injury-in-fact, is traceable to the challenged action, and is likely to be redressed by a favorable decision that either denies a license or mandates compliance with legal requirements that protect the interests of the petitioners; CLI-09-20, 70 NRC 917 (2009)
the plume exposure pathway emergency planning zone for nuclear power reactors shall consist of an area about 10 miles in radius, and the ingestion pathway emergency planning zone shall consist of an area about 50 miles in radius; LBP-09-4, 69 NRC 182 n.31 (2009)
- 10 C.F.R. 50.33(k)
a combined license application is required to have a decommissioning report, but certification of financial assurance is not required until 30 days after the Commission publishes notice pursuant to section 52.103(a); LBP-09-4, 69 NRC 197 (2009)
- 10 C.F.R. 50.33(k)(1)
a non-electric-utility owner/operator of a facility must submit 5-year cost and revenue projections and other business-related financial data and discussion; CLI-07-18, 65 NRC 415 (2007)
applicant's decommissioning report must explain how reasonable assurance will be provided; LBP-09-15, 70 NRC 218 (2009)
combined license applications must include a report that indicates how reasonable assurance will be provided that funds will be available to decommission the facility; LBP-09-4, 69 NRC 198 (2009); LBP-09-15, 70 NRC 214 (2009); LBP-09-18, 70 NRC 417 (2009)
- 10 C.F.R. 50.34
a combined license application must include a safety analysis report that covers the design features that will mitigate the radiological consequences of accidents; LBP-09-10, 70 NRC 107 (2009)
- 10 C.F.R. 50.34(a)(1)(ii)(D)(i)
doses from design basis accidents must be calculated for hypothetical individuals located at the closest point on the exclusion area boundary for a 2-hour period and at the outer radius of the low population zone for the course of the accident; LBP-07-1, 65 NRC 92 (2007)
- 10 C.F.R. 50.34(a)(4)
construction permit applications must consider the consequences of design basis events; CLI-10-1, 71 NRC 10 (2010)
design basis event is distinguished from design basis threat; CLI-10-1, 71 NRC 11 n.52 (2010); CLI-10-9, 71 NRC 258 (2010)
nuclear power plants must be designed against accidents that are anticipated during the life of the facility; CLI-10-9, 71 NRC 256 (2010); LBP-09-2, 69 NRC 101 (2009)
- 10 C.F.R. 50.34(b)(6)(ii)
each applicant for a license to operate a power plant must submit a final safety analysis report that includes the managerial and administrative controls to be used to assure safe operation; LBP-07-2, 65 NRC 166 (2007)
- 10 C.F.R. 50.34(b)(6)(iii)
the FSAR must include the applicant's plans for preoperational testing and initial operations; LBP-07-2, 65 NRC 166 n.34 (2007)
- 10 C.F.R. 50.34(c) & (d)
nuclear reactor power plant security plans must provide protection against the design basis threat of radiological sabotage, but this requirement does not extend to a specifically licensed independent spent fuel storage installation; LBP-08-7, 67 NRC 366 n.2 (2008)
reactor security plans require protection against the design basis threat; CLI-07-11, 65 NRC 150 n.10 (2007)

LEGAL CITATIONS INDEX
REGULATIONS

- 10 C.F.R. 50.34(h)(3)
although a standard review plan sets forth the criteria that NRC Staff uses to evaluate whether an application conforms to the agency's regulations, it nonetheless is considered nonbinding on the Staff and licensing boards; LBP-08-2, 67 NRC 70 n.10 (2008)
provisions in regulatory guides or even a standard review plan are not a substitute for the regulations, and compliance is not a requirement; CLI-06-20, 64 NRC 37 (2006)
- 10 C.F.R. 50.34a
applicant is to describe equipment to be installed to maintain control over radioactive materials in gaseous and liquid effluents produced during normal reactor operations, including expected operational occurrences; LBP-09-19, 70 NRC 473 (2009)
if a COL or CP applicant chooses to pursue a new reactor design before the Commission has set specific standards applicable to that type of reactor, then applicant will be required to demonstrate that its emissions will be ALARA; CLI-07-27, 66 NRC 254 (2007)
standards apply on a per-reactor basis, requiring that all nuclear reactors be designed so that releases of radioactivity are ALARA; CLI-07-27, 66 NRC 250 (2007)
- 10 C.F.R. 50.34a(a)
combined license applications must include a description of equipment and measures taken to ensure that any exposures to radioactive materials such as low-level radioactive waste are kept as low as reasonably achievable, including a description of the provisions for storage of solid waste containing radioactive materials; LBP-09-10, 70 NRC 124 (2009)
for applications filed after January 2, 1971, applicant must identify design objectives and means to maintain levels of radioactive effluents as low as is reasonably achievable; LBP-09-19, 70 NRC 473 (2009)
numerical guidance on design objectives are provided for light water reactors to meet the requirements that radioactive material in effluents released to unrestricted areas be kept ALARA; CLI-07-27, 66 NRC 251 (2007)
- 10 C.F.R. 50.34a(b)(3)
a combined license application must include a description of equipment and measures taken to ensure that any exposures to radioactive materials such as low-level radioactive waste are kept as low as reasonably achievable, including a description of the provisions for storage of solid waste containing radioactive materials; LBP-09-10, 70 NRC 124 (2009)
- 10 C.F.R. 50.36a
if a COL or CP applicant chooses to pursue a new reactor design before the Commission has set specific standards applicable to that type of reactor, then the applicant will be required to demonstrate that its emissions will be ALARA pursuant to this section; CLI-07-27, 66 NRC 254 (2007)
NRC includes the EPA drinking water standard in the technical specifications that licensee must meet; LBP-07-9, 65 NRC 580 n.67 (2007)
- 10 C.F.R. 50.36a(a)
each licensee of a nuclear power reactor must include technical specifications that, among other things, require compliance with 10 C.F.R. 20.1301(a), in order to keep releases of radioactive materials during normal conditions ALARA; CLI-07-27, 66 NRC 25 n.197 (2007)
the potential for tritium contamination of water is primarily a NEPA issue because it involves the environmental impacts of the proposed early site permit and possible mitigation measures, but also has a safety element because safety regulations require that exposure to radiation be as low as reasonably achievable; LBP-07-9, 65 NRC 579, 584 (2007)
- 10 C.F.R. 50.38
a source material license may not be issued to a corporation if the Commission determines that the corporation is owned, controlled, or dominated by a foreign corporation; LBP-08-6, 67 NRC 337 n.549 (2008)
any person who is a citizen, national, or agent of a foreign country, or any corporation, or other entity which the Commission knows or has reason to believe is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government, shall be ineligible to apply for and obtain a license; CLI-09-9, 69 NRC 359-360 n.151 (2009); LBP-09-4, 69 NRC 192 (2009)

LEGAL CITATIONS INDEX

REGULATIONS

- 10 C.F.R. 50.40(a)
applications for nuclear power plants show that the issuance of the license would not be inimical to, and will provide adequate protection to, the health and safety of the public; LBP-09-10, 70 NRC 124 (2009)
- 10 C.F.R. 50.40(c)
before issuing a construction permit for a nuclear power reactor, the Commission must conclude that the issuance of a license to the applicant will not be inimical to the common defense and security or to the health and safety of the public; LBP-07-9, 65 NRC 556, 598 (2007)
- 10 C.F.R. 50.47
contention alleging the applicant's environmental report violates the National Environmental Policy Act and NRC regulations by failing to address the environmental impacts of emergency preparedness and evacuation planning is rejected as outside the scope of the proceeding; LBP-08-13, 68 NRC 147-48 (2008)
emergency plans do not fall within the scope of license renewal; LBP-07-4, 65 NRC 336 (2007)
- 10 C.F.R. 50.47(a)(1)(i)
no new finding on emergency preparedness will be made as part of a license renewal decision;
LBP-08-13, 68 NRC 149, 165 (2008)
- 10 C.F.R. 50.47(a)(1)(ii)
consideration of emergency plans in license renewal proceedings is precluded because they are already covered by ongoing regulatory review; LBP-08-13, 68 NRC 164 (2008)
- 10 C.F.R. 50.47(a)(1)(iii)
if applicant submits a complete and integrated emergency plan in conjunction with an early site permit application, NRC Staff must find that the emergency plans provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency; LBP-09-19, 70 NRC 510 (2009)
- 10 C.F.R. 50.47(a)(2)
FEMA's finding on emergency plans constitutes a rebuttable presumption on questions of adequacy and implementation capability in NRC licensing proceedings; LBP-09-19, 70 NRC 511 (2009)
in its review of emergency plans, NRC Staff must take into account FEMA's findings; LBP-09-19, 70 NRC 511 (2009)
- 10 C.F.R. 50.47(b)
NRC Staff's review of an integrated emergency plan focuses primarily on the applicant-prepared onsite provisions of the plans, which include the evacuation time estimate provided by applicant, and the inspections, tests, analyses, and acceptance criteria; LBP-09-19, 70 NRC 510 (2009)
- 10 C.F.R. 50.47(b)(5)
procedures must be established to provide for early notification and clear instructions to the populace within the plume exposure pathway EPZ; LBP-09-16, 70 NRC 296 (2009)
- 10 C.F.R. 50.47(b)(10)
evacuation planning is required only in regard to the 10-mile plume-exposure pathway EPZ; LBP-08-21, 68 NRC 584 (2008)
potassium iodide distribution beyond the 10-mile EPZ is not necessary; LBP-09-16, 70 NRC 295 n.203 (2009)
the plume-exposure pathway emergency planning zone for nuclear power reactors is an area about 10 miles in radius; LBP-07-11, 66 NRC 93 (2007)
- 10 C.F.R. 50.47(c)(2)
the emergency planning zone is based on safety considerations and is not intended for use as a boundary for assessing environmental impacts; LBP-09-16, 70 NRC 247 n.51 (2009)
the plume exposure pathway emergency planning zone shall generally consist of an area covering a radius of about 10 miles; LBP-07-11, 66 NRC 93 (2007); LBP-09-16, 70 NRC 296 (2009)
- 10 C.F.R. 50.47(d)
NRC Staff's review of an integrated emergency plan focuses primarily on the applicant-prepared onsite provisions of the plans, which include the evacuation time estimate provided by applicant, and the inspections, tests, analyses, and acceptance criteria; LBP-09-19, 70 NRC 510 (2009)

LEGAL CITATIONS INDEX
REGULATIONS

- 10 C.F.R. 50.48
because of questions about the ability of 1-hour- and 3-hour-rated Thermo-Lag fire barrier material, NRC requests that licensees implement appropriate compensatory measures and develop plans to resolve any noncompliances; DD-06-1, 63 NRC 137 (2006)
fire protection systems must include features to limit fire damage to structures, systems, or components important to safety so that the capability to shut down the NPP safely is ensured; DD-06-1, 63 NRC 138, 139 (2006)
NRC's enforcement policy allows NRC to exercise enforcement discretion for certain violations of the fire protection requirements; DD-07-3, 65 NRC 657 (2007)
transformers necessary for compliance with this section nominally perform their safety-related function without moving parts and without a change in configuration or properties and thus are subject to aging management review; LBP-08-13, 68 NRC 87 (2008)
- 10 C.F.R. 50.48(b)
NRC normally will not take enforcement action for a violation involving a problem related to engineering, design, implementing procedures, or installation, if the violation is documented in an inspection report and it meets certain criteria including the Licensee's voluntary initiative to adopt the risk-informed performance-based fire protection program; DD-07-3, 65 NRC 654 (2007)
- 10 C.F.R. 50.48(c)
licensee is not required to submit docketed information on the resolution of each fire protection noncompliance, but it is required to implement and maintain compensatory measures for remaining noncompliances; DD-07-3, 65 NRC 649 (2007)
licensees may voluntarily adopt a risk-informed and performance-based fire protection program; DD-07-3, 65 NRC 648-56 (2007)
- 10 C.F.R. 50.48(c)(2)(vii)
licensees who wish to use performance-based methods for certain fire protection program elements and minimum design requirements may apply for license amendments to allow for such use in lieu of other fire protection requirements; LBP-07-11, 66 NRC 74 (2007)
- 10 C.F.R. 50.49(b)(1)(ii)
"design basis events" are defined as those conditions of normal operation, including anticipated operational occurrences, design basis accidents, external events, and natural phenomena for which the plant must be designed; LBP-09-26, 70 NRC 971 n.165 (2009)
- 10 C.F.R. 50.51(a)
each original license will be issued for a fixed period of time to be specified in the license but in no case to exceed 40 years from date of issuance; LBP-06-10, 63 NRC 342 n.102 (2006)
- 10 C.F.R. 50.54(a)(1)
each nuclear power plant must implement a quality assurance program that includes all testing required to demonstrate that the structures, systems, and components will perform satisfactorily in service; LBP-07-2, 65 NRC 166, 192 (2007)
- 10 C.F.R. 50.54(f)
responses to NRC's requests for information about structural integrity of the reactor pressure vessel head penetration nozzles are required to be signed under oath or affirmation, to enable the Commission to determine whether or not the license should be modified, suspended, or revoked; LBP-06-13, 63 NRC 531 (2006)
- 10 C.F.R. 50.54(hh)
although analysis of aircraft impact is required, reactors whose construction permits were issued prior to July 13, 2009, are excluded and the rule is not NEPA-based; LBP-09-26, 70 NRC 981 n.233 (2009)
intervenors have provided no argument to support the proposition that the Commission intended that this rule should be read as changing the risk profiles of the accidents addressed in the rules; LBP-10-10, 71 NRC 552 (2010)
to the extent that petitioners argue that the provisions of this section should be applied to dry cask storage, they may file a rulemaking petition with the Commission; LBP-09-17, 70 NRC 343 n.176 (2009)

LEGAL CITATIONS INDEX

REGULATIONS

- 10 C.F.R. 50.54(hh)(2)
licensee must develop and implement guidance and strategies to maintain or restore core cooling, containment, and spent fuel pool cooling capabilities if large areas of the plant are lost due to explosions or fire; LBP-10-5, 71 NRC 333 n.2 (2010)
the board issued a protective order governing access to and use of protected information in the correspondence from applicant to NRC Staff regarding the requirements under this section and any related documents; CLI-10-24, 72 NRC 456 (2010)
- 10 C.F.R. 50.55(b)
if a construction permit holder is unable to finish construction by the date specified in the permit, the CP holder can apply for and obtain an extension of the CP; LBP-10-7, 71 NRC 407 (2010)
if the proposed construction is not completed by the latest completion date, the permit shall expire and all rights be forfeited; CLI-10-6, 71 NRC 129 (2010)
the scope of a construction permit extension proceeding is limited to direct challenges to the permit holder's asserted reasons that show "good cause" justification for the delay; LBP-10-7, 71 NRC 417 (2010)
upon good cause shown, the Commission will extend the construction completion date for a reasonable period of time; LBP-10-7, 71 NRC 415 (2010)
- 10 C.F.R. 50.55a
for operating plants, licensees are permitted to use the original construction code during the operational phase or voluntarily update to a later version; LBP-06-7, 63 NRC 205-06 (2006)
petitioner is prohibited from challenging the adequacy of applicant's commitment to a program that incorporates the requirements of an ASME Code that is specifically referenced by this section; CLI-09-7, 69 NRC 274 n.218 (2009); LBP-06-22, 64 NRC 247 (2006)
use of the American Society of Mechanical Engineers Boiler and Pressure Vessel Code in assessing metal fatigue is endorsed; LBP-08-25, 68 NRC 801 (2008)
- 10 C.F.R. 50.55a(a)(3)
authorization from the NRR Director is required only when alternatives to the established requirements in subsections (c), (d), (e), (f), (g), and (h) are used; CLI-06-24, 64 NRC 122 (2006)
- 10 C.F.R. 50.55a(c)
ASME components refers to those components required to meet the requirements of Class 1 components in section III of the ASME Boiler and Pressure Vessel Code; LBP-07-2, 65 NRC 183 n.57 (2007)
components that are part of the reactor coolant pressure boundary must meet the requirements for Class 1 components in section III of the ASME Boiler and Pressure Vessel Code; LBP-08-25, 68 NRC 801 (2008)
use of the ASME Boiler and Pressure Vessel Code is required; LBP-07-2, 65 NRC 184 n.58 (2007)
- 10 C.F.R. 50.55a(c)(1)
components of the reactor coolant pressure boundary for boiling water-cooled nuclear power facilities must meet the requirements for Class 1 components in section III of the current ASME Code; CLI-08-28, 68 NRC 663 (2008); LBP-06-7, 63 NRC 205 (2006)
for license renewal, feedwater, core spray, and reactor recirculation outlet nozzles, as part of the reactor coolant pressure boundary, must meet the metal-fatigue requirements for Class 1 components in section III of the ASME Code; CLI-10-17, 72 NRC 17 (2010)
- 10 C.F.R. 50.55a(c)(4)
a contention that attacks licensee's use of a cumulative usage factor for evaluating the metal fatigue of reactor coolant pressure boundary components during the license renewal period is inadmissible; LBP-06-7, 63 NRC 204 (2006)
for operating plants whose construction permits were issued prior to May 14, 1984, the applicable ASME Code requirements are those for such components at the time of issuance of the construction permit; LBP-06-7, 63 NRC 205 (2006)
- 10 C.F.R. 50.55a(g)(4)
the Commission expresses approval of Appendix L of ASME Code for demonstrating that a component is acceptable with regard to cumulative fatigue effects; LBP-06-7, 63 NRC 206 (2006)

LEGAL CITATIONS INDEX
REGULATIONS

- 10 C.F.R. 50.55a(g)(4)(v)(A)
the containment vessel is identified as an ASME Code Class MC component in both the inservice inspection subsection of section 50.55a as well as the inspection requirements subsection of the AP1000 DCD; LBP-10-21, 72 NRC 656 n.27 (2010)
- 10 C.F.R. 50.55a(g)(4)
the requirements set forth in ASME section XI, subsection IWE, are imposed on licensees; LBP-06-22, 64 NRC 247 (2006)
- 10 C.F.R. 50.55a(g)(4)-(5)
because licensee's construction permit was issued prior to January 1, 1971, licensee is required to implement an in-service inspection program that complies with this section; LBP-08-22, 68 NRC 635 (2008)
- 10 C.F.R. 50.55a(g)(6)(ii)(B)
the requirements set forth in ASME section XI, subsection IWE, are imposed on licensees; LBP-06-22, 64 NRC 247 (2006)
- 10 C.F.R. 50.57(a)(3)(i)
perfection in plant construction and the construction quality assurance program is not a precondition for a license, but rather what is required is reasonable assurance that the plant, as built, can and will be operated without endangering the public health and safety; LBP-10-9, 71 NRC 519 (2010)
- 10 C.F.R. 50.58(b)(6)
a petition or other request for review of or hearing on Staff's significant hazards consideration determination will not be entertained by the Commission; LBP-08-18, 68 NRC 537, 539, 541 (2008); LBP-08-19, 68 NRC 546, 547 (2008); LBP-08-20, 68 NRC 550 (2008)
for significant hazards consideration determinations, the Staff's determination is final, subject only to the Commission's discretion, on its own initiative, to review the determination; LBP-08-18, 68 NRC 539 (2008); LBP-08-20, 68 NRC 551 n.4 (2008)
NRC is expressly authorized to grant license amendments, and to make them immediately effective, in advance of the holding and completion of any required hearing, as long as NRC determines that the amendment involves no significant hazards consideration; CLI-06-8, 63 NRC 238 (2006); LBP-07-2, 65 NRC 159 n.10 (2007); LBP-07-10, 66 NRC 32 n.22 (2007)
- 10 C.F.R. 50.59
although the analysis required by this section is not the same as the final safety analysis, it is nevertheless a formal, written analysis involving safety issues (accident probabilities and/or consequences); LBP-10-20, 72 NRC 602 n.38 (2010)
petitioner alleges failure to conduct safety review of the modification of the controlled access area by the addition of an undocumented roof access for a siphon breaker experiment; DD-10-3, 72 NRC 175, 176-78 (2010)
the function of this section is to deal with changes to a nuclear power plant, and it requires, as a prerequisite to any such change, that licensee perform safety analyses in addition to those contained in the FSAR; LBP-10-20, 72 NRC 602 (2010)
- 10 C.F.R. 50.59(c)(1)
under certain conditions, licensee may implement changes to a nuclear power plant without obtaining a license amendment; LBP-10-20, 72 NRC 602 n.37 (2010)
- 10 C.F.R. 50.59(c)(2)
even if a license amendment is not required, licensee must still conduct such a safety analysis in addition to the original FSAR analysis, to assess the effect of a proposed amendment; LBP-10-20, 72 NRC 602 n.37 (2010)
licensee must apply for a license amendment and obtain NRC's approval before it can implement any proposed change; LBP-10-20, 72 NRC 602 n.37 (2010)
- 10 C.F.R. 50.59(c)(2)(i)-(viii)
under certain conditions, licensee may implement changes to a nuclear power plant without obtaining a license amendment; LBP-10-20, 72 NRC 602 n.37 (2010)
- 10 C.F.R. 50.59(d)(1)
even if a license amendment is not required, licensee must still conduct such a safety analysis in addition to the original FSAR analysis, to assess the effect of a proposed amendment; LBP-10-20, 72 NRC 602 n.37 (2010)

LEGAL CITATIONS INDEX
REGULATIONS

- 10 C.F.R. 50.61
licensees are required to calculate the effects of neutron flux on the reactor vessel materials, and to project the time at which embrittlement of the reactor vessel will exceed a conservative screening criterion; CLI-06-17, 63 NRC 731 (2006)
- 10 C.F.R. 50.61(a)(2)
a pressurized thermal shock event is an event or transient in pressurized water reactors causing severe overcooling (thermal shock) concurrent with or followed by significant pressure in the reactor vessel; CLI-06-17, 63 NRC 731 (2006); LBP-06-10, 63 NRC 348 (2006)
- 10 C.F.R. 50.61(a)(3)-(7)
a "pressurized thermal shock screening criterion" is the value of a reference temperature for the vessel bellline material above which the plant cannot continue to operate without justification; LBP-06-10, 63 NRC 348 n.130 (2006)
- 10 C.F.R. 50.61(a)(8)
a "pressurized thermal shock event" is an event or transient in pressurized water reactors causing severe overcooling concurrent with or followed by significant pressure in the reactor vessel; LBP-06-10, 63 NRC 348 (2006)
- 10 C.F.R. 50.61(b)
the pressurized thermal shock rule applies to pressurized water reactors throughout their operating life and requires plants to project the course that embrittlement will take over the reactor's operating life; LBP-06-10, 63 NRC 348 n.144 (2006)
- 10 C.F.R. 50.61(b)(2)
screening criteria have been established to ensure that embrittlement does not progress to the extent that it represents a safety hazard; LBP-06-10, 63 NRC 348 (2006)
- 10 C.F.R. 50.61(b)(3)
flux reduction programs are the preferred method to avoid exceeding the pressurized thermal shock criterion, because such programs slow the progress of the embrittlement process itself; LBP-06-10, 63 NRC 348 n.144 (2006)
licensees must implement a neutron flux reduction program to avoid exceeding the screening criterion; CLI-06-17, 63 NRC 731 (2006)
- 10 C.F.R. 50.61(b)(4)
a licensee is required to submit a safety analysis to determine what, if any, modifications to equipment, systems, and operations are necessary to prevent potential failure of the reactor vessel as a result of postulated pressurized thermal shock events if continued operation beyond the screening criterion is allowed; LBP-06-10, 63 NRC 348 n.144 (2006)
if no practicable flux reduction can prevent the reactor vessel from exceeding the criterion, the licensee must conduct an analysis to identify how it must modify equipment, systems, and operations to prevent failure of the reactor vessel in a thermal shock event; CLI-06-17, 63 NRC 731 (2006)
- 10 C.F.R. 50.61(b)(4)-(6)
if the reactor vessel is projected to exceed the screening criterion, the burden is on the licensee to demonstrate that it is safe for the plant to continue to operate; CLI-06-17, 63 NRC 731 (2006)
- 10 C.F.R. 50.61(b)(5)
NRC evaluates the reactor pressure vessel safety analysis and decides, on a case-by-case basis, whether to permit continued operation once the screening threshold has been reached; LBP-06-10, 63 NRC 348 n.144 (2006)
- 10 C.F.R. 50.61(b)(7)
if no practicable flux reduction can prevent the reactor vessel from exceeding the criterion, the licensee may anneal the reactor pressure vessel to restore ductility; CLI-06-17, 63 NRC 731 (2006); LBP-06-10, 63 NRC 348 n.144 (2006)
- 10 C.F.R. 50.61(c)
methods and equations that a licensee must use to make these embrittlement projections are based on the neutron flux, or number of neutrons passing through the material per unit of time per unit area, to which the reactor vessel materials are subject; LBP-06-10, 63 NRC 348 n.144 (2006)

LEGAL CITATIONS INDEX
REGULATIONS

- 10 C.F.R. 50.63
although licensee's alternative source of AC power is owned, operated, and maintained by another company, licensee is obliged to ensure that combustion turbines are operational throughout the period of extended operation; LBP-06-7, 63 NRC 210 n.18 (2006)
licensee must have an alternative source of alternating current power for a facility in the event of a station blackout; LBP-06-7, 63 NRC 207 (2006)
transformers necessary for compliance with this section nominally perform their safety-related function without moving parts and without a change in configuration or properties and thus are subject to aging management review; LBP-08-13, 68 NRC 87 (2008)
- 10 C.F.R. 50.71(e)
the UFSAR supplement must be included in the next UFSAR update; LBP-08-25, 68 NRC 866, 868 (2008)
- 10 C.F.R. 50.71(e)(4)
the Updated Final Safety Analysis Report is part of the current licensing basis and must be updated annually; LBP-08-13, 68 NRC 73 (2008)
- 10 C.F.R. 50.72(b)(3)(ii)(A) & (B)
if it discovers any significant corrosion on the drywell shell, licensee is required to notify NRC Staff and take immediate corrective action, consistent with its current licensing basis, to ensure the plant presents no undue risk of harm to public health and safety; LBP-07-17, 66 NRC 367 n.55 (2007)
- 10 C.F.R. 50.73
licensee's report to NRC of a manual reactor trip due to main turbine high vibrations included the details of the event, provided an analysis of the event, including estimated change in conditional core damage probability, and provided a list of corrective actions; DD-09-2, 70 NRC 904 (2009)
- 10 C.F.R. 50.73(a)(2)(iv)(A)-(B)
generator load rejection transients must be analyzed and reported to the NRC; LBP-07-2, 65 NRC 171 (2007)
when an MSIV transient occurs, the reactor operator is required to analyze what happened and how the reactor systems responded and performed, and to report to the NRC; LBP-07-2, 65 NRC 170 (2007)
- 10 C.F.R. 50.75
a non-electric-utility owner/operator of a facility must submit 5-year cost and revenue projections and other business-related financial data and discussion; CLI-07-18, 65 NRC 415 (2007)
condition reports, survey records, radiological liquid effluent and environmental monitoring reports, records of historical spills and leaks must be maintained by licensees; DD-08-2, 68 NRC 346 (2008)
the requirements of this section are intended to ensure that entities who construct and operate a nuclear power plant will have sufficient funds at the end of the operational life of the plant to complete the decommissioning of the plant; LBP-09-15, 70 NRC 219 (2009)
- 10 C.F.R. 50.75(a)
decommissioning funding assurance is the process through which a combined license applicant assures the NRC that funds will be available to decommission a site or facility; LBP-09-15, 70 NRC 206 n.9 (2009)
- 10 C.F.R. 50.75(b)
contents of the required report describing how reasonable assurance will be provided that funds will be available to decommission the facility are discussed; LBP-09-15, 70 NRC 214 (2009)
- 10 C.F.R. 50.75(b)(1)
an estimate of decommissioning costs must be contained in the decommissioning report that is part of the combined license application; LBP-09-4, 69 NRC 199 (2009)
combined license applicants must submit a decommissioning report containing a certification that the funding assurance will be provided no later than 30 days after the NRC publishes notice in the *Federal Register* of its scheduled date for initial fuel loading; LBP-09-4, 69 NRC 199 (2009); LBP-09-15, 70 NRC 215 (2009); LBP-09-18, 70 NRC 417 (2009); LBP-09-21, 70 NRC 630 (2009)
not only must the decommissioning report state the amount of financial assurance to be provided, but also that the amount of financial assurance will be covered by one or more of the funding methods identified in section 50.75(e) as acceptable to the NRC; LBP-09-15, 70 NRC 217 (2009)

LEGAL CITATIONS INDEX
REGULATIONS

- the decommissioning report must contain a certification that financial assurance for decommissioning will be provided in an amount not less than that calculated using the table found in section 50.75(c)(1), adjusted as required by section 50.75(c)(2); LBP-09-15, 70 NRC 215 (2009)
- 10 C.F.R. 50.75(b)(2)
the amount of financial assurance must be adjusted annually, using a rate calculated pursuant to section 50.75(c)(2); LBP-09-15, 70 NRC 215 (2009)
- 10 C.F.R. 50.75(b)(3)
applicant may choose one or more of the funding methods provided in section 50.75(e); LBP-09-15, 70 NRC 215 (2009); LBP-09-18, 70 NRC 422 (2009)
not only must the decommissioning report state the amount of financial assurance to be provided, but also an explanation of how that requirement will be fulfilled; LBP-09-4, 69 NRC 199 (2009); LBP-09-15, 70 NRC 217 (2009)
the fact that the Commission included language deferring the obligation that would otherwise apply to combined license applicants in section 50.75(b)(4), but included no equivalent provision in this section, confirms that the Commission did not intend to defer the requirement of this section until after the license is issued; LBP-09-15, 70 NRC 218 (2009)
the requirement imposed upon combined license applicants by this section, which on its face applies concurrently with the duty to submit a decommissioning report, may not be deferred until after the COL is issued; LBP-09-15, 70 NRC 218 (2009)
- 10 C.F.R. 50.75(b)(4)
a combined license applicant must obtain the financial instrument and submit a copy to the Commission as provided in section 50.75(e)(3); LBP-09-15, 70 NRC 215 (2009)
the fact that the Commission included language deferring the obligation that would otherwise apply to combined license applicants in this section, but included no equivalent provision in section 50.75(b)(3), confirms that the Commission did not intend to defer the requirement of section 50.75(b)(3) until after the license is issued; LBP-09-15, 70 NRC 218 (2009)
- 10 C.F.R. 50.75(c)
contention disputing the cost estimate for decommissioning is an indirect challenge to this regulation and therefore inadmissible; LBP-09-16, 70 NRC 255 (2009)
- 10 C.F.R. 50.75(c)(1)
the amount of decommissioning funds that must be available is calculated by the applicant, using the table found in this section; LBP-09-4, 69 NRC 198 (2009)
- 10 C.F.R. 50.75(c)(2)
licensees are required to annually adjust the amount of decommissioning funding assurance; LBP-09-4, 69 NRC 198 (2009)
- 10 C.F.R. 50.75(e)
a parent company guarantee, standing alone, is not a funding method identified in this section as acceptable to the NRC; LBP-09-15, 70 NRC 218 (2009)
applicant may choose one or more of the funding methods provided in this section; LBP-09-18, 70 NRC 422 (2009)
by the time the Post-Shutdown Decommissioning Activities Report is filed, licensees should either have funds plus an estimate of expected earnings on a fund, or a guarantee, insurance, or other funding assurance method for the total estimated cost; LBP-09-4, 69 NRC 198 (2009)
- 10 C.F.R. 50.75(e)(1)
funding for financial assurance for decommissioning must be covered by prepayment, an external sinking fund, or a surety method, insurance, or other guarantee including a parent company guarantee; LBP-09-15, 70 NRC 215 (2009); LBP-09-18, 70 NRC 417 (2009)
- 10 C.F.R. 50.75(e)(1)(i)
applicant may prepay the entire decommissioning amount; LBP-09-4, 69 NRC 196 n.94 (2009)
“prepayment” of decommissioning funding is defined; LBP-09-4, 69 NRC 196 n.94 (2009)
- 10 C.F.R. 50.75(e)(1)(ii)
applicant may use a sinking fund for decommissioning funding; LBP-09-4, 69 NRC 196 n.93 (2009)
“external sinking fund” is defined; LBP-09-4, 69 NRC 196 n.93 (2009)

LEGAL CITATIONS INDEX
REGULATIONS

- NRC will defer to state economic regulators where decommissioning funding is assured by the fact that any shortfall in decommissioning funds will be provided by ratepayers pursuant to state law; LBP-09-21, 70 NRC 629 (2009)
- 10 C.F.R. 50.75(e)(1)(iii)(B)
- a combined license application must provide reasonable assurance of adequate decommissioning funding by identifying the method or methods of funding the applicant plans to use and providing the information required by this section if applicant plans to use a parent company guarantee; LBP-09-15, 70 NRC 213 (2009)
- a parent company guarantee is only an acceptable method of providing financial assurance if the guarantee and test are as contained in Appendix A to 10 C.F.R. Part 30; LBP-09-15, 70 NRC 215, 219 (2009); LBP-09-18, 70 NRC 418 (2009)
- a parent company guarantee of funds for decommissioning costs based on a financial test may be used; LBP-09-4, 69 NRC 196 n.91 (2009)
- financial tests showing that the method of assurance is financially possible are required when the decommissioning funding method includes a parent company guarantee; LBP-09-4, 69 NRC 200 (2009)
- 10 C.F.R. 50.75(e)(3)
- applicant, 2 years before and 1 year before the scheduled date for the initial fuel loading, shall submit a report to NRC containing a certification updating the financial information, including a copy of the financial instrument to be used; LBP-09-15, 70 NRC 215 (2009); LBP-09-18, 70 NRC 418 (2009)
- final decommissioning financial assurance documents must be submitted to the NRC 30 days after the notification in the *Federal Register* pursuant to section 52.103(a) that licensee has set a date to load fuel; LBP-09-15, 70 NRC 216 (2009)
- with its final decommissioning financial assurance documents, licensee must submit a report containing a certification that financial assurance for decommissioning is being provided in an amount specified in the licensee's most recent updated certification, including a copy of the financial instrument obtained to satisfy the requirements of section 52.75(e); LBP-09-15, 70 NRC 216 (2009)
- 10 C.F.R. 50.75(f)
- five years before permanent cessation of operations, licensees must file a preliminary decommissioning cost estimate that includes plans for adjusting levels of funds as needed; LBP-09-4, 69 NRC 198 (2009)
- licensees are required to annually report on the status of decommissioning funding; LBP-09-4, 69 NRC 198 (2009)
- 10 C.F.R. 50.75(f)(1)
- holder of a combined license must begin filing biannual reports on the status of decommissioning funding once the Commission has made a finding that all acceptance criteria in the license have been met; LBP-09-15, 70 NRC 219 (2009)
- 10 C.F.R. 50.80
- if, at some point in the future, applicant were to decide to change the ownership structure and to enter into a joint venture with another entity, its license would have to be amended to reflect this change; LBP-09-18, 70 NRC 428 (2009)
- the test for approval of a license transfer application is described; CLI-07-18, 65 NRC 405 n.3 (2007)
- transfer of any NRC license is precluded unless the Commission both finds the transfer in accordance with the AEA and gives its consent in writing; CLI-07-19, 65 NRC 425 (2007)
- 10 C.F.R. 50.81
- creditor interests are created in equipment, devices, or important parts thereof, capable of separating the isotopes of uranium or enriching uranium in the isotope U-235; CLI-09-15, 70 NRC 19 (2009)
- creditor regulations may be augmented by license conditions as necessary to allow ownership arrangements, such as sale and leaseback, not covered by this section, provided it can be found that such arrangements are not inimical to the common defense and security of the United States; CLI-09-15, 70 NRC 19 (2009); CLI-10-4, 71 NRC 73 (2010)
- 10 C.F.R. 50.82(a)(4)
- decommissioning plans are not required until the applicant files a post-shutdown decommissioning activities report, which is not due until 2 years before permanent cessation of operation; LBP-09-21, 70 NRC 621 (2009)
- decommissioning plans are provided in the post-shutdown phase of a plant; LBP-09-17, 70 NRC 372 (2009)

LEGAL CITATIONS INDEX
REGULATIONS

- 10 C.F.R. 50.90
a request for a power uprate requires an amendment to the facility's operating license, and therefore must meet the NRC's regulatory requirements for issuance of a license amendment; CLI-08-17, 68 NRC 233 (2008)
applications to amend existing operating licenses or construction permits for production or utilization facilities are authorized; CLI-07-18, 65 NRC 405 n.3 (2007)
licensee must apply for a license amendment and obtain NRC's approval before it can implement any proposed change; LBP-10-20, 72 NRC 602 n.37 (2010)
plants licensed to operate after January 1, 1979, may make changes to their approved fire protection program without prior NRC Staff approval if those changes would not adversely affect the ability to achieve and maintain safe shutdown in the event of a fire; DD-06-1, 63 NRC 140 (2006)
plants that adopt a risk-informed approach to changes in their fire protection systems should submit a license amendment; DD-06-1, 63 NRC 140 (2006)
- 10 C.F.R. 50.91(a)(4)
Staff is permitted to issue an amendment to a reactor operating license notwithstanding the pendency of an adjudicatory hearing if it determines that the licensing action involves no significant hazards consideration; CLI-09-5, 69 NRC 122 n.29 (2009)
- 10 C.F.R. 50.92
a request for a power uprate requires an amendment to the facility's operating license, and therefore must meet the NRC's regulatory requirements for issuance of a license amendment; CLI-08-17, 68 NRC 233 (2008)
NRC is expressly authorized to grant license amendments, and to make them immediately effective, in advance of the holding and completion of any required hearing, as long as the NRC determines that the amendment involves no significant hazards consideration; CLI-06-8, 63 NRC 238 (2006)
- 10 C.F.R. 50.92(a)
in determining whether an amendment to a license will be issued, NRC is guided by the considerations that govern the issuance of initial licenses; LBP-08-9, 67 NRC 437 n.98 (2008)
the FSAR for an application to amend a license and authorize an extended power uprate must include the applicant's plans for preoperational testing and initial operations; LBP-07-2, 65 NRC 166 (2007)
- 10 C.F.R. 50.92(c)
contentions challenging the standard for significant hazards consideration determinations are inadmissible; LBP-08-20, 68 NRC 550 (2008)
- 10 C.F.R. 50.109
NRC Staff could impose license conditions that are necessary to protect the environment under backfit procedures; CLI-10-30, 72 NRC 567 (2010)
NRC Staff is expected over the period of license renewal to require any appropriate modification to systems, structures, or components that is necessary to ensure adequate protection of the public health and safety or to bring the facility into compliance with a license or NRC rules and orders; CLI-08-23, 68 NRC 485 (2008)
- 10 C.F.R. 50.109(a)(3)
backfitting of a facility is required only when NRC determines that there is a substantial increase in the overall protection of the public health and safety or the common defense and security to be derived and that the direct and indirect costs of implementation are justified; LBP-10-13, 71 NRC 679 (2010)
Staff may impose new conditions on existing licenses only under very limited circumstances; CLI-07-27, 66 NRC 234 (2007)
- 10 C.F.R. 50.109(a)(5)
the Commission shall always require backfitting of a facility if it determines that such regulatory action is necessary to ensure that the facility provides adequate protection to the health and safety of the public and is in accord with the common defense and security; LBP-07-9, 65 NRC 561 n.35 (2007)
- 10 C.F.R. 50.150
intervenors have provided no argument to support the proposition that the Commission in adopting this rules intended that it should appropriately be read as changing the risk profiles of the accidents addressed in the rules; LBP-10-10, 71 NRC 552 (2010)

LEGAL CITATIONS INDEX
REGULATIONS

- 10 C.F.R. 50.150(a)(3)
although analysis of aircraft impact is required, reactors whose construction permits were issued prior to July 13, 2009, are excluded and the rule is not NEPA-based; LBP-09-26, 70 NRC 981 (2009)
- 10 C.F.R. Part 50, Appendix A
transients can be, and often are, anticipated operational occurrences that are conditions of normal operation; LBP-07-2, 65 NRC 168 (2007)
- 10 C.F.R. Part 50, Appendix A, GDC 1
requirement to perform metal fatigue CUFs for reactor components is established; LBP-08-25, 68 NRC 801 (2008)
- 10 C.F.R. Part 50, Appendix A, GDC 2
an ESP applicant must consider the most severe surface deformation historically reported for the site and surrounding area, with sufficient margin for uncertainties; LBP-07-1, 65 NRC 66 (2007)
the design basis flood is the magnitude of the flood event that is used to evaluate safety structures, systems, and components important to safety during facility design; LBP-09-25, 70 NRC 878 n.53 (2009)
- 10 C.F.R. Part 50, Appendix A, GDC 3
structures, systems, and components important to safety must be designed and located to minimize the probability and effect of fires and explosions; DD-06-1, 63 NRC 138 (2006)
- 10 C.F.R. Part 50, Appendix A, GDC 10
an MSIV transient is classified as an anticipated operational occurrence, and nuclear power stations must be designed and built to withstand them; LBP-07-2, 65 NRC 170 (2007)
generator load rejection transients occasionally occur and are classified as anticipated operational occurrences that nuclear power stations must be designed and built to withstand; LBP-07-2, 65 NRC 171 (2007)
the reactor core and associated coolant, control, and protection systems must be designed with appropriate margin to assure that specified acceptable fuel design limits are not exceeded during any condition of normal operation, including the effects of anticipated operational occurrences; LBP-07-2, 65 NRC 168 (2007)
- 10 C.F.R. Part 50, Appendix A, GDC 16
in determining whether a containment is capable of performing its intended function, the NRC Staff looks to ensure that the regulatory requirements of General Design Criteria are met; LBP-08-9, 67 NRC 438 (2008)
- 10 C.F.R. Part 50, Appendix A, GDC 30
components that are part of the reactor coolant pressure boundary shall be designed, fabricated, erected, and tested to the highest quality standards practical; LBP-08-25, 68 NRC 801 (2008)
the core spray and reactor recirculation outlet nozzles are part of the reactor coolant pressure boundary and are subject to the highest quality standards practical; LBP-08-25, 68 NRC 824 (2008)
- 10 C.F.R. Part 50, Appendix A, GDC 50
in determining whether a containment is capable of performing its intended function, the NRC Staff looks to ensure that the regulatory requirements of General Design Criteria are met; LBP-08-9, 67 NRC 438 (2008)
- 10 C.F.R. Part 50, Appendix A, GDC 54
main steam isolation valves serve a safety function in the event of fuel failure by preventing fission products from the fuel inside of the reactor from being released into the steam system outside of the reactor containment; LBP-07-2, 65 NRC 169 (2007)
- 10 C.F.R. Part 50, Appendix A, GDC 60
the radwaste facility design must include measures to suitably control the release of radioactive materials; LBP-07-1, 65 NRC 58 (2007)
- 10 C.F.R. Part 50, Appendix B
applicant for a combined license is required to establish a quality assurance program and to apply that program to its safety-related activities; LBP-10-9, 71 NRC 500 (2010)
each applicant for a license to operate a power plant must submit a final safety analysis report that includes the managerial and administrative controls to be used to assure safe operation; LBP-07-2, 65 NRC 166 (2007)

LEGAL CITATIONS INDEX

REGULATIONS

- nuclear power plants include structures, systems, and components that prevent or mitigate the consequences of postulated accidents and that could cause undue risk to the health and safety of the public; LBP-07-2, 65 NRC 166 (2007)
- quality assurance requirements apply to license renewal aging management plans; LBP-08-22, 68 NRC 624 (2008)
- the quality assurance requirements for the design, construction, and operation of structures, systems, and components apply to all activities affecting the safety-related functions of those structures, systems, and components; LBP-07-2, 65 NRC 166 (2007)
- 10 C.F.R. Part 50, Appendix B, Criterion II
- licensees are required to develop a quality assurance program that is documented by written policies, procedures, or instructions and it shall be carried out throughout plant life; LBP-06-22, 64 NRC 252 n.25 (2006)
- 10 C.F.R. Part 50, Appendix B, Criterion XI
- a test program shall be established to assure that all testing required to demonstrate that structures, systems, and components will perform satisfactorily in service is identified and performed in accordance with written test procedures which incorporate the requirements and acceptance limits contained in applicable design documents; LBP-07-2, 65 NRC 166-67 (2007)
- each nuclear power plant must implement a quality assurance program that includes all testing required to demonstrate that the structures, systems, and components will perform satisfactorily in service; LBP-07-2, 65 NRC 192 (2007)
- it is not necessary for licensee to perform large transient testing in order to satisfy the relevant legal requirement; LBP-07-2, 65 NRC 179 (2007)
- quality assurance programs must include written test procedures that incorporate the requirements and acceptance limits contained in applicable design documents, and, as appropriate, proof tests prior to installation, preoperational tests, and operational tests during nuclear power plant operation, of structures, systems, and components; LBP-08-22, 68 NRC 635 (2008)
- regulatory guides and Staff review plans are worth noting, but they do not have the force of law and are not binding on the board's determination as to whether applicant's testing program satisfies the legal standard; LBP-07-2, 65 NRC 173 (2007)
- the board must decide whether an MSIV transient test and a GLR transient test are required to demonstrate that the structures, systems, and components on the reactor at the uprated conditions will perform satisfactorily in service; LBP-07-2, 65 NRC 177 (2007)
- the legal standard that the board must use for determining whether the license amendment should be approved is whether applicant's test program assures that all testing required to demonstrate that SSC will perform satisfactorily in service is identified and performed; LBP-07-2, 65 NRC 167 (2007)
- 10 C.F.R. Part 50, Appendix B, Criterion XVI
- based on results of its problem identification and resolution biennial team inspections with annual followup of selected issues at licensed facilities, NRC takes any appropriate enforcement action to ensure compliance with this regulation; DD-10-1, 72 NRC 160 (2010)
- measures must be established to ensure that conditions adverse to quality are promptly identified and corrected; LBP-08-9, 67 NRC 442 (2008)
- operating reactor licensees are not required to implement an employee concerns program, but are required to establish and implement an effective corrective action program; DD-10-1, 72 NRC 155, 160 (2010)
- 10 C.F.R. Part 50, Appendix E, § IV.B
- emergency action levels are the criteria used to determine the notifications that need to be made to federal, state, and local authorities and to determine the appropriate protective responses to a particular set of emergency conditions; LBP-09-19, 70 NRC 510 (2009)
- 10 C.F.R. Part 50, Appendix E, § IV.D.2
- potassium iodide distribution beyond the 10-mile EPZ is not necessary; LBP-09-16, 70 NRC 295 n.203 (2009)
- 10 C.F.R. Part 50, Appendix I
- a combined license application must include a description of equipment and measures taken to ensure that any exposures to radioactive materials such as low-level radioactive waste are kept as low as reasonably achievable, including a description of the provisions for storage of solid waste containing radioactive materials; LBP-09-10, 70 NRC 124 (2009)

LEGAL CITATIONS INDEX
REGULATIONS

- numerical guidance on design objectives are provided for light water reactors to meet the requirements that radioactive material in effluents released to unrestricted areas be kept ALARA; CLI-07-27, 66 NRC 251 (2007)
- the per-reactor dose limits for sites with multiple reactors are discussed; LBP-07-9, 65 NRC 582, 584-85 (2007)
- this regulation only applies to "light-water-cooled" power plant reactors; LBP-07-9, 65 NRC 624 (2007)
- 10 C.F.R. Part 50, Appendix I, § II.A
some of NRC's radiation doses and standards for members of the public apply on a per-reactor basis; LBP-07-9, 65 NRC 623 (2007)
- 10 C.F.R. Part 50, Appendix I, § II.D
liquid and gaseous waste systems at a nuclear power plant have the potential to affect populations at distances up to 50 miles from the plant; LBP-09-4, 69 NRC 182 n.31 (2009)
- the nontrivial increased risk of living within 50 miles of a proposed reactor constitutes injury-in-fact, is traceable to the challenged action, and is likely to be redressed by a favorable decision that either denies a license or mandates compliance with legal requirements that protect the interests of the petitioners; CLI-09-20, 70 NRC 917 (2009)
- 10 C.F.R. Part 50, Appendix I, § III.A.1
licensees must take into account the cumulative effect of all sources and pathways within the plant contributing to the particular type of effluent being considered; LBP-07-9, 65 NRC 585 n.74 (2007)
- 10 C.F.R. Part 50, Appendix R
if nonconforming conditions are identified, licensees of plants licensed to operate before January 1, 1979, may request an exemption from fire protection requirements; DD-06-1, 63 NRC 139 (2006)
- licensees of plants licensed to operate before January 1, 1979, must comply with fire protection requirements specified in this regulation; DD-06-1, 63 NRC 139 (2006)
- 10 C.F.R. Part 50, Appendix S, ¶ IV(a)(1)(ii)
a nuclear power plant must be designed so that, if the safe shutdown earthquake occurs, certain structures, systems, and components will remain functional and within applicable stress, strain, and deformation limits; LBP-07-9, 65 NRC 595 (2007)
- 10 C.F.R. Part 51
a license applicant is required to describe and the Staff is required to consider the potential environmental effects of the proposed agency action; LBP-06-8, 63 NRC 258 (2006)
- an environmental report and an environmental impact statement for a materials license must include a statement on the alternatives to the proposed action, including a discussion of the no-action alternative; CLI-09-15, 70 NRC 17-18 (2009)
- as part of the NRC's review in a license renewal proceeding, the NRC Staff conducts an environmental review; CLI-06-24, 64 NRC 117 (2006)
- contention alleging that applicant's environmental report violates the National Environmental Policy Act and NRC regulations by failing to address the environmental impacts of emergency preparedness and evacuation planning is rejected as outside the scope of the proceeding; LBP-08-13, 68 NRC 147, 149 (2008)
- environmental issues for license renewal are divided into generic and site-specific components; LBP-06-20, 64 NRC 148 (2006); LBP-08-13, 68 NRC 67 (2008)
- in promulgating these regulations, NRC's intention was to implement section 102(2) of NEPA; LBP-09-26, 70 NRC 976 (2009)
- petitioner presents sufficient information and expert opinion to question whether applicant's conclusions in its environmental report regarding the significance of the groundwater contamination are complete and legally sufficient; LBP-08-13, 68 NRC 189 (2008)
- the requirement that the environmental report cover all significant environmental impacts associated with a project is not limited to onsite environmental impacts; LBP-09-10, 70 NRC 88 (2009)
- 10 C.F.R. 51.1
the regulations in Part 51 implement section 102(2) of the National Environmental Policy Act of 1969, as amended; LBP-09-16, 70 NRC 261 (2009)
- 10 C.F.R. 51.1(a)
in promulgating Part 51, the Commission's intention was to implement section 102(2) of the National Environmental Policy Act; LBP-09-26, 70 NRC 976 (2009)

LEGAL CITATIONS INDEX
REGULATIONS

- 10 C.F.R. 51.10
although an early site permit does not authorize any construction activity, the NRC Staff is still required by Council on Environmental Quality regulations to consider actions that are related to other actions that could lead to a significant impact on the environment; LBP-07-1, 65 NRC 99 (2007)
- 10 C.F.R. 51.10(a)
NRC has an announced policy to take account of the Council on Environmental Quality regulations voluntarily, subject to certain conditions; CLI-08-1, 67 NRC 12 n.49 (2008); CLI-10-2, 71 NRC 34 (2010); CLI-10-18, 72 NRC 75 n.110 (2010); LBP-10-16, 72 NRC 418 n.275 (2010); LBP-10-24, 72 NRC 756 n.74 (2010)
to the fullest extent possible all agencies of the federal government shall comply with the procedures in NEPA § 102(2); LBP-07-9, 65 NRC 603 (2007)
- 10 C.F.R. 51.10(b)
the Commission's policy on Council on Environmental Quality regulations is tempered by the Commission's overriding responsibility as an independent regulatory agency for protecting the radiological health and safety of the public as the Commission conducts its licensing and associated regulatory functions; CLI-08-1, 67 NRC 12 n.49 (2008)
- 10 C.F.R. 51.14(a)
categorical exclusion encompasses actions that do not individually or cumulatively have a significant effect on the human environment and which NRC has found to have no such effect in accordance with procedures set out in 10 C.F.R. 51.22, and for which, therefore, neither an environmental assessment nor an environmental impact statement is required; CLI-10-18, 72 NRC 76 (2010)
"finding of no significant impact" is defined; CLI-08-26, 68 NRC 514 (2008)
Staff's obligations for preparation of an environmental assessment are discussed; CLI-10-18, 72 NRC 77 n.116 (2010)
the purpose and scope of an environmental assessment are described; CLI-08-26, 68 NRC 514 (2008)
- 10 C.F.R. 51.14(b)
in implementing the National Environmental Policy Act, NRC uses the definitions provided in Council on Environmental Quality regulations; LBP-09-7, 69 NRC 719 (2009); LBP-09-19, 70 NRC 463 (2009)
the National Environmental Policy Act requires federal agencies to examine, analyze, and disclose not only direct effects, but also indirect effects that are later in time or farther removed in distance, but are still reasonably foreseeable; LBP-09-6, 69 NRC 404 (2009)
- 10 C.F.R. 51.20(a)(1)
if a major federal action significantly affects the quality of the human environment, an environmental impact statement must be prepared; CLI-08-8, 67 NRC 200 (2008)
- 10 C.F.R. 51.20(a)(2)
an environmental impact statement is required for issuance or renewal of a nuclear reactor operating license; LBP-06-23, 64 NRC 278 (2006); LBP-07-11, 66 NRC 63 (2007)
- 10 C.F.R. 51.20(b)(1)
NRC Staff is required to prepare an environmental impact statement in connection with issuance of an early site permit; LBP-09-7, 69 NRC 633 (2009); LBP-09-19, 70 NRC 463 (2009)
- 10 C.F.R. 51.20(b)(2)
an environmental impact statement must be prepared for a combined operating license; LBP-08-15, 68 NRC 309 n.67 (2008)
- 10 C.F.R. 51.20(b)(14)
an environmental impact statement is required for any agency action that is a major action significantly affecting the environment; LBP-10-7, 71 NRC 423 (2010)
- 10 C.F.R. 51.22(a)
the categorical exclusion rule applies only to classes of licensing actions that the NRC, by rule or regulation, has found do not individually or cumulatively have a significant effect on the human environment; CLI-08-3, 67 NRC 154 (2008)
- 10 C.F.R. 51.22(b)
a special-circumstances exception for actions is provided in which a blanket finding is made by rule that the licensing action does not have a significant effect on the human environment; LBP-06-4, 63 NRC 108 (2006)

LEGAL CITATIONS INDEX
REGULATIONS

- any interested person has the right to challenge the use of a categorical exclusion by presenting special circumstances; LBP-06-4, 63 NRC 109 n.38 (2006)
- location of an irradiator may be a circumstance in which the exception to the categorical exclusion might not apply; LBP-06-4, 63 NRC 110 (2006)
- NRC may find special circumstances warranting a categorical exclusion upon its own initiative, or upon the request of an interested person; CLI-10-18, 72 NRC 76 n.112 (2010)
- petitioner's speculative claim concerning the possible health effects of irradiating papayas and mangos does not rise to the level of special circumstances necessary to invoke the exception for the categorical exclusion of irradiators; LBP-06-4, 63 NRC 114 (2006)
- Staff need not prepare an EA or an EIS for any action categorically excluded except in special circumstances; LBP-06-4, 63 NRC 107 (2006)
- the "categorical exclusion" provision contains an exception for "special circumstances" that could prompt the need for an environmental assessment or environmental impact statement; CLI-08-3, 67 NRC 154 (2008)
- the "special circumstances" provision has no relevance to claims unrelated to the Commission's environmental regulations; LBP-06-12, 63 NRC 407 (2006)
- 10 C.F.R. 51.22(c)
- license transfers, like irradiators, are categorically excluded from NEPA review; LBP-06-4, 63 NRC 107 (2006)
- 10 C.F.R. 51.22(c)(14)(vii)
- irradiators are exempted from the category of actions for which an environmental assessment or an environmental impact statement must be prepared; CLI-08-3, 67 NRC 154 (2008); CLI-08-16, 68 NRC 222 (2008); CLI-10-18, 72 NRC 76 n.113 (2010); LBP-06-4, 63 NRC 106, 109 n.38 (2006)
- the regulatory history of the categorical exclusion of irradiators merely provides a brief description of an irradiator and states that personnel exposures during use of these devices are less than 5% of the limits in 10 C.F.R. Part 20; LBP-06-4, 63 NRC 110 (2006)
- 10 C.F.R. 51.23
- contentions challenging NRC's Waste Confidence Rule are inadmissible; CLI-10-9, 71 NRC 272 (2010); LBP-08-21, 68 NRC 586 (2008); LBP-09-10, 70 NRC 144 n.84 (2009)
- in the area of waste storage, the Commission largely has chosen to proceed generically through the rulemaking process instead of litigating issues case-by-case in adjudicatory proceedings; CLI-10-19, 72 NRC 99 (2010)
- ISL mining does not involve fuel rod waste and to the extent such waste is indirectly relevant, the Waste Confidence rule would prohibit its consideration in a license amendment proceeding; LBP-08-6, 67 NRC 342 (2008)
- mere statements of government officials are insufficient to overturn this rule; LBP-09-21, 70 NRC 602 n.94 (2009)
- petitioner has made a prima facie case that there are special circumstances with regard to the environmental impacts and risks of earthquake-induced spent fuel pool accidents so as to warrant the waiver of portions of this regulation and classifying such spent fuel impacts as Category I and to warrant that these impacts be assessed on a site-specific basis; LBP-10-15, 72 NRC 306 (2010)
- the Waste Confidence Rule applies to new or proposed reactors as well as existing reactors; LBP-09-10, 70 NRC 114 (2009)
- 10 C.F.R. 51.23(a)
- spent fuel can be stored safely onsite for at least 30 years beyond a plant's licensed life for operation; LBP-06-7, 63 NRC 202 n.9 (2006); LBP-09-17, 70 NRC 343 (2009)
- the Commission has made a determination, on a generic basis, that spent fuel generated by any reactor can be safely managed and that sufficient repository capacity will be available; LBP-08-17, 68 NRC 456 (2008)
- the phrase "any reactor" includes new reactors; LBP-09-17, 70 NRC 340 (2009); LBP-09-21, 70 NRC 599 (2009)
- the Waste Confidence rule applies to new reactors; LBP-08-21, 68 NRC 586-87 (2008)
- there is reasonable assurance that a geologic repository will be available by 2025 and that sufficient repository capacity will be available within 30 years beyond the licensed life to dispose of high-level

LEGAL CITATIONS INDEX
REGULATIONS

- waste and spent fuel generated by any reactor up to that time; LBP-09-10, 70 NRC 113 (2009); LBP-09-18, 70 NRC 406 (2009)
- 10 C.F.R. 51.23(b)
applicant need not consider the environmental impacts of spent fuel storage in reactor facility storage pools or independent spent fuel storage installations for the period following the term of the reactor combined license; LBP-09-21, 70 NRC 602 (2009)
environmental reports and environmental impact statements for nuclear reactors are not required to discuss the environmental impacts of the spent nuclear fuel and high-level waste that they inevitably generate; LBP-09-10, 70 NRC 113, 114 (2009); LBP-09-17, 70 NRC 343 (2009); LBP-09-18, 70 NRC 406 (2009)
- 10 C.F.R. 51.30(a)
an environmental assessment shall identify the proposed action and include a list of agencies and persons consulted, and identification of sources used; CLI-08-1, 67 NRC 21 (2008)
content of an environmental assessment for proposed actions is described; CLI-10-18, 72 NRC 77 (2010)
- 10 C.F.R. 51.30(a)(1)
an environmental assessment is expected to provide a brief discussion of offsite consequences below the dose limit of 5 rem; CLI-08-1, 67 NRC 29 (2008)
- 10 C.F.R. 51.30(a)(1)(ii)
NRC Staff is required under NEPA to evaluate reasonable technological and geographical alternatives to the proposed irradiator; CLI-10-18, 72 NRC 70 (2010)
- 10 C.F.R. 51.30(a)(2)
an addendum to the environmental assessment augmenting the Reference Document List provides the sources used by the Staff in its preparation of the EA; LBP-08-7, 67 NRC 366 (2008)
an environmental assessment must include a Reference Document List that identifies the sources used; LBP-08-7, 67 NRC 370 (2008)
an environmental assessment shall identify the proposed action and include a list of agencies and persons consulted, and identification of sources used; CLI-08-1, 67 NRC 14 (2008)
- 10 C.F.R. 51.30(d)
design certification applicants are required to address severe accident mitigation design alternatives; LBP-09-19, 70 NRC 536 (2009)
- 10 C.F.R. 51.33(c)
any member of the public who wishes to comment on the draft environmental assessment outside of the adjudicatory process, pursuant to NRC's normal environmental process, must do so within 30 days after it is made available (or within 45 days) of the publication of a draft environmental impact statement; CLI-07-11, 65 NRC 150 (2007)
- 10 C.F.R. 51.41
although the primary duties of NEPA fall on the NRC Staff in NRC proceedings, the initial requirement to analyze the environmental impacts of an action, including license renewal, is directed to applicants; LBP-06-23, 64 NRC 278 (2006); LBP-07-4, 65 NRC 310 (2007); LBP-07-11, 66 NRC 63 (2007); LBP-08-6, 67 NRC 321 (2008)
applicant must address potentially adverse environmental effects in its environmental report; LBP-09-25, 70 NRC 889 (2009)
it is the NRC, not applicant, that has the legal duty to perform a NEPA analysis and to issue appropriate NEPA documents; CLI-06-18, 64 NRC 5 (2006)
NRC may, and has, required applicants to supply information helpful to the NRC's ability to satisfy its obligations under NEPA; LBP-10-6, 71 NRC 362 (2010)
NRC Staff independently evaluates and is responsible for the reliability of any information that it uses in complying with its NEPA obligations; CLI-06-10, 63 NRC 474 (2006); LBP-06-28, 64 NRC 491 (2006)
- 10 C.F.R. 51.45
a claim of inadequacy in the organization of the application cannot be the basis for a contention; LBP-10-16, 72 NRC 410 (2010)
although the requirements of NEPA are directed to federal agencies and the primary duties of NEPA accordingly fall on the NRC Staff in NRC proceedings, the initial requirement to analyze the environmental impacts of an action is directed to applicants; LBP-10-10, 71 NRC 546-47 (2010)

LEGAL CITATIONS INDEX

REGULATIONS

- applicant for a combined license must file an environmental report that describes the proposed action, states its purposes, describes the environment affected, and discusses the project's environmental impacts in proportion to their significance and alternatives to the proposal; CLI-10-2, 71 NRC 33, 34 (2010)
- applicant must submit an environmental report which the NRC Staff uses as input to the draft and final environmental impact statements; LBP-07-9, 65 NRC 614 (2007)
- concerns raised by petitioners related to the applicant's foreign ownership are potentially material to the safety and environmental requirements; LBP-08-6, 67 NRC 335 (2008)
- drought and climate change would clearly fall within any reasonable consideration of the concepts expressed in this rule; LBP-08-6, 67 NRC 321-22 (2008)
- indirect and cumulative impacts of the proposed project have been sufficiently alleged and supported to fairly raise the issue as to whether, under the rule of reason, they are significant enough to have been included in the environmental report; LBP-09-10, 70 NRC 104 (2009)
- NRC Staff's issuance of its draft and final environmental impact statements may lead to the filing of additional contentions if the data or conclusions contained in them are significantly different from the data or conclusions found in the applicant's documents; LBP-10-10, 71 NRC 547 (2010)
- the environmental report must cover all significant environmental impacts associated with the proposed project; LBP-09-10, 70 NRC 102 (2009)
- there is no basis for providing an EIS description to such a level of detail that it can be duplicated by members of the public, so as to permit an individual to run applicable computer codes or make other detailed computations; LBP-06-9, 63 NRC 302, 305 (2006)
- 10 C.F.R. 51.45(a)
- each application must be accompanied by an environmental report; LBP-09-10, 70 NRC 87 (2009)
- 10 C.F.R. 51.45(b)
- environmental reports must contain a description of the environment affected and discuss the impact of the proposed action on the environment; CLI-06-9, 63 NRC 440 (2006); LBP-09-17, 70 NRC 368 (2009)
- issues relating to threats to public health and safety and potential impacts on the environment arising out of water quality issues are within the scope of a license amendment proceeding; LBP-08-6, 67 NRC 320 (2008)
- nothing in the agency's Part 51 NEPA regulations or the Staff's ER preparation guidance in regard to providing a description of the local environment, indicates exactly how, as a general matter, a baseline for NEPA analysis is to be established; LBP-07-3, 65 NRC 256 (2007)
- Staff will use information from applicant's environmental report in preparing its environmental impact statement; CLI-10-2, 71 NRC 33 (2010)
- the environmental report shall discuss the impacts of the proposed action on the environment in proportion to their significance; LBP-09-25, 70 NRC 877 n.49 (2009)
- the required content of applicant's environmental report is described; LBP-09-7, 69 NRC 632 (2009)
- 10 C.F.R. 51.45(b)(1)
- an environmental impact statement must provide a detailed statement concerning the environmental impact of the proposed action, any adverse environmental effects that cannot be avoided should the proposal be implemented, and any irreversible and irretrievable commitments of resources that would be involved in the proposed action should it be implemented; LBP-09-10, 70 NRC 124 (2009); LBP-09-16, 70 NRC 258 (2009)
- applicant must discuss in its environmental report the impact of the proposed action on the environment; CLI-10-2, 71 NRC 45 n.95 (2010); LBP-10-16, 72 NRC 418 (2010)
- climate change would clearly fall within any reasonable consideration of the concepts expressed in this subsection; LBP-08-24, 68 NRC 732 n.220 (2008)
- environmental reports must discuss environmental impacts in proportion to their significance; LBP-09-10, 70 NRC 88 (2009)
- environmental reports prepared for a combined license application must describe the proposed action and discuss the impact of the proposed action on the environment, any adverse environmental effects that cannot be avoided, and any irreversible and irretrievable commitments of resources that would be involved in the proposed action should it be implemented; LBP-09-4, 69 NRC 225 (2009)

LEGAL CITATIONS INDEX
REGULATIONS

- in an environmental report, impacts on the environment must be discussed in proportion to their significance, but a discussion or evaluation of unaffected areas or sites is not required whether or not they are historic; CLI-06-9, 63 NRC 440 (2006)
- 10 C.F.R. 51.45(b)(1)-(3)
the environmental report must contain a description of the proposed action, a statement of its purposes, and a discussion of the impacts, adverse environmental effects, and alternatives to the proposed action; LBP-09-10, 70 NRC 87-88 (2009)
- 10 C.F.R. 51.45(b)(1)-(5)
content of a uranium enrichment facility applicant's environmental report is discussed; LBP-07-6, 65 NRC 484 (2007)
environmental factors that might conflict with the issuance of an early site permit include impact of the proposed action on the environment, unavoidable adverse environmental impacts, alternatives to the proposed action, conflicts between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and irreversible and irretrievable commitments of resources; LBP-07-1, 65 NRC 72 n.198 (2007)
environmental reports are required to address a list of environmental considerations that correspond to the environmental considerations that NEPA § 102(2)(C)(i)-(v) requires the agency to address in the environmental impact statement; LBP-09-16, 70 NRC 261-62, 263 (2009)
- 10 C.F.R. 51.45(b)(2)
environmental impact statements must provide detailed information about the environmental impact of the proposed action, any adverse environmental effects that cannot be avoided should the proposal be implemented, and any irreversible and irretrievable commitments of resources that would be involved in the proposed action should it be implemented; LBP-09-4, 69 NRC 225, 229 (2009); LBP-09-10, 70 NRC 124 (2009); LBP-09-16, 70 NRC 258, 259 (2009); LBP-09-25, 70 NRC 889 (2009)
- 10 C.F.R. 51.45(b)(3)
applicant's environmental report for an ESP must include a discussion of the alternatives to the proposed action which, to the extent practicable, should be presented in a comparative form; LBP-07-1, 65 NRC 73 (2007)
applicant's environmental report must address potentially adverse environmental effects; LBP-09-25, 70 NRC 889 (2009)
applicant's environmental report must, in relevant part, contain a discussion of alternatives sufficiently complete to aid the Commission in developing and exploring, pursuant to section 102(2)(E) of NEPA, appropriate alternatives to recommended courses of action; LBP-10-6, 71 NRC 362 (2010)
as part of its application, an early site permit applicant must submit an environmental report that addresses alternatives to the proposed site sufficiently complete to aid the Commission in developing and exploring appropriate alternatives to recommended courses of action; CLI-07-27, 66 NRC 222 (2007)
discussion of alternatives in the environmental report must be sufficiently complete to aid the Commission in developing and exploring appropriate alternatives pursuant to section 102(2)(E) of National Environmental Policy Act; LBP-09-10, 70 NRC 88, 131 (2009)
if the proposed siting of a plant for an ESP involves unresolved conflicts concerning alternative uses of available resources, then the discussion in the environmental report must be sufficiently complete to allow the NRC Staff to develop and explore appropriate alternatives to the ESP; LBP-07-1, 65 NRC 73, 100 (2007); LBP-07-6, 65 NRC 484 (2007); LBP-09-19, 70 NRC 487 (2009)
NRC policy is to defer to applicant's stated purpose to produce baseload power, as long as reasonable alternative means of achieving that specific goal are examined; LBP-09-2, 69 NRC 108 (2009)
presentation of alternatives in an applicant's environmental report and in an NRC environment impact statement must be in comparative form; LBP-09-7, 69 NRC 691 n.34 (2009); LBP-09-19, 70 NRC 487-88 (2009)
- 10 C.F.R. 51.45(b)(4)
climate change would clearly fall within any reasonable consideration of the concepts expressed in this subsection; LBP-08-24, 68 NRC 732 n.220 (2008)
- 10 C.F.R. 51.45(b)(5)
environmental impact statements must provide details about the environmental impact of the proposed action, any adverse environmental effects that cannot be avoided should the proposal be implemented,

LEGAL CITATIONS INDEX

REGULATIONS

- and any irreversible and irretrievable commitments of resources that would be involved in the proposed action should it be implemented; LBP-09-10, 70 NRC 124 (2009); LBP-09-16, 70 NRC 258 (2009)
- environmental reports prepared for combined license applications must describe the proposed action and discuss the impact of the proposed action on the environment, any adverse environmental effects that cannot be avoided, and any irreversible and irretrievable commitments of resources that would be involved in the proposed action should it be implemented; LBP-09-4, 69 NRC 225 (2009)
- 10 C.F.R. 51.45(c)
- although the SAMA methodology is available to provide the required analysis, neither NEPA nor NRC regulations require that the analysis under this section be performed using the SAMA methodology; LBP-09-26, 70 NRC 956 (2009)
- an environmental report prepared for a license renewal need not discuss the economic or technical benefits and costs of the proposed action or alternatives except as they are either essential for determining whether an alternative should be included or relevant to mitigation; LBP-08-13, 68 NRC 212 (2008)
- an environmental report submitted for agency review must contain analysis of economic, technical, and other benefits; LBP-08-16, 68 NRC 412 (2008)
- in its terrorism review, NRC Staff may rely, where appropriate, on qualitative rather than quantitative considerations; CLI-07-11, 65 NRC 150 (2007)
- NRC did not intend, and its regulations do not require, that costs be considered in applicant's environmental report; LBP-08-21, 68 NRC 576 (2008)
- the environmental report must include an analysis that considers and balances the effects of the proposed action and its alternatives, and the alternatives available for reducing or avoiding adverse environmental effects; LBP-08-21, 68 NRC 576 (2008); LBP-09-10, 70 NRC 88, 108 (2009); LBP-09-19, 70 NRC 536 (2009); LBP-09-26, 70 NRC 963 (2009); LBP-10-16, 72 NRC 399 n.157 (2010)
- the environmental report should contain sufficient information to aid the Commission in development of an independent analysis of whether any historic or archaeological properties will be affected by the proposed project; LBP-08-26, 68 NRC 922 (2008)
- the environmental report's analysis of the cooling system intake and discharge structures and operation is not based on field surveys or quantitative analysis; LBP-07-3, 65 NRC 257-58 n.5 (2007)
- under the National Environmental Policy Act, the Commission is ultimately responsible for evaluating impacts on minority groups, but applicant is required to assist the Commission with that evaluation; LBP-08-26, 68 NRC 931 (2008)
- where quantification is not possible, the Commission expects license applicants and NRC Staff to assess pertinent factors in qualitative terms; CLI-08-26, 68 NRC 521 (2008)
- 10 C.F.R. 51.45(d)
- applicant must provide a list of all approvals and describe the status of those approvals with the applicable environmental standards and requirements; LBP-08-6, 67 NRC 329 (2008)
- in its application, applicant must list all federal permits, licenses, approvals, and other entitlements that must be obtained in connection with the issuance of an operating license for a second nuclear reactor and adequately discuss the status of its compliance with them; LBP-06-20, 64 NRC 182 n.58 (2006); LBP-09-10, 70 NRC 105 (2009); LBP-09-26, 70 NRC 956 (2009)
- 10 C.F.R. 51.45(e)
- information submitted in the environmental report should not be confined to information supporting the proposed action but should also include adverse information; LBP-09-4, 69 NRC 226 (2009); LBP-09-16, 70 NRC 258 (2009)
- 10 C.F.R. 51.50
- applicant must submit an environmental report which the NRC Staff uses as input to the draft and final environmental impact statements; LBP-07-9, 65 NRC 614 (2007)
- the content of a uranium enrichment facility applicant's environmental report is discussed; LBP-07-6, 65 NRC 484 (2007)
- 10 C.F.R. 51.50(b)
- applicant for an early site permit must address the five factors of section 51.45(b)(1)-(5) in its environmental report; LBP-09-19, 70 NRC 487 (2009)
- applicant for an early site permit must submit with its application an environmental report; LBP-09-7, 69 NRC 632 (2009)

LEGAL CITATIONS INDEX
REGULATIONS

- 10 C.F.R. 51.50(b)(1)
applicant's environmental report must include an evaluation of alternative sites to determine whether there is any obviously superior alternative to the site proposed; LBP-09-19, 70 NRC 487 (2009)
- 10 C.F.R. 51.50(b)(2)
the environmental report for an early site permit application may evaluate the environmental impacts of a reactor or reactors falling within the site characteristics and design parameters for the ESP application; LBP-09-19, 70 NRC 549 (2009)
the environmental report submitted with the early site permit application must address all environmental effects of construction and operation necessary to determine whether there is any obviously superior alternative to the site proposed; LBP-08-15, 68 NRC 324 (2008)
- 10 C.F.R. 51.50(c)
an environmental report for a combined operating license application must include information required by section 51.45(c); LBP-08-16, 68 NRC 412 (2008)
environmental reports are required for combined license applications, including those that reference a standard design certification; LBP-09-10, 70 NRC 88 (2009)
to facilitate compliance with NEPA, NRC requires a combined license applicant to submit a complete environmental report with its application; CLI-10-2, 71 NRC 34 (2010)
when a combined license application references an early site permit, neither applicant nor Staff needs to address environmental issues resolved in the ESP proceeding unless new and significant information arises on those issues; LBP-10-1, 71 NRC 184 n.12 (2010)
- 10 C.F.R. 51.50(c)(1)
an issue can be "resolved" within the meaning of this section even though there might have been no litigation concerning that issue; LBP-08-15, 68 NRC 309 (2008)
if, at the COL stage, the power level selected is either lower or higher than 2000 MWe, the different value would be considered new information and thus subject to review to determine the effects of the changed value on the conclusions of the alternative energy analysis in the FEIS; LBP-07-1, 65 NRC 75 n.210 (2007)
the environmental report at the combined license stage need not contain information or analyses submitted to the Commission in applicant's environmental report or resolved in the Commission's early site permit environmental impact statement; LBP-08-15, 68 NRC 308, 309 (2008)
- 10 C.F.R. 51.50(c)(1)(i)
if the application references an early site permit, applicant must demonstrate that the chosen design falls within the parameters specified in the ESP or, on the safety side, request a variance; LBP-09-19, 70 NRC 549 (2009)
- 10 C.F.R. 51.50(c)(1)(i)-(iii)
required content of the environmental report for the combined operating license stage is described; LBP-08-15, 68 NRC 308 (2008)
- 10 C.F.R. 51.50(c)(2)
environmental reports are required for combined license applications, including those that reference a standard design certification; LBP-09-10, 70 NRC 88 (2009)
- 10 C.F.R. 51.51
applicant is required to take Table S-3 as the basis for evaluating the contribution of the environmental effects of management of high-level wastes related to uranium fuel cycle activities; LBP-09-21, 70 NRC 601 (2009)
contention challenging the applicant's use of Table S-3 of 10 C.F.R. Part 51 in its environmental report is inadmissible; LBP-08-16, 68 NRC 423 (2008)
low-level radioactive waste disposal contentions may not challenge Table S-3, consistent with NRC policy that regulations may not be the subject of collateral attack in an adjudication; CLI-10-2, 71 NRC 43 n.78 (2010)
- 10 C.F.R. 51.51(a)
each environmental report prepared for the combined license stage must take Table S-3 as the basis for evaluating the contribution of the environmental effects of the fuel cycle to the environmental costs of licensing the reactor; CLI-09-21, 70 NRC 929 n.6 (2009)

LEGAL CITATIONS INDEX
REGULATIONS

- the environmental report prepared for a combined license application must address the environmental costs of management of low-level wastes and high-level wastes related to uranium fuel cycle activities; LBP-08-15, 68 NRC 316 (2008)
- 10 C.F.R. 51.51(b)
health effects from radioactive effluents may be the subject of litigation in individual combined license proceedings; LBP-08-15, 68 NRC 316 (2008)
- 10 C.F.R. 51.51(c)(2)
applicant for a combined license that elects to reference a certified design is permitted to incorporate by reference the environmental report prepared in connection with the certified design, and that is, in turn, required pursuant to consider severe accident mitigation design alternatives; LBP-09-2, 69 NRC 102 (2009)
- 10 C.F.R. 51.51, Table S-3
both temporary and permanently committed land resources are specified as part of the uranium fuel cycle; LBP-09-21, 70 NRC 613 (2009)
carbon dioxide emissions from the uranium fuel cycle are to be listed as zero; LBP-09-21, 70 NRC 616 (2009)
contentions challenging the Waste Confidence Rule are inadmissible; LBP-09-10, 70 NRC 144 n.84 (2009)
high-level and transuranic wastes are to be buried at a repository and no release to the environment is expected; LBP-09-10, 70 NRC 112 (2009)
NRC regulations and the National Environmental Policy Act require consideration of all significant environmental impacts without distinguishing between onsite and offsite impacts; LBP-09-10, 70 NRC 103 (2009)
unless there is a viable alternative that has an extremely low carbon footprint, the footprint of the nuclear fuel cycle is immaterial to the decision NRC must make, and therefore such a contention fails to create a genuine issue of material fact; LBP-08-21, 68 NRC 579 (2008)
- 10 C.F.R. 51.51, Table S-3 n.1
the table does not include health effects from the effluents described in the table, and that issue, as well as others specifically noted, may be the subject of litigation in individual licensing proceedings; LBP-09-16, 70 NRC 256 (2009)
- 10 C.F.R. 51.53
this provision pertains to operating reactor license renewal, and does not apply to combined license applicants; CLI-10-1, 71 NRC 11 (2010)
- 10 C.F.R. 51.53(b)
absent an adequately supported request to waive the application of this rule, the board is bound by it, even in light of the unusual circumstances of this case, this contention cannot be admitted; LBP-09-26, 70 NRC 977 (2009)
applicant must submit a supplement to its environmental report at the operating license stage that discusses the same matters described in sections 51.45, 51.51, and 51.52, which would have been initially discussed in the environmental report at the construction permit stage, but only to the extent that they differ from those discussed or reflect new information; LBP-09-26, 70 NRC 976 (2009)
at the operating license stage, applicant's environmental report need not include a discussion of the need for power or the economic costs and benefits of the proposed action; LBP-10-12, 71 NRC 663 n.18 (2010)
further review of need for power and alternative energy sources are precluded once a construction permit has been issued; CLI-10-29, 72 NRC 558 (2010)
no discussion of need for power or alternative energy sources is required in a supplemental environmental report at the operating license stage; LBP-09-26, 70 NRC 974 (2009)
the clear intent of this section is to avoid duplication and to highlight new information; LBP-09-26, 70 NRC 976-77 (2009)
- 10 C.F.R. 51.53(c)
a license renewal applicant must submit with its application an environmental report, which must contain a description of the proposed action, including the applicant's plans to modify the facility or its administrative control procedures; LBP-06-10, 63 NRC 344 (2006); LBP-07-4, 65 NRC 310 (2007); LBP-07-11, 66 NRC 63 (2007)

LEGAL CITATIONS INDEX

REGULATIONS

- an environmental report prepared for a license renewal need not discuss the economic or technical benefits and costs of the proposed action or alternatives except as they are either essential for determining whether an alternative should be included or relevant to mitigation; LBP-08-13, 68 NRC 213 (2008)
- 10 C.F.R. 51.53(c)(1)
contention asserting that applicant failed to provide a separate environmental report for each license for which an extension is sought is dismissed; LBP-08-13, 68 NRC 77 (2008)
- 10 C.F.R. 51.53(c)(1) & (2)
a license renewal applicant must submit an environmental report describing in detail the modifications directly affecting the environment or affecting plant effluents that affect the environment; LBP-07-11, 66 NRC 63 (2007)
- 10 C.F.R. 51.53(c)(2)
a license renewal applicant must describe in detail the modifications directly affecting the environment or affecting plant effluents that affect the environment; LBP-06-10, 63 NRC 345 (2006); LBP-06-20, 64 NRC 212 (2006); LBP-06-23, 64 NRC 278 (2006)
Category 1 environmental issues are outside the scope of license renewal proceedings; LBP-06-20, 64 NRC 154 (2006)
for a license renewal, the environmental report and the supplemental environmental impact statement do not need to discuss spent fuel storage issues related to a generic determination; LBP-06-20, 64 NRC 170 (2006)
petitioner has made a prima facie case that there are special circumstances with regard to the environmental impacts and risks of earthquake-induced spent fuel pool accidents so as to warrant the waiver of portions of this regulation and classifying such spent fuel impacts as Category 1 and to warrant that these impacts be assessed on a site-specific basis; LBP-10-15, 72 NRC 306 (2010)
- 10 C.F.R. 51.53(c)(3)
applicant's environmental report is not required to contain an analysis of the environmental impacts identified as Category 1 issues in Appendix B to Subpart A of the generic environmental impact statement; LBP-06-20, 64 NRC 212 (2006)
applicant's environmental report must contain any new and significant information regarding the impacts of license renewal of which the applicant is aware; LBP-06-20, 64 NRC 212 (2006)
Category 2 thermal issues include entrainment of fish and shellfish in early life stages, impingement of fish and shellfish, and heat shock; LBP-06-20, 64 NRC 212 (2006)
even where the generic environmental impact statement has found that a particular impact applies generically (Category 1), the applicant must still provide additional analysis in its environmental report if new and significant information may bear on the applicability of the Category 1 finding at its particular plant; LBP-06-20, 64 NRC 155 (2006)
for a plant with a once-through cooling system, applicant must include analyses in its environmental report for the three Category 2 issues related to thermal discharges; LBP-06-20, 64 NRC 212 (2006)
the site-specific environmental review does not routinely reconsider Category 1 issues, but requires applicants (and ultimately the NRC Staff) to assess certain site-specific, "Category 2" issues; CLI-06-24, 64 NRC 118 (2006)
- 10 C.F.R. 51.53(c)(3)(i)
applicant's environmental report is not required to contain analyses of environmental impacts identified as "Category 1," or "generic," issues in Part 51, Subpart A, Appendix B, Table B-1; CLI-07-3, 65 NRC 17 (2007); CLI-07-16, 65 NRC 378 n.22 (2007); CLI-09-10, 69 NRC 523 (2009); CLI-10-14, 71 NRC 471 (2010); LBP-06-10, 63 NRC 345 (2006); LBP-06-20, 64 NRC 148 (2006); LBP-06-23, 64 NRC 278 (2006); LBP-07-4, 65 NRC 310 (2007); LBP-07-11, 66 NRC 63 (2007); LBP-10-15, 72 NRC 293 n.37 (2010)
applicant's environmental report must contain analyses of the environmental impacts of the proposed action, including the impacts of refurbishment activities, if any, associated with license renewal and the impacts of operation during the renewal term, for those issues identified as Category 2, or plant-specific, issues in Appendix B to Subpart A; LBP-06-23, 64 NRC 278 (2006)
applicant's environmental report must include new and significant information regarding a Category 1 issue; LBP-06-20, 64 NRC 155 (2006)

LEGAL CITATIONS INDEX

REGULATIONS

- challenges to findings in a generic environmental impact statement are not admissible absent a waiver of the NRC's generic finding or a successful petition for rulemaking; CLI-07-3, 65 NRC 16 (2007)
- in their site-specific environmental reports, license renewal applicants may refer to and adopt the generic environmental impact findings found in Appendix B, Table B-1, for all Category 1 issues; LBP-07-11, 66 NRC 64 (2007)
- license renewal applicants may in their site-specific environmental reports refer to and adopt the generic environmental impact findings found in Table B-1, Appendix B for all Category 1 issues; LBP-06-10, 63 NRC 345 (2006); LBP-06-23, 64 NRC 279 (2006); LBP-07-4, 65 NRC 311 n.134 (2007)
- new and significant information about a Category 1 issue is not a proper subject for a contention, absent a waiver of the rule; LBP-07-4, 65 NRC 311 n.134 (2007)
- section 51.53(c)(3)(iv) creates an exception to this section in the context of the requirements for ERs and EISs but not with regard to the scope of issues permitted to be raised in contentions in a license renewal adjudication context, absent a waiver; LBP-06-23, 64 NRC 299 n.170 (2006)
- the Commission has determined that a number of environmental issues that might otherwise be relevant to license renewal shall be resolved generically for all plants, and such issues, classified as "Category 1" issues, are normally beyond the scope of a license renewal hearing; LBP-06-7, 63 NRC 199 (2006)
- 10 C.F.R. 51.53(c)(3)(ii)
- an environmental report must contain analyses of the environmental impacts of the proposed action, including the impacts of refurbishment activities, if any, associated with license renewal and the impacts of operation during the renewal term and identified as "Category 2," or "plant-specific," issues in Table B-1; LBP-06-10, 63 NRC 345 (2006); LBP-06-23, 64 NRC 278 (2006); LBP-07-11, 66 NRC 64 (2007)
- applicant needs to provide an analysis of severe accident mitigation alternatives only for those issues identified as Category 2 in Appendix B to Subpart A of Part 51; LBP-06-20, 64 NRC 161 (2006)
- applicant's environmental report is not required to contain analyses of environmental impacts identified as Category 1, or generic, issues in Appendix B to Subpart A of Part 51; LBP-06-23, 64 NRC 278 (2006)
- applicants must provide a plant-specific analysis of all Category 2 issues; CLI-07-16, 65 NRC 390 (2007); CLI-09-10, 69 NRC 523 (2009)
- "Category 2" issues are issues for which an applicant must make a plant-specific analysis of environmental impacts in its environmental report; LBP-06-7, 63 NRC 199 (2006)
- 10 C.F.R. 51.53(c)(3)(ii)(A)-(L)
- the scope of a license renewal proceeding is limited to the detrimental effects of aging on plant structures, systems, and components and to the environmental issues listed in this section and designated as Category 2 in the generic environmental impact statement; LBP-08-13, 68 NRC 165 (2008)
- 10 C.F.R. 51.53(c)(3)(ii)(B)
- analysis of entrainment and impingement of fish, and heat shock, is required only for plants with once-through cooling or cooling ponds, because it has been determined generically that such impacts are small for plants that use cooling towers; LBP-07-4, 65 NRC 320 (2007)
- applicant may address Category 2 thermal issues by including a copy of the current Clean Water Act § 316(b) determination relating to the location, design, construction, and capacity of the cooling water system to minimize impingement and entrainment, and, if necessary, a section 316(a) demonstration or equivalent State permits and supporting documentation to minimize impact of effluent discharges; LBP-06-20, 64 NRC 213 (2006)
- applicant must provide in its environmental report a site-specific analysis of entrainment, impingement, and heat shock/thermal discharge impacts from its once-through cooling systems; LBP-08-13, 68 NRC 155, 182 (2008)
- as long as the applicant can provide a copy of its current Clean Water Act 316(b) determinations, applicant does not need to assess the impact of the proposed action on fish and shellfish resources resulting from heat shock and impingement and entrainment; LBP-08-26, 68 NRC 926 n.140, 927 n.152 (2008)
- if applicant cannot provide the relevant Clean Water Act § 316(a) or (b) documents, it must assess the impact of the license renewal on fish and shellfish resources resulting from heat shock, impingement, and entrainment; LBP-06-20, 64 NRC 213 (2006)
- if applicant's plant uses a once-through cooling system, applicant shall provide a copy of a Clean Water Act § 316a variance or equivalent state permit and supporting documentation or it must assess the

LEGAL CITATIONS INDEX

REGULATIONS

- impact of the proposed action on fish and shellfish resources resulting from heat shock; CLI-07-16, 65 NRC 378 (2007); LBP-08-13, 68 NRC 151, 182 (2008)
- meeting the submittal requirements of this section does not excuse applicant from providing in its environmental report the descriptions and discussions required by section 51.53(c)(2) relating to environmental impacts from the proposed action; LBP-08-13, 68 NRC 157 n.708 (2008)
- petitioner's challenge to the validity of applicant's SPDES permit is inadmissible because it is considered an attack on this regulation; LBP-08-13, 68 NRC 158 (2008)
- renewal applicants with plants with once-through cooling water systems must provide a copy of current Clean Water Act 316(b) determinations and, if necessary, a 316(a) variance in accordance with 40 C.F.R. Part 125, or equivalent State permits and supporting documentation; LBP-06-20, 64 NRC 181-82 (2006)
- the current version of applicant's NPDES permit must be attached to its license renewal application; CLI-07-16, 65 NRC 379 (2007)
- 10 C.F.R. 51.53(c)(3)(ii)(I)
- a license renewal application must be accompanied by an environmental report that includes an assessment of the impact of the proposed action on land use within the vicinity of the plant; LBP-08-13, 68 NRC 115 (2008)
- 10 C.F.R. 51.53(c)(3)(ii)(K)
- applicant must assess whether any historic or archaeological properties will be affected by the proposed project; LBP-08-26, 68 NRC 920 (2008)
- expansion of an independent spent fuel storage installation is a project separate from license renewal and thus applicant has no obligation to discuss its potential impacts in its environmental report; LBP-08-26, 68 NRC 922 (2008)
- 10 C.F.R. 51.53(c)(3)(ii)(L)
- a contention related to emergency planning that touches on the adequacy of a severe accident mitigation alternatives analysis in the context of environmental review during license renewal proceedings is admissible; LBP-08-13, 68 NRC 165 (2008)
- an applicant is not required to broadly consider severe accident risks, only severe accident mitigation alternatives; LBP-06-23, 64 NRC 290 n.143 (2006)
- applicant's environmental report for its license renewal application must include a severe accident mitigation alternatives analysis, outlining the costs and benefits of potential mitigation measures to reduce severe accident risk or consequences; CLI-10-30, 72 NRC 565 (2010)
- because NRC regulations require that the ER and EIS include a SAMA analysis, the adequacy of that analysis is material to the findings NRC must make in a license renewal proceeding; LBP-10-15, 72 NRC 288 (2010)
- license renewal applications must provide an analysis of severe accident mitigation alternatives if not previously considered by NRC Staff; CLI-10-11, 71 NRC 291 (2010); CLI-10-14, 71 NRC 472 (2010); LBP-06-7, 63 NRC 199 (2006); LBP-06-20, 64 NRC 154, 161 (2006); LBP-06-23, 64 NRC 279 (2006); LBP-07-4, 65 NRC 312 (2007); LBP-07-11, 66 NRC 64 (2007); LBP-07-13, 66 NRC 141 (2007); LBP-10-13, 71 NRC 679, 688 (2010); LBP-10-15, 72 NRC 287, 321 (2010)
- petitioner asserts that applicant's SAMA analysis is not based on complete information that is necessary and applicant failed to acknowledge the absence of the information or demonstrate that the information is too costly to obtain; LBP-10-15, 72 NRC 287 (2010)
- petitioner identified the absence of consideration of terrorist-originated core-damaging events from the applicant's SAMA analysis, and supported that assertion with reference to the relevant law; LBP-10-15, 72 NRC 321 (2010)
- 10 C.F.R. 51.53(c)(3)(ii)-(iii)
- plant-specific, or Category 2, issues must be addressed in a license renewal applicant's environmental report; LBP-06-20, 64 NRC 148 (2006)
- 10 C.F.R. 51.53(c)(3)(iii)
- an environmental report must contain severe accident mitigation alternatives for some issues; LBP-06-20, 64 NRC 154 (2006)

LEGAL CITATIONS INDEX
REGULATIONS

- 10 C.F.R. 51.53(c)(3)(iv)
applicant's environmental report must contain any new and significant information regarding the environmental impacts of license renewal of which the applicant is aware; LBP-06-20, 64 NRC 152 (2006); LBP-06-23, 64 NRC 279 (2006)
applicant's environmental report must include new and significant information regarding a Category 1 issue; CLI-07-3, 65 NRC 18 (2007); LBP-07-4, 65 NRC 311 n.134 (2007); LBP-06-20, 64 NRC 148, 155, 159 n.32 (2006); LBP-07-11, 66 NRC 64 n.83 (2007)
petitioner asserts that the potential for a terrorist attack is new and significant information that should be included in the environmental report; LBP-08-13, 68 NRC 214 (2008)
the generic environmental impact statement must be updated if new and significant information or changed circumstances would change the outcome of the environmental analysis; LBP-10-15, 72 NRC 301, 305-06 (2010)
this rule creates an exception to section 51.53(c)(3)(i) in the context of the requirements for ERs and EISs but not with regard to the scope of issues permitted to be raised in contentions in a license renewal adjudication context, absent a waiver; LBP-06-23, 64 NRC 299 n.170 (2006)
this rule may be read as in effect creating an exception to section 51.53(c)(3)(i)'s allowance that an applicant's ER is not required to contain analyses of the environmental impacts of the license renewal issues identified as Category 1 issues in Appendix B; LBP-06-23, 64 NRC 294 (2006)
- 10 C.F.R. 51.53(d)
decommissioning plans are provided in the post-shutdown phase of a plant; LBP-09-17, 70 NRC 372 (2009)
- 10 C.F.R. 51.55
environmental reports are required for each application for a standard design certification; LBP-09-10, 70 NRC 88 (2009)
- 10 C.F.R. 51.55(a)
a materials license amendment applicant must submit with its application an environmental report, which is required to contain the information specified in section 51.45; LBP-08-6, 67 NRC 321, 329 (2008)
applicant for a combined license that elects to reference a certified design is permitted to incorporate by reference the environmental report prepared in connection with the certified design, and that is, in turn, required to consider severe accident mitigation design alternatives; LBP-09-2, 69 NRC 102 (2009)
design certification applicants are required to address severe accident mitigation design alternatives; LBP-09-19, 70 NRC 536 (2009)
the environmental report associated with each application for a standard design certification must address the costs and benefits of severe accident design mitigation alternatives; LBP-09-10, 70 NRC 108 (2009)
- 10 C.F.R. 51.70
although the initial requirement to discuss the extent to which adverse effects can be avoided falls upon applicants, the ultimate responsibility lies with NRC Staff, who must address these issues in a supplemental environmental impact statement; LBP-06-23, 64 NRC 280 (2006)
Staff must first prepare a draft environmental impact statement, which addresses, among other topics, the matters specified in section 51.45; LBP-09-7, 69 NRC 633 (2009)
Staff's supplemental environmental impact statement for license renewal is specific to the particular site involved and provides the Staff's independent assessment of the applicant's environmental report; LBP-06-23, 64 NRC 280 (2006); LBP-07-4, 65 NRC 312 (2007); LBP-07-11, 66 NRC 65 (2007)
- 10 C.F.R. 51.70(b)
although the draft environmental impact statement may rely in part on applicant's environmental report, Staff must independently evaluate and be responsible for the reliability of all information used in the DEIS; LBP-09-19, 70 NRC 463 (2009)
in its environmental review, Staff need not replicate the work completed by another entity, but rather must independently review and find relevant and scientifically reasonable any outside reports or analyses on which it intends to rely; LBP-06-8, 63 NRC 259 (2006); LBP-06-28, 64 NRC 491 (2006)
the requirements of NEPA are directed to federal agencies and thus the primary duties of NEPA fall on the NRC Staff in NRC proceedings; LBP-06-23, 64 NRC 278 (2006); LBP-07-4, 65 NRC 310 (2007); LBP-07-11, 66 NRC 63 (2007); LBP-08-6, 67 NRC 321, 329 (2008)

LEGAL CITATIONS INDEX
REGULATIONS

- 10 C.F.R. 51.71
difficulty in quantification does not excuse inclusion in the environmental impact statement, because, to the extent that there are important qualitative considerations that cannot be quantified, these considerations or factors will be discussed in qualitative terms; LBP-06-23, 64 NRC 324 (2006)
NRC Staff must perform a cost-benefit analysis of construction and operation of a uranium enrichment facility and compare the incremental costs of the proposed action to the increase in benefits over the no-action alternative; LBP-07-6, 65 NRC 481 (2007)
there is no basis for providing an EIS description to such a level of detail that it can be duplicated by members of the public, so as to permit an individual to run applicable computer codes or make other detailed computations; LBP-06-9, 63 NRC 302, 305 (2006)
- 10 C.F.R. 51.71 n.3
compliance with the Clean Water Act limits imposed by a designated permitting state is not a substitute for, and does not negate the requirements for, NRC's obligation to weigh all environmental effects of a proposed action; LBP-08-13, 68 NRC 157 n.708 (2008)
- 10 C.F.R. 51.71(a)
review of environmental issues in a license renewal proceedings is limited to site-specific environmental impacts; LBP-08-13, 68 NRC 66 (2008)
Staff must first prepare a draft environmental impact statement, which addresses, among other topics, the matters specified in section 51.45; LBP-09-7, 69 NRC 633 (2009)
- 10 C.F.R. 51.71(b)
though Staff's draft environmental impact statement may rely in part on the applicant's environmental report, Staff must independently evaluate and be responsible for the reliability of all information used in the DEIS; LBP-09-7, 69 NRC 633 (2009)
- 10 C.F.R. 51.71(c)
although federal permits and exemptions must be mentioned in the final environmental impact statement, the absence of such mention does not perforce render the FEIS invalid; LBP-06-19, 64 NRC 104 n.40 (2006)
- 10 C.F.R. 51.71(d)
a draft environmental impact statement must include a preliminary analysis that considers and weighs the environmental effects of the proposed action, the environmental impacts of alternatives to the proposed action, and alternatives available for reducing or avoiding adverse environmental effects; LBP-06-19, 64 NRC 62 (2006)
after analyzing applicant's environmental report and performing its own independent review, NRC Staff must publish for public comment a draft environmental impact statement analyzing the comparative environmental effects of locating the new reactor on the proposed and alternative sites; CLI-07-27, 66 NRC 223 (2007)
an environmental impact statement must give due consideration to compliance with environmental quality standards and requirements that have been imposed by federal, state, regional, and local agencies having responsibility for environmental protection; CLI-08-1, 67 NRC 22 (2008)
based on information in applicant's environmental report, NRC Staff prepares an EIS that includes an analysis that considers and weighs the environmental impacts of alternatives to the proposed action, and alternatives available for reducing or avoiding adverse environmental effects; LBP-07-1, 65 NRC 73, 100 (2007); LBP-07-6, 65 NRC 484 (2007)
Category 2 issues are plant- or site-specific environmental impacts that must be evaluated in the supplemental environmental impact statement; LBP-06-20, 64 NRC 212 n.3 (2006)
compliance with the environmental quality standards and requirements of the Federal Water Pollution Control Act is not a substitute for and does not negate the requirement for NRC to weigh all environmental effects of the proposed action; LBP-06-20, 64 NRC 179 (2006)
in its terrorism review, NRC Staff may rely, where appropriate, on qualitative rather than quantitative considerations; CLI-07-11, 65 NRC 150 (2007)
it is environmental quality standards and requirements that the environmental analysis is obliged to address, not security issues; CLI-08-1, 67 NRC 22 (2008)
NRC Staff's environmental impact statement prepared during review of an early site permit application must consider and weigh the environmental impacts of alternatives to the proposed action and

LEGAL CITATIONS INDEX

REGULATIONS

- alternatives available for reducing or avoiding adverse environmental effects; LBP-09-19, 70 NRC 488 (2009)
- the comparison analysis in the final environmental impact statement must include the economic, technical, and other benefits of the proposed action and alternatives to those comparative costs; LBP-07-6, 65 NRC 487 (2007)
- the draft environmental impact statement must include an analysis of alternatives available for reducing or avoiding adverse environmental effects; LBP-07-9, 65 NRC 606 (2007)
- the draft supplemental environmental impact statement for a license renewal will rely on conclusions presented in the generic environmental impact statement for Category 1 issues, but must contain an analysis of those issues identified as Category 2; LBP-06-20, 64 NRC 213, 216 (2006)
- the environmental impact statement must provide a cost-benefit analysis among alternatives that considers and weighs the environmental effects of the proposed action and the alternatives available for reducing or avoiding adverse environmental effects; LBP-06-19, 64 NRC 91 (2006)
- this regulation incorporates not only ameliorative alternatives, but also preventive alternatives; LBP-10-15, 72 NRC 322 n.74 (2010)
- water pollution limitations imposed pursuant to the Federal Water Pollution Control Act for thermal discharges must be relied upon in the overall assessment of environmental impacts from the licensed renewal period; LBP-06-20, 64 NRC 216 (2006)
- when preparing an environmental impact statement, in addition to considering the adverse environmental impacts of a proposed action, NRC Staff must consider measures to mitigate such impacts by examining alternatives available for reducing or avoiding adverse environmental effects; LBP-06-19, 64 NRC 93 (2006)
- where quantification is not possible, the Commission expects license applicants and NRC Staff to assess pertinent factors in qualitative terms; CLI-08-26, 68 NRC 521 (2008); LBP-10-15, 72 NRC 324 n.78 (2010)
- 10 C.F.R. 51.71(d) n.3
- in the context of NEPA, NRC is obligated to study matters that may be far afield of its primary mission, including the environmental impacts related to the permits and licenses issued by other governmental agencies; LBP-09-21, 70 NRC 594 n.36 (2009)
- Staff and applicant must address matters such as the environmental impacts of unregulated seepage into adjacent groundwater in their environmental impact statement and environmental report; LBP-09-25, 70 NRC 889 (2009)
- the fact that an agency other than NRC has jurisdiction to issue a permit concerning a certain environmental impact of the project does not mean that the subject may be excluded from the environmental report or environmental impact statement; LBP-09-10, 70 NRC 100 (2009); LBP-09-16, 70 NRC 278 (2009)
- 10 C.F.R. 51.71(e)
- a draft environmental impact statement must include a preliminary recommendation by NRC Staff respecting the proposed action; LBP-06-19, 64 NRC 62 (2006)
- 10 C.F.R. 51.72(a)
- an environmental impact statement must be supplemented only when changed circumstances cause effects that are significantly different from those already studied; LBP-06-19, 64 NRC 99 (2006)
- further Staff analysis does not require a further circulation of the final environmental impact statement for comment, nor is it necessary to develop further alternatives for evaluation; LBP-06-19, 64 NRC 100 (2006)
- Staff must supplement an environmental impact statement if there are substantial changes in the proposed action that are relevant to environmental concerns, or there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts; LBP-06-19, 64 NRC 98 (2006)
- 10 C.F.R. 51.72(a)(2)
- Staff must review applicant's environmental report and include any significant new circumstances or information relating to Category 1 issues in supplements to the draft supplemental environmental impact statement; LBP-06-20, 64 NRC 149, 159 n.32 (2006)

LEGAL CITATIONS INDEX

REGULATIONS

- 10 C.F.R. 51.73
any member of the public who wishes to comment on the draft environmental assessment outside of the adjudicatory process, pursuant to NRC's normal environmental process, must do so within 30 days after it is made available in accordance with the NRC's regulations (or within 45 days) of the publication of a draft environmental impact statement; CLI-07-11, 65 NRC 150 (2007)
the draft environmental impact statement is distributed for public comment and, based on the comments received, a review of information provided by the applicant, and supplemental independent information and analysis, the Staff prepares and issues a final environmental impact statement; LBP-09-7, 69 NRC 633 (2009); LBP-09-19, 70 NRC 463 (2009)
the minimum time required for a draft environmental impact statement comment period is 45 days; LBP-10-24, 72 NRC 741 n.39 (2010)
- 10 C.F.R. 51.73-51.74
although the initial requirement to discuss the extent to which adverse effects can be avoided falls upon applicants, the ultimate responsibility lies with NRC Staff, who must address these issues in a supplemental environmental impact statement; LBP-06-23, 64 NRC 280 (2006)
Staff's supplemental environmental impact statement is specific to the particular site involved and provides the Staff's independent assessment of the applicant's environmental report; LBP-06-23, 64 NRC 280 (2006); LBP-07-4, 65 NRC 312 (2007); LBP-07-11, 66 NRC 65 (2007)
upon completing its draft environmental impact statement, Staff releases it to the public and requests comments; LBP-06-19, 64 NRC 62 (2006)
- 10 C.F.R. 51.75(b)
content of Staff's draft environmental impact statement is discussed; LBP-09-19, 70 NRC 463 (2009)
NRC Staff's environmental impact statement prepared during review of an early site permit application must include an evaluation of alternative sites to determine whether there is any obviously superior alternative to the site proposed; LBP-09-19, 70 NRC 488 (2009)
the draft environmental impact statement prepared at the early site permit stage must include an evaluation of the environmental effects of construction and operation of a reactor that has design characteristics that fall within the site characteristics and design parameters for the ESP application to the extent addressed in the ESP environmental report; LBP-08-15, 68 NRC 324 (2008)
- 10 C.F.R. 51.75(c)(2)
if a combined license application references a design certification, then the presiding officer shall not admit contentions concerning severe accident design mitigation alternatives unless the contention demonstrates that the site characteristics fall outside of the site parameters in the standard design certification; LBP-09-10, 70 NRC 108 (2009)
- 10 C.F.R. 51.90
after the release-and-comment stage on the draft environment impact statement, Staff prepares a final environmental impact statement, which includes responses to any comments on the DEIS; LBP-06-19, 64 NRC 62 (2006)
although federal permits and exemptions must be mentioned in the final environmental impact statement, the absence of such mention does not render the FEIS invalid; LBP-06-19, 64 NRC 104 n.40 (2006)
- 10 C.F.R. 51.91
after the release-and-comment stage on the draft environment impact statement, Staff prepares a final environmental impact statement, which includes responses to any comments on the DEIS; LBP-06-19, 64 NRC 62 (2006)
the draft environmental impact statement is distributed for public comment and, based on the comments received, a review of information provided by the applicant, and supplemental independent information and analysis, the Staff prepares and issues a final environmental impact statement; LBP-09-7, 69 NRC 633 (2009); LBP-09-19, 70 NRC 463 (2009)
the final environmental impact statement must include an analysis of alternatives available for reducing or avoiding adverse environmental effects; LBP-07-9, 65 NRC 606 (2007)
- 10 C.F.R. 51.91(a)(1)
when NRC Staff received comments criticizing the failure of the draft environmental impact statement to take into account the impact of the partial closure of the Barnwell facility, Staff was required to respond to those comments in the FEIS; LBP-08-15, 68 NRC 324 (2008)

LEGAL CITATIONS INDEX
REGULATIONS

- 10 C.F.R. 51.91(c)
after reviewing public comments on the draft environmental impact statement, the Staff must issue a final environmental impact statement stating how the alternatives considered will or will not achieve the requirements of sections 101 and 102(1) of NEPA; CLI-07-27, 66 NRC 223 (2007)
- 10 C.F.R. 51.92
a late-filed environmental contention may be admitted only where petitioner relies upon newly available, significant information, meets the nontimely filing requirements, or successfully argues for supplementing the EIS; LBP-08-11, 67 NRC 475 (2008)
because of the nature of the two-step structure created for the MOX fuel fabrication facility, environmental contentions are beyond the scope of the current proceeding unless they meet requirements for supplementing the environmental impact statement; LBP-07-14, 66 NRC 192 (2007)
NRC may not permit construction or operation of new reactors unless and until it has taken into account any changed circumstances and new and significant information; LBP-07-3, 65 NRC 267 (2007)
- 10 C.F.R. 51.92(a)
Staff must supplement an environmental impact statement if there are substantial changes in the proposed action that are relevant to environmental concerns, or there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts; LBP-06-19, 64 NRC 98, 99 (2006)
- 10 C.F.R. 51.92(a)(1)
NRC's NEPA-implementing regulations anticipate the possibility of substantial changes in the proposed action that are relevant to environmental concerns and provide that when this happens NRC Staff will prepare a supplement to a final environmental impact statement; LBP-10-17, 72 NRC 516 (2010)
Staff's final supplemental environmental impact statement will cover any significant new circumstances or information relating to Category 1 issues; LBP-06-20, 64 NRC 156, 159 n.32 (2006)
Staff's pursuit of further analysis of a proposed project, which resulted in no substantial changes relevant to environmental concerns, does not require supplementing the final environmental impact statement; LBP-06-19, 64 NRC 101 (2006)
- 10 C.F.R. 51.92(a)(1)-(2)
circumstances in which supplementation of the environmental impact statement is required are described; LBP-08-11, 67 NRC 477 (2008)
Staff must supplement the EIS if there are substantial changes in the proposed action or significant new circumstances or information that bear on environmental concerns; LBP-08-11, 67 NRC 479 (2008)
- 10 C.F.R. 51.92(a)(2)
because NRC regulations require that the ER and EIS include a SAMA analysis, the adequacy of that analysis is material to the findings NRC must make in a license renewal proceeding; LBP-10-15, 72 NRC 288 (2010)
NRC Staff's obligation to consider significant new information in preparing NEPA documents follows from the agency's NEPA regulations; LBP-10-24, 72 NRC 748 (2010)
the generic environmental impact statement must be updated if new and significant information or changed circumstances would change the outcome of the environmental analysis; LBP-10-15, 72 NRC 301, 305-06 (2010)
when dealing with a request to waive an environmental regulation under 10 C.F.R. 2.335(b), NRC should use the significant new information criterion; LBP-10-15, 72 NRC 301 (2010)
when preparing the supplemental environmental impact statement, the Staff must consider any significant new information related to Category 1 issues; LBP-06-23, 64 NRC 294 (2006)
- 10 C.F.R. 51.92(d)(1)
the required dissemination of information permits the public to react to the effects of a proposed action at a meaningful time; LBP-06-23, 64 NRC 298 n.169 (2006)
- 10 C.F.R. 51.92(e)(6)-(7)
when a combined license application references an early site permit, neither the applicant nor the Staff needs to address environmental issues resolved in the ESP proceeding unless new and significant information arises on those issues; LBP-10-1, 71 NRC 184 n.12 (2010)
- 10 C.F.R. 51.95
decommissioning plans are provided in the post-shutdown phase of a plant; LBP-09-17, 70 NRC 372 (2009)

LEGAL CITATIONS INDEX
REGULATIONS

- 10 C.F.R. 51.95(b)
further review of need for power and alternative energy sources are precluded once a construction permit has been issued; CLI-10-29, 72 NRC 558 (2010)
if NRC Staff concludes that the legal threshold for new and significant information has been met, it is authorized to supplement the final environmental statement; CLI-10-29, 72 NRC 563 (2010)
no discussion of need for power or alternative energy sources is required in a final supplemental environmental impact statement at the operating license stage; LBP-09-26, 70 NRC 974 (2009); LBP-10-12, 71 NRC 663 n.18 (2010)
- 10 C.F.R. 51.95(c)
although the initial requirement for addressing environmental impacts falls on applicant, ultimate responsibility lies with NRC Staff, who must address these issues in a supplemental environmental impact statement; LBP-06-23, 64 NRC 280 (2006); LBP-07-11, 66 NRC 65 (2007)
applicant's environmental report is not required to contain analyses of environmental impacts identified as "Category 1," or "generic," issues in Part 51, Subpart A, Appendix B, Table B-1; LBP-07-11, 66 NRC 63 (2007)
"Category 2" issues are issues for which NRC Staff must prepare a supplemental environmental impact statement; LBP-06-7, 63 NRC 199 (2006)
draft supplemental environmental impact statements for license renewal will rely on conclusions presented in the generic environmental impact statement for Category 1 issues, but must contain an analysis of those issues identified as Category 2; LBP-06-20, 64 NRC 213 (2006)
in a supplemental environmental impact statement, NRC Staff must address adverse environmental effects that cannot be avoided; LBP-07-4, 65 NRC 312 (2007)
review of environmental issues in a license renewal proceeding is limited to site-specific environmental impacts; LBP-08-13, 68 NRC 66 (2008)
- 10 C.F.R. 51.95(c)(2)
for a license renewal, the environmental report and the supplemental environmental impact statement need not discuss spent fuel storage issues related to a generic determination; LBP-06-20, 64 NRC 170 (2006)
- 10 C.F.R. 51.95(c)(3)
when preparing the supplemental environmental impact statement, Staff must consider any significant new information related to Category 1 issues; LBP-06-20, 64 NRC 156 (2006); LBP-06-23, 64 NRC 294 (2006)
- 10 C.F.R. 51.101(a)
applicant proceeds with construction of an independent spent fuel storage installation at its own risk; CLI-06-27, 64 NRC 402 (2006)
- 10 C.F.R. 51.102
the adjudicatory record and board decision and any Commission appellate decisions become, in effect, part of the final environmental impact statement; LBP-06-19, 64 NRC 69 n.11 (2006)
- 10 C.F.R. 51.102(a)
as a part of its environmental review, Staff prepare a record of decision to accompany any Commission decision on any action for which a final environmental impact statement has been prepared; LBP-06-8, 63 NRC 259 (2006)
- 10 C.F.R. 51.102(b), (c)
Staff prepares the record of decision on an action, but when a hearing is held on the proposed action, the licensing board's initial decision on that action constitutes the record of decision; LBP-06-8, 63 NRC 260 (2006)
- 10 C.F.R. 51.102(c)
the record of decision may incorporate by reference any material contained in the relevant final environmental impact statement; LBP-06-8, 63 NRC 260 (2006)
- 10 C.F.R. 51.103
requirements for the "record of decision" relating to any license renewal application are described; LBP-06-10, 63 NRC 346 (2006); LBP-07-11, 66 NRC 65 (2007)
the adjudicatory record and board decision and any Commission appellate decisions become, in effect, part of the final environmental impact statement; LBP-06-19, 64 NRC 69 n.11 (2006)

LEGAL CITATIONS INDEX
REGULATIONS

- 10 C.F.R. 51.103(a)(5)
the standard for NRC's decision on license renewal applications is whether or not the adverse environmental impacts of license renewal are so great that preserving the option of license renewal for energy planning decisionmakers would be unreasonable; LBP-06-23, 64 NRC 280 (2006); LBP-07-4, 65 NRC 312 (2007); LBP-07-11, 66 NRC 65 (2007)
- 10 C.F.R. 51.104
Staff has the burden of proof to demonstrate the adequacy of the final environmental impact statement; LBP-06-8, 63 NRC 250 (2006)
- 10 C.F.R. 51.104(a)(1)
NRC Staff may not offer the final environmental impact statement in evidence or present the Staff's position on matters within the scope of NEPA until the FEIS is filed with the Environmental Protection Agency, furnished to commenting agencies, and made available to the public; CLI-07-17, 65 NRC 394 (2007)
- 10 C.F.R. 51.105(a)(1)
in the mandatory early site permit hearing, the NRC must address whether the requirements of section 102(2)(A), (C), and (E) of NEPA and the regulations in 10 C.F.R. Part 51, Subpart A have been complied with; CLI-07-27, 66 NRC 221 (2007)
- 10 C.F.R. 51.105(a)(1)-(3)
benefit-cost analysis can be postponed until the reactor licensing stage; LBP-07-9, 65 NRC 559 (2007)
the mandatory hearing board is required to answer six questions for the uncontested early site permit proceedings; LBP-08-15, 68 NRC 301 (2008)
- 10 C.F.R. 51.105(a)(1)-(4)
environmental findings that a board must make to authorize issuance of an early site permit are described; LBP-09-19, 70 NRC 458 (2009)
- 10 C.F.R. 51.105(a)(2)
a licensing board's review need not go beyond the record, but rather must independently perform the required weighing based upon the record; LBP-06-28, 64 NRC 475 n.40 (2006)
even if a proceeding is uncontested, the presiding officer must independently consider the final balance among the conflicting factors contained in the record of the proceeding with a view to determining the appropriate action to be taken; LBP-07-9, 65 NRC 556 n.27, 614-15 (2007)
in the mandatory early site permit hearing, the NRC must independently consider the final balance among the conflicting factors contained in the record of the proceeding with a view to determining the appropriate action to be taken; CLI-07-27, 66 NRC 221 (2007)
- 10 C.F.R. 51.105(a)(3)
in the mandatory early site permit hearing, the NRC must determine, after considering reasonable alternatives, whether the construction permit should be issued, denied, or appropriately conditioned to protect environmental values; CLI-07-27, 66 NRC 221, 257 (2007)
three NEPA-related matters must be addressed by the board; LBP-06-28, 64 NRC 471 (2006)
- 10 C.F.R. 51.105(a)(4)
even if a proceeding is uncontested, the board must determine whether the NEPA review conducted by the NRC Staff has been adequate; LBP-07-9, 65 NRC 558, 616 (2007)
in conducting their sufficiency review, licensing boards are directed to make specific findings; LBP-07-1, 65 NRC 36 (2007)
in the mandatory early site permit hearing, the NRC must address whether the review conducted by the Commission pursuant to the National Environmental Policy Act has been adequate; CLI-07-27, 66 NRC 221 (2007)
- 10 C.F.R. 51.105(c)
boards are to determine whether the site redress plan will adequately redress the activities performed under a limited work authorization should the activities be terminated by either the holder of the LWA or by Commission denial of any corresponding early site permit or combined license; LBP-09-19, 70 NRC 459 (2009)
- 10 C.F.R. 51.105(c)(3)
although a presiding officer should issue a separate partial initial decision regarding a limited work authorization request, the board finds no practical or logical basis for separating its consideration of the

LEGAL CITATIONS INDEX
REGULATIONS

- adequacy of the LWA request from its determination regarding the early site permit with which it is associated; LBP-09-19, 70 NRC 504-05 n.32 (2009)
- 10 C.F.R. 51.106(c)
at the operating license stage, licensing boards will not admit contentions concerning need for power or alternative energy sources; LBP-10-12, 71 NRC 663 n.18 (2010)
- 10 C.F.R. 51.107(a)
the board recommends that the issue of waste disposal from in situ leach mining be considered when the mandatory review and hearing are conducted; LBP-10-16, 72 NRC 435 (2010)
the board recommends that the location of a new reactor within the emergency planning zone of an existing reactor be considered by the Commission or board when it conducts the mandatory review and hearing that must be held; LBP-09-10, 70 NRC 112 (2009)
- 10 C.F.R. 51.107(a)(1)-(3)
determinations that the licensing board must make in a combined operating license proceeding are described; LBP-08-15, 68 NRC 333 (2008)
power generation benefits that applicant asserts a new unit will provide are relevant to the findings required by this section; LBP-08-15, 68 NRC 333 (2008)
- 10 C.F.R. 51.107(a)(3)
NRC must analyze the need for additional power when it relies upon a benefit in performing the balancing of benefits and costs; LBP-09-16, 70 NRC 301-02 (2009)
- 10 C.F.R. 51.107(b)(2), (3)
environmental contentions at the COL stage are generally only admissible where they either raise issues that were not resolved at the ESP stage or raise issues resolved at the ESP stage for which new and significant information has been identified; LBP-10-1, 71 NRC 184 n.12 (2010)
- 10 C.F.R. 51.107(c)
if a combined license application references a design certification, then the presiding officer shall not admit contentions concerning severe accident mitigation design alternatives unless the contention demonstrates that the site characteristics fall outside of the site parameters in the standard design certification; LBP-09-10, 70 NRC 108 (2009)
to the extent petitioner challenges the SAMDA analysis, it is an impermissible challenge to the AP1000 certified design in 10 C.F.R. Part 52, Appendix D; CLI-10-1, 71 NRC 14 n.68 (2010); CLI-10-9, 71 NRC 258 (2010)
- 10 C.F.R. 51.109
in addition to meeting NRC's regular contention admissibility requirements in section 2.309(f), environmental contentions addressing any DOE environmental impact statement or supplement must also conform to the requirements and address the applicable factors outlined in this section; CLI-08-25, 68 NRC 502 (2008)
- 10 C.F.R. 51.109(a)(1)
NRC Staff is required to present its position on whether it is practicable to adopt DOE's environmental impact statement for Yucca Mountain without supplementation; LBP-09-6, 69 NRC 393 (2009)
- 10 C.F.R. 51.109(a)(2)
a presiding officer considering environmental contentions in the high-level waste proceeding should apply NRC reopening procedures and standards in section 2.326 to the extent possible; CLI-08-25, 68 NRC 503 (2008)
affidavits supporting NEPA contentions must set forth factual and/or technical bases for the claim that it is not practicable to adopt the DOE environmental impact statement; LBP-09-6, 69 NRC 400 (2009)
each environmental contention in the high-level waste proceeding must be supported by one or more affidavits which set forth factual and/or technical bases; LBP-09-6, 69 NRC 392 (2009)
each factual NEPA contention must be accompanied by one or more affidavits, but a purely legal issue contention cannot logically require affidavit support, as by definition such a contention alleges no facts that require support; CLI-09-14, 69 NRC 590 (2009); LBP-09-6, 69 NRC 400 (2009)
parties to the high-level waste proceeding are to be afforded the opportunity to submit contentions asserting that it is not practicable to adopt the DOE environmental impact statement; LBP-09-6, 69 NRC 393 (2009)
the 30-day hearing petition and contention-filing deadlines set forth in this section have been modified for the high-level waste proceeding; CLI-08-25, 68 NRC 499 (2008)

LEGAL CITATIONS INDEX

REGULATIONS

- the presiding officer in the high-level waste proceeding shall resolve disputes concerning adoption of the DOE environmental impact statement by using, to the extent possible, the criteria and procedures in 10 C.F.R. 2.326 that are followed in ruling on motions to reopen; LBP-09-6, 69 NRC 393 (2009)
- 10 C.F.R. 51.109(c)
criteria governing the practicability of adoption of DOE's environmental impact statement for the high-level waste repository are discussed; LBP-09-6, 69 NRC 393-94 (2009)
- the presiding officer in the high-level waste proceeding shall make the environmental findings required by this section, even on uncontested issues, to the extent it is not practicable to adopt the environmental impact statement prepared by the Secretary of Energy; CLI-08-25, 68 NRC 503 (2008)
- the presiding officer should treat as a cognizable "new consideration" an attack on the Yucca Mountain environmental impact statements based on significant and substantial information that, if true, would render the statements inadequate; CLI-08-25, 68 NRC 502-03 (2008)
- 10 C.F.R. 51.109(c)(2)
affidavits supporting environmental contentions in the high-level waste proceeding must set forth significant and substantial grounds for the claim that it is not practicable to adopt the environmental impact statement for the proposed repository prepared by DOE; LBP-09-6, 69 NRC 392 (2009)
- the only relevant test for a claim that it is not practicable to adopt the DOE environmental impact statement is whether the supporting affidavit presents significant and substantial new information or new considerations sufficient to render such EIS inadequate; LBP-09-6, 69 NRC 400 (2009)
- 10 C.F.R. 51.109(f)
the final environmental impact statement may be modified by subsequent decisions of NRC adjudicatory tribunals; CLI-07-27, 66 NRC 230 (2007)
- 10 C.F.R. Part 51, Subpart A, Appendix A
the alternatives analysis is the heart of the environmental impact statement; LBP-10-14, 72 NRC 110 (2010)
- the NEPA hard-look doctrine is subject to a rule of reason that the Commission has interpreted as obligating the agency to consider all reasonable alternatives to the proposed action; LBP-10-14, 72 NRC 110 (2010)
- 10 C.F.R. Part 51, Subpart A, Appendix A, § 1(a)(5)
an otherwise reasonable alternative will not be excluded from discussion solely on the ground that it is not within the jurisdiction of the NRC; LBP-09-10, 70 NRC 127 (2009); LBP-09-17, 70 NRC 379 (2009)
- environmental reports and environmental impact statements are required to consider all significant environmental impacts of a proposed project, even if the regulation of such impacts falls outside of NRC's jurisdiction and lies with another agency; LBP-09-10, 70 NRC 100, 105 (2009); LBP-09-16, 70 NRC 278 (2009); LBP-09-21, 70 NRC 594 n.36 (2009)
- presentation of alternatives in an applicant's environmental report and in an NRC environment impact statement must be in comparative form; LBP-09-19, 70 NRC 487-88 (2009)
- Staff and applicant must address matters such as the environmental impacts of unregulated seepage into adjacent groundwater in their environmental impact statement and environmental report; LBP-09-25, 70 NRC 889 (2009)
- the environmental impact statement must identify and discuss all reasonable alternatives; LBP-09-17, 70 NRC 378 (2009)
- the NEPA alternatives analysis is the heart of the environmental impact statement; LBP-09-10, 70 NRC 126 (2009); LBP-09-16, 70 NRC 263 (2009); LBP-09-17, 70 NRC 378 (2009)
- 10 C.F.R. Part 51, Subpart A, Appendix A, § 1(b)
an agency may rely on an environmental impact statement prepared by another federal agency if such reliance will aid in the presentation of issues, eliminate repetition, or reduce the length of an EIS; LBP-09-7, 69 NRC 634 (2009)
- 10 C.F.R. Part 51, Subpart A, Appendix A, § 4
Staff's draft and final environmental impact statements are to include a statement that will briefly describe and specify the need for the proposed action; LBP-06-17, 63 NRC 813 (2006)
- the proper inquiry for determining the sufficiency of the purpose and need statement is whether the final environmental impact statement, read as a whole, includes a correct and adequate description of the purpose and need of the proposed action; LBP-06-19, 64 NRC 85 n.30 (2006)

LEGAL CITATIONS INDEX

REGULATIONS

- 10 C.F.R. Part 51, Subpart A, Appendix A, § 5
all reasonable alternatives must be identified in the environmental impact statement and the range of alternatives discussed will encompass those proposed to be considered by the ultimate decisionmaker; LBP-07-9, 65 NRC 603, 606, 613 (2007)
- an early site permit applicant's environmental report must identify all reasonable alternatives to the proposed site; CLI-07-27, 66 NRC 222 (2007)
- an otherwise reasonable alternative will not be excluded from discussion in an environmental impact statement solely on the ground that it is not within the jurisdiction of the NRC; LBP-10-10, 71 NRC 584 n.286 (2010)
- the fact that a possible alternative is beyond the NRC's power to implement, does not absolve NRC of any duty to consider it; LBP-07-9, 65 NRC 603, 639 (2007)
- the final environmental impact statement must contain a discussion of alternatives, which is considered to be the heart of the environmental impact statement; LBP-06-19, 64 NRC 86 (2006); LBP-07-9, 65 NRC 603, 606, 631 (2007)
- 10 C.F.R. Part 51, Subpart A, Appendix A, § 7
applicants' assertion that low-level radioactive waste could be transferred to another licensee or that some other arrangement might be established in the future is not sufficient to erase the requirement that reasonably foreseeable environmental impacts be assessed in an environmental report; CLI-09-20, 70 NRC 924 (2009)
- 10 C.F.R. Part 51, Subpart A, Appendix A, §(7)(b)
under NEPA standards and NRC environmental regulations, it is appropriate to consider the reasonably foreseeable environmental impacts of a proposed action, even if they are only indirect effects; CLI-06-15, 63 NRC 690 (2006)
- 10 C.F.R. Part 51, Subpart A, Appendix B
alternatives to mitigate severe accidents must be considered for all plants that have not previously considered such alternatives; LBP-06-23, 64 NRC 279 (2006)
- applicants must provide a plant-specific review of all the Category 2 environmental issues; LBP-06-10, 63 NRC 345 (2006)
- Category 1 issues are those issues that NRC has categorized and assessed generically because the environmental effects of those issues are essentially similar for all plants; CLI-06-17, 63 NRC 734 n.29 (2006); LBP-06-10, 63 NRC 345 (2006)
- Category 1 issues are those that apply to all plants having specified plant or site characteristics, that have a small impact, and whose alternatives analyses demonstrate that additional plant-specific mitigation measures are likely not to be sufficiently beneficial to warrant implementation; LBP-06-20, 64 NRC 212 n.2 (2006)
- Category 2 issues are plant- or site-specific environmental impacts that must be evaluated in the supplemental environmental impact statement; LBP-06-20, 64 NRC 212 n.3 (2006)
- even though the probability that weighted consequences of atmospheric releases, fallout onto open bodies of water, releases to groundwater, and societal and economic impacts from severe accidents are small for all plants, alternatives to mitigate severe accidents must still be considered; LBP-06-23, 64 NRC 324 (2006)
- heat shock cannot be treated generically but must instead be addressed on a case-by-case basis; CLI-07-16, 65 NRC 378 (2007)
- impacts of design-basis accidents at spent fuel storage installations are characterized as small, and so, no site-specific NEPA review is required; CLI-07-8, 65 NRC 133 (2007)
- in their environmental report, applicants must address environmental issues for which the Commission was not able to make generic environmental findings; LBP-07-4, 65 NRC 311 (2007); LBP-07-11, 66 NRC 64 (2007)
- issues on which the Commission can draw generic conclusions applicable to all existing nuclear power plants, or to a specific subgroup of plants are identified as "Category 1" issues; LBP-06-23, 64 NRC 279 (2006); LBP-07-4, 65 NRC 311 (2007); LBP-07-11, 66 NRC 63 (2007)
- petitioner has made a prima facie case that there are special circumstances with regard to the environmental impacts and risks of earthquake-induced spent fuel pool accidents so as to warrant the waiver of portions of this regulation and classifying such spent fuel impacts as Category 1 and to warrant that these impacts be assessed on a site-specific basis; LBP-10-15, 72 NRC 306 (2010)

LEGAL CITATIONS INDEX

REGULATIONS

- societal and economic impacts from severe accidents have been deemed small for all plants and such issues cannot be raised in a license renewal proceeding absent a waiver; LBP-06-10, 63 NRC 365 (2006)
- the expected increase in the volume of spent fuel from an additional 20 years of operation can be safely accommodated onsite with small environmental effects through dry or pool storage at all plants if a permanent repository or monitored retrievable storage is not available; LBP-06-7, 63 NRC 202 (2006)
- 10 C.F.R. Part 51, Subpart A, Appendix B, Table B-1
- a contention that a license renewal for a nuclear plant will result in excessive radioactive and toxic chemical contamination of the local drinking water may be viewed as a Category 1 issue; LBP-06-10, 63 NRC 357 (2006)
- all spent fuel accidents, whatever their cause, are treated as generic, Category 1 events not suitable for case-by-case adjudication; LBP-06-23, 64 NRC 295 (2006)
- alternatives to mitigate severe accidents must be considered for all plants that have not previously considered such alternatives; LBP-07-4, 65 NRC 312 (2007); LBP-07-11, 66 NRC 64 (2007)
- applicant's environmental report is not required to contain analyses of environmental impacts identified as "Category 1," or "generic," issues; LBP-07-4, 65 NRC 310 (2007)
- definitions are provided for the three significance levels of environmental issues; LBP-07-1, 65 NRC 100 n.323 (2007); LBP-07-6, 65 NRC 474 n.213 (2007)
- discharge of chlorine or other biocides is a Category 1, out-of-scope issue in a license renewal proceeding; LBP-07-4, 65 NRC 324 (2007)
- emergency planning is excluded from license renewal proceedings because the issue is not germane to age-related degradation or unique to the period of time covered by the license renewal; LBP-07-4, 65 NRC 335-36 (2007)
- environmental impacts pertaining to onsite spent fuel are a Category 1 issue; CLI-10-14, 71 NRC 471 (2010)
- in a generic environmental impact statement, NRC has already considered certain environmental issues common to all (or to a certain category of) reactors, designated "Category 1" issues, which include such matters as onsite land use, noise, bird collisions with cooling towers, and onsite spent fuel storage; CLI-06-24, 64 NRC 118 (2006)
- offsite radiological impacts are a Category 1 issue, which the Commission has determined to be "small" for all nuclear power plants seeking a renewed license; LBP-08-26, 68 NRC 929 (2008)
- onsite spent fuel management is a Category 1 issue; LBP-06-20, 64 NRC 155 (2006)
- severe accident mitigation alternatives are a Category 2 issue that demands a site-specific analysis for license renewal; LBP-10-13, 71 NRC 679 (2010)
- spent fuel from an additional 20 years of operation can be stored safely, with small environmental effects, at all plants, and such impacts are classified as Category 1 issues that are not within the scope of individual license renewal proceedings; CLI-07-3, 65 NRC 17 (2007); LBP-06-23, 64 NRC 291 (2006); LBP-10-15, 72 NRC 294-95 (2010)
- the Category-2 environmental issues listed in NRC regulations include only one thermal effect, heat shock; CLI-07-16, 65 NRC 390 (2007)
- the impact on offsite land use during the license renewal term cannot be assessed generically and, accordingly, it is a Category 2 environmental issue that is within the scope of a license renewal proceeding; LBP-08-13, 68 NRC 115 (2008)
- 10 C.F.R. Part 51, Subpart A, Appendix B, Table B-1 n.3
- when the Staff makes its conclusions in the draft and final environmental impact statements regarding the environmental impacts of a proposed action or alternative actions, the Staff uses as guidance a standard scheme to categorize or quantify the impacts; LBP-09-7, 69 NRC 633 (2009)
- license renewal impacts that do not exceed permissible regulatory levels are to be considered "small"; LBP-08-16, 68 NRC 425 (2008)
- 10 C.F.R. Part 52
- in determining the acceptability of an ESP site, the NRC Staff must consider hydrogeologic characteristics; LBP-07-1, 65 NRC 55 (2007)
- local geologic and hydrological characteristics must be defined because these parameters may bear on the potential consequences of radioactive materials escaping from a plant; LBP-07-1, 65 NRC 55 (2007)

LEGAL CITATIONS INDEX
REGULATIONS

- the effects of dewatering during construction on the existing structures is reviewed during the COL stage; LBP-07-1, 65 NRC 48 (2007)
- with respect to combined licenses, interested persons may request a hearing as to the adequacy of construction after issuance of a combined license; CLI-09-2, 69 NRC 61 n.20 (2009)
- 10 C.F.R. 52.1
- an early site permit is an approval for a nuclear plant site; LBP-09-19, 70 NRC 549 (2009)
- an early site permit is categorized as a partial construction permit; LBP-08-15, 68 NRC 307 (2008)
- “design parameters” is defined as the postulated features of a reactor or reactors that could be built at a proposed site; CLI-07-27, 66 NRC 257 n.227 (2007)
- “site characteristics” is defined as the actual physical, environmental, and demographic features of a site; CLI-07-27, 66 NRC 257 n.227 (2007)
- 10 C.F.R. 52.1(a)
- an early site permit focuses on the suitability of a proposed site, and is defined as a Commission approval for a site or sites for one or more nuclear power facilities; LBP-08-15, 68 NRC 299-300 (2008)
- early site permit applications, as partial construction permit applications, are subject to the AEA hearing requirement, as well as all procedural requirements in 10 C.F.R. Part 2; LBP-09-19, 70 NRC 456 (2009)
- if granted, an early site permit evidences Commission approval of a site for one or more nuclear power facilities; LBP-09-19, 70 NRC 456 (2009)
- 10 C.F.R. 52.3
- an early site permit holder may not actually commence construction of any reactors on the site without having applied for and received a separate construction permit or combined operating license from the NRC; LBP-07-9, 65 NRC 550 n.5 (2007)
- 10 C.F.R. 52.3(b)
- an early site permit focuses on the suitability of a proposed site, and is defined as a Commission approval for a site or sites for one or more nuclear power facilities; LBP-07-9, 65 NRC 550-51 (2007); LBP-08-15, 68 NRC 299-300 (2008)
- 10 C.F.R. 52.3(b)(2)
- license applications may be modified or improved during the NRC review process; LBP-10-17, 72 NRC 517 n.70 (2010)
- 10 C.F.R. Part 52, Subpart A
- an early site permit is a special type of NRC permit that can resolve certain environmental, safety, and emergency planning issues related to a proposed site for a reactor; LBP-06-24, 64 NRC 361 (2006)
- 10 C.F.R. 52.12
- an early site permit authorizes approval of a site for one or more nuclear power facilities; LBP-08-15, 68 NRC 323 (2008)
- 10 C.F.R. 52.15(a)
- an early site permit may be sought even though an application for a construction permit or combined license has not been filed; LBP-08-15, 68 NRC 307 (2008)
- 10 C.F.R. 52.16
- corporate applicants must provide place of incorporation, citizenship of directors and principal officers, and whether owned, controlled, or dominated by a foreign corporation in their application; LBP-08-24, 68 NRC 747 n.316 (2008); LBP-09-1, 69 NRC 33 (2009)
- 10 C.F.R. 52.17
- an early site permit applicant may choose to submit a plan for redress of the site, which, if accepted as part of an approved ESP, would allow an applicant to perform certain preconstruction activities; LBP-06-28, 64 NRC 469 (2006)
- an early site permit applicant may make a number of choices regarding the scope, and therefore the content, of its ESP application; LBP-06-28, 64 NRC 468 (2006)
- an ESP applicant must submit the information required by 10 C.F.R. 50.34(a)(12) and (b)(10) and demonstrate that the characteristics of the proposed site comply with 10 C.F.R. Part 100; LBP-07-1, 65 NRC 41 (2007)
- applicant has the option to use either plant-specific information or a surrogate plant or plants via a plant parameter envelope to satisfy the regulatory requirements; LBP-07-1, 65 NRC 85 (2007)

LEGAL CITATIONS INDEX
REGULATIONS

- ESP applicants must provide information regarding the interface between the proposed site and facility and the functional or operational needs of the facility from the site's natural and environmental resources, the facility's capability to withstand natural and manmade environmental hazards of the site, and the direct impact of the facility on the site's natural and environmental resources; LBP-07-1, 65 NRC 85 (2007)
- radiological consequences of design basis accidents must be analyzed to demonstrate that any new nuclear unit or units could be sited at the proposed ESP site without undue risk to the health and safety of the public; LBP-07-1, 65 NRC 92 (2007)
- Staff's EIS analysis for an early site permit need not include an assessment of the benefits (e.g., need for power); LBP-07-1, 65 NRC 99 (2007)
- the threshold probability that calls for analysis for reactors is generally greater than 1 in 10 million per year; CLI-10-1, 71 NRC 12 n.56 (2010)
- 10 C.F.R. 52.17(a)(1)
- a site safety assessment that demonstrates the acceptability of the site under the radiological consequence evaluation factors identified in section 50.34(a)(1) is required; LBP-07-1, 65 NRC 92 (2007)
- an early site permit applicant must describe the maximum levels of radiological effluents each facility will produce, and demonstrate that radiological effluent release limits can be met, with appropriate design, given the atmospheric dispersion characteristics of the site; CLI-07-27, 66 NRC 250 (2007)
- it is not necessary to address compliance with the ALARA requirements in an early site permit proceeding because Part 100 provides that an ESP applicant need only show that radiological effluent release limits associated with normal operation from the type of facility proposed to be located at the site can be met for any individual located offsite; CLI-07-27, 66 NRC 253 (2007)
- 10 C.F.R. 52.17(a)(1)(i)
- applicant need not have selected a particular reactor design at the ESP stage or applied for a construction permit or COL, but it must include in the application the specific number, type, and thermal power level of the facilities, or range of possible facilities, for which the site may be used; LBP-08-15, 68 NRC 322 (2008)
- 10 C.F.R. 52.17(a)(1)(vi)
- applicant's site safety analysis report must include seismic and geologic characteristics of the proposed site with appropriate consideration of the most severe historical natural phenomena that have been reported for the site; LBP-09-19, 70 NRC 524 (2009)
- the site safety analysis report submitted with an early site permit application must contain the seismic, meteorological, hydrologic, and geologic characteristics of the proposed site; LBP-09-19, 70 NRC 482 (2009)
- 10 C.F.R. 52.17(a)(1)(ix)
- early site permit applicants must perform an evaluation and analysis of the postulated fission product release to evaluate the offsite radiological consequences; LBP-09-19, 70 NRC 473 (2009)
- early site permit applicants must submit a safety assessment that includes an analysis of a fission product release from an accident, using the expected demonstrable containment leak rate and any fission product cleanup systems intended to mitigate the consequences of the accidents; LBP-09-19, 70 NRC 535 (2009)
- early site permit applications must contain a description and safety assessment of the site that includes an analysis and evaluation of the major structures, systems, and components of the facility that bear significantly on the acceptability of the site under radiological consequence evaluation factors; LBP-09-19, 70 NRC 473 (2009)
- the site safety analysis report submitted with an early site permit application must contain a description and safety assessment of the site on which a facility is to be located; LBP-09-19, 70 NRC 482 (2009)
- 10 C.F.R. 52.17(a)(1)(ix) n.1
- in applicant's safety assessment, the fission product releases in question are associated with accidents that have generally been assumed to result in substantial meltdown of the core with subsequent release into the containment of appreciable quantities of fission products; LBP-09-19, 70 NRC 535 (2009)
- 10 C.F.R. 52.17(a)(1)(ix)(A)-(B)
- individuals located at the boundary of the exclusion area cannot be exposed to more than 25 rem total effective dose equivalent in any 2-hour period, and any individual located at the outer boundary of the

LEGAL CITATIONS INDEX

REGULATIONS

- low population zone cannot be exposed to more than 25 rem TEDE during the entire period of any radioactive release; LBP-09-19, 70 NRC 473 (2009)
- 10 C.F.R. 52.17(a)(2)
an early site permit applicant's environmental report must evaluate alternative sites to determine whether there is any obviously superior alternative to the site proposed; CLI-07-27, 66 NRC 222, 236 (2007)
an environmental report need not include an assessment of the need for power; CLI-07-27, 66 NRC 237 (2007)
NRC Staff's and applicant's environmental review must focus on the environmental effects of construction and operation of a reactor, or reactors, that have characteristics that fall within the postulated site parameters; LBP-06-28, 64 NRC 468 n.2 (2006)
since analysis of need for power for the proposed facility and a final cost-benefit balance are not required for issuance of an early site permit, the board's balancing review relates to the selection of the site vis-a-vis other potential sites; LBP-06-28, 64 NRC 487 (2006)
the environmental report must focus on the environmental effects of the construction and operation of a reactor and need not include an assessment of the benefits (e.g., need for power); LBP-07-3, 65 NRC 270 n.20 (2007); LBP-07-9, 65 NRC 559 n.31 (2007)
the environmental report that must be included in the early site permit application need not include an assessment of the benefits of the proposed action, but must include an evaluation of alternative sites to determine whether there is any obviously superior alternative to the site proposed; LBP-08-2, 67 NRC 60 n.1 (2008); LBP-08-3, 67 NRC 90 n.2 (2008)
with regard to reasonable alternatives, at the ESP stage a discussion of the benefits, including need for power, is not necessary; LBP-06-28, 64 NRC 486 n.81 (2006); LBP-07-1, 65 NRC 36 n.14 (2007)
with respect to the environmental review for an early site permit, an ESP applicant must submit a complete environmental report focusing on construction and operation of one or more new reactors; CLI-07-27, 66 NRC 236 (2007)
- 10 C.F.R. 52.17(b)(1)
the site safety analysis report filed with an early site permit application must include information that identifies physical characteristics of the proposed site, such as egress limitations from the area surrounding the site, that could pose a significant impediment to the development of emergency plans; LBP-09-19, 70 NRC 507-08 (2009)
- 10 C.F.R. 52.17(b)(2)
an early site permit applicant may propose for review and approval by the NRC major features of its emergency plan, or a complete and integrated emergency plan; LBP-06-28, 64 NRC 468 (2006)
- 10 C.F.R. 52.17(b)(2)(i), (ii)
an early site permit applicant has the option of either proposing a complete and integrated emergency plan or proposing major features of the emergency plan for review and approval by NRC, in consultation with the Department of Homeland Security; LBP-09-19, 70 NRC 508 (2009)
- 10 C.F.R. 52.17(b)(3)
if applicant submits a complete and integrated emergency plan under section 52.17(b)(2)(ii), it must include in the early site permit application the proposed inspections, tests, and analyses that will be performed, and the acceptance criteria that are necessary and sufficient for the Commission's required findings for issuance of the ESP; LBP-09-19, 70 NRC 508, 554 (2009)
- 10 C.F.R. 52.17(b)(4)
if applicant chooses to submit a complete and integrated emergency plan at the early site permit stage, applicant also is required to make a good-faith effort to obtain a certification from federal, state, and local governmental agencies with emergency planning responsibilities; LBP-09-19, 70 NRC 509 (2009)
- 10 C.F.R. 52.17(c)
an early site permit applicant may request that a limited work authorization be issued in conjunction with the ESP; LBP-09-19, 70 NRC 456, 459 (2009)
- 10 C.F.R. 52.18
a final environmental impact statement must be prepared and it must focus on the environmental effects of construction and operation of the reactors covered by the early site permit application; LBP-07-9, 65 NRC 604 (2007)
a long-term productivity assessment can only be performed by discussing the benefits of operating the unit, which does not need to be assessed at the ESP stage; LBP-07-1, 65 NRC 102 (2007)

LEGAL CITATIONS INDEX

REGULATIONS

- deferral of the NEPA analysis of the need for power until the combined operating license stage does not violate NEPA; LBP-07-9, 65 NRC 604 (2007)
- ESP applications are partial construction permits and, as such, the NRC Staff must prepare an EIS that includes an evaluation of alternative sites to determine whether there is any obviously superior alternative to the site proposed; LBP-07-1, 65 NRC 72-73, 99 (2007); LBP-07-9, 65 NRC 606 (2007)
- NRC Staff must prepare an environmental impact statement during review of an early site permit application; LBP-08-15, 68 NRC 309 (2008); LBP-09-19, 70 NRC 488 (2009)
- review of the ESP application should provide for an adequate transition between the ESP application and an application for a COL that references the ESP; LBP-07-1, 65 NRC 88 (2007)
- Staff's and applicant's environmental review must focus upon the environmental effects of construction and operation of a reactor, or reactors, that have characteristics that fall within the postulated site parameters; LBP-06-28, 64 NRC 468 n.2 (2006)
- Staff is to review early site permit applications according to the applicable standards set out in 10 C.F.R. Part 50 and its appendices and 10 C.F.R. Part 100; LBP-09-19, 70 NRC 473 (2009)
- Staff's analysis of alternatives must include a discussion of the no-action alternative, exclusive of the portion dealing with the need for power, and a comparison of alternative sites; LBP-07-1, 65 NRC 100 (2007)
- Staff's EIS analysis for an early site permit need not include an assessment of the benefits (e.g., need for power); LBP-07-1, 65 NRC 99 (2007); LBP-07-9, 65 NRC 559 n.31, 606 (2007)
- the determination of the final balance among conflicting factors must be made at the CP or COL stage because the regulations exempt the FEIS from covering, and the board from considering, at the early site permit stage, the prospective benefits such as the need for power; LBP-07-9, 65 NRC 615 (2007)
- the EIS must include an evaluation of alternative sites, but consideration of system design alternatives is not precluded; LBP-07-9, 65 NRC 639 (2007)
- the method prescribed by NUREG-1555 for generating alternative sites is a reasonable and fair method for conducting the alternatives analysis; LBP-07-9, 65 NRC 612 (2007)
- where one or more particular environmental impacts cannot be meaningfully assessed at the early site permit stage, those matters may be designated as unresolved, provided they do not interfere with the Staff's ability to determine whether there is any obviously superior alternative to the proposed site; CLI-07-27, 66 NRC 236 (2007)
- 10 C.F.R. 52.21
- a licensing board must determine whether, taking into consideration the site criteria contained in 10 C.F.R. Part 100, a reactor or reactors, having characteristics that fall within the parameters for the site, and which meet the terms and conditions proposed by the Staff in the safety evaluation report, can be constructed and operated without undue risk to the health and safety of the public; LBP-06-28, 64 NRC 470 (2006)
- an early site permit is a partial construction permit, authorizing limited construction activities when issued; LBP-06-28, 64 NRC 467 (2006)
- an early site permit is categorized as a partial construction permit but its issuance does not authorize an applicant to construct nuclear power reactors; LBP-07-9, 65 NRC 550 (2007); LBP-08-15, 68 NRC 299 (2008)
- an uncontested proceeding is subject to the mandatory hearing requirements; LBP-08-15, 68 NRC 301 (2008)
- at the early site permit stage, an applicant is excused from examination, in its environmental report, of the benefits of the proposed project or analysis regarding energy alternatives, and the relevant regulations may not be construed to require that the draft or final environmental impact statement include an assessment of the benefits of the proposed action; LBP-06-28, 64 NRC 486 (2006)
- early site permit applications, as partial construction permit applications, are subject to the AEA hearing requirement, as well as all procedural requirements in 10 C.F.R. Part 2; LBP-07-1, 65 NRC 35 (2007); LBP-09-19, 70 NRC 456 (2009)
- ESP applications are partial construction permits and, as such, the NRC Staff must prepare an EIS; LBP-07-1, 65 NRC 72 (2007)
- in conducting their sufficiency review, licensing boards are directed to make specific findings; LBP-07-1, 65 NRC 36 (2007)

LEGAL CITATIONS INDEX

REGULATIONS

- not all of the safety issues relevant to construction permits are ripe for review in an early site permit proceeding; LBP-06-28, 64 NRC 472 (2006)
- on AEA Safety Issue 2, the board must decide whether, taking into consideration the site criteria contained in 10 C.F.R. Part 100, a reactor or reactors having the characteristics that fall within the parameters for the site can be constructed without undue risk to the health and safety of the public; LBP-07-9, 65 NRC 557, 570, 594, 599 (2007)
- seismic siting factors are part of the safety determination a board must make in an early site permit proceeding; LBP-07-9, 65 NRC 594 (2007)
- Staff's analysis of alternatives must include a discussion of the no-action alternative, exclusive of the portion dealing with the need for power, and a comparison of alternative sites; LBP-07-1, 65 NRC 100 (2007)
- with dismissal of petitioner's final contention, an early site permit adjudication becomes an uncontested proceeding subject to the mandatory hearing requirements; LBP-07-9, 65 NRC 552 (2007)
- 10 C.F.R. 52.24(a)
prior to issuance of an early site permit, the findings required by 10 C.F.R. Part 51, Subpart A must be made; LBP-09-19, 70 NRC 458-59 (2009)
- 10 C.F.R. 52.24(a)(1)-(6)
findings that a board must make for issuance of an early site permit are clarified; LBP-09-19, 70 NRC 457-58 (2009)
- 10 C.F.R. 52.24(a)(5)
to grant an early site permit, the Commission must find that the proposed inspections, tests, analyses, and acceptance criteria, including any on emergency planning, are necessary and sufficient, within the scope of the ESP, to provide reasonable assurance that the facility has been constructed and will be operated in conformity with the license, the provisions of the Act, and the Commission's regulations; LBP-09-19, 70 NRC 554 (2009)
- 10 C.F.R. 52.24(a)(7)
when an early site permit is issued with an associated limited work authorization, the board must find relative to the LWA that any significant adverse environmental impact resulting from activities requested under section 52.17(c) can be redressed; LBP-09-19, 70 NRC 459 n.8 (2009)
- 10 C.F.R. 52.24(a)(8)
prior to issuance of an early site permit, the findings required by 10 C.F.R. Part 51, Subpart A must be made; LBP-09-19, 70 NRC 459 (2009)
- 10 C.F.R. 52.24(b)
an early site permit specifies design parameters for the site; LBP-09-19, 70 NRC 549 (2009)
any permit conditions imposed that are not met before a combined license referencing the early site permit is issued will attach to the COL; LBP-09-19, 70 NRC 547 (2009)
if the Commission decides to authorize issuance of an early site permit, the issued ESP must specify the site characteristics, design parameters, and terms and conditions of the ESP that the Commission deems appropriate; LBP-09-19, 70 NRC 458 (2009)
- 10 C.F.R. 52.24(c)
if limited work authorization activities are approved by NRC in conjunction with an early site permit, the ESP as issued shall specify those authorized activities; LBP-09-19, 70 NRC 459-60 (2009)
- 10 C.F.R. 52.25
a site redress plan remains in effect for an early site permit applicant even if the ESP with which the LWA is issued is not referenced in a construction permit or COL application during the period that the ESP remains valid; LBP-09-19, 70 NRC 499 (2009)
if applicant includes a satisfactory site redress plan, an early site permit holder may conduct certain site preparation activities under a limited work authorization; LBP-07-9, 65 NRC 550 n.5 (2007); LBP-08-15, 68 NRC 307 n.58 (2008)
- 10 C.F.R. 52.27
an early site permit allows a future applicant for a construction permit, an operating license, or a combined license to seek early NRC review and approval of some siting and environmental issues, and therefore, to bank a site for up to 20 years in anticipation of its future reference in an application for a CP or COL; LBP-06-28, 64 NRC 467 (2006)
an early site permit is valid for up to 20 years; LBP-07-9, 65 NRC 560 (2007)

LEGAL CITATIONS INDEX

REGULATIONS

- 10 C.F.R. 52.27(c)
an applicant for a construction permit or combined license may, at its own risk, reference in its application a site for which an early site permit application has been docketed but not granted; CLI-07-17, 65 NRC 397 n.23 (2007)
- 10 C.F.R. 52.29(a)
an early site permit can be extended for another 20 years; LBP-07-9, 65 NRC 560 (2007)
- 10 C.F.R. 52.38(c)(1)(iv)
a safety contention arising from a matter resolved in an early site permit proceeding is within the scope of a combined license proceeding that references the ESP if it concerns whether emergency planning matters resolved in the ESP should be revisited; LBP-08-15, 68 NRC 308 (2008)
- 10 C.F.R. 52.39
an early site permit allows a future applicant for a construction permit, an operating license, or a combined license to seek early NRC review and approval of some siting and environmental issues, and therefore, to bank a site for up to 20 years in anticipation of its future reference in an application for a CP or COL; LBP-06-28, 64 NRC 467 (2006)
an early site permit proceeding allows an applicant to secure early review and approval of specific siting and environmental issues as a preliminary to the submission of an application for a construction permit or combined operating license; LBP-07-1, 65 NRC 33 n.1 (2007)
litigation of matters resolved in an early site permit proceeding is barred in the combined license proceeding; LBP-08-15, 68 NRC 326 (2008)
should the Commission approve issuance of an early site permit, the site characteristics and plant parameters must be specified in the ESP; CLI-07-27, 66 NRC 257 (2007)
- 10 C.F.R. 52.39(a)
an early site permit allows an applicant to resolve key site-related environmental, safety, and emergency planning issues before choosing the particular facility design for, or deciding to build such a facility on, a designated site, essentially allowing the applicant to “bank” a possible site for the future construction of a specified number of new nuclear facilities; LBP-09-3, 69 NRC 147 (2009)
once an early site permit has been issued, more protective conditions may be imposed on the permit holder if the modification is necessary to ensure adequate protection of the public health and safety or the common defense and security; LBP-07-9, 65 NRC 561 n.35 (2007)
- 10 C.F.R. 52.39(a)(1)
once an early site permit is issued, the proposed site for the nuclear reactors is approved, the regulations applicable to the site are frozen as of the date that the early site permit is issued, and the Commission may not impose new requirements on the site; LBP-07-9, 65 NRC 560, 562, 626 (2007)
- 10 C.F.R. 52.39(a)(2)
all issues resolved in an early site permit proceeding shall be treated as resolved in a subsequent construction permit or COL proceeding that references the ESP, unless a contention is admitted under narrowly specified conditions; CLI-07-12, 65 NRC 209 (2007)
an issue can be “resolved” within the meaning of this section even though there might have been no litigation concerning that issue, if the NRC Staff adequately addressed the matter in an environmental impact statement; LBP-08-15, 68 NRC 305, 310 (2008)
at the construction permit or combined operating license stage, an applicant must demonstrate that the chosen reactor fits within the site parameters set forth in the early site permit’s plant parameter envelope, if it wishes to treat as resolved any related issues from the ESP review; LBP-06-28, 64 NRC 468 n.2 (2006)
matters resolved in an early site permit proceeding are considered resolved in a subsequent combined license proceeding when the COL application references the ESP; LBP-08-15, 68 NRC 305 n.45 (2008); LBP-08-23, 68 NRC 686 (2008)
once an early site permit is issued, the public, and in most cases, the NRC, is barred, absent a finding of necessity, from applying more stringent or contemporary regulatory siting requirements on matters that were resolved in the early site permit proceeding; LBP-07-9, 65 NRC 561, 616 (2007)
should a CP or COL applicant reference the ESP, and the Staff ultimately determine that a representation or assumption has not been satisfied at the CP/COL stage, that information would be considered new and potentially significant, and the affected impact area could be subject to re-examination; CLI-07-27, 66 NRC 258 (2007)

LEGAL CITATIONS INDEX

REGULATIONS

- when an early site permit is issued subject to permit conditions and COL action items identified in the Staff's review, none of the aforesaid permit conditions, the COL action items, or items listed as requiring further action or follow-up shall be treated as resolved; CLI-07-12, 65 NRC 209 (2007)
- 10 C.F.R. 52.39(c)
intervenor are not necessarily foreclosed from raising their concerns about the environmental impacts of dredging if and when a decision is made later to dredge a federal navigation channel; LBP-09-7, 69 NRC 730 (2009)
- 10 C.F.R. 52.39(c)(1)
matters resolved in an early site permit proceeding are considered resolved in a subsequent combined operating license proceeding when the combined license application references the ESP, but are subject to certain exceptions; LBP-08-15, 68 NRC 305 n.45 (2008)
- 10 C.F.R. 52.39(c)(1)(i)-(ii)
a safety contention arising from a matter resolved in an early site permit proceeding is within the scope of a combined license proceeding that references the ESP if it concerns whether a term or condition in the ESP has been met; LBP-08-15, 68 NRC 308 (2008)
- 10 C.F.R. 52.39(c)(1)(iii)
a safety contention arising from a matter resolved in an early site permit proceeding is within the scope of a combined license proceeding that references the ESP if it concerns whether a variance from the ESP requested by the COL applicant is unwarranted or should be modified; LBP-08-15, 68 NRC 308 (2008)
- 10 C.F.R. 52.39(c)(1)(v)
environmental contentions at the combined license stage are generally only admissible where they either raise issues that were not resolved at the early site permit stage or raise issues resolved at the ESP stage for which new and significant information has been identified; LBP-08-15, 68 NRC 309 (2008); LBP-10-1, 71 NRC 184 n.12 (2010)
- 10 C.F.R. Part 52, Subpart B
a combined license applicant may reference a certified reactor design for the facility it proposes to construct and operate; LBP-09-16, 70 NRC 238 (2009)
- 10 C.F.R. 52.47(a)(2)
the safety analysis report component of an application for a standard design certification must analyze and address the problem of extremely low probability for accidents that could result in the release of significant quantities of radioactive fission products; LBP-09-10, 70 NRC 107 n.43 (2009)
- 10 C.F.R. 52.47(a)(2)(iv) & n.3
the safety analysis report must provide special attention to design features intended to mitigate the radiological consequences of accidents if there is a substantial meltdown of the core with subsequent release into the containment of appreciable quantities of fission products; LBP-09-10, 70 NRC 107 n.43 (2009)
- 10 C.F.R. 52.55(c)
a design certification application may be referenced in the combined license application; LBP-09-10, 70 NRC 76 (2009); LBP-09-17, 70 NRC 332 (2009)
a license application will not be held in abeyance until the design certification rulemaking is completed; LBP-09-16, 70 NRC 269 (2009); LBP-09-18, 70 NRC 415 (2009)
an attack on the design certification process that is being conducted by rulemaking is outside the scope of a combined license proceeding; LBP-09-2, 69 NRC 97 n.35 (2009)
applicant for a combined license is expressly authorized by NRC's regulations to incorporate by reference a certified reactor design in its application; LBP-09-2, 69 NRC 97 n.37 (2009)
applicant for a combined license may, at its own risk, reference in its application a design for which a design certification application has been docketed but not granted; CLI-08-15, 68 NRC 3 (2008); CLI-09-8, 69 NRC 322, 324 (2009); CLI-10-9, 71 NRC 260 (2010); LBP-08-17, 68 NRC 443 (2008); LBP-09-3, 69 NRC 158 (2009); LBP-09-10, 70 NRC 76 (2009); LBP-09-16, 70 NRC 268 (2009); LBP-09-17, 70 NRC 334 (2009); LBP-09-18, 70 NRC 413, 414 (2009); LBP-10-9, 71 NRC 525 n.144 (2010); LBP-10-20, 72 NRC 581 n.13 (2010)
applicant is permitted to incorporate by reference the certified reactor design into the combined license application, but changes proposed to the certified design are to be addressed in the design certification rulemaking and are not within the scope of the COL proceeding; LBP-09-2, 69 NRC 100 (2009)

LEGAL CITATIONS INDEX
REGULATIONS

- argument that combined license application hearing notice should be delayed until completion of certified design rulemaking fails to recognize the Commission direction that a contention raised in a COL hearing challenging information in a design certification rulemaking, if otherwise admissible, should be referred to the Staff for consideration in the rulemaking, and held in abeyance by the licensing board pending outcome of the rulemaking; LBP-09-3, 69 NRC 157 n.9 (2009)
- generic issues are to be resolved as part of the design certification rulemaking process, and any concerns related to those issues must be addressed in the rulemaking and not within the scope of a COL proceeding; LBP-09-8, 69 NRC 745 (2009)
- incorporation by reference is consistent with NRC rules when an applicant chooses to reference a standard design; CLI-09-8, 69 NRC 326 n.38 (2009)
- the revision process for reactor design is contemplated by NRC regulations and is currently being carried out through the design certification rulemaking; LBP-09-2, 69 NRC 98 (2009)
- 10 C.F.R. 52.63(a)(1)
- design of the auxiliary building, the spent fuel pools, spent fuel storage racks, spent fuel pool makeup water systems, spent fuel pool cooling water systems, and design basis accidents are all addressed in the AP1000 DC Rule and are therefore not subject to challenge in the COLA proceeding; LBP-08-21, 68 NRC 571 (2008)
- the Commission generally refuses to modify, rescind, or impose new requirements on reactor design certification information, unless through rulemaking; LBP-10-21, 72 NRC 653 n.21, 654 (2010)
- 10 C.F.R. 52.63(a)(5)
- in making the findings required for issuance of a combined license, the Commission shall treat as resolved those matters resolved in connection with issuance or renewal of a design certification rule; LBP-10-21, 72 NRC 653, 654 (2010)
- in the absence of a waiver petition, any challenge brought to aspects of a referenced certified reactor design is outside the scope of the licensing proceeding; LBP-08-16, 68 NRC 388, 397 (2008)
- 10 C.F.R. 52.63(b)(1)
- if applicant later decides not to reference a certified design, and instead proceeds with a site-specific design, any admissible issues would have to be addressed in the licensing adjudication; LBP-09-2, 69 NRC 100 (2009)
- 10 C.F.R. 52.63(b)(1), (2)
- once a final design is certified, each COLA applicant will have to determine whether it will adopt *in toto* the certified design, or whether it will take exemptions thereto and/or departures therefrom; LBP-09-2, 69 NRC 100 (2009)
- 10 C.F.R. 52.73(a)
- an attack on the design certification process that is being conducted by rulemaking is outside the scope of a combined license proceeding; LBP-09-2, 69 NRC 97 n.35 (2009)
- applicant for a combined license is expressly authorized by NRC's regulations to incorporate by reference a certified reactor design in its application; CLI-09-8, 69 NRC 326 n.38 (2009); LBP-09-2, 69 NRC 97 n.37 (2009); LBP-09-3, 69 NRC 146, 156 (2009); LBP-09-8, 69 NRC 739 n.13 (2009)
- at the COL stage, an applicant may reference both an early site permit and a standard design certification in its application; LBP-09-10, 70 NRC 76 (2009); LBP-09-19, 70 NRC 549 (2009)
- the current COL application references the early site permit; LBP-10-1, 71 NRC 174 (2010)
- 10 C.F.R. 52.77-52.80
- applicants are not required to address or demonstrate whether the issuance of a combined license will improve the general welfare, increase the standard of living, or strengthen free competition in private enterprise; LBP-08-17, 68 NRC 451 (2008)
- 10 C.F.R. 52.79
- should the Commission approve issuance of an early site permit, the site characteristics and plant parameters must be specified in the ESP; CLI-07-27, 66 NRC 257 n.227 (2007)
- the fact that an extended low-level radioactive waste storage plan is contingent does not mean that it does not need to comply with this regulation or that it is subject to a relaxed standard; LBP-10-20, 72 NRC 605 (2010)
- the threshold probability that calls for analysis for reactors is generally greater than 1 in 10 million per year; CLI-10-1, 71 NRC 12 n.56 (2010)

LEGAL CITATIONS INDEX

REGULATIONS

- topics that must be covered in the FSAR and the level of information that is sufficient for each topic are specified; LBP-10-20, 72 NRC 590 (2010)
- 10 C.F.R. 52.79(a)
a combined license application must contain a final safety analysis report; LBP-09-10, 70 NRC 117 (2009)
applicant must submit its plans for managing low-level radioactive waste for a period of longer than the original AP1000 capacity, and its FSAR must contain information sufficient to reach a final conclusion on all safety matters before the issuance of the combined license; LBP-10-20, 72 NRC 602-03 (2010)
applicant's combined license application fails to address the management of low-level radioactive waste plan for a longer term than envisioned in the COLA; LBP-10-20, 72 NRC 575, 576 (2010)
COL applicants must include required information in its FSAR at a level sufficient to reach a final conclusion on all safety matters that must be resolved by the Commission before issuance of a combined license; LBP-10-20, 72 NRC 590, 609 (2010)
- 10 C.F.R. 52.79(a)(1)
in the environmental context, the contents of the final environmental impact statement bounds the reach of both issue preclusion and Staff inquiry into new and significant information in a future CP or COL proceeding referencing an ESP granted for the North Anna ESP site; CLI-07-27, 66 NRC 259 (2007)
- 10 C.F.R. 52.79(a)(1)(vi)
the final safety analysis report of a combined license application must contain analysis of a severe accident involving a fission product release from the core into the containment including any fission product cleanup systems intended to mitigate the consequences of the accidents; LBP-09-10, 70 NRC 107 (2009)
- 10 C.F.R. 52.79(a)(1)(vi) n.5
the fission product release assumed for the final safety analysis report is based on a major accident assumed to result in substantial meltdown of the core with subsequent release into the containment of appreciable quantities of fission products; LBP-09-10, 70 NRC 107 (2009)
- 10 C.F.R. 52.79(a)(3)
a combined license application must describe the kinds and qualities of radioactive materials expected to be produced in the operation and the means for controlling and limiting the radioactive effluents and radiation exposures within the limits set forth in 10 C.F.R. Part 20; CLI-09-16, 70 NRC 36-37 (2009); LBP-09-10, 70 NRC 124 (2009); LBP-09-27, 70 NRC 1001, 1005, 1012, 1014 (2009)
although applicant's plan reduces the storage capacity for Class A waste, substantial storage capacity remains, and petitioner has not alleged that this change will prevent applicant from controlling and limiting radioactive effluents and radiation exposures from Class A waste within the limits set forth in 10 C.F.R. Part 20; LBP-09-27, 70 NRC 1011 (2009)
applicant must explain how it intends, through its design, operational organization, and procedures, to comply with relevant substantive radiation protection requirements in 10 C.F.R. Part 20, including, but not limited to, low-level radioactive waste handling and storage; LBP-09-27, 70 NRC 1001 (2009)
applicant's explanation of the kinds and quantities of radioactive materials expected to be produced in the operation must be accurate; LBP-09-27, 70 NRC 1012 (2009)
COL applicants are to consider long-term onsite low-level radioactive waste storage, but the regulation sets no quantity or time restrictions relative to onsite storage of such waste; CLI-09-16, 70 NRC 36 (2009)
combined license applicants must describe the kinds and quantities of radioactive materials expected to be produced in facility operations, and the means for controlling and limiting radioactive effluents to comply with Part 20 limits; CLI-10-2, 71 NRC 45, 46 (2010); LBP-08-15, 68 NRC 316 (2008); LBP-10-20, 72 NRC 577, 590, 603, 604 (2010)
detailed design, location, and health impacts information on low-level radioactive waste storage is not required in the combined license application; LBP-10-20, 72 NRC 582-83 (2010)
information to be included in the final safety analysis report is described; CLI-09-16, 70 NRC 35 (2009)
low-level radioactive waste storage information required by this section is tied to the COL applicant's particular plans for compliance through design, operational organization, and procedures; CLI-10-2, 71 NRC 45 (2010); LBP-10-20, 72 NRC 581 (2010)

LEGAL CITATIONS INDEX
REGULATIONS

- purported failures to provide detailed information regarding design, location, and worker health impacts do not identify a deficiency in FSAR LLRW information that is required to be provided in the COL application; LBP-10-8, 71 NRC 444 (2010)
- there is no requirement for applicant's FSAR to include details regarding building materials and high-integrity containers, exact location, or health impacts on employees for the contingent onsite long-term LLRW storage facility; LBP-10-20, 72 NRC 603 (2010)
- this regulation sets no quantity or time restrictions relative to onsite storage of low-level radioactive waste; LBP-09-27, 70 NRC 1014 (2009)
- this rule pertains to how the COL applicant intends, through its design, operational organization, and procedures, to comply with relevant substantive radiation protection requirements in 10 C.F.R. Part 20; LBP-10-20, 72 NRC 601 (2010)
- 10 C.F.R. 52.79(a)(4)
- because any discussion of a long-term low-level radioactive waste storage facility is merely contingent at the combined license application stage, this section does not govern its description in applicant's final safety analysis report; LBP-10-8, 71 NRC 444, 445 (2010)
- combined license applicant's FSAR must specify the design of the low-level radioactive waste storage facility and provide information relative to materials of construction, arrangement, and dimensions sufficient to give reasonable assurance that the design will conform to the design bases with adequate margin for safety; LBP-10-20, 72 NRC 604 (2010)
- this section governs only those structures that are a component of the facility to be constructed under the combined license; LBP-10-8, 71 NRC 440 (2010)
- 10 C.F.R. 52.79(a)(11)
- a combined license application must include a description of the programs, and their implementation, necessary to ensure that the systems and components meet the requirements of the ASME Boiler and Pressure Vessel Code in accordance with 10 C.F.R. 50.55a; LBP-10-21, 72 NRC 656 (2010)
- 10 C.F.R. 52.79(b)(1)
- a combined license application referencing an early site permit must include a safety analysis report that either includes or incorporates by reference the ESP site safety analysis report and that contains additional information and analyses sufficient to demonstrate that the design of the facility falls within the site characteristics and design parameters specified in the ESP; LBP-08-15, 68 NRC 308 (2008); LBP-09-19, 70 NRC 551 n.32 (2009)
- information on radioactive waste disposal need not be submitted again in a combined license application if it was previously provided to the Commission in connection with an early site permit and certain other conditions are satisfied; LBP-08-15, 68 NRC 316 (2008)
- 10 C.F.R. 52.79(b)(1)-(2)
- if the application references an early site permit, the applicant must demonstrate that the chosen design falls within the parameters specified in the ESP or, on the safety side, request a variance; LBP-09-19, 70 NRC 549 (2009)
- 10 C.F.R. 52.79(b)(3)
- the combined operating license application must demonstrate that the design of the chosen reactor falls within the site characteristics and design parameters in the early site permit, identify any necessary variances from the ESP, and demonstrate that all terms and conditions that have been included in the ESP, other than those imposed under section 50.36b, will be satisfied by the date of issuance of the combined license; LBP-08-15, 68 NRC 308 (2008)
- 10 C.F.R. 52.79(d)(1)
- applicant for a combined license is expressly authorized by NRC's regulations to incorporate by reference a certified reactor design in its application; LBP-09-2, 69 NRC 97 n.37 (2009)
- 10 C.F.R. 52.80(a)
- a combined license application must include the proposed inspections, tests, and analyses, including those applicable to emergency planning, to be performed and the acceptance criteria that are necessary and sufficient to support the Commission's finding that a COL can be granted; LBP-09-19, 70 NRC 554 (2009)
- 10 C.F.R. 52.80(a)(3)
- if a combined license application references an early site permit with inspections, tests, analyses, and acceptance criteria or a standard design certification or both, the application may include a notification

LEGAL CITATIONS INDEX
REGULATIONS

- that a required inspection, test, or analysis in the ITAAC has been successfully completed and that the corresponding acceptance criterion has been met; LBP-09-19, 70 NRC 554 (2009)
- if applicant requests a Commission finding on the completion of inspections, tests, analyses, and acceptance criteria needed for issuance of a COL, the Commission is required to identify these ITAAC in the notice of hearing published in the *Federal Register* for the COL proceeding; LBP-09-19, 70 NRC 554 (2009)
- 10 C.F.R. 52.80(d)
the board issued a protective order governing access to and use of protected information in the correspondence from applicant to NRC Staff regarding the requirements under this section and any related documents; CLI-10-24, 72 NRC 456 (2010)
- the licensing board rules on issues that concern guidance and strategies in the combined license application for maintaining or restoring core cooling, containment, and spent fuel pool cooling capabilities if large areas of the plant are lost due to explosions or fire; LBP-10-5, 71 NRC 333 & n.2 (2010)
- 10 C.F.R. 52.81
applications for nuclear power plants show that the issuance of the license would not be inimical to, and will provide adequate protection to, the health and safety of the public; LBP-09-10, 70 NRC 124 (2009)
- 10 C.F.R. 52.83(a)
if a certified standard design is referenced in a combined license application, in the context of an adjudicatory challenge to the COLA, and absent a petition under 10 C.F.R. 2.335 seeking a waiver, the Commission will treat the CSD as resolving all matters that could have been raised in the design certification rulemaking; LBP-09-3, 69 NRC 147 (2009)
- 10 C.F.R. 52.85
if applicant requests a Commission finding on the completion of inspections, tests, analyses, and acceptance criteria needed for issuance of a combined license, the Commission is required to identify these ITAAC in the notice of hearing published in the *Federal Register* for the COL proceeding; LBP-09-19, 70 NRC 554 (2009)
- 10 C.F.R. 52.89
in the environmental context, the contents of the final environmental impact statement bounds the reach of both issue preclusion and Staff inquiry into new and significant information in a future CP or COL proceeding referencing an ESP granted for the North Anna ESP site; CLI-07-27, 66 NRC 259 (2007)
- 10 C.F.R. 52.97
NRC is not required to make a finding that applicants will improve the general welfare, increase the standard of living, or strengthen free competition prior to granting a COL; LBP-08-17, 68 NRC 451 (2008)
- 10 C.F.R. 52.97(a)(1)
during that mandatory hearing, the presiding officer explores issues associated with the COL application that are not the subject of the contested proceeding, and makes a determination concerning the adequacy of Staff's safety and environmental reviews, as well as certain independent National Environmental Policy Act findings; LBP-08-16, 68 NRC 376 n.2 (2008)
- 10 C.F.R. 52.97(a)(1)(iii)-(v)
before it may issue a combined license, the Commission is required to find reasonable assurance that the facility will be constructed and operated in conformity with the license, provisions of the applicable statutes, and regulations, the applicant is technically qualified to engage in the activities authorized, and issuance of the license will not be inimical to the health and safety of the public; LBP-10-9, 71 NRC 512 (2010)
- 10 C.F.R. 52.97(a)(2)
if the Commission finds that early site permit or design certification inspections, tests, analyses, and acceptance criteria have been met, those acceptance criteria will be deemed to be excluded from the combined license and from findings under section 52.103(g); LBP-09-19, 70 NRC 554 (2009)
- 10 C.F.R. 52.97(b)
on issuance of a combined license, the Commission must identify any inspections, tests, analyses, and acceptance criteria that have not yet been met; LBP-09-19, 70 NRC 554 (2009)

LEGAL CITATIONS INDEX
REGULATIONS

- 10 C.F.R. 52.98(f)
if applicant later decides not to reference a certified design, and instead proceeds with a site-specific design, any admissible issues would have to be addressed in the licensing adjudication; LBP-09-2, 69 NRC 100 (2009)
- 10 C.F.R. 52.99(a)
no later than 1 year after issuance of the combined license or at the start of construction, whichever is later, the COL licensee must submit its schedule for completing the inspections, tests, or analyses and provide schedule updates; LBP-09-19, 70 NRC 554-55 (2009)
- 10 C.F.R. 52.99(e)(1)
at appropriate intervals during the time between issuance of a combined license and the last date for submission of requests for hearing under section 52.103(a), NRC shall publish notices in the *Federal Register* of NRC Staff's determination of the successful completion of inspections, tests, and analyses; LBP-09-19, 70 NRC 555 (2009)
- 10 C.F.R. 52.99(e)(2)
NRC must make publicly available any notifications from the COL licensee indicating that the licensee believes certain inspections, tests, analyses, and acceptance criteria have been met as well as any notifications that any uncompleted ITAAC will be met prior to operation; LBP-09-19, 70 NRC 555 (2009)
- 10 C.F.R. 52.102
adjudicatory findings on NEPA issues become part of the environmental record of decision and in effect supplement the final environmental impact statement; CLI-06-15, 63 NRC 707 n.91 (2006)
discussion in the final environmental impact statement regarding the impacts of disposal of depleted uranium at a near-surface disposal facility is supplemented by the board's decision, along with the underlying adjudicatory record supporting that decision; LBP-06-8, 63 NRC 287 (2006)
- 10 C.F.R. 52.103
with respect to combined licenses, interested persons may request a hearing as to the adequacy of construction after issuance of a combined license; CLI-09-2, 69 NRC 61 n.20 (2009)
- 10 C.F.R. 52.103(a)
an opportunity for hearing will be provided in the *Federal Register* notice of fuel loading, regarding whether inspections, tests, or analyses that have not been found to have been met under section 52.97(a)(2) prior to issuance of the COL; LBP-09-19, 70 NRC 555 (2009)
COL applicants must submit a decommissioning report containing a certification that the funding assurance will be provided no later than 30 days after the NRC publishes notice in the *Federal Register* of its scheduled date for initial fuel loading; LBP-09-4, 69 NRC 199 n.111 (2009); LBP-09-21, 70 NRC 630 (2009)
prior to operation under a COL, a notice of intended operation will be published in the *Federal Register* not less than 180 days before the date scheduled for initial loading of fuel; LBP-09-19, 70 NRC 555 (2009)
- 10 C.F.R. 52.103(b)
an opportunity for hearing will be provided in the *Federal Register* notice of fuel loading, regarding whether inspections, tests, or analyses that have not been found to have been met under section 52.97(a)(2) prior to issuance of the COL; LBP-09-19, 70 NRC 555 (2009)
- 10 C.F.R. 52.103(g)
holder of a combined license must begin filing biannual reports on the status of decommissioning funding once the Commission has made a finding that all acceptance criteria in the license have been met; LBP-09-15, 70 NRC 219 (2009)
- 10 C.F.R. 52.104
a combined license is issued for a period of 40 years; LBP-09-16, 70 NRC 265 (2009)
- 10 C.F.R. 52.109
licensee remains authorized to own and possess the facility even after the operating license expires; LBP-09-17, 70 NRC 349 (2009)
- 10 C.F.R. 52.110(a)(1)
if after public notice and review the NRC approves the decommissioning plan, licensee has 60 years to complete decommissioning; LBP-09-17, 70 NRC 373 (2009)

LEGAL CITATIONS INDEX

REGULATIONS

- 10 C.F.R. 52.110(b)
licensee remains authorized to own and possess the facility even after the operating license expires; LBP-09-17, 70 NRC 349 (2009)
- 10 C.F.R. 52.110(c)
if after public notice and review the NRC approves the decommissioning plan, licensee has 60 years to complete decommissioning; LBP-09-17, 70 NRC 373 (2009)
- 10 C.F.R. 52.110(d)
decommissioning plans are not required until the applicant files a post-shutdown decommissioning activities report, which is not due until 2 years before permanent cessation of operation; LBP-09-17, 70 NRC 372 (2009); LBP-09-21, 70 NRC 621 (2009)
- 10 C.F.R. 52.110(d)(1)
if after public notice and review the NRC approves the decommissioning plan, licensee has 60 years to complete decommissioning; LBP-09-17, 70 NRC 373 (2009)
- 10 C.F.R. 52.110(i)
when a nuclear power plant ceases operations, the owner must apply for a license to terminate, which cannot be granted until the NRC is satisfied that the plant has been properly dismantled and decommissioned so that residual radiation meets established rules, and that no spent fuel or high-level wastes would be onsite; LBP-09-21, 70 NRC 606 n.124 (2009)
- 10 C.F.R. 52.110(k)
decommissioning is not complete, and an operating license cannot be terminated, in effect, until all spent fuel and high-level waste have been removed from the site; LBP-09-17, 70 NRC 348 (2009)
- 10 C.F.R. Part 52, Appendix D
a challenge to the single-fire assumption is an impermissible challenge to NRC's regulations; LBP-08-21, 68 NRC 565, 566 (2008)
applicants seeking to construct and operate a plant based on the AP1000 design can do so by referencing the design control document; LBP-09-3, 69 NRC 156 (2009)
- 10 C.F.R. Part 52, Appendix D, § ILC
applicant will have to demonstrate that the site-specific parameters are bounded by the parameters developed for the certified reactor design; LBP-09-2, 69 NRC 100 (2009)
- 10 C.F.R. Part 52, Appendix D, § IV
once a final design is certified, each COLA applicant will have to determine whether it will adopt *in toto* the certified design, or whether it will take exemptions thereto and/or departures therefrom; LBP-09-2, 69 NRC 100 (2009)
- 10 C.F.R. Part 52, Appendix D, § VLB
a challenge to the severe accident mitigation design alternatives analysis performed for the AP1000 certified design constitutes an impermissible challenge to NRC regulations; CLI-10-1, 71 NRC 14 n.68 (2010)
- 10 C.F.R. Part 52, Appendix D, § VLB.1
matters relating to all nuclear safety issues with certain delineated exceptions are deemed resolved by the design certification for the AP1000; LBP-09-2, 69 NRC 98 (2009)
- 10 C.F.R. Part 52, Appendix D, § VLB.7
all environmental issues concerning severe accident mitigation design alternatives associated with the information in the NRC's environmental assessment for a certified design are considered resolved; LBP-09-2, 69 NRC 98, 99 n.43, 104 n.70 (2009); LBP-09-19, 70 NRC 536, 538 (2009)
applicant will have to demonstrate that the site-specific parameters are bounded by the parameters developed for the certified reactor design; LBP-09-2, 69 NRC 100 (2009)
- 10 C.F.R. Part 52, Appendix D, § VIII
if applicant later decides not to reference a certified design, and instead proceeds with a site-specific design, any admissible issues would have to be addressed in the licensing adjudication; LBP-09-2, 69 NRC 100 (2009)
once a final design is certified, each combined license applicant will have to determine whether it will adopt *in toto* the certified design, or whether it will take exemptions thereto and/or departures therefrom; LBP-09-2, 69 NRC 100 (2009)

LEGAL CITATIONS INDEX
REGULATIONS

- 10 C.F.R. Part 54
a comprehensive baseline inspection is not required, no matter how sensible such a requirement might seem; LBP-08-13, 68 NRC 126 (2008)
as part of the NRC's review in a license renewal proceeding, the Staff conducts a health and safety review; CLI-06-24, 64 NRC 117 (2006)
renewal applicants must demonstrate how their programs will be effective in managing the effects of aging during the proposed period of extended operation; CLI-06-17, 63 NRC 733-34 (2006)
safety contentions in license renewal proceedings must focus on topics related to the detrimental effects of aging and related time-limited issues; LBP-06-20, 64 NRC 148 (2006); LBP-06-22, 64 NRC 235 (2006)
- 10 C.F.R. 54.3
acceptance criteria are part of the plant's current licensing basis in that they are plant-specific design-basis information defined in 10 C.F.R. 50.2 as documented in the most recent final safety analysis report as required by 10 C.F.R. 50.71; LBP-07-17, 66 NRC 344-45 (2007)
"current licensing basis" is a term of art comprehending the various Commission requirements applicable to a specific plant that are in effect at the time of the license renewal application; LBP-06-10, 63 NRC 344 (2006); LBP-06-23, 64 NRC 276 n.57 (2006)
"current licensing basis" is the set of NRC requirements applicable to a specific plant and a licensee's written commitments and the plant-specific design basis, including all modifications and additions to such commitments over the life of the license, that are docketed and in effect; CLI-10-14, 71 NRC 453-54 (2010); LBP-07-4, 65 NRC 308 (2007); LBP-07-11, 66 NRC 60-61 n.66 (2007); LBP-07-17, 66 NRC 334 n.10, 339 n.17 (2007); LBP-08-22, 68 NRC 600 n.44 (2008)
licensee's current licensing basis includes the NRC regulations contained in 10 C.F.R. Parts 50, among others, and appendices thereto; LBP-06-22, 64 NRC 253 (2006)
the current licensing basis includes all modifications and additions to such commitments over the life of the license; LBP-08-25, 68 NRC 830 n.94 (2008)
time-limited aging analyses are contained in the current licensing basis; CLI-10-17, 72 NRC 33 (2010)
"time-limited aging analysis" is defined; LBP-06-20, 64 NRC 183 n.61 (2006); LBP-08-25, 68 NRC 786 (2008)
- 10 C.F.R. 54.3(a)
"current licensing basis" is defined as the set of NRC requirements applicable to a specific plant and a licensee's written commitments for ensuring compliance with and operation within applicable NRC requirements and the plant-specific design basis (including all modifications and additions to such commitments over the life of the license) that are docketed and in effect; LBP-06-7, 63 NRC 198 (2006); LBP-06-16, 63 NRC 741 n.5 (2006); LBP-06-22, 64 NRC 235-36 n.8 (2006); LBP-08-13, 68 NRC 70 n.83 (2008); LBP-08-25, 68 NRC 786 (2008); LBP-08-26, 68 NRC 940 (2008)
environmentally adjusted cumulative usage factor analyses are time-limited aging analyses; LBP-08-25, 68 NRC 789 (2008)
the current licensing basis is the set of NRC requirements that includes regulations, orders, technical specifications, and license conditions applicable to a specific plant as well as licensee's written, docketed commitments for ensuring compliance with applicable NRC requirements and the plant-specific design basis; LBP-10-13, 71 NRC 678 (2010)
the Updated Final Safety Analysis Report is part of the current licensing basis and must be updated annually; LBP-08-13, 68 NRC 73 (2008)
time-limited aging analysis is defined; CLI-08-28, 68 NRC 664 n.23 (2008); CLI-10-17, 72 NRC 12 n.48 (2010)
- 10 C.F.R. 54.4
a license renewal application must demonstrate that the effects of aging will be adequately managed so that the direct and indirect safety-related functions enumerated in this section will be maintained consistent with the current licensing basis for the period of extended operation; LBP-08-22, 68 NRC 601 (2008)
aging management programs for buried structures, systems, and components that convey or contain radioactively contaminated water or other fluids are systems, structures, and components within the scope of license renewal proceedings; LBP-08-13, 68 NRC 82 (2008)

LEGAL CITATIONS INDEX

REGULATIONS

- if a component falls within the scope of this section and meets the requirements of 10 C.F.R. 54.21 such that aging of the component is a relicensing issue, applicant may address the issue in one of two ways; LBP-08-26, 68 NRC 937 (2008)
- in its license renewal application, applicant must include an aging management review for the drywell shell; LBP-06-22, 64 NRC 241 (2006)
- scope of a license renewal proceeding is limited to review of plant structures and components requiring an aging management review for the period of extended operation and to the plant's systems, structures, and components that are subject to an evaluation of time-limited aging analyses; LBP-08-13, 68 NRC 66 (2008); LBP-10-21, 72 NRC 654 n.24 (2010)
- 10 C.F.R. 54.4(a)
- plant systems, structures, and components relevant to license renewal are those that are safety-related, or whose failure could affect safety-related functions, or that are relied on to demonstrate compliance with the NRC's regulations for fire protection, environmental qualification, pressurized thermal shock, anticipated transients without scram, and station blackout; CLI-08-23, 68 NRC 466 n.8 (2008)
- plant systems, structures, and components that are within the ambit of license renewal proceedings are described; LBP-06-23, 64 NRC 275 n.52 (2006); LBP-07-11, 66 NRC 59-60 n.61 (2007)
- 10 C.F.R. 54.4(a)(1)-(3)
- safety-related structures, systems, and components are those that are relied upon to remain functional during and following design-basis events to ensure the integrity of the reactor coolant pressure boundary, the capability to shut down the reactor and maintain it in a safe shutdown condition, or the capability to prevent or mitigate the consequences of accidents that could result in potential offsite exposures; CLI-10-14, 71 NRC 455 (2010)
- three general categories of structures, systems, and components that fall within the initial focus of license renewal review are outlined; CLI-10-14, 71 NRC 455 (2010)
- 10 C.F.R. 54.4(a)(2)
- approval of an aging management plan for license renewal includes all nonsafety-related systems, structures, and components whose failure could prevent safety-related systems, structures, and components from performing their safety-related functions; LBP-08-25, 68 NRC 834 (2008); LBP-08-26, 68 NRC 932 (2008)
- plant security systems, structures, and components within the scope of Part 54 include all nonsafety-related SSCs whose failure could prevent satisfactory accomplishment of any of the functions identified in paragraphs (a)(1)(i), (ii), or (iii) of this section; LBP-06-20, 64 NRC 171 n.47 (2006)
- safety-related structures, systems, and components in this category consist of all non-safety-related SSCs whose failure could prevent satisfactory accomplishment of any of the safety functions identified in section 54.4(a)(1), including auxiliary systems necessary for the function of safety-related systems; CLI-10-14, 71 NRC 455 (2010)
- 10 C.F.R. 54.4(a)(3)
- all structures, systems, and components in this section are included within the initial scope of license renewal safety review, even if they otherwise might be considered outside the traditional definition of safety-related, and outside of section 54.4(a)(1) and (2); CLI-10-14, 71 NRC 455 (2010)
- all structures, systems, and components relied on in safety analyses or plant evaluations to perform a function that demonstrates compliance with the NRC's regulations for fire protection, environmental qualification, pressurized thermal shock, anticipated transients without scram, and station blackout are included in this category; CLI-10-14, 71 NRC 455 (2010)
- the condensate storage system buried pipes are outside the scope of a license renewal proceeding with respect to their "safety" functionality, but that does not eliminate the need for consideration of potential leaks from those buried pipes because of their role in fire protection; LBP-08-22, 68 NRC 606 (2008)
- 10 C.F.R. 54.4(b)
- "intended functions" that structures, systems, and components must be shown to fulfill in the aging management review are those specified in section 54.4(a)(1)-(3); CLI-10-14, 71 NRC 456, 462 (2010)
- 10 C.F.R. 54.13
- contention requesting that the board should suspend the hearing until applicant files an amended application is inadmissible; LBP-08-13, 68 NRC 68 (2008)
- information provided to the Commission by a license renewal applicant must be complete and accurate in all material respects; CLI-08-23, 68 NRC 481 (2008)

LEGAL CITATIONS INDEX

REGULATIONS

- NRC Staff should not abandon all reliance on a license renewal applicant's regulatory obligation to submit complete and accurate information; CLI-08-23, 68 NRC 479 (2008)
- 10 C.F.R. 54.17(c)
the time frame for filing a license renewal application is no more than 20 years prior to the expiration of the current operating license; LBP-07-4, 65 NRC 299 (2007); LBP-07-14, 66 NRC 207 n.89 (2007)
- 10 C.F.R. 54.21
a license renewal applicant must demonstrate that its UT monitoring program is adequate to manage the aging effects of corrosion in the sand bed region of the plant's drywell shell so the intended functions of the shell will be maintained during the renewal period consistent with the current licensing basis; LBP-07-17, 66 NRC 339, 340 (2007)
- any safety-related opposition to license renewal can be based only on matters stemming from the aging of the facility; LBP-07-14, 66 NRC 207 n.89 (2007)
- contention alleging that the aging management plan does not provide adequate inspection and monitoring for corrosion or leaks in all buried systems, structures, and components that may convey or contain radioactively contaminated water or other fluids is admissible; LBP-08-13, 68 NRC 79 (2008)
- contention asserting that because information from safety analyses and evaluations performed at the NRC's request are not identified or included in the UFSAR, the license renewal application should be denied is inadmissible; LBP-08-13, 68 NRC 72 (2008)
- each license renewal application must include an integrated plant assessment identifying structures and components subject to aging management review, an evaluation of time-limited aging analyses, and a final safety analysis report supplement describing the plant's aging management programs; CLI-08-23, 68 NRC 466 (2008)
- if an applicant submits an aging management plan that shows how it addresses the recommendations of NUREG-1801, then it will have provided the demonstration required by this section; LBP-08-25, 68 NRC 870 (2008)
- impacts of metal fatigue, corrosion, and embrittlement are directly related to the detrimental results of aging and are the focus of the NRC Staff's technical review of the application for license renewal; LBP-08-13, 68 NRC 67 (2008)
- license renewal applicant must submit an environmental report with its application describing the proposed action, including applicant's plans to modify the facility or its administrative control procedures; LBP-07-11, 66 NRC 63 (2007)
- licensee must establish an aging management program that provides reasonable assurance that the drywell shell will continue to perform its intended function consistent with the current licensing basis during the period of extended operation; CLI-09-7, 69 NRC 263 (2009); LBP-07-17, 66 NRC 340 (2007)
- licensees should address the effects of the coolant environment on component fatigue life as aging management programs are formulated in support of license renewal; LBP-08-25, 68 NRC 799 (2008)
- NUREGs represent general guidance for NRC Staff's review, and do not specify the only acceptable way to satisfy the requirements of this regulation; LBP-06-23, 64 NRC 312 n.255 (2006)
- standards for determining which structures and components require an aging management review are provided; CLI-10-14, 71 NRC 456 (2010)
- technical information to be included in a license renewal application is described and relevant structures and components are identified; LBP-07-11, 66 NRC 60 (2007)
- the scope of a license renewal proceeding is limited to the detrimental effects of aging on plant structures, systems, and components; LBP-08-13, 68 NRC 165 (2008)
- the term "demonstrate" is a strong, definitive verb that logically requires applicant to provide a reasonably thorough description of its aging management plan to show conclusively how this program will ensure that the effects of aging will be managed for its specific plant; LBP-08-25, 68 NRC 870 (2008)
- this section does not require each structure and component within the scope of license renewal to be the subject of a far-reaching evaluation encompassing all aspects of the current licensing basis; CLI-10-14, 71 NRC 461-62 (2010)
- this section explains what has to be looked at in an aging management review of components once they are determined to be within scope of license renewal; CLI-10-14, 71 NRC 461 (2010)

LEGAL CITATIONS INDEX

REGULATIONS

- 10 C.F.R. 54.21(a)
- a license renewal application must demonstrate that the effects of aging will be managed in such a way that the intended functions of passive and long-lived structures and components will be maintained for the period of extended operation; CLI-08-23, 68 NRC 466 (2008)
 - although licensee's alternative source of AC power is owned, operated, and maintained by another company, license is obliged to ensure that the effects of aging on the combustion turbines are adequately managed; LBP-06-7, 63 NRC 210 n.18 (2006)
 - contention that license renewal applicant's aging management plan relating to aging and degradation of buried, below-grade, underground, or hard-to-access safety-related electrical cables due to submergence and wet environments is inadequate is inadmissible; LBP-10-19, 72 NRC 545 (2010)
 - in its license renewal application, applicant must include an aging management review for the drywell shell; LBP-06-22, 64 NRC 241 (2006)
 - license renewal proceedings are limited to a review of the plant structures and components that will require an aging management review for the period of extended operation and the plant's systems, structures, and components that are subject to an evaluation of time-limited aging analyses; LBP-08-22, 68 NRC 599 (2008)
 - petitioner contends that applicant's license renewal application does not include an adequate plan to monitor and manage the effects of aging due to metal fatigue on key reactor components that are subject to an aging management review; LBP-07-15, 66 NRC 264 (2007)
 - renewal applicants must demonstrate how their aging management programs will be effective in managing the effects of aging during the proposed period of extended operation; CLI-06-24, 64 NRC 117 (2006); LBP-07-17, 66 NRC 339 (2007)
 - scope of a license renewal proceeding is limited to review of plant structures and components requiring an aging management review for the period of extended operation and to the plant's systems, structures, and components that are subject to an evaluation of time-limited aging analyses; LBP-08-13, 68 NRC 66 (2008); LBP-10-21, 72 NRC 654 n.24 (2010)
 - the license renewal application fails to comply with this section because it lacks a specific plan for the aging management of non-environmentally-qualified inaccessible medium-voltage cables and wiring; LBP-08-13, 68 NRC 83 (2008)
 - the license renewal application must identify and demonstrate an aging management program for structures and components that perform an intended function, as described in section 54.4; LBP-08-26, 68 NRC 932 (2008)
- 10 C.F.R. 54.21(a)(1)
- aging management review does not cover active components because routine surveillance and maintenance programs detect and manage the effects of aging on these components; CLI-08-23, 68 NRC 467 (2008)
 - an aging management plan is required only for structures and components that perform an intended function without moving parts or without a change in configuration or properties; LBP-08-26, 68 NRC 945-46 (2008)
 - failure to account for the effects of a pressure shock on reactor vessel internals in the license renewal application is an admissible issue; LBP-08-26, 68 NRC 937 (2008)
 - systems, structures, and components relevant to aging-related review for license renewal are described; LBP-08-22, 68 NRC 600 (2008)
 - transformers are subject to aging management review; LBP-08-13, 68 NRC 88 (2008)
- 10 C.F.R. 54.21(a)(1)(i)
- a host of individual components and structures may be vulnerable to the adverse effects of aging; LBP-06-23, 64 NRC 277 (2006)
 - age-related degradation can affect a number of reactor and auxiliary systems, including the reactor vessel, the reactor coolant system pressure boundary, steam generators, electrical cables, the pressurizer, heat exchangers, and the spent fuel pool; LBP-07-4, 65 NRC 309 (2007)
 - "intended functions" are those functions described in section 54.4; CLI-10-14, 71 NRC 462 (2010)
 - some of the detrimental effects of aging and related time-limited issues are described; LBP-07-11, 66 NRC 61 (2007)
 - structures, systems, and components requiring an aging management review perform an intended function, as described in section 54.4; CLI-10-14, 71 NRC 456 (2010)

LEGAL CITATIONS INDEX

REGULATIONS

- 10 C.F.R. 54.21(a)(1)-(2)
structures, systems, and components subject to an aging management review for license renewal perform an intended function in a passive fashion and are not already subject to replacement based on a qualified life or specified time period; CLI-10-14, 71 NRC 456 (2010)
- 10 C.F.R. 54.21(a)(3)
a license renewal applicant seeking to satisfy aging management requirements by reliance upon an aging management plan would rely on this section; CLI-10-17, 72 NRC 18 (2010)
a license renewal application must demonstrate that the effects of aging will be adequately managed so that the direct and indirect safety-related functions enumerated in section 54.4 will be maintained consistent with the current licensing basis for the period of extended operation; LBP-08-22, 68 NRC 601 (2008)
actual cumulative usage factor calculations must be included in the license renewal application to meet the time-limited aging analysis requirements; LBP-08-13, 68 NRC 138 (2008)
aging management review addresses activities identified in this section regarding the integrated plant assessment; CLI-10-17, 72 NRC 16 (2010)
applicant is required to demonstrate that the effects of aging will be adequately managed so that the intended function(s) will be maintained consistent with the CLB for the period of extended operation; LBP-08-26, 68 NRC 940 (2008)
applicant must establish an aging management program that is adequate to provide reasonable assurance that the intended function of the piping subject to flow-accelerated corrosion will be maintained in accordance with the current licensing basis for the period of extended operation; LBP-08-25, 68 NRC 856 (2008)
applicant's flow-accelerated corrosion programs supply sufficient specificity to meet the demonstration requirement; LBP-08-25, 68 NRC 893 (2008)
applicant's proposed aging management program for the steam dryer will adequately manage the effects of aging during the 20-year license renewal period; LBP-08-25, 68 NRC 895-96 (2008)
contention alleging that the license renewal application fails to supply sufficient details of the aging management program for flow-accelerated corrosion to demonstrate that its effects will be adequately managed is admitted; LBP-08-26, 68 NRC 948-49 (2008)
each application must contain an integrated plant assessment for which specified components will demonstrate that the effects of aging will be adequately managed so that the intended function(s) will be maintained consistent with the current licensing basis for the period of extended operation; LBP-08-13, 68 NRC 86 (2008); LBP-08-25, 68 NRC 786 (2008)
license renewal applicants must demonstrate that the effects of aging will be adequately managed so that the intended functions will be maintained consistent with the current licensing basis for the period of extended operation; CLI-10-14, 71 NRC 456 (2010); LBP-10-15, 72 NRC 333 (2010)
petitioner's contention that applicant's program for management of flow-accelerated corrosion fails to comply with this section is admissible; LBP-08-13, 68 NRC 174 (2008)
the level of information that an aging management program must contain in order to satisfy the legal requirements of this section is discussed; LBP-08-25, 68 NRC 785 (2008)
to approve a license renewal request, NRC Staff must find that applicant demonstrates that the effects of aging of the drywell shell will be adequately managed so that the structural support and pressure boundary will be maintained for the period of extended operation; LBP-06-22, 64 NRC 241 (2006)
- 10 C.F.R. 54.21(b)
a license renewal application must be periodically amended to reflect any changes to the plant's current licensing basis made after the license renewal application was submitted; CLI-08-23, 68 NRC 466 (2008)
changes to a facility's current licensing basis during the license renewal review process are expressly permitted by Commission regulations; LBP-06-7, 63 NRC 207 n.14 (2006)
- 10 C.F.R. 54.21(c)
a license renewal application that fails to broaden its time-limited aging analysis beyond the scope of representative components to identify other components whose CUF may be greater than 1 does not meet the requirements of this section; LBP-08-13, 68 NRC 166 n.772 (2008)
adequate time-limited aging analyses are a required component of the license renewal application and a necessary prerequisite to license renewal; LBP-08-25, 68 NRC 787 (2008)

LEGAL CITATIONS INDEX

REGULATIONS

- applicant for a license renewal must demonstrate that the effects of aging on the intended functions will be adequately managed for the period of extended operation; CLI-06-24, 64 NRC 122 (2006)
- calculations to determine valid cumulative usage factors less than 1 when accounting for the effects of reactor water environment are the fundamental fatigue analyses for time-limited aging required to be included in the license renewal application; LBP-08-13, 68 NRC 138 (2008); LBP-08-25, 68 NRC 827 (2008)
- each license renewal application must contain an evaluation of time-limited aging analyses, a list of TLAAAs, and a demonstration relating to TLAAAs; LBP-08-25, 68 NRC 793 (2008)
- for structures and components already subject to periodic replacement, the license renewal application must provide time-limited aging analyses, demonstrating that existing replacement programs will provide reasonable assurance that the effects of aging on intended functions will be adequately managed for the period of extended operation; CLI-10-14, 71 NRC 456 n.30 (2010)
- petitioner contends that applicant's license renewal application does not include an adequate plan to monitor and manage the effects of aging due to metal fatigue on key reactor components that are subject to an evaluation of the time-limited aging analysis; LBP-07-15, 66 NRC 264 (2007)
- the scope of license renewal proceedings is limited to a review of the plant systems, structures, and components that will require an aging management review for the period of extended operation and the plant's systems, structures, and components that are subject to an evaluation of time-limited aging analysis; LBP-08-13, 68 NRC 66 (2008); LBP-08-22, 68 NRC 599 (2008); LBP-10-21, 72 NRC 654 n.24 (2010)
- the timing of the performance and submission of time-limited aging analyses is discussed; LBP-08-25, 68 NRC 785 (2008)
- to the extent that any health and safety analyses performed during the initial licensing process were limited to the initial 40-year license period, the license renewal applicant must show that it has reassessed these time-limited aging analyses and that these analyses remain valid for the period of extended operation; CLI-06-24, 64 NRC 117 (2006)
- 10 C.F.R. 54.21(c)(1)
- a license renewal application must contain an evaluation of time-limited aging analyses; LBP-08-25, 68 NRC 825 (2008)
- aging management review addresses activities identified in this section regarding the evaluation of time-limited aging analyses; CLI-10-17, 72 NRC 16 (2010)
- applicant for a license renewal must demonstrate in the license renewal application that the evaluation of time-limited aging analyses has been completed; LBP-08-25, 68 NRC 825 (2008)
- applicant is not allowed to postpone the demonstration until after the license has been renewed; LBP-08-25, 68 NRC 794 (2008)
- applicant's metal fatigue analyses of the core spray and reactor recirculation outlet nozzles do not comply with relevant requirements and do not provide the reasonable assurance of safety, and thus license renewal is not authorized; LBP-08-25, 68 NRC 780 (2008)
- applicants' obligations regarding time-limited aging analyses are described; CLI-08-23, 68 NRC 467 (2008)
- calculation of the cumulative usage factors is a time-limited aging analysis for metal fatigue that must be included in a license renewal application; LBP-08-13, 68 NRC 137 (2008)
- compliance cannot be achieved by repackaging and postponing a TLAA analysis-of-record and calling it an aging management plan; LBP-08-25, 68 NRC 826 (2008)
- contention identifying four representative reactor coolant components for which applicant's evaluation of time-limited aging analyses is facially noncompliant is admissible; LBP-08-13, 68 NRC 167 (2008)
- petitioners may address time-limited aging analyses such as neutron embrittlement of the reactor pressure vessel by demonstrating that existing analyses remain valid for the period of extended operation, revising existing analyses to demonstrate their validity to the end of the period of extended operation, or demonstrating that the effects of aging on the intended function(s) will be adequately managed for the period of extended operation; LBP-06-10, 63 NRC 347 (2006)
- Staff did not accept applicant's commitment to complete the evaluation of time-limited aging analysis prior to entering the period of extended operations, but required applicant to calculate the cumulative usage factor for its license renewal application; LBP-08-13, 68 NRC 137 n.576 (2008)

LEGAL CITATIONS INDEX
REGULATIONS

- technical information that must be included in a license renewal application as part of the time-limited aging analyses is described; CLI-08-28, 68 NRC 664 (2008)
- this section permits a demonstration after issuance of a renewed license, i.e., that applicant's use of an aging management program identified in the GALL Report constitutes reasonable assurance that it will manage the targeted aging effect during the renewal period; CLI-10-17, 72 NRC 36 (2010)
- 10 C.F.R. 54.21(c)(1)(i)
- a license renewal applicant seeking to satisfy aging management requirements by reliance upon existing time-limited aging analyses in its current licensing basis would rely on this section; CLI-10-17, 72 NRC 18 (2010)
- a license renewal application analysis of metal fatigue that ignored the known and substantial effects of the light-water reactor environment (the Fen) would be insufficient, as both a technical matter and a legal matter; LBP-08-25, 68 NRC 824 (2008)
- a technically accurate time-limited aging analysis that shows that the component will fail during the period of extended operation is not enough to satisfy this section; LBP-08-25, 68 NRC 794 (2008)
- if applicant can demonstrate by plant operating experience that the initially predicted number of stress cycles would not be exceeded even in the extended 20-year operating period, then this section would be satisfied; CLI-10-17, 72 NRC 19 n.82 (2010)
- regarding use of the cumulative usage factor, an applicant who chooses to rely on an existing time-limited aging analysis may demonstrate compliance with the rule by showing that the existing CUF calculations remain valid because the number of assumed transients would not be exceeded during the period of extended operation; CLI-10-17, 72 NRC 18 (2010)
- 10 C.F.R. 54.21(c)(1)(i)-(ii)
- time-limited aging analyses for components are incomplete if they omit consideration of the exacerbating effects of environmental conditions on the fatigue of metal components; LBP-08-13, 68 NRC 166 n.772 (2008)
- 10 C.F.R. 54.21(c)(1)(i)-(iii)
- a metal fatigue issue and applicant's approach to meeting the requirements of this section with respect to that issue is an aging management issue that is clearly within the scope of a license renewal proceeding; LBP-07-15, 66 NRC 270 (2007)
- applicant has three options for demonstrating time-limited aging analyses; LBP-08-25, 68 NRC 793 (2008)
- each time-limited aging analysis in a license renewal application must demonstrate that the analyses remain valid for the period of extended operation, or have been projected to the end of the period of extended operation, or the effects of aging on the intended function(s) will be adequately managed for the period of extended operation; LBP-08-25, 68 NRC 787 (2008)
- license renewal applications must include an evaluation of time-limited aging analyses demonstrating that the analyses will remain valid for the period of extended operation, have been projected to the end of the period of extended period of operation, or the effects of aging on the intended functions will be adequately managed for the period of extended operation; CLI-10-17, 72 NRC 18 (2010)
- petitioner demonstrates a genuine, material dispute with a license renewal application by raising the question of whether applicant's "plan to develop a plan" to manage environmentally assisted fatigue is sufficient to meet the license renewal requirements; LBP-06-20, 64 NRC 186 (2006)
- some license renewal applicants have sought to satisfy more than one of the three subsections; CLI-10-17, 72 NRC 18 (2010)
- 10 C.F.R. 54.21(c)(1)(ii)
- a license renewal applicant demonstrates compliance with the ASME Code by projecting the fatigue analysis for the nozzle through the extended operating period; CLI-08-28, 68 NRC 664 n.24 (2008)
- a license renewal applicant seeking to satisfy aging management requirements by reliance upon existing time-limited aging analyses in its current licensing basis would rely on this section; CLI-10-17, 72 NRC 18 (2010)
- a license renewal application analysis of metal fatigue that ignored the known and substantial effects of the light-water reactor environment (the Fen) would be insufficient, as both a technical matter and a legal matter; LBP-08-25, 68 NRC 824 (2008)
- a list of time-limited aging analyses together with a demonstration that the analyses have been projected to the end of the period of extended operation must be included in the license renewal application; CLI-08-28, 68 NRC 671 (2008)

LEGAL CITATIONS INDEX

REGULATIONS

- a technically accurate projection of the time-limited aging analysis that predicts that the component will fail due to aging during the 20-year period of extended operation is not enough to satisfy this section; LBP-08-25, 68 NRC 794 (2008)
- applicant may demonstrate compliance with the rule by showing that the CUF calculations have been reevaluated based on an increased number of assumed transients to bound the period of extended operation and that the resulting CUF remains less than or equal to 1.0 for the period of extended operation; CLI-10-17, 72 NRC 19 (2010)
- if a license renewal applicant seeks to demonstrate that its time-limited aging analysis has been projected to the period of extended operation, it must perform a CUFen calculation, not just a CUF calculation; LBP-08-25, 68 NRC 802 (2008)
- 10 C.F.R. 54.21(c)(1)(iii)
- a license renewal applicant seeking to satisfy aging management requirements by reliance on an aging management plan would rely instead on this section; CLI-10-17, 72 NRC 18 (2010)
- a license renewal applicant who addresses the cumulative usage factor issue via an aging management program may reference Chapter X of the Generic Aging Lessons Learned Report; CLI-10-17, 72 NRC 19 (2010)
- actual cumulative usage factor calculations must be included in the license renewal application to provide the specificity needed to achieve the demonstration required of an aging management plan; LBP-08-13, 68 NRC 138 (2008)
- an aging management program is intended to manage the effects of aging on a particular component by, e.g., ensuring that the fatigue usage factor for the component does not exceed the design code limit; CLI-10-17, 72 NRC 12 n.44 (2010)
- applicant can use an aging management plan either when the time-limited aging analyses predict that the component in question will fail due to aging during the period of extended operation or the applicant foregoes the TLAAs and assumes that aging is a problem; LBP-08-25, 68 NRC 794 (2008)
- applicant must demonstrate that the effects of aging due to metal fatigue on key reactor components will be adequately managed for the period of extended operation; LBP-07-15, 66 NRC 264 (2007)
- applicant must establish an aging management program that is adequate to provide reasonable assurance that the intended function of the piping subject to flow-accelerated corrosion will be maintained in accordance with the current licensing basis for the period of extended operation; LBP-08-25, 68 NRC 856 (2008)
- applicant's commitment to repair or replace the affected locations before exceeding a cumulative usage factor of 1.0 does not meet the "demonstration" requirement of the regulations; LBP-08-13, 68 NRC 138 (2008)
- applicant's flow-accelerated corrosion program for the period of extended operation will be effective in managing the effects of aging; LBP-08-25, 68 NRC 893 (2008)
- applicant's proposed aging management program for the steam dryer will adequately manage the effects of aging during the 20-year license renewal period; LBP-08-25, 68 NRC 895-96 (2008)
- if metal fatigue will not exceed regulatory limits, then an aging management plan is not required; LBP-08-25, 68 NRC 790 (2008)
- in evaluating metal fatigue, a component's cumulative usage factor is the fundamental parameter used to determine whether it will likely develop cracks during the license renewal period and, as a result, be subject to an aging management plan; LBP-08-13, 68 NRC 137 (2008)
- license renewal applicant commits to an aging management program that would satisfy the requirements of this section; CLI-08-28, 68 NRC 664 n.24 (2008)
- mere reference to a NUREG as the sole support for the aging management plan does not adequately demonstrate that the effects of aging will be adequately managed; LBP-08-25, 68 NRC 868 (2008)
- the "adequate management" requirement is generally accomplished by establishing a prospective aging management or similar plan; CLI-10-17, 72 NRC 18 (2010)
- the Generic Aging Lessons Learned Report sets forth three ways that a license renewal applicant proposing to use an aging management plan may comply with the requirements of this section; CLI-10-17, 72 NRC 12 (2010)
- the level of information that an aging management program must contain in order to satisfy the legal requirements of this section is discussed; LBP-08-25, 68 NRC 785 (2008)

LEGAL CITATIONS INDEX
REGULATIONS

- 10 C.F.R. 54.23
in addition to information supplied for the technical safety review, a license renewal applicant is required to submit a supplemental environmental report that complies with 10 C.F.R. Part 51; CLI-08-23, 68 NRC 467 (2008)
- 10 C.F.R. 54.27(c)
a license renewal may be set aside or appropriately conditioned even after it has been issued, upon subsequent administrative or judicial review; CLI-08-13, 67 NRC 400 (2008)
- 10 C.F.R. 54.29
a license renewal review considers aging management issues and some time-limited aging analyses that are associated with the functions of relevant plant systems, structures, and components; LBP-07-11, 66 NRC 60 (2007)
any safety-related opposition to license renewal can be based only on matters stemming from the aging of the facility; LBP-07-14, 66 NRC 207 n.89 (2007)
applicant's metal fatigue analyses of the core spray and reactor recirculation outlet nozzles do not comply with relevant requirements and do not provide the reasonable assurance of safety, and thus license renewal is not authorized; LBP-08-25, 68 NRC 780 (2008)
failure of applicant to file its intended license amendment application in time to allow for an aging-related review of whatever new fire protection system would otherwise be proposed and possibly approved, might arguably be occasion to submit a new request for hearing, petition to intervene, and contention(s); LBP-07-11, 66 NRC 80 (2007)
findings required under this section were written to be consistent with section 64.21(a)(3); CLI-10-14, 71 NRC 463 n.71 (2010)
impacts of metal fatigue, corrosion, and embrittlement are directly related to the detrimental results of aging and are the focus of the Staff's technical review of the application for license renewal; LBP-08-13, 68 NRC 67 (2008)
licensee must establish an aging management program that provides reasonable assurance that the drywell shell will continue to perform its intended function consistent with the current licensing basis during the additional 20 years of the renewal period; CLI-09-7, 69 NRC 263 (2009); LBP-07-17, 66 NRC 340 (2007)
NRC may issue the renewed license if it finds that, with respect to the structures and components identified under section 54.21(a)(1), there is reasonable assurance of ongoing conformity to the current licensing basis; CLI-08-23, 68 NRC 468 (2008); LBP-08-22, 68 NRC 599-600 (2008)
past actions and performance provide objective evidence as to future performance and can be used in the reasonable assurance determination; LBP-10-15, 72 NRC 340 (2010)
standards defining the findings NRC must make to support a license renewal are set forth in this regulation; LBP-06-23, 64 NRC 354 (2005); LBP-07-11, 66 NRC 58 (2007)
the current licensing basis is effectively addressed and maintained by ongoing agency oversight, review, and enforcement; LBP-07-11, 66 NRC 61 (2007)
the findings required by this section consider the results of the integrated plant assessment; CLI-10-14, 71 NRC 463 n.71 (2010)
the license renewal application fails to comply with this section because it lacks a specific plan for the aging management of non-environmentally-qualified inaccessible medium-voltage cables and wiring; LBP-08-13, 68 NRC 83 (2008)
the phrase "reasonable assurance" is not defined, but requires, at a minimum, that an applicant demonstrate compliance with all of NRC's safety regulations; LBP-08-25, 68 NRC 787 (2008)
the reference to functionality means the intended functions that must be assured in the integrated plant assessment aging management review; CLI-10-14, 71 NRC 463 n.71 (2010)
the standards defining the findings the NRC must make to support a license renewal are set forth in this regulation; LBP-07-4, 65 NRC 305 (2007)
the timing of the performance and submission of time-limited aging analyses is discussed; LBP-08-25, 68 NRC 785 (2008)
this regulation must be read in conjunction with 10 C.F.R. 54.30; LBP-10-15, 72 NRC 338 (2010)
this section does not expand the scope of review to any matter involving the current licensing basis; CLI-10-14, 71 NRC 462-63 n.71 (2010)

LEGAL CITATIONS INDEX

REGULATIONS

10 C.F.R. 54.29(a)

- a license renewal application analysis of metal fatigue that ignores the known and substantial effects of the light-water reactor environment would be insufficient, as both a technical matter and a legal matter; LBP-08-25, 68 NRC 824 (2008)
- a narrow and specific contention that alleges facts, with supporting documentation, of a longstanding and continuing pattern of noncompliance or management difficulties, that are reasonably linked to whether the licensee will actually be able to adequately manage aging in accordance with the current licensing basis during the period of extended operation, can be an admissible contention; LBP-10-15, 72 NRC 336 (2010)
- a reasonable assurance finding with regard to managing the effects of aging and time-limited aging analyses is required; CLI-10-17, 72 NRC 16 n.72 (2010)
- a renewed license may be issued if the Commission finds that there is reasonable assurance that the activities authorized by the renewed license will continue to be conducted in accordance with the current licensing basis; CLI-09-7, 69 NRC 270 n.196 (2009)
- although license renewal review focuses on management of aging, aging is a continuous process and the aging in question does not need to be unique to the period of extended operation to be relevant; LBP-10-15, 72 NRC 340 (2010)
- applicant's metal fatigue analyses for core spray and reactor recirculation outlet nozzles failed to comply with all relevant requirements and therefore applicant could not demonstrate that there was a reasonable assurance of safety; LBP-10-19, 72 NRC 532 (2010)
- applicant's use of NUREG/CR-5704 and -6583 in the calculation of the CUFen reanalyses and the confirmatory CUFen analyses is sufficient to provide the reasonable assurance required by this section; LBP-08-25, 68 NRC 806 (2008)
- as a condition precedent to granting licensee's license renewal request, NRC Staff must find there is reasonable assurance that the activities authorized by the renewed license will continue to be conducted in accordance with the current licensing basis; LBP-07-11, 66 NRC 79-80 (2007); LBP-07-17, 66 NRC 339-40 (2007)
- because a renewed license will incorporate the aging management programs, the extent to which a plant complies with the elements of its AMPs will be subject to NRC's continuing oversight activities during the period of extended operation and therefore cannot be considered under this section; LBP-10-15, 72 NRC 329 (2010)
- because the CUFen reanalyses for the feedwater, core spray, and reactor recirculation outlet nozzles used a simplified Green's function methodology, they are inconsistent with the ASME Code, cannot be validated, could underestimate the nature and extent of metal fatigue, cannot be the analysis-of-record, and do not satisfy the requirements of this section; LBP-08-25, 68 NRC 822 (2008)
- contention alleging that the aging management plan does not provide adequate inspection and monitoring for corrosion or leaks in all buried systems, structures, and components that may convey or contain radioactively contaminated water or other fluids is admissible; LBP-08-13, 68 NRC 79 (2008)
- contention that license renewal applicant's aging management plan relating to aging and degradation of buried, below-grade, underground, or hard-to-access safety-related electrical cables due to submergence and wet environments is inadequate is inadmissible; LBP-10-19, 72 NRC 545 (2010)
- findings that the Commission must make regarding aging management plans and time-limited aging analyses in order to grant a license renewal are discussed; LBP-08-25, 68 NRC 787 (2008)
- license renewals cannot be issued unless there is reasonable assurance that licensed activities will be conducted in accordance with any changes made to the plant's current licensing basis; LBP-08-25, 68 NRC 830 (2008); LBP-10-15, 72 NRC 331 (2010)
- the "reasonable assurance" standard must be determined on a case-by-case basis; LBP-08-22, 68 NRC 646 (2008)
- the future-tense phrase "will be taken" is simply a recognition that aging management plans described in the license renewal application are necessarily implemented during the period of extended operation, not an authorization to perform TLAA analyses-of-record in the future; LBP-08-25, 68 NRC 827 (2008)
- the term, "reasonable assurance," is interpreted; LBP-08-22, 68 NRC 644, 645, 645 (2008)
- this section speaks of both past and future actions, referring specifically to those that have been or will be taken with respect to managing the effects of aging and time-limited aging analyses; CLI-10-17, 72 NRC 33 (2010)

LEGAL CITATIONS INDEX
REGULATIONS

- under narrowly limited circumstances, the reasonable assurance determination can be informed by applicant's past performance if it is an ongoing pattern of difficulty in managing activities and compliance that have a direct link to applicant's ability to implement its aging management program in accordance with the current licensing basis; LBP-10-15, 72 NRC 333 (2010)
- 10 C.F.R. 54.29(a)(1)
contention asserting noncompliance of a license renewal application because it is not possible to ascertain if all relevant equipment, components, and systems that are required to have aging management have been identified is inadmissible; LBP-08-13, 68 NRC 75 (2008)
- contention asserting that because information from safety analyses and evaluations performed at the NRC's request are not identified or included in the UFSAR, the license renewal application should be denied is inadmissible; LBP-08-13, 68 NRC 72 (2008)
- the relevant matters of concern in a license renewal proceeding relate to managing the effects of the aging of critical systems, structures, and components; LBP-08-22, 68 NRC 601 (2008)
- 10 C.F.R. 54.29(a)(1)-(2)
aging management-related findings that the Commission must make to authorize renewal of an operating license are discussed; CLI-10-17, 72 NRC 17 (2010)
- safety contentions in license renewal proceedings must focus on topics related to the detrimental effects of aging and related time-limited issues dealt within 10 C.F.R. Part 54; LBP-06-20, 64 NRC 148 (2006)
- 10 C.F.R. 54.29(a)(2)
contention asserting noncompliance of license renewal application because it is not possible to ascertain if all relevant equipment, components, and systems that are required to have aging management have been identified is inadmissible; LBP-08-13, 68 NRC 75 (2008)
- to the extent that any health and safety analyses performed during the initial licensing process were limited to the initial 40-year license period, the license renewal applicant must show that it has reassessed these time-limited aging analyses and that these analyses remain valid for the period of extended operation; CLI-06-24, 64 NRC 117 (2006)
- 10 C.F.R. 54.29(b)
environmental review of certain site-specific environmental impacts is required for license renewal; LBP-10-13, 71 NRC 678 (2010)
- 10 C.F.R. 54.29(c)(1)
because the CUFen reanalyses for the feedwater, core spray, and reactor recirculation outlet nozzles used a simplified Green's function methodology, they are inconsistent with the ASME Code, cannot be validated, could underestimate the nature and extent of metal fatigue, cannot be the analysis-of-record, and do not satisfy the requirements of this section; LBP-08-25, 68 NRC 822 (2008)
- 10 C.F.R. 54.30
licensee's compliance with its current licensing basis during the current licensing term is not within the scope of the license renewal review; LBP-07-17, 66 NRC 339 n.17 (2007); LBP-10-15, 72 NRC 331 (2010)
- the current licensing basis is effectively addressed and maintained by ongoing agency oversight, review, and enforcement; LBP-07-4, 65 NRC 308 (2007); LBP-07-11, 66 NRC 61 (2007)
- 10 C.F.R. 54.30(a)
licensee is obliged to correct current noncompliances now; LBP-10-15, 72 NRC 339 (2010)
- 10 C.F.R. 54.30(b)
licensee's compliance with the obligation to take measures under its current license is not within the scope of the license renewal review; CLI-09-7, 69 NRC 270 n.196 (2009)
- the current licensing basis and questions regarding its ascertainability are current operation issues which are outside the scope of a license renewal proceeding; LBP-08-13, 68 NRC 70 (2008); LBP-08-22, 68 NRC 601 (2008)
- whether or not licensee complies with its obligation to correct current noncompliances now is not within the scope of license renewal review; LBP-10-15, 72 NRC 339 (2010)
- 10 C.F.R. 54.31
a renewed license takes effect immediately, with a term of up to 20 years plus the number of years remaining on the initial operating license; CLI-08-23, 68 NRC 469 (2008)

LEGAL CITATIONS INDEX

REGULATIONS

- 10 C.F.R. 54.31(b)
license renewal proceedings generally concern requests to renew 40-year reactor operating licenses for additional 20-year terms; LBP-06-10, 63 NRC 342 (2006); LBP-07-4, 65 NRC 306 (2007); LBP-07-11, 66 NRC 59 (2007)
- 10 C.F.R. 54.31(c)
the current plant licensing remains in effect pending final outcome of any hearing on renewal; LBP-08-12, 68 NRC 42 (2008)
- 10 C.F.R. 54.33
in the license renewal context, licensee must comply with Part 50 regulations, including the provisions requiring compliance with the ASME Code, during the period of extended operation; CLI-08-28, 68 NRC 664 (2008); CLI-10-17, 72 NRC 16-17 (2010)
- 10 C.F.R. 54.33(b)
NRC Staff is authorized to impose such conditions on applicant's current licensing basis under a backfit procedure if they are necessary to protect the environment; LBP-10-13, 71 NRC 697 (2010)
- 10 C.F.R. 54.33(c)
NRC has the authority and responsibility to supplement or to amend conditions to the current licensing basis of an existing operating license at the time of license renewal if such supplements or amendments are deemed necessary to protect the environment; LBP-10-13, 71 NRC 678 (2010)
- 10 C.F.R. 54.35
for license renewal, licensee must comply with Part 50 regulations, including provisions requiring compliance with the ASME Code, during the period of extended operation; CLI-08-28, 68 NRC 664 (2008); CLI-10-17, 72 NRC 16-17 (2010)
- 10 C.F.R. 55.35
applicant is exempted from the 6-month waiting period required for a third application for a reactor operator license, contingent upon participation in a licensed operator requalification training program; LBP-06-2, 63 NRC 83 (2006)
- 10 C.F.R. 55.53(b)
any senior reactor operator license is limited to the facility for which it is issued; LBP-09-14, 70 NRC 194-95, 196 (2009)
- 10 C.F.R. 55.53(e)
no senior reactor operator license that petitioner might be awarded could be active, because (not having been at the facility for more than 6 months) petitioner could not have performed the functions of an operator or senior operator for the necessary minimum number of hours during each calendar quarter; LBP-09-14, 70 NRC 196 (2009)
- 10 C.F.R. 55.55(a)
any senior reactor operator license automatically expires upon termination of employment with the facility licensee; LBP-09-14, 70 NRC 195, 196 (2009)
- 10 C.F.R. Part 61
whether applicant may appropriately dispose of its depleted uranium at a specific near-surface facility will depend on whether the performance objectives governing near-surface disposal (or comparable state regulations) can be met at that facility; CLI-06-15, 63 NRC 690 (2006)
- 10 C.F.R. 61.1
Part 61 only applies to the land disposal of radioactive waste received from others; LBP-09-10, 70 NRC 121 (2009)
- 10 C.F.R. 61.1(a)
Part 61 applies only to land disposal facilities that receive waste from others, not to onsite facilities where the licensee intends to store its own low-level radioactive waste; CLI-09-3, 69 NRC 73 (2009)
regulation is limited to waste received from other persons; LBP-07-5, 65 NRC 362 (2007)
- 10 C.F.R. 61.2
a "land disposal facility" effectively includes any land, building and structures, and equipment that are intended to be used for the disposal of radioactive wastes, but does not include geologic repository disposal; LBP-06-8, 63 NRC 263 (2006)
an inadvertent "intruder" is someone who might occupy a waste disposal site after site closure and engage in activities such as agriculture, dwelling, or construction, in which the person may unknowingly come into contact with the waste; CLI-06-15, 63 NRC 694 n.35 (2006)

LEGAL CITATIONS INDEX
REGULATIONS

- 10 C.F.R. 61.7(a)
burial deeper than 30 meters may also be satisfactory for near-surface disposal provided that the disposal methods meet the specific technical requirements for near-surface disposal; LBP-06-8, 63 NRC 264 n.18 (2006)
near-surface disposal includes disposal in engineered facilities that may be built totally or partially above-grade, provided that such facilities have protective earthen covers; LBP-06-8, 63 NRC 264 n.18 (2006)
near-surface methods of disposal may involve disposal at depths down to approximately 30 meters, although burial at a depth greater than 30 meters may also be acceptable; CLI-06-15, 63 NRC 689 n.5 (2006)
- 10 C.F.R. 61.10
a permit for the land disposal of radioactive waste is required for those who receive from others, possess, and dispose of wastes containing or contaminated with source, byproduct, or special nuclear material; LBP-08-15, 68 NRC 317 (2008)
- 10 C.F.R. 61.41
dose limits for releases of radioactivity to members of the general public are not applicable to inadvertent intruders; CLI-06-15, 63 NRC 696 n.47 (2006)
Subpart C performance objectives must be met regardless of the classification of the waste involved, and are specifically intended to protect the general public from releases of radioactivity; LBP-06-8, 63 NRC 264 (2006)
the performance objectives for a near-surface disposal facility require that the relevant licensing entity examine whether, at any particular time after active institutional controls are removed, the dose limitations will be met for an inadvertent intruder; LBP-06-8, 63 NRC 281 (2006)
- 10 C.F.R. 61.42
dose limits for protection of inadvertent intruders are not specified; CLI-06-15, 63 NRC 696 n.47 (2006)
dose limits must be met without time limitation; LBP-06-8, 63 NRC 284 (2006)
Subpart C performance objectives must protect individuals from inadvertent intrusion at any time after active institutional controls over a disposal site are removed; LBP-06-8, 63 NRC 264 (2006)
- 10 C.F.R. 61.43
Subpart C performance objectives must protect individuals from radiation exposures during operation of a facility; LBP-06-8, 63 NRC 264 (2006)
- 10 C.F.R. 61.44
Subpart C performance objectives must ensure the long-term stability of a disposal site after closure; LBP-06-8, 63 NRC 264 (2006)
- 10 C.F.R. 61.50(a)
a primary purpose of the Part 61, Subpart D technical requirements is to ensure that the Subpart C performance objectives for a land disposal facility are met; LBP-06-8, 63 NRC 264 (2006)
the minimum characteristics to be satisfied by low-level radioactive waste land disposal facilities to make it acceptable for use as a near-surface disposal facility are discussed; LBP-06-8, 63 NRC 264 (2006)
- 10 C.F.R. 61.52(a)(2)
intruder barriers must be designed to protect against an inadvertent intrusion for at least 500 years; LBP-06-8, 63 NRC 284 (2006)
- 10 C.F.R. 61.55(a)
depleted uranium is a Class A low-level waste; LBP-07-6, 65 NRC 474 n.210 (2007)
- 10 C.F.R. 61.55(a)
depleted uranium is appropriately categorized as low-level waste and is deemed Class A waste; LBP-06-8, 63 NRC 267 (2006); LBP-06-15, 63 NRC 665 (2006)
- 10 C.F.R. 61.55(a)(2)
greater-than-Class-C waste is one of the radioactive byproducts of nuclear power generation; CLI-10-2, 71 NRC 47 n.105 (2010)
- 10 C.F.R. 61.55(a)(2)(i)-(iii)
Class A, B, and C wastes are generally appropriate for near-surface disposal; LBP-06-8, 63 NRC 264 (2006)

LEGAL CITATIONS INDEX
REGULATIONS

- 10 C.F.R. 61.55(a)(2)(iv)
wastes having a greater radioactivity than Class C (greater-than-Class-C waste) typically are not appropriate for near-surface disposal; LBP-06-8, 63 NRC 264 (2006)
- 10 C.F.R. 61.55(a)(3)-(5), Tables 1 & 2
wastes are classified on the basis of the long-lived and/or short-lived radionuclides present in the waste; LBP-06-8, 63 NRC 264 (2006)
- 10 C.F.R. 61.55(a)(6)
a literal reading of the regulation renders depleted uranium "Class A" low-level radioactive waste; CLI-06-15, 63 NRC 699 (2006)
if a particular radioactive waste does not contain any of the radionuclides listed in Tables 1 and 2, it is, by default, designated Class A waste; LBP-06-8, 63 NRC 264 (2006)
no exception is made for depleted uranium from enrichment facilities; LBP-06-8, 63 NRC 267 (2006)
should the Commission make a determination in the course of a rulemaking proceeding that this section or other portions of Part 61 need revision to address the impacts resulting from the waste stream from uranium enrichment facilities, such a determination may well require that licenses for near-surface disposal facilities be evaluated in light of any new requirements; LBP-06-8, 63 NRC 286-87 (2006)
- 10 C.F.R. 61.58
anticipating that new waste streams or disposal methods might become relevant in the future, the drafters of Part 61 left flexibility to deal with such occurrences; LBP-06-8, 63 NRC 275 (2006)
even if the Staff ultimately were to alter the general classification rules, it would not follow that licensee's depleted uranium could not be classified as Class A at another specific near-surface facility; CLI-06-22, 64 NRC 50 n.52 (2006)
- 10 C.F.R. Part 63
although the Commission no longer mandates separate construction and operating license applications for nuclear power plants, it nonetheless contemplated a multistage licensing scheme for the high-level waste repository expressly requiring DOE to submit additional design information and to update its application at later stages; LBP-10-22, 72 NRC 678 (2010)
- 10 C.F.R. 63.2
"event sequence" is defined; CLI-09-14, 69 NRC 597 n.105 (2009)
- 10 C.F.R. 63.10
DOE is responsible for the accuracy and completeness of its Yucca Mountain application throughout the licensing process; CLI-08-11, 67 NRC 385 (2008)
- 10 C.F.R. 63.11
deliberately submitting to NRC inaccurate or incomplete information on Yucca Mountain is misconduct suitable for enforcement action; CLI-08-11, 67 NRC 384 n.29 (2008)
- 10 C.F.R. 63.21
the Commission expressly addressed the distinction between a plan and a description of a plan; LBP-10-22, 72 NRC 682 (2010)
the required contents of an application for a high-level waste repository are specified, including a wide variety of matters relevant to protection from radiation; CLI-08-20, 68 NRC 276 (2008)
- 10 C.F.R. 63.21(a)
a license application consists of two parts, one of which is the safety analysis report; CLI-06-5, 63 NRC 156 (2006)
the high-level waste repository license application must be as complete as possible in light of the information that is reasonably available at the time of docketing; LBP-10-22, 72 NRC 677 (2010)
- 10 C.F.R. 63.21(c)
the Safety Analysis Report included in the high-level waste repository application must contain information relating to the evaluation of potential exposures during the post-closure period beyond 10,000 years following disposal; CLI-08-20, 68 NRC 276 (2008)
- 10 C.F.R. 63.21(c)(1)
the high-level waste repository application must include a description of the site, with appropriate attention to matters that might affect the performance of the geological repository, which is essential to evaluation of exposures in the period beyond 10,000 years after disposal; CLI-08-20, 68 NRC 276 (2008)

LEGAL CITATIONS INDEX
REGULATIONS

- 10 C.F.R. 63.21(c)(3)(ii)
the high-level waste repository application must describe the engineered barrier system, including the design criteria used and their relationships to the post-closure performance objectives specified in section 63.113(b); CLI-08-20, 68 NRC 276 (2008)
- 10 C.F.R. 63.21(c)(5)
applicant's Safety Analysis Report is a required part of its license application and must include a preclosure safety analysis; LBP-08-1, 67 NRC 41 n.9 (2008)
- 10 C.F.R. 63.21(c)(7)
had the Commission intended to require more than a description of retrieval plans, it could have said so explicitly, as it did in other parts of section 63.21 with respect to other plans; LBP-10-22, 72 NRC 682 (2010)
- 10 C.F.R. 63.21(c)(9)
the high-level waste repository application must include an assessment to determine the degree to which features, events, and processes of the site that are expected to materially affect compliance with section 63.113 have been characterized, and the extent to which they affect waste isolation; CLI-08-20, 68 NRC 276 (2008)
- 10 C.F.R. 63.21(c)(10)
the high-level waste repository application must include an assessment of the anticipated response of the geomechanical, hydrogeologic, and geochemical systems to the range of design thermal loadings under consideration; CLI-08-20, 68 NRC 276 (2008)
- 10 C.F.R. 63.21(c)(11)
the high-level waste repository application must include an assessment of the ability of the proposed geologic repository to limit radiological exposures to the reasonably maximally exposed individual for the period after permanent closure; CLI-08-20, 68 NRC 276 (2008)
- 10 C.F.R. 63.21(c)(12)
the high-level waste repository application must set forth an assessment of the ability of the proposed geologic repository to limit releases of radionuclides into the accessible environment; CLI-08-20, 68 NRC 277 (2008)
- 10 C.F.R. 63.21(c)(13)
the application must set forth an assessment of the ability of the proposed geologic repository to limit radiological exposures to the reasonably maximally exposed individual for the period after permanent closure in the event of human intrusion into the engineered barrier system; CLI-08-20, 68 NRC 277 (2008)
- 10 C.F.R. 63.21(c)(14)
the high-level waste repository application must set forth an evaluation of the natural features of the geologic setting and design features of the engineered barrier system that are considered barriers important to waste isolation; CLI-08-20, 68 NRC 277 (2008)
- 10 C.F.R. 63.21(c)(15)
the application must provide an explanation of measures used to support the models used to provide the information required in section 63.21(c)(9)-(14); CLI-08-20, 68 NRC 277 (2008)
- 10 C.F.R. 63.21(c)(18)
the high-level waste repository license application must give special attention to those items that may significantly influence the final design; LBP-10-22, 72 NRC 677 (2010)
- 10 C.F.R. 63.21(c)(19)
contention asserting that DOE's description of its expert elicitation relating to a probabilistic volcanic hazard analysis update fails to comply with this section or the NRC guidance document that DOE formally committed to follow is admissible; LBP-09-29, 70 NRC 1032-33 (2009)
- 10 C.F.R. 63.24
before issuance of a license to receive and possess waste material, DOE must update its application; LBP-10-22, 72 NRC 686 (2010)
- 10 C.F.R. 63.24(b)(1)
before any waste may be received at the high-level waste repository, DOE must update its application with additional design data obtained during construction; LBP-10-22, 72 NRC 678 (2010)

LEGAL CITATIONS INDEX
REGULATIONS

- 10 C.F.R. 63.31
safety findings are to be made on review and consideration of an application; CLI-09-14, 69 NRC 602 (2009)
the Commission may authorize construction of the proposed repository if the application provides a reasonable assurance of preclosure safety and a reasonable expectation of postclosure safety; LBP-09-6, 69 NRC 418 (2009)
- 10 C.F.R. 63.31(a)(1) & (2)
the character or integrity of an applicant is a proper consideration in a licensing proceeding; LBP-09-6, 69 NRC 458 (2009)
- 10 C.F.R. 63.31(a)(2)
before authorizing construction of the proposed repository, the Commission must determine that there is reasonable expectation that the materials can be disposed of without unreasonable risk to the health and safety of the public; LBP-10-22, 72 NRC 685 (2010)
- 10 C.F.R. 63.41(a)
the Commission may issue a license to receive and possess high-level waste upon finding that the construction of the facility has been substantially completed; LBP-10-22, 72 NRC 685 (2010)
- 10 C.F.R. 63.41(a)(2)
before issuing a license to receive and possess high-level waste at the repository, the Commission must find that construction of any underground storage space required for initial operation has been substantially completed; LBP-10-22, 72 NRC 685 (2010)
- 10 C.F.R. 63.42(d)
the Commission decision approving the first construction authorization for the high-level waste repository application shall prohibit the emplacement in the first repository of a quantity of spent fuel containing in excess of 70,000 metric tons of heavy metal or a quantity of solidified high-level radioactive waste resulting from the reprocessing of such a quantity of spent fuel until such time as a second repository is in operation; CLI-09-14, 69 NRC 592 n.71 (2009)
- 10 C.F.R. 63.73
DOE must report Yucca Mountain deficiencies to NRC; CLI-08-11, 67 NRC 384 n.29 (2008)
- 10 C.F.R. 63.101
the performance assessment for the high-level waste repository must meet a number of very specific requirements; LBP-09-6, 69 NRC 414 (2009)
- 10 C.F.R. 63.102
the performance assessment for the high-level waste repository must meet a number of very specific requirements; LBP-09-6, 69 NRC 414 (2009)
this section merely provides a functional overview of Subpart E; LBP-10-22, 72 NRC 676 (2010)
- 10 C.F.R. 63.102(c)
three phases of high-level waste repository operations are recognized; LBP-10-22, 72 NRC 685 n.118 (2010)
- 10 C.F.R. 63.102(j)
compliance with limits on radiological exposures, over necessarily long time periods, requires a performance assessment; LBP-09-6, 69 NRC 413 (2009)
performance assessment is defined as a systematic analysis that quantitatively estimates radiological exposures; LBP-09-6, 69 NRC 415 (2009)
whether a feature, event, or process must be included in the performance assessment for the period after 10,000 years is not governed by this section; LBP-10-22, 72 NRC 676 (2010)
- 10 C.F.R. 63.111(a)(1)
the geologic repository operations area must meet the requirements of 10 C.F.R. Part 20; CLI-09-14, 69 NRC 595 n.93 (2009); LBP-10-22, 72 NRC 671 (2010)
- 10 C.F.R. 63.111(c)
a preclosure safety analysis must be performed for the high-level waste repository and it must demonstrate, among other things, that the requirements of section 63.111(a) are met; CLI-09-14, 69 NRC 595 n.93 (2009)
the preclosure safety analysis for the high-level waste repository must demonstrate that in the event of Category 1 or Category 2 event sequences, prescribed dose limits will be met; CLI-09-14, 69 NRC 597 n.105 (2009)

LEGAL CITATIONS INDEX
REGULATIONS

- 10 C.F.R. 63.113
“adequate confidence” in the performance assessment is derived from sufficient analyses, data, and the technical basis offered to demonstrate compliance with postclosure performance objectives; LBP-10-22, 72 NRC 687 (2010)
the performance assessment for the high-level waste repository must meet a number of very specific requirements; LBP-09-6, 69 NRC 413 (2009)
the performance margins analysis cannot be used to validate or provide confidence in the total system performance assessment if its data and models are not qualified under DOE’s quality assurance program; LBP-10-22, 72 NRC 686 (2010)
- 10 C.F.R. 63.113(b), (c)
the high-level waste repository application must include an assessment of the ability of the proposed geologic repository to limit radiological exposures to the reasonably maximally exposed individual for the period after permanent closure; CLI-08-20, 68 NRC 276 (2008)
- 10 C.F.R. 63.113(c)
the high-level waste repository application must set forth an assessment of the ability of the proposed geologic repository to limit releases of radionuclides into the accessible environment; CLI-08-20, 68 NRC 277 (2008)
- 10 C.F.R. 63.114
the performance assessment for the high-level waste repository must meet a number of very specific requirements; LBP-09-6, 69 NRC 413 (2009)
the performance margins analysis cannot be used to validate or provide confidence in the total system performance assessment if its data and models are not qualified under DOE’s quality assurance program; LBP-10-22, 72 NRC 686 (2010)
- 10 C.F.R. 63.114(a)(5)
only features, events, and processes that produce significant changes in releases or doses within the first 10,000 years after disposal must be included in performance assessments; LBP-10-22, 72 NRC 676 (2010)
- 10 C.F.R. 63.114(c)
any performance assessment used to demonstrate compliance with 10 C.F.R. 63.113 must consider alternative conceptual models; LBP-09-6, 69 NRC 415 (2009)
- 10 C.F.R. 63.115
the high-level waste repository application must set forth an evaluation of the natural features of the geologic setting and design features of the engineered barrier system that are considered barriers important to waste isolation; CLI-08-20, 68 NRC 277 (2008)
- 10 C.F.R. Part 63, Subpart G
the performance margins analysis cannot be used to validate or provide confidence in the total system performance assessment if its data and models are not qualified under DOE’s quality assurance program; LBP-10-22, 72 NRC 686 (2010)
- 10 C.F.R. 63.141
a quality assurance program is required to provide adequate confidence that the geologic repository and its structures, systems, or components will perform satisfactorily in service; LBP-10-22, 72 NRC 686-87 (2010)
- 10 C.F.R. 63.142
if the performance margins analysis is needed to establish adequate confidence in the total system performance assessment, then it is subject to the quality assurance requirements of this section; LBP-10-22, 72 NRC 687 (2010)
- 10 C.F.R. 63.142(a)
the quality assurance program must be applied to all structures, systems, and components that are important to waste isolation and to related activities, defined as including analyses of samples and data; LBP-10-22, 72 NRC 687 (2010)
- 10 C.F.R. 63.172
willful violations of sections 63.11 and 63.73, among others, are subject to criminal penalties; CLI-08-11, 67 NRC 384 n.29 (2008)
- 10 C.F.R. 63.304
characteristics of the reasonable expectation standard are discussed; LBP-09-6, 69 NRC 418-20 (2009)

LEGAL CITATIONS INDEX
REGULATIONS

- 10 C.F.R. 63.305
climate projections should be based on cautious but reasonable assumptions; LBP-10-22, 72 NRC 673 (2010)
this section does not say anything about analyzing future climate based upon the historical geologic record; LBP-10-22, 72 NRC 672 (2010)
the performance assessment for the high-level waste repository must meet a number of very specific requirements; LBP-09-6, 69 NRC 414 (2009)
- 10 C.F.R. 63.311
the limits in this section must be consistent with the final EPA radiation protection standards, pursuant to the Energy Policy Act of 1992, which requires the NRC to modify its technical requirements and criteria, as necessary, to be consistent with final EPA standards; CLI-08-20, 68 NRC 277 (2008)
- 10 C.F.R. 63.342
although the petition for rule waiver fails to satisfy the strict requirements for a waiver, the Commission might wish to revisit the rule on its own initiative; LBP-10-22, 72 NRC 666 (2010)
whether a feature, event, or process must be included in the performance assessment for the period after 10,000 years is governed by this section, not by section 63.102(j); LBP-10-22, 72 NRC 676 (2010)
- 10 C.F.R. 63.342(c)
analysis is required for the post-10,000-year period of certain specified features, events, and processes (which do not include erosion), as well as all FEPs that are screened in during the first 10,000 years pursuant to section 63.342(a); LBP-10-22, 72 NRC 675 (2010)
applicant must assess the effects of climate change during the 990,000-year period regardless of whether it necessarily must assess climate change during the initial 10,000-year period under the criteria set forth in section 63.342(a) and (b); LBP-10-22, 72 NRC 673-74 (2010)
erosion cannot be screened in under section 63.342(a) if there is no showing that erosion causes increases in radiological exposures or releases within the first 10,000 years; LBP-10-22, 72 NRC 666, 675, 676, 677 (2010)
- 10 C.F.R. 63.342(c)(2)
applicant may perform its climate change analysis using a specified percolation rate; LBP-10-22, 72 NRC 674 (2010)
applicant may simplify its assessment of climate change during the 990,000-year period; LBP-10-22, 72 NRC 674 (2010)
applicant's climate change analysis for the 990,000-year period may be limited to the effects of increased water flow through the repository as a result of climate change; LBP-10-22, 72 NRC 674 (2010)
DOE may elect to use the deep percolation flux to analyze the effects of climate change during the post-10,000-year period, regardless of whether it is required to analyze the effects of climate change during the initial 10,000-year period; LBP-10-22, 72 NRC 688 (2010)
- 10 C.F.R. 70.4
under the double contingency principle, process designs should incorporate sufficient factors of safety to require at least two unlikely, independent, and concurrent changes in process conditions before a criticality accident is possible; LBP-06-17, 63 NRC 791 (2006)
- 10 C.F.R. 70.9 & 70.10
contradictions between a report prepared by outside counsel hired to conduct an investigation into fitness-for-duty violations and credible sworn testimony of licensee employees and documents produced by licensee suggest a violation of NRC regulations; CLI-08-6, 67 NRC 181 (2008)
- 10 C.F.R. 70.17
an exemption can be granted if it is authorized by law and will not endanger life or property or the common defense and security, and is otherwise in the public interest; LBP-07-6, 65 NRC 445 (2007)
an exemption from liability insurance requirements may be granted if NRC finds that the proposed exemption is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest; LBP-07-6, 65 NRC 463 (2007)
because DOE has legal authority to indemnify a uranium enrichment facility licensee against claims arising from nuclear incidents, an exemption under the Commission's regulations is authorized by law; LBP-07-6, 65 NRC 464 (2007)

LEGAL CITATIONS INDEX
REGULATIONS

- 10 C.F.R. 70.22
a license application must include information demonstrating that the equipment, facilities, and procedures to be used at the proposed facility are adequate to protect health and minimize danger to life and property; LBP-07-6, 65 NRC 439 (2007)
- 10 C.F.R. 70.22(a)(8)
license applications must contain proposed procedures to protect health and minimize danger to life or property; LBP-07-6, 65 NRC 467 (2007)
the 10 C.F.R. Part 70 financial criteria can be met by conditioning the materials license to require funding commitments to be in place prior to construction and operation; CLI-09-15, 70 NRC 18 (2009)
- 10 C.F.R. 70.22(a)(9)
an applicant seeking a license to construct and operate a uranium enrichment facility must submit with its license application a proposed decommissioning funding plan; LBP-06-15, 63 NRC 623 (2006)
- 10 C.F.R. 70.22(n)
a license application that seeks authorization to use source material or SNM in a uranium enrichment facility must include the applicant's provisions for liability insurance; LBP-07-6, 65 NRC 462 (2007)
- 10 C.F.R. 70.23
applicant is not required to "request" a completion finding, or call for a single action, such as an inspection, on the part of NRC Staff that would serve as a discrete starting point for revising a contention; CLI-09-2, 69 NRC 61 n.20 (2009)
in conducting their sufficiency review of safety matters, boards must determine whether the application and the record of the proceeding contain sufficient information, and the review of the application by NRC Staff has been adequate, to support the required findings; LBP-07-6, 65 NRC 437 (2007)
- 10 C.F.R. 70.23(a)(5)
the 10 C.F.R. Part 70 financial criteria can be met by conditioning the materials license to require funding commitments to be in place prior to construction and operation; CLI-09-15, 70 NRC 18 (2009)
- 10 C.F.R. 70.23(a)(7)
boards must independently consider the final balance among conflicting factors in the record; LBP-07-6, 65 NRC 490 (2007)
NRC regulations contemplate approval of construction and approval for operation of a fuel fabrication facility; CLI-09-2, 69 NRC 59 (2009)
- 10 C.F.R. 70.23(a)(8)
construction of the principal structures, systems, and components approved in the construction authorization proceeding must be completed in accordance with the application; CLI-09-2, 69 NRC 58 (2009)
contentions questioning whether construction of the principal structures, systems, and components of a fuel fabrication facility has been completed in accordance with the application can scarcely avoid containing elements of speculation or prematurity if they have to be filed before that construction has even commenced; LBP-07-14, 66 NRC 203 (2007)
NRC regulations contemplate approval of construction and approval for operation of a fuel fabrication facility; CLI-09-2, 69 NRC 59 (2009)
the overriding regulatory precondition to the award of an operating license is that every major aspect of the facility has been completed in accordance with its design; LBP-08-11, 67 NRC 489, 492, 502 (2008)
- 10 C.F.R. 70.23(b)
NRC regulations contemplate approval of construction and approval for operation of a fuel fabrication facility; CLI-09-2, 69 NRC 59 (2009)
- 10 C.F.R. 70.23a
a materials license hearing will be conducted for a fuel enrichment facility according to the rules of practice in 10 C.F.R. Part 2, Subparts A, C, G, and to the extent that classified information becomes involved, Subpart I; CLI-09-15, 70 NRC 7 (2009); CLI-10-4, 71 NRC 61 (2010)
for enrichment facilities a single construction/operation hearing is held; LBP-07-14, 66 NRC 208 n.92 (2007)
for license applications for uranium enrichment facilities, the NRC must hold a hearing even when the license is not contested; LBP-06-17, 63 NRC 762 (2006); LBP-07-6, 65 NRC 435 (2007)

LEGAL CITATIONS INDEX

REGULATIONS

- 10 C.F.R. 70.25
applicant has the burden of proof to demonstrate the adequacy of its license application; LBP-06-15, 63 NRC 602 (2006)
applicant must submit a decommissioning funding plan for its proposed facility; LBP-07-6, 65 NRC 449 (2007)
to fulfill the financial assurance/decommissioning funding plan requirements and relevant guidance in NUREG-1757, agency licensing of an enrichment facility should be based on the cost estimates that would be applicable under the plausible strategy associated with the U.S. Department of Energy providing dispositioning services; LBP-06-15, 63 NRC 603 (2006)
- 10 C.F.R. 70.25(a)
an applicant seeking a license to construct and operate a uranium enrichment facility must submit a proposed decommissioning funding plan with its license application; LBP-06-15, 63 NRC 623 (2006); LBP-06-17, 63 NRC 779 (2006)
- 10 C.F.R. 70.25(e)
a decommissioning funding plan must contain a cost estimate for decommissioning and a description of the method of assuring funds for decommissioning, including means for adjusting cost estimates and associated funding levels periodically over the life of the facility; LBP-06-15, 63 NRC 623 (2006)
a surety bond must be funded in an amount greater than or equal to the decommissioning cost estimate set forth in licensee's decommissioning funding plan; LBP-06-17, 63 NRC 781 (2006)
applicant must adjust its cost estimates and associated financial assurance levels for decommissioning at least once every 3 years; LBP-06-15, 63 NRC 623 (2006); LBP-06-17, 63 NRC 780 (2006)
applicant must submit a certification with its decommissioning funding plan that financial assurance for decommissioning has been provided in an amount equal to the decommissioning cost estimate, as well as a signed original or appropriate duplicate of the funding instrument whereby the applicant will provide financial assurance; LBP-06-15, 63 NRC 623 (2006)
the triennial adjustment is intended to account only for minor decommissioning cost estimate modifications; LBP-06-15, 63 NRC 676 (2006)
without an exemption, applicant is required to fully fund all of its estimated decommissioning costs at the time of licensing; LBP-07-6, 65 NRC 450 (2007)
- 10 C.F.R. 70.25(f)(1)-(3)
financial assurance may be provided for decommissioning in the case of a private applicant by prepayment into a segregated account prior to start of facility operations, a surety or other guarantee method, or by annual deposits into an external sinking fund coupled with a surety method whereby the surety value decreases over time by the amount accrued in the sinking fund; LBP-06-15, 63 NRC 623 (2006); LBP-06-17, 63 NRC 780 (2006)
- 10 C.F.R. 70.25(f)(2)(i)
surety bonds must either be open-ended or written for a specified term subject to automatic renewal, and must specify that the full face value will be automatically paid to the NRC prior to expiration if the licensee does not provide an acceptable replacement mechanism within a specified period of time; LBP-06-17, 63 NRC 781 n.24 (2006)
- 10 C.F.R. 70.25(f)(2)(ii)
a surety bond must be directly payable to an acceptable standby trust that will be used to fund decommissioning if the licensee defaults on its decommissioning obligation; LBP-06-17, 63 NRC 781 n.24 (2006)
- 10 C.F.R. 70.25(f)(2)(iii)
a surety bond must remain in effect until license termination; LBP-06-17, 63 NRC 781 n.24 (2006)
- 10 C.F.R. 70.31
an affirmative finding by the Commission that issuance of a license for a uranium enrichment facility will not be inimical to the common defense and security is required; CLI-09-15, 70 NRC 19 (2009)
- 10 C.F.R. 70.31(e)
for license applications for uranium enrichment facilities, NRC must hold a hearing even when the license is not contested; LBP-06-17, 63 NRC 762 (2006); LBP-07-6, 65 NRC 435 (2007)
- 10 C.F.R. 70.32(k)
"decommissioning" a facility means to remove it safely from service and reduce residual radioactivity to a level that permits release of the property for unrestricted use and termination of the license or release

LEGAL CITATIONS INDEX

REGULATIONS

- of the property under restricted conditions and termination of the license; LBP-06-15, 63 NRC 602 n.2 (2006)
- if a uranium enrichment facility is licensed, prior to commencement of operations NRC will verify through an inspection that the facility meets the construction and operation requirements of the license; CLI-10-4, 71 NRC 60 (2010)
- in a preoperation inspection, the NRC Staff will address any changes or additions to equipment or procedures and ensure that all tie-down provisions have been satisfied; LBP-07-6, 65 NRC 447 n.62 (2007)
- prior to commencement of operations of a fuel enrichment facility, NRC will verify through inspection that the facility has been constructed in accordance with the requirements of the license for such construction and operation; CLI-09-15, 70 NRC 6-7 (2009)
- 10 C.F.R. 70.44
creditor interests may be created in special nuclear material; CLI-09-15, 70 NRC 19 (2009)
- 10 C.F.R. 70.60
for authorization to possess greater than a critical mass of special nuclear material, and engage in uranium enrichment, an applicant must comply with certain performance requirements regarding nuclear criticality safety; LBP-06-17, 63 NRC 791 (2006)
- 10 C.F.R. 70.61
applicant must identify and assess all credible accident sequences and identify appropriate mitigation measures, commonly referred to as items relied on for safety, to prevent or mitigate the consequences of such accidents; LBP-06-17, 63 NRC 792 (2006)
recordkeeping and reporting commitments for occupational exposure to radiation exceeding the dose limits are described; LBP-07-6, 65 NRC 470 (2007)
Staff guidance documents, though not legally binding, provide further information about the relationship between the various subsections of this regulation; LBP-06-17, 63 NRC 791 (2006)
- 10 C.F.R. 70.61(a)
applicant must evaluate, in its integrated safety assessment, its compliance with performance requirements set forth in section 70.61(b) through (d); LBP-06-17, 63 NRC 791 (2006)
- 10 C.F.R. 70.61(b)
applicant must limit, through the application of engineered and/or administrative controls, the risk of credible high-consequence events so as to make them highly unlikely, or to make their consequences less severe than certain established dose and exposure limits; LBP-06-17, 63 NRC 791 (2006)
in theory, a facility operator could have an inadvertent criticality, but still be in compliance with the dose limits; LBP-06-17, 63 NRC 792 (2006)
- 10 C.F.R. 70.61(b)
Staff's definitions of "highly unlikely" and "unlikely" for ensuring compliance with the performance requirements are reasonable; LBP-07-6, 65 NRC 456 (2007)
- 10 C.F.R. 70.61(c)
applicant must limit the risk posed by each credible intermediate-consequence event so as to make the event unlikely or its consequences less severe than regulatory dose and exposure limits; LBP-06-17, 63 NRC 791 (2006)
in theory, a facility operator could have an inadvertent criticality, but still be in compliance with the dose limits; LBP-06-17, 63 NRC 792 (2006)
Staff's definitions of "highly unlikely" and "unlikely" for ensuring compliance with the performance requirements are reasonable; LBP-07-6, 65 NRC 456 (2007)
- 10 C.F.R. 70.61(d)
risks of criticality accidents must be limited by assuring that all nuclear processes are subcritical under normal and credible abnormal conditions, including the use of an approved margin of subcriticality, and preventive measures must be the primary means of protection against criticality accidents; LBP-06-17, 63 NRC 791 (2006)
the purpose of this section is to ensure that all nuclear processes are designed to remain subcritical under normal and credible abnormal conditions; LBP-06-17, 63 NRC 792 (2006)
- 10 C.F.R. 70.61(e)
each engineered or administrative control/control system necessary to comply with paragraphs (b) through (d) must be designated an item relied on for safety; LBP-06-17, 63 NRC 791 (2006)

LEGAL CITATIONS INDEX
REGULATIONS

- 10 C.F.R. 70.62
with its license application, applicant must submit a description of its safety program; LBP-07-6, 65 NRC 440 (2007)
- 10 C.F.R. 70.64(a)(9)
design of new facilities must provide for criticality control including adherence to the double contingency principle; LBP-06-17, 63 NRC 791 (2006)
- 10 C.F.R. 70.65
with its license application, applicant must submit a description of its safety program; LBP-07-6, 65 NRC 440 (2007)
- 10 C.F.R. 70.65(b)(4)
applicant must provide documentation of its compliance with the performance requirements of section 70.61 in its integrated safety analysis summary; LBP-06-17, 63 NRC 791 (2006)
Staff guidance documents, though not legally binding, provide further information about the content of the integrated safety analysis summary and how an applicant can comply with this section; LBP-06-17, 63 NRC 792 (2006)
- 10 C.F.R. 70.72
additional opportunities for public input for minor changes or modifications not requiring a license amendment are not required; LBP-07-6, 65 NRC 461-62 (2007)
- 10 C.F.R. 70.72(a)
any increase in the maximum inventory of either radionuclides or chemicals used to perform the evaluations in the ISA Summary are subject to the requirements of this section; LBP-07-14, 66 NRC 204-05 (2007)
licensee must establish a configuration management system to evaluate, implement, and track each change to the site, structures, processes, systems, equipment, components, computer programs, and activities of personnel; LBP-07-14, 66 NRC 204 (2007)
- 10 C.F.R. 70.72(a)(2)
licensee's configuration management system must address the impact of changes on safety and health or control of licensed material; LBP-07-14, 66 NRC 204 (2007)
- 10 C.F.R. 70.72(a)(6)
licensee's configuration management system must address impacts or modifications to the integrated safety analysis, integrated safety analysis summary, or other safety program information; LBP-07-14, 66 NRC 204 (2007)
- 10 C.F.R. 70.74
recordkeeping and reporting commitments for occupational exposure to radiation exceeding the dose limits are described; LBP-07-6, 65 NRC 470 (2007)
- 10 C.F.R. Part 71
petitioner alleges release of controlled byproduct nuclear materials in containers not certified for transport of such materials on public roads and not labeled with the required labeling; DD-10-3, 72 NRC 175, 178-80 (2010)
- 10 C.F.R. 71.23
Staff may withhold some facts underlying its findings and conclusions on terrorism-related risks as safeguards information; CLI-07-11, 65 NRC 151 (2007)
- 10 C.F.R. 72.50
transfer of any NRC license is precluded unless the Commission both finds the transfer in accordance with the AEA and gives its consent in writing; CLI-07-19, 65 NRC 425 (2007)
- 10 C.F.R. 72.106(a)(1)
the accident dose limit is 5 rem to any individual located on or beyond the nearest boundary of the controlled area of an independent spent fuel storage installation; CLI-08-1, 67 NRC 29 n.121 (2008)
- 10 C.F.R. 72.106(b)
the dose limit at the boundary of an independent spent fuel storage installation as a result of any design basis accident is set at 5 rem; CLI-08-26, 68 NRC 517 n.45, 526 (2008)
the dose limit for an individual at the nearest site boundary for hypothetical accidents is 5 rem; CLI-08-1, 67 NRC 29 n.121 (2008)

LEGAL CITATIONS INDEX
REGULATIONS

- 10 C.F.R. 72.210
issuance of a combined license could be accompanied by a Part 72 general license, subject to certain conditions; LBP-09-21, 70 NRC 604 n.111 (2009)
the assertion that the applicant might need to obtain a Part 72 license is irrelevant at the combined license stage, because a grant of the COL could be accompanied by grant of a Part 72 general license if applicant complies with certain conditions; LBP-09-21, 70 NRC 594 (2009)
the Commission has issued a general license for the storage of spent fuel at an onsite independent spent fuel storage installation to all persons authorized to possess or operate nuclear power reactors under 10 C.F.R. Part 50 or Part 52; LBP-09-20, 70 NRC 567 (2009)
- 10 C.F.R. 72.212(a)(2)
issuance of a combined license could be accompanied by a Part 72 general license, subject to certain conditions; LBP-09-21, 70 NRC 604 n.111 (2009)
the assertion that the applicant might need to obtain a Part 72 license is irrelevant at the combined license stage, because a grant of the COL could be accompanied by grant of a Part 72 general license if applicant complies with certain conditions; LBP-09-21, 70 NRC 594 (2009)
- 10 C.F.R. 72.212(b)(2)(i)(B) & (b)(3)
the stability of ISFSI concrete pads holding dry spent fuel storage casks during earthquakes is addressed; DD-07-2, 65 NRC 366, 367, 369 (2007)
- 10 C.F.R. 72.214
petitioner's spent fuel cask failure assertion is an impermissible challenge to the rulemaking certification of those casks; LBP-07-10, 66 NRC 32 n.24 (2007)
- 10 C.F.R. 73.1
the "design basis threat" rule describes general adversary characteristics that designated NRC licensees, including nuclear power plant licensees, are required to defend against with high assurance; CLI-07-8, 65 NRC 128 n.9 (2007)
there is a fundamental distinction between design basis events, which are accidents that must be considered in the design of the plant, and design basis threats, which are accidents that must be considered in the design of plant security features; CLI-10-9, 71 NRC 258 (2010); LBP-09-2, 69 NRC 101 (2009)
- 10 C.F.R. 73.1(a)(1)(i)
the design basis threat for which a facility must have appropriate security measures includes a violent external assault, attack by stealth, or deceptive actions, of several persons who are well trained, possess explosives and sophisticated weapons, and utilize a four-wheel-drive vehicle; LBP-06-7, 63 NRC 203 (2006)
- 10 C.F.R. 73.2
an individual requesting access to safeguards information must provide a statement that explains the individual's need to know; CLI-10-4, 71 NRC 77 (2010)
content of a statement that explains an individual's "need to know" safeguards information is described; CLI-09-15, 70 NRC 22-23 (2009)
- 10 C.F.R. 73.21
for decades, the Commission has restricted public access to classified information and safeguards information; LBP-10-2, 71 NRC 198 (2010)
safeguards information qualifies for the FOIA exemption from disclosure; LBP-10-2, 71 NRC 198 n.20 (2010)
- 10 C.F.R. 73.22
prior to providing safeguards information to a requestor, the NRC Staff will conduct an inspection to confirm that the recipient's information protection system is sufficient to satisfy the requirements of this section; CLI-09-15, 70 NRC 25 (2009); CLI-10-4, 71 NRC 80 (2010)
- 10 C.F.R. 73.22(b)
for requests for access to safeguards information, if NRC Staff determines that the requestor has satisfied its requirements, the Office of Administration will then determine, based upon completion of the background check, whether the proposed recipient is trustworthy and reliable; CLI-09-15, 70 NRC 25 (2009)

LEGAL CITATIONS INDEX
REGULATIONS

- the Office of Administration must determine, based upon completion of the background check, whether a proposed recipient is trustworthy and reliable, as required for access to safeguards information; CLI-10-4, 71 NRC 79-80 (2010)
- 10 C.F.R. 73.22(b)(1)
a completed Form FD-258 (fingerprint card), signed in original ink, and submitted in accordance with 10 C.F.R. 73.57(d) is required for access to safeguards information; CLI-09-15, 70 NRC 23 (2009)
an individual requesting access to safeguards information must provide a statement that explains the individual's need to know; CLI-10-4, 71 NRC 77 (2010)
content of a statement that explains an individual's "need to know" safeguards information is described; CLI-09-15, 70 NRC 22-23 (2009)
- 10 C.F.R. 73.22(b)(2)
a completed Form SF-85, "Questionnaire for Non-Sensitive Positions" is required for each individual who would have access to safeguards information; CLI-09-15, 70 NRC 23 (2009)
a completed Form SF-85, Questionnaire for Non-Sensitive Positions, will be used by the Office of Administration to conduct the background check required for access to safeguards information; CLI-10-4, 71 NRC 77 (2010)
- 10 C.F.R. 73.46(g)(1)
because of the importance of security systems, the Commission does not wait until the license renewal stage to address their aging, but rather actively manages them under the current licensing basis; LBP-06-20, 64 NRC 173 n.50 (2006)
- 10 C.F.R. 73.55(a)
nuclear reactor power plant security plans must provide protection against the design basis threat of radiological sabotage, but this requirement does not extend to a specifically licensed independent spent fuel storage installation; LBP-08-7, 67 NRC 366 n.2 (2008)
reactor security plans require protection against the design basis threat; CLI-07-11, 65 NRC 150 n.10 (2007)
- 10 C.F.R. 73.56
denial of unescorted access was based on an existing tax lien with the rationale that trustworthiness and reliability could not be assured because petitioner had not made an effort to resolve the tax lien; DD-10-2, 72 NRC 164 (2010)
- 10 C.F.R. 73.56(b)(1)
a senior plant supervisor's deliberate failure to contact the appropriate site security manager in order to initiate an assessment of the trustworthiness and reliability of the two contract technicians who falsified a maintenance report is a violation; LBP-08-14, 68 NRC 284 (2008)
high assurance must be provided that individuals granted unescorted access are trustworthy and reliable, and do not constitute an unreasonable risk to the public health and safety, including a potential to commit radiological sabotage; LBP-08-14, 68 NRC 283 (2008)
- 10 C.F.R. 73.56(d)(5)
licensees, applicants, contractors, and vendors shall ensure that the full credit history of any individual who is applying for unescorted access or unescorted access authorization is evaluated; DD-10-2, 72 NRC 167 (2010)
- 10 C.F.R. 73.57(d)(3)(ii)
the fee for access to safeguards information is used by NRC to pay the costs it incurs in determining whether the individual should be granted access to SGI; CLI-09-4, 69 NRC 82 (2009)
- 10 C.F.R. 73.57(e)(1)
before the Office of Administration makes an adverse determination regarding a proposed recipient's trustworthiness and reliability for access to safeguards information, it must provide the proposed recipient any records that were considered in the trustworthiness and reliability determination, so that the proposed recipient will have an opportunity to correct or explain the record; CLI-10-4, 71 NRC 80-81 (2010)
- 10 C.F.R. 73.59
individuals requesting access to safeguards information who believe they belong to one or more of the categories of individuals that are exempt from the criminal history records check and background check requirements should specifically state which exemption the requestor is invoking and explain the

LEGAL CITATIONS INDEX
REGULATIONS

- requestor's basis for believing that the exemption is applicable; CLI-09-15, 70 NRC 24 (2009); CLI-10-4, 71 NRC 78 (2010)
- 10 C.F.R. 74.7
NRC may grant exemptions that will not threaten the common defense and security, or endanger life or property, and that are otherwise in the public interest; CLI-06-10, 63 NRC 471 (2006)
- 10 C.F.R. 76.33(a)(2)
corporate applicants must provide place of incorporation, citizenship of directors and principal officers, and whether owned, controlled, or dominated by a foreign corporation in their application; LBP-08-24, 68 NRC 747 n.316 (2008); LBP-09-1, 69 NRC 33 (2009)
- 10 C.F.R. Part 95
classified information is exempt from disclosure; LBP-10-2, 71 NRC 198 n.20 (2010)
- 10 C.F.R. 95.34
for decades, the Commission has restricted public access to classified information and safeguards information; LBP-10-2, 71 NRC 198 (2010)
- 10 C.F.R. 95.37(f)
documents containing classified information or SGI must be evaluated paragraph by paragraph and those paragraphs containing classified information or SGI are to be redacted and the remaining paragraphs (not containing such sensitive material) are to be made available for disclosure to the public; LBP-10-2, 71 NRC 204 (2010)
- 10 C.F.R. Part 100
local geologic and hydrological characteristics must be defined because these parameters may bear on the potential consequences of radioactive materials escaping from a plant; LBP-07-1, 65 NRC 55 (2007)
radiological consequences of design basis accidents must be analyzed to demonstrate that any new nuclear unit or units could be sited at the proposed ESP site without undue risk to the health and safety of the public; LBP-07-1, 65 NRC 92 (2007)
seismic siting factors are part of the safety determination a board must make in an early site permit proceeding; LBP-07-9, 65 NRC 594 (2007)
- 10 C.F.R. 100.10
the threshold probability that calls for analysis for reactors is generally greater than 1 in 10 million per year; CLI-10-1, 71 NRC 12 n.56 (2010)
- 10 C.F.R. 100.20
factors to be considered when evaluating a proposed site include population density and use characteristics, nature and proximity of man-related hazards such as airports, and physical characteristics of the site including seismology, meteorology, geology, and hydrology; LBP-07-9, 65 NRC 600 (2007)
the threshold probability that calls for analysis for reactors is generally greater than 1 in 10 million per year; CLI-10-1, 71 NRC 12 n.56 (2010)
- 10 C.F.R. 100.20(c)
in determining the acceptability of a site for a stationary power reactor, NRC Staff will consider the sites physical characteristics, including seismology, meteorology, geology, and hydrology; LBP-09-19, 70 NRC 482 (2009)
in determining the acceptability of an ESP site, the NRC Staff must consider hydrogeologic characteristics; LBP-07-1, 65 NRC 55 (2007)
- 10 C.F.R. 100.20(c)(1)
the Commission will consider the physical characteristics of the proposed site, including the geologic and seismic siting factors; LBP-07-9, 65 NRC 594 (2007)
- 10 C.F.R. 100.20(c)(3)
a properly pleaded contention of omission contends that the combined license application does not present site-specific measurements of adsorption and retention coefficients; LBP-09-16, 70 NRC 272 (2009)
completeness and clarity are of paramount importance in meeting hydrology requirements; LBP-07-9, 65 NRC 571 (2007)
for site characterization, the hydrological parameters that should be identified and described are groundwater coefficients of dispersion and adsorption, groundwater velocities, travel times, gradients, permeabilities, porosities, and water table elevations or piezometric levels, surface water transport parameters, and potential pathways of contamination to groundwater and surface water users; LBP-07-1, 65 NRC 54 n.110 (2007)

LEGAL CITATIONS INDEX

REGULATIONS

- in its review of early site permit applications, Staff must consider physical characteristics of the site, specifically noting that factors important to hydrological radionuclide transport must be obtained from onsite measurements; LBP-09-19, 70 NRC 473 (2009)
- site characterization issues are safety-related because, in determining the acceptability of a site, factors important to hydrological radionuclide transport must be obtained from onsite measurements; LBP-07-9, 65 NRC 569, 570, 573, 601 (2007)
- the Staff must address factors important to hydrologic radionuclide transport in the groundwater using onsite measurements of the relevant characteristics, including, but not limited to, adsorption and retention coefficients of the geologic strata, groundwater velocities, and travel distances to discharge zones; LBP-07-1, 65 NRC 55 (2007)
- 10 C.F.R. 100.21
- nonseismic siting criteria include the requirement to have an exclusion area and a low population zone and to consider the population center distance, site atmospheric dispersion characteristics, radiological release limits and dose consequences, hydrology, and the proximity of transportation routes, industrial locations, and military facilities; LBP-07-9, 65 NRC 600 (2007)
- the threshold probability that calls for analysis for reactors is generally greater than 1 in 10 million per year; CLI-10-1, 71 NRC 12 n.56 (2010)
- 10 C.F.R. 100.21(c)(1)
- an early site permit applicant must describe the maximum levels of radiological effluents each facility will produce, and demonstrate that radiological effluent release limits can be met, with appropriate design, given the atmospheric dispersion characteristics of the site; CLI-07-27, 66 NRC 250 (2007)
- guidelines are provided for the description of the exposure pathways and the calculation methods to estimate doses to the maximally exposed individual and to the population surrounding a site; LBP-07-1, 65 NRC 92 (2007)
- it is not necessary to address compliance with the ALARA requirements in an early site permit proceeding because Part 100 provides that an ESP applicant need only show that radiological effluent release limits associated with normal operation from the type of facility proposed to be located at the site can be met for any individual located offsite; CLI-07-27, 66 NRC 253 (2007)
- 10 C.F.R. 100.21(h)
- reactor sites should be located away from very densely populated centers; CLI-07-27, 66 NRC 232 (2007)
- 10 C.F.R. 100.23
- a thorough characterization of the seismic sources surrounding a site is required; LBP-07-1, 65 NRC 65 (2007)
- geologic and seismic siting criteria include the geological, seismological, and engineering characteristics of the site and the PPE, the ability to satisfy the safe shutdown earthquake ground motion criteria, the potential for surface tectonic and nontectonic deformations and other factors such as soil and rock stability, liquefaction potential, and slope stability; LBP-07-9, 65 NRC 500 (2007)
- in providing information on seismic and geologic characteristics of a proposed site, applicants must conform to the requirements of this section; LBP-09-19, 70 NRC 524 (2009)
- 10 C.F.R. 100.23(a)
- geological, seismological, and engineering characteristics and geologic and seismic siting factors govern early site permit siting decisions; LBP-07-9, 65 NRC 594 (2007)
- 10 C.F.R. 100.23(c)
- ESP applicants must provide a thorough characterization of the seismological characteristics of a proposed site and its environs to allow an estimate of the safe shutdown earthquake ground motion and to permit adequate engineering solutions to actual or potential geologic and seismic effects at the proposed site; LBP-07-1, 65 NRC 62 (2007)
- the engineering characteristics of a site and its environs must be investigated in sufficient scope and detail to permit an adequate evaluation of the proposed site; LBP-07-1, 65 NRC 66 (2007)
- 10 C.F.R. 100.23(d)
- the seismic siting factors for design must also include the potential for surface tectonic deformations; LBP-07-1, 65 NRC 62 (2007)
- 10 C.F.R. 100.23(d)(1)
- the safe shutdown earthquake for a site is characterized by both horizontal and vertical free-field ground motion response spectra at the free ground surface; LBP-07-1, 65 NRC 64 (2007)

LEGAL CITATIONS INDEX
REGULATIONS

- 10 C.F.R. 100.23(d)(4)
evaluation of siting factors such as soil and rock stability, liquefaction potential, and natural and artificial slope stability is required; LBP-07-1, 65 NRC 68 (2007)
- 10 C.F.R. 110.9(b)
before source material can be exported from the United States, the NRC must grant an export license; CLI-09-12, 69 NRC 570 (2009)
- 10 C.F.R. 110.45(b)
findings the Commission must make to issue a low-level waste import license are discussed; CLI-08-24, 68 NRC 494 (2008)
NRC will not grant an import license for waste intended for disposal unless it is clear that the waste will be accepted by a disposal facility, host state, and compact (where applicable); CLI-08-24, 68 NRC 495 (2008)
- 10 C.F.R. 110.82
an export license application carries with it an opportunity to seek to intervene and request a hearing; CLI-09-9, 69 NRC 361 (2009); CLI-09-12, 69 NRC 570 (2009)
- 10 C.F.R. 110.84(a)(1), (2)
discretionary standing involves the Commission deciding that a hearing would be in the public interest and/or that it would assist the Commission in making the statutory determinations required by the Atomic Energy Act; LBP-09-1, 69 NRC 39 (2009)
- 10 C.F.R. 140.13b
proof of adequate liability insurance must be filed with the NRC before a license for the operation of a uranium enrichment facility may be issued; LBP-07-6, 65 NRC 463 (2007)
the limit of liability for which DOE will indemnify a uranium enrichment facility licensee against claims arising from nuclear incidents is in excess of the liability insurance required under NRC regulations; LBP-07-6, 65 NRC 463 n.157 (2007)
- 10 C.F.R. 140.15
proof of adequate liability insurance must be filed with the NRC before a license for the operation of a uranium enrichment facility may be issued; LBP-07-6, 65 NRC 463 (2007)
- 10 C.F.R. 150.20
upon submitting for approval to work under a reciprocity agreement licensee will send a copy of the board order confirming the settlement agreement to the regulator processing the reciprocity application at least 2 weeks prior to engaging in activity authorized by the reciprocity agreement; LBP-09-12, 70 NRC 164-65 (2009)
- 10 C.F.R. Part 961
DOE's standard contract commits DOE to take title to and dispose of commercial spent nuclear fuel; CLI-08-11, 67 NRC 380 (2008)
- 21 C.F.R. 10.30
FDA can revoke a food additive regulation if it changes its conclusions on the safety of the additive, and members of the public can petition the FDA to revoke a regulation authorizing a particular food additive; CLI-08-16, 68 NRC 224 (2008)
- 21 C.F.R. 170.3(i)
to determine that a food additive is safe, FDA must find, after a fair evaluation of the data, that there is a reasonable certainty in the minds of competent scientists that the substance is not harmful under all intended conditions of use; CLI-08-16, 68 NRC 224 (2008)
- 21 C.F.R. 179.26
ionizing radiation to treat fresh fruits is safe if the radiation dose does not exceed 1 kGy (100 krad); CLI-08-16, 68 NRC 226 (2008)
- 21 C.F.R. 570.3(i)
to determine that a food additive is safe, FDA must consider the probable consumption of the additive and of any substance formed in or on food because of its use and the cumulative effect of the additive in the diet, taking into account any chemically or pharmacologically related substance or substances in the diet; CLI-08-16, 68 NRC 224 (2008)
- 21 C.F.R. 570.20(a)
a decision on the safety of a food additive must give due weight to the anticipated levels and patterns of consumption of the additive; CLI-08-16, 68 NRC 224 (2008)

LEGAL CITATIONS INDEX
REGULATIONS

- 25 C.F.R. 83.1
the Bureau of Indian Affairs is required to publish its list of federally recognized Indian tribes in the *Federal Register*; LBP-09-13, 70 NRC 185 (2009)
- 25 C.F.R. 83.7
to qualify for recognition on the Bureau of Indian Affairs' list as an Indian tribe, a petitioning group must establish that it has historically been recognized as an American Indian entity since 1900, that it is composed of a cohesive group of individuals that share a distinct community and an autonomous government, and that its members are descended from a historic Indian tribe or tribes; LBP-09-13, 70 NRC 185 (2009)
- 25 C.F.R. 83.7(f)
membership of a petitioning Indian group must be composed principally of persons who are not members of any other acknowledged North American Indian tribe; LBP-09-13, 70 NRC 185 (2009)
- 28 C.F.R. 50.7
the U.S. Department of Justice allows 30 days for public comment prior to the settlement of most environmental enforcement cases; LBP-06-18, 63 NRC 837 (2006)
- 36 C.F.R. 800.1(c)(2)(iii)
federal agencies should be sensitive to the special concerns of Indian tribes in historic preservation issues, which often extend beyond Indian lands to other historic properties, and should invite the governing body of the responsible tribe to be a consulting party and to concur in any agreement; LBP-08-24, 68 NRC 714 (2008); LBP-10-16, 72 NRC 393 (2010)
- 36 C.F.R. 800.2(a)
it is the statutory obligation of the federal agency to fulfill the requirements of section 106; LBP-08-24, 68 NRC 723 n.167 (2008)
- 36 C.F.R. 800.2(a)(3)
if a document or study is prepared by a nonfederal party, the agency official is responsible for ensuring that its content meets applicable standards and guidelines; LBP-08-24, 68 NRC 723 n.167 (2008)
- 36 C.F.R. 800.2(c)(2)(ii)
a tribe may become a consulting party if its property, potentially affected by a federal undertaking, has religious or cultural significance; LBP-08-6, 67 NRC 328 (2008); LBP-08-24, 68 NRC 714 (2008); LBP-10-16, 72 NRC 392 (2010)
- 36 C.F.R. 800.2(c)(2)(ii)(A)
a consulting tribe is entitled to a reasonable opportunity to identify its concerns about historic properties, advise on the identification and evaluation of historic properties (including those of traditional religious and cultural importance), articulate its views on the undertaking's effects on such properties, and participate in resolution of adverse effects; LBP-08-6, 67 NRC 328 (2008); LBP-08-24, 68 NRC 714 (2008); LBP-10-16, 72 NRC 392-93 (2010)
- 36 C.F.R. 800.2(c)(2)(ii)(A)-(D)
in initiating the section 106 process, the agency is required to make a reasonable and good faith effort to identify Indian tribes who may attach religious and cultural significance to historic properties that may be affected by the proposed undertaking and invite them to participate as consulting parties in the section 106 process; LBP-08-24, 68 NRC 722 n.166 (2008)
- 36 C.F.R. 800.2(c)(2)(ii)(D)
federal agencies are to consult with a tribe if that tribe ascribes cultural or religious significance to properties not on tribal lands; LBP-08-24, 68 NRC 722 n.161 (2008)
it is not the duty of applicant to consult with a tribe regarding cultural resources at a proposed site, but instead is the duty of the agency to initiate and follow through with the consultation process; LBP-10-16, 72 NRC 422 n.303 (2010)
NEPA itself is binding only on the agency; LBP-10-16, 72 NRC 432 (2010)
- 36 C.F.R. 800.2(c)(2)(iii)
federal agencies should be sensitive to the special concerns of Indian tribes in historic preservation issues, which often extend beyond Indian lands to other historic properties, and should invite the governing body of the responsible tribe to be a consulting party and to concur in any agreement; LBP-08-6, 67 NRC 328 (2008)

LEGAL CITATIONS INDEX
REGULATIONS

- 36 C.F.R. 800.3(b)
an agency may use information developed for NEPA reviews to satisfy the requirements of the NHPA section 106 process; CLI-06-9, 63 NRC 437-38 (2006)
an agency should coordinate the National Historic Preservation Act section 106 process with the overall planning schedule for the undertaking and with any reviews required under other authorities such as the National Environmental Policy Act; CLI-06-9, 63 NRC 437 (2006)
the procedures set forth for an agency official may be implemented by the official in a flexible manner reflecting differing program requirements, as long as the purposes of National Historic Preservation Act section 106 and the regulations are met; CLI-06-11, 63 NRC 488 n.25 (2006)
- 36 C.F.R. 800.3(c)
an agency official should establish a schedule for completing the National Historic Preservation Act section 106 process that is consistent with the planning and approval schedule for the undertaking; CLI-06-11, 63 NRC 488 n.25 (2006)
where an action is going to take place on tribal lands, an agency must consult with the Tribal Historic Preservation Officer if one has been designated, to assume the duties normally performed by the State Historic Preservation Officer on tribal lands; CLI-09-9, 69 NRC 348 (2009); CLI-09-12, 69 NRC 566 (2009)
- 36 C.F.R. 800.3(f)(2)
in initiating the section 106 process, the agency is required to make a reasonable and good faith effort to identify Indian tribes who may attach religious and cultural significance to historic properties that may be affected by the proposed undertaking and invite them to participate as consulting parties in the section 106 process; LBP-08-24, 68 NRC 722 n.166 (2008)
- 36 C.F.R. 800.4(b)
a mere request for information is not necessarily sufficient to constitute the reasonable effort that section 106 of the National Historic Preservation Act requires; LBP-08-6, 67 NRC 329 (2008)
the National Historic Preservation Act requires NRC Staff to consult with Indian tribes concerning certain actions that may affect them; CLI-09-12, 69 NRC 565 (2009)
- 36 C.F.R. 800.4(b)(2)
this section is intended to provide federal agencies with flexibility when several alternatives are under consideration and the nature of the undertaking and its potential scope and effect have therefore not yet been completely defined; CLI-06-11, 63 NRC 489 n.32 (2006)
- 36 C.F.R. 800.4(c)(1)
federal agencies shall acknowledge that Indian tribes possess special expertise in assessing the eligibility of historic properties that may possess religious and cultural significance to them; LBP-08-6, 67 NRC 329 (2008)
- 36 C.F.R. 800.4(c)(1), (d)(1)
the National Historic Preservation Act requires NRC Staff to consult with Indian tribes concerning certain actions that may affect them; CLI-09-12, 69 NRC 565 (2009)
- 36 C.F.R. 800.4(d)(1)
federal agencies must notify all consulting parties, including Indian tribes, when a finding of no effect has been made, and to provide those consulting parties with an invitation to inspect the documentation prior to approving the undertaking; LBP-08-6, 67 NRC 330 (2008)
this subsection applies when an agency official finds that no historic properties are affected by the project; CLI-06-9, 63 NRC 440 n.38 (2006)
- 36 C.F.R. 800.4(d)(2)
this subsection applies when an agency official finds that historic properties may be affected by the project; CLI-06-9, 63 NRC 440 (2006)
- 36 C.F.R. 800.4(f)(2)
an agency must make a reasonable and good-faith effort to identify any Indian tribes that might attach religious and cultural significance to historic properties in the area of potential effects and invite them to be consulting parties; CLI-09-9, 69 NRC 349 (2009); CLI-09-12, 69 NRC 566 (2009)
- 36 C.F.R. 800.5(a)(1)
an adverse effect is a required precondition to the consideration of alternatives under the National Historic Preservation Act; CLI-06-9, 63 NRC 449 (2006)

LEGAL CITATIONS INDEX
REGULATIONS

- an undertaking has an adverse effect if it may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the National Register; CLI-06-9, 63 NRC 437 (2006)
- 36 C.F.R. 800.5(d)(2), 800.6
an adverse effect is a required precondition to the consideration of alternatives under the National Environmental Policy Act; CLI-06-9, 63 NRC 449 (2006)
- 36 C.F.R. 800.8(c)
if its process meets certain conditions, an agency may use the National Environmental Policy Act process in lieu of the procedures set forth in 36 C.F.R. 800.3-.6 to satisfy the section 800.6 requirements; CLI-06-9, 63 NRC 438 (2006)
- 36 C.F.R. 800.16(m)
only Indian tribes that appear on the Department of the Interior's list of recognized tribes have consultation rights under the National Historic Preservation Act; LBP-09-13, 70 NRC 188 (2009)
- 36 C.F.R. 800.16(y)
a project requiring a federal license is defined as an "undertaking"; CLI-06-9, 63 NRC 437 (2006)
federal "undertakings" are defined as any project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a federal agency, including those requiring a federal permit, license, or approval; CLI-09-9, 69 NRC 348 n.89 (2009)
the National Historic Preservation Act regulations apply to federal undertakings; CLI-09-12, 69 NRC 566 n.137 (2009)
- 36 C.F.R. 1220.14
agency "records" are defined; CLI-08-23, 68 NRC 482 (2008)
- 36 C.F.R. 1222.34(c)
to constitute an agency record, a working file must contain unique information that underlies an agency decision, and it must also have been made available to other agency employees for purposes of helping to reach or support that decision; CLI-08-23, 68 NRC 483 (2008)
- 36 C.F.R. 1228.24(b)(5)
nonrecords may be discarded in accordance with instructions in the agency's published records control guidelines; CLI-08-23, 68 NRC 483 n.101 (2008)
- 40 C.F.R. 141.2
maximum contaminant level goals are nonenforceable health goals set at the level at which no known or anticipated adverse effects on the health of persons would occur, and which allow an adequate margin of safety; LBP-07-9, 65 NRC 580 n.67 (2007)
- 40 C.F.R. 141.55
maximum contaminant level goals for tritium and other beta emitters are set at zero; LBP-07-9, 65 NRC 580 n.67 (2007)
- 40 C.F.R. 141.66(d)
the enforceable maximum contaminant level for tritium and other beta emitters is set at 20,000 pCi/L, a level that avoids producing an annual dose equivalent to the total body or any internal organ greater than 4 millirem/yr; LBP-07-9, 65 NRC 580 n.67, 581 (2007)
- 40 C.F.R. 190.02(b)
the EPA standard of 25 mrem only applies to the uranium fuel cycle, which only includes the generation of electricity by a light-water-cooled nuclear power plant; LBP-07-9, 65 NRC 624 (2007)
the term "uranium fuel cycle operations" includes milling, conversion, enrichment, fabrication, use, and reprocessing of fuel which occur at different sites; LBP-07-9, 65 NRC 623 n.111 (2007)
the uranium fuel cycle encompasses the processes in production of uranium fuel, generation of electricity by a light-water cooled nuclear power plant using uranium fuel, and reprocessing spent uranium fuel; CLI-07-27, 66 NRC 251 (2007)
- 40 C.F.R. 190.10
a multireactor site could have up to five units conforming to the Appendix I design objectives without violating the limits of this section; CLI-07-27, 66 NRC 252 n.203 (2007)
applicant shall provide reasonable assurance that the annual dose equivalent to members of the public from planned discharges not exceed 25 millirems to the whole body; LBP-10-20, 72 NRC 598 (2010)
dose is considered to be a cumulative dose for all operations at a given site; CLI-07-27, 66 NRC 254 (2007)

LEGAL CITATIONS INDEX
REGULATIONS

- gas-cooled nuclear power reactors are not subject to the stricter 25-mrem per-site limit; CLI-07-27, 66 NRC 251 (2007)
- this regulation applies only to light water reactors; CLI-07-27, 66 NRC 251 (2007)
- this regulation is a per-site restriction, applying to all sources within the uranium fuel cycle at a given site; CLI-07-27, 66 NRC 250 (2007)
- this regulation is not expressed in terms of a particular site, but instead applies the 25-mrem/yr dose limit to radiation from uranium fuel cycle operations; LBP-07-9, 65 NRC 623 n.111 (2007)
- 40 C.F.R. 190.10(a)
- a maximum dose from direct radiation that is conservatively estimated at 0.17 mrem is a small fraction of the annual dose limit of 25 mrem to the whole body of any member of the public beyond the site boundary; LBP-08-9, 67 NRC 446 n.143 (2008)
- section 20.1301(e) is neither reactor- nor site-specific, and applies to doses resulting from exposures to planned discharges of radioactive materials, except radon and its daughters, to the general environment from uranium fuel cycle operations; LBP-07-9, 65 NRC 584 (2007)
- 40 C.F.R. 192.01(m)
- “tailings” are defined as the remaining portion of a metal-bearing ore after some or all of such metal, such as uranium, has been extracted; LBP-06-1, 63 NRC 64 n.20 (2006)
- 40 C.F.R. Part 1500
- Council on Environmental Quality regulations are not binding on the NRC because the agency has not expressly adopted them, but they are entitled to considerable deference; LBP-09-7, 69 NRC 631 (2009)
- 40 C.F.R. 1500.1(b)
- NEPA procedures must ensure that environmental information is available to public officials and citizens before decisions are made and before actions are taken; CLI-10-18, 72 NRC 93 n.207 (2010)
- 40 C.F.R. 1500.2(d)
- as part of environmental scoping, specific efforts should be made to interview representatives of minority communities having specific knowledge about the locations, resource dependencies, customs and practices, and preexisting health and socioeconomic conditions of minority and low-income populations in the region; CLI-07-27, 66 NRC 243 n.156 (2007)
- 40 C.F.R. 1501.2(a)
- a final environmental impact statement should be analytic rather than encyclopedic; CLI-07-27, 66 NRC 241 n.150 (2007)
- 40 C.F.R. 1501.4
- if an agency is uncertain whether an action is a major federal action significantly affecting the environment, it must first prepare an environmental assessment; LBP-08-7, 67 NRC 365 n.1 (2008)
- 40 C.F.R. 1501.4(e)
- no environmental impact statement is necessary if the environmental assessment concludes with a finding of no significant impact, which briefly presents the reasons why the proposed action will not significantly impact the environment; LBP-08-7, 67 NRC 365 n.1 (2008)
- 40 C.F.R. 1502.8
- environmental documents must be written in plain language so that decisionmakers and the public can readily understand them; LBP-10-16, 72 NRC 432 (2010)
- 40 C.F.R. 1502.13
- the final environmental impact statement is required to include a description of the underlying purpose and need of a proposed project; LBP-06-19, 64 NRC 83 (2006)
- 40 C.F.R. 1502.14
- all reasonable alternatives are to be rigorously explored and objectively evaluated, but for alternatives eliminated from detailed study, only a brief discussion of the reasons for their having been eliminated is required; LBP-10-10, 71 NRC 567, 578 (2010)
- although NEPA does require identification, rigorous exploration, and objective evaluation of all reasonable alternatives, this does not mean that every conceivable alternative must be included in the EIS; LBP-10-10, 71 NRC 581 (2010)
- an environmental impact statement must include a detailed statement of reasonable alternatives to a proposed action; LBP-09-17, 70 NRC 378 (2009); LBP-10-24, 72 NRC 755 (2010)
- NEPA does not require a detailed discussion of the rejected alternative’s environmental impacts in an environmental impact statement; LBP-10-10, 71 NRC 581-82 (2010)

LEGAL CITATIONS INDEX

REGULATIONS

- the heart of the environmental impact statement is the alternatives analysis; LBP-07-9, 65 NRC 603, 606, 631 (2007); LBP-09-10, 70 NRC 126 (2009); LBP-09-16, 70 NRC 263 (2009); LBP-09-17, 70 NRC 378 (2009); LBP-10-24, 72 NRC 756 (2010)
- 40 C.F.R. 1502.14(a)
in reviewing applicant's process for identifying the best alternative sites that could reasonably be found within the region of interest, NRC Staff must rigorously explore and exercise skepticism in dealing with the self-serving statements from the primary beneficiary of the project; LBP-07-9, 65 NRC 636 (2007)
NRC Staff is required under NEPA to evaluate reasonable technological and geographical alternatives to the proposed irradiator; CLI-10-18, 72 NRC 70 (2010)
reasonable alternatives to applicant's proposed site must be rigorously explored and objectively evaluated; CLI-07-27, 66 NRC 222 n.21 (2007)
the reasonableness of energy conservation as an alternative in light of the need for a large amount of baseload electric power is questioned; LBP-09-10, 70 NRC 132 (2009)
- 40 C.F.R. 1502.14(c)
the fact that an environmental impact is regulated by another federal agency or by a state does not justify the exclusion of the analysis in the applicant's environmental report or the NRC's environmental impact statement; LBP-09-10, 70 NRC 100 (2009); LBP-09-16, 70 NRC 278 (2009)
- 40 C.F.R. 1502.14(f)
Council on Environmental Quality regulations define the term "mitigation," and require that the environmental impact statement include appropriate mitigation measures; LBP-09-10, 70 NRC 108 (2009)
- 40 C.F.R. 1502.16
an environmental impact statement must address both direct and indirect effects of an action; LBP-06-8, 63 NRC 259 (2006); LBP-09-7, 69 NRC 632 (2009)
- 40 C.F.R. 1502.16(g)
cultural and historic resources are to be considered as part of the environmental impacts assessment that must be completed; LBP-10-16, 72 NRC 418 (2010)
- 40 C.F.R. 1502.16(h), 1508.20
Council on Environmental Quality regulations define the term "mitigation," and require that the environmental impact statement include appropriate mitigation measures; LBP-09-10, 70 NRC 108 (2009)
- 40 C.F.R. 1502.22
any agency should make clear when information is incomplete or lacking; LBP-09-7, 69 NRC 731 (2009)
for impacts that are reasonably foreseeable, but for which the agency lacks complete information in its analysis, the agency must indicate that such information is lacking in its environmental impact statement; LBP-09-7, 69 NRC 731 (2009)
petitioner asserts that applicant's SAMA analysis is not based on complete information that is necessary and applicant failed to acknowledge the absence of the information or demonstrate that the information is too costly to obtain; LBP-10-15, 72 NRC 287 (2010)
- 40 C.F.R. 1502.22(a)
this section only applies if the incomplete information is essential to a reasoned choice among alternatives; LBP-10-15, 72 NRC 283 (2010)
- 40 C.F.R. 1502.22(b)
a final environmental impact statement can overcome a deficiency in information that may be unavoidably incomplete or unavailable if it states that fact, explains how the missing information is relevant, sets forth the existing information, and evaluates the environmental impacts to the best of the agency's ability; CLI-07-27, 66 NRC 236 (2007)
analysis of reasonably foreseeable impacts must be supported by credible scientific evidence, must not be based on pure conjecture, and must be within the rule of reason; CLI-08-1, 67 NRC 12 (2008)
- 40 C.F.R. 1502.22(b)(1)
difficulty in quantification does not excuse exclusion from the environmental impact statement, because, to the extent that there are important qualitative considerations that cannot be quantified, these considerations or factors will be discussed in qualitative terms; LBP-06-23, 64 NRC 323 (2006)

LEGAL CITATIONS INDEX
REGULATIONS

- Staff's many statements in the final environmental impact statement and in testimony that certain information is unavailable to perform a quantitative or site-specific analysis satisfies the requirements of this section; LBP-09-7, 69 NRC 732 n.52 (2009)
- 40 C.F.R. 1502.22(b)(3)
agencies are called upon to include a summary of existing credible scientific evidence that is relevant to evaluating the reasonably foreseeable significant adverse impacts on the human environment; CLI-08-1, 67 NRC 12 (2008)
NRC must consider low-probability environmental impacts with catastrophic consequences, if those impacts are reasonably foreseeable; CLI-08-1, 67 NRC 19 (2008)
"reasonably foreseeable" impacts include those that have catastrophic consequences, even if their probability of occurrence is low; CLI-08-1, 67 NRC 12 (2008)
testimony at hearing from experts in the field explaining the types of impacts that could occur satisfies the requirements of this section; LBP-09-7, 69 NRC 732 n.52 (2009)
- 40 C.F.R. 1502.22(b)(4)
impacts that are reasonably foreseeable under NEPA must be analyzed publicly, even if their probability of occurrence is low; CLI-10-18, 72 NRC 90 (2010)
"reasonably foreseeable" impacts include those that have catastrophic consequences, even if their probability of occurrence is low, provided that the analysis of the impacts is supported by credible scientific evidence, is not based on pure conjecture, and is within the rule of reason; CLI-08-8, 67 NRC 200 n.46 (2008)
Staff's conclusion in the environmental impact statement that impacts could be MODERATE, with the board's finding that this was a reasonable conclusion, satisfies this requirements of this section; LBP-09-7, 69 NRC 732 n.52 (2009)
- 40 C.F.R. 1502.24
agencies may place discussion of methodology used in an environmental assessment in an appendix; CLI-08-1, 67 NRC 14 n.56 (2008)
agencies shall identify any methodologies used and shall make explicit reference by footnote to the scientific and other sources relied upon for conclusions in an environmental impact statement; CLI-08-1, 67 NRC 14 n.56 (2008)
- 40 C.F.R. 1503.1
agencies are required to request and consider comments from other federal agencies, appropriate state and local agencies, affected Indian tribes, any relevant applicant, the public generally, and, in particular, interested or affected persons or organizations; LBP-06-23, 64 NRC 298 n.169 (2006)
- 40 C.F.R. 1505.2(c)
a monitoring and enforcement program is required as part of the practicable means to avoid or minimize environmental harm from the selected alternative; LBP-07-6, 65 NRC 458 (2007)
- 40 C.F.R. 1506.5(a)
NRC may comply with NEPA without requiring that applicant submit an environmental report, but NEPA and Council on Environmental Quality regulations permit agencies to request information from an applicant for a license or permit that will require a NEPA analysis; CLI-10-2, 71 NRC 34 (2010)
- 40 C.F.R. 1506.6
neither the number nor location of public meetings required to satisfy an agency's public review process for its environmental document is specified; LBP-09-6, 69 NRC 480 n.643 (2009)
- 40 C.F.R. 1506.6c
agencies are required to request and consider comments from other federal agencies, appropriate state and local agencies, affected Indian tribes, any relevant applicant, the public generally, and, in particular, interested or affected persons or organizations; LBP-06-23, 64 NRC 298 n.169 (2006)
- 40 C.F.R. 1508.4
certain actions are designated as categorically excluded from the requirement to prepare an environmental assessment or an environmental impact statement; CLI-10-18, 72 NRC 75 (2010)
- 40 C.F.R. 1508.7
although environmental impacts standing alone may be negligible, when aggregated they could have significant detrimental consequences on the environment; LBP-07-1, 65 NRC 82 (2007)

LEGAL CITATIONS INDEX

REGULATIONS

- Council on Environmental Quality regulations define “direct and indirect” impacts and “cumulative” impacts and require that they be considered in the environmental impact statement; LBP-09-10, 70 NRC 84 n.27 (2009)
- cumulative impacts are the impact on the environment that results from the incremental impact of a proposed action, when added to other past, present, and reasonably foreseeable future actions; CLI-06-29, 64 NRC 422 (2006); LBP-06-19, 64 NRC 67, 72 (2006); LBP-09-4, 69 NRC 201, 214 (2009); LBP-09-7, 69 NRC 719 (2009); LBP-09-16, 70 NRC 248 (2009)
- cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time; CLI-10-5, 71 NRC 102 n.60 (2010); LBP-09-19, 70 NRC 463 (2009)
- direct environmental impacts are those caused by the federal action and occurring at the same time and place as that action; LBP-09-19, 70 NRC 463 (2009)
- experience with and information about past direct and indirect effects of individual past actions may be useful in illuminating or predicting the direct and indirect effects of a proposed action; LBP-09-16, 70 NRC 248 (2009)
- indirect environmental impacts are caused by the action at a later time or more distant place, yet are still reasonably foreseeable; LBP-09-19, 70 NRC 463 (2009)
- this section does not expressly state whether the environmental effect of other past and present actions may be analyzed in the aggregate or individual past and present actions must be separately analyzed; LBP-09-4, 69 NRC 201 (2009)
- 40 C.F.R. 1508.8
- an environmental impact statement must address both direct and indirect effects of an action; LBP-06-8, 63 NRC 259 (2006); LBP-09-7, 69 NRC 632 (2009)
- Council on Environmental Quality regulations define “direct and indirect” impacts and “cumulative” impacts and require that they be considered in the environmental impact statement; LBP-09-10, 70 NRC 84 n.27 (2009)
- direct effects are those caused by the federal action, and occurring at the same time and place as that action, while indirect effects are those caused by the action at a later time or more distant place, yet are still reasonably foreseeable; LBP-06-8, 63 NRC 259 (2006); LBP-09-7, 69 NRC 632, 719 (2009)
- indirect effects are distinguished from connected actions under 40 C.F.R. 1508.25(a)(1); CLI-10-18, 72 NRC 89 n.187 (2010)
- the effects that must be considered in an environmental impact statement are those that are caused by the action; LBP-07-4, 65 NRC 330 n.246 (2007)
- 40 C.F.R. 1508.8(b)
- only those indirect effects that can be said to be reasonably foreseeable need to be analyzed under the National Environmental Policy Act; CLI-08-16, 68 NRC 226 n.31 (2008)
- the National Environmental Policy Act requires federal agencies to examine, analyze, and disclose not only direct effects, but also indirect effects that are later in time or farther removed in distance, but are still reasonably foreseeable; LBP-09-6, 69 NRC 404 (2009)
- 40 C.F.R. 1508.9
- one purpose of an environmental assessment is to facilitate preparation of an environmental impact statement when one is necessary; CLI-10-18, 72 NRC 77 n.116 (2010)
- the purpose and scope of an environmental assessment are described; CLI-08-26, 68 NRC 514 (2008)
- 40 C.F.R. 1508.9(a)(1)
- in determining whether to prepare an environmental impact statement, the federal agency shall prepare an environmental assessment, which will briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact; LBP-06-27, 64 NRC 456 (2006)
- 40 C.F.R. 1508.9(b)
- NRC Staff is required under NEPA to evaluate reasonable technological and geographical alternatives to the proposed project; CLI-10-18, 72 NRC 70 (2010)
- 40 C.F.R. 1508.13
- no environmental impact statement is necessary if the environmental assessment concludes with a finding of no significant impact, which briefly presents the reasons why the proposed action will not significantly impact the environment; LBP-08-7, 67 NRC 365 n.1 (2008)

LEGAL CITATIONS INDEX
REGULATIONS

- 40 C.F.R. 1508.23
where there is no proposal for major federal action within the meaning of NEPA § 102(C), there is no requirement for a NEPA analysis of dredging; CLI-10-5, 71 NRC 107 (2010)
- 40 C.F.R. 1508.25
an agency environmental impact statement must consider direct, indirect, and cumulative impacts of an action; LBP-09-7, 69 NRC 719 (2009); LBP-09-19, 70 NRC 463 (2009)
each type of action and each type of environmental impact has its own independent significance in the sense that a conclusion that something is a “connected action” does not necessarily inform the type of impacts analysis that is performed, whether direct, indirect, or cumulative; LBP-09-7, 69 NRC 720 (2009)
in performing NEPA evaluations, agencies must consider three types of actions, three types of alternatives, and three types of impacts; CLI-10-5, 71 NRC 109 n.101 (2010)
- 40 C.F.R. 1508.25(a)(1)
connected actions under 40 C.F.R. 1508.8 are distinguished from indirect effects; CLI-10-18, 72 NRC 89 n.187 (2010)
NEPA requires an analysis of all impacts of connected actions, including direct, indirect, and cumulative impacts; CLI-10-5, 71 NRC 109 (2010)
- 40 C.F.R. 1508.27
agencies are required to consider both the context and intensity of environmental impacts; LBP-09-7, 69 NRC 633-34 (2009)
the word “significantly” as used in the NEPA process describes the significance of environmental impacts in several contexts, including the locality; CLI-06-29, 64 NRC 427 n.58 (2006)
- 40 C.F.R. 1508.27(b)(7)
agencies must consider the environmental effects of related actions; CLI-07-14, 65 NRC 218 (2007)
although an early site permit does not authorize any construction activity, the NRC Staff is still required by Council on Environmental Quality regulations to consider actions that are related to other actions that could lead to a significant impact on the environment; LBP-07-1, 65 NRC 73 n.199, 99 (2007)
- 40 N.J. Reg. 5196(b)
a provision for ALARA determinations allows the use of cost as a factor for determining what level of remediation is cost-effective below the standards, but is not allowed by the New Jersey Agreement State Program; CLI-10-8, 71 NRC 160 n.95 (2010)
- 40 N.J. Reg. 5196(b), at 8
creating an open class is not the equivalent of special legislation, which is prohibited, nor is it arbitrary or discriminatory; CLI-10-8, 71 NRC 163 n.105 (2010)
- 40 N.J. Reg. 5196(b), at 8-9
by lowering the annual dose limit and requiring the use of conservative dose calculation methodologies, the NJDEP’s decommissioning regulations embody the essential objective of the license termination rule; CLI-10-8, 71 NRC 161 (2010)
- 40 N.J. Reg. 5196(b), at 9
there is flexibility in complying with the remediation standards, including the availability of a petition for alternative remediation standards; CLI-10-8, 71 NRC 161 n.96 (2010)

**LEGAL CITATIONS INDEX
STATUTES**

- 2 U.S.C. § 441b(b)(1)
courts' refusal to grant automatic standing to unions may lie in the fact that unions are formed to represent their members in collective bargaining and other employment-related negotiations, not in administrative or judicial litigation; CLI-08-19, 68 NRC 264 n.47 (2008)
- 5 U.S.C. § 553
concerns relating specifically to the AP1000 reactor design amendment may be raised by filing comments on the proposed rule when it is issued; LBP-08-17, 68 NRC 443 (2008)
- 18 U.S.C. § 207(a)(1)(B)
any former federal employee is prohibited from attempting to influence any action relating to any matter in which the person participated while an employee; LBP-06-10, 63 NRC 372 n.16 (2006)
- 18 U.S.C. § 1001, 42 U.S.C. § 2273
violations of 10 C.F.R. 70.9 and 70.10 may be referred to the Department of Justice as possible criminal violations of federal statutes; CLI-08-6, 67 NRC 181 (2008)
- 18 U.S.C. § 2001
making material false statements to the government is subject to criminal penalties; CLI-08-11, 67 NRC 384 n.29 (2008)
- 18 U.S.C. § 3142(c), (f)
to succeed in imposing pretrial detention because the accused is a danger to the community, the government must, among other things, prove in an adversary hearing by clear and convincing evidence that no conditions of release can reasonably ensure the community's safety; LBP-09-24, 70 NRC 806 (2009)
- 28 U.S.C. § 455
the disqualification standard under this section is not directed to administrative judges, but the Commission and its adjudicatory boards have applied it in assessing a motion for disqualification under 10 C.F.R. 2.313, and it provides a helpful framework for such an assessment; CLI-10-22, 72 NRC 203 (2010)
- 28 U.S.C. § 455(b)(1)
a judge should disqualify himself if he has personal knowledge of disputed evidentiary facts concerning the proceeding; CLI-10-22, 72 NRC 204 (2010)
- 28 U.S.C. § 1491(a)(1)
NRC proceedings are not an appropriate forum to challenge DOE's procurement process, which fall under the jurisdiction of the Government Accountability Office or Court of Federal Claims; CLI-08-11, 67 NRC 383 n.22 (2008)
- 31 U.S.C. § 3552
NRC proceedings are not an appropriate forum to challenge DOE's procurement process, which fall under the jurisdiction of the Government Accountability Office or Court of Federal Claims; CLI-08-11, 67 NRC 383 n.22 (2008)
- Administrative Dispute Resolution Act of 1996, 5 U.S.C. §§ 571-584
each federal agency must promote the use of alternative dispute resolution; LBP-08-14, 68 NRC 292 (2008)
- Administrative Procedure Act, 5 U.S.C. § 552(a)(4)(B)
a board's determination on a request for access to sensitive unclassified nonsafeguards information is reviewed de novo; CLI-10-24, 72 NRC 461 (2010)

LEGAL CITATIONS INDEX

STATUTES

- Administrative Procedure Act, 5 U.S.C. § 556(d)
a party is entitled to conduct such cross-examination as may be required for a full and true disclosure of the facts; LBP-09-10, 70 NRC 145 (2009); LBP-09-22, 70 NRC 656 n.34 (2009)
cross-examination must be available whenever it is required for a full and fair adjudication of the facts; LBP-06-23, 64 NRC 349 n.477 (2006)
NRC Staff's role at a hearing in an enforcement proceeding is akin to that of a prosecutor, and it has the burden to prove its allegations by a preponderance of the reliable, probative, and substantial evidence; LBP-09-24, 70 NRC 706 (2009)
the standard for allowing parties to conduct cross-examination is the same under Subparts G and L; LBP-09-10, 70 NRC 145 (2009); LBP-10-15, 72 NRC 343-44 (2010)
there is no absolute right to cross-examination; LBP-09-10, 70 NRC 145 (2009); LBP-10-15, 72 NRC 344 (2010)
- Administrative Procedure Act, 5 U.S.C. § 706(2)(A)
reviewing courts must decide the narrow issue as to whether an agency action was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law; LBP-07-9, 65 NRC 602 n.92 (2007)
- Anti-Deficiency Act, 31 U.S.C. § 1341(a)(1)(A), (B) (2000)
an officer or employee of the United States Government is prohibited from making or authorizing an expenditure or obligation exceeding an amount available in a current appropriation, and may not involve the government in a contract or obligation for the payment of money before an appropriation is made; LBP-06-6, 63 NRC 178 (2006)
- Archaeological Resources Protection Act, 16 U.S.C. § 470aa *et seq.*
criteria and procedures pursuant to which a federal land manager may issue excavation permits for federal lands and requirements for notification to Indian Tribe if permits may result in harm to cultural or religious sites are established; LBP-08-24, 68 NRC 713 n.105 (2008)
Indian tribes have an interest in artifacts related to their heritage; CLI-09-9, 69 NRC 338 (2009)
- Archaeological Resources Protection Act, 16 U.S.C. § 470aa-470mm
criteria and procedures pursuant to which a federal land manager may issue excavation permits for federal lands are provided as well as notification to Indian tribe if permits may result in harm to cultural or religious sites; LBP-10-16, 72 NRC 392 n.111 (2010)
- Atomic Energy Act, 42 U.S.C. § 2011
general policy for use of nuclear power in the United States is stated; LBP-08-17, 68 NRC 451 (2008)
- Atomic Energy Act, 42 U.S.C. § 2012(d)
processing and utilization of source material must be regulated in the national interest and in order to provide for the common defense and security and to protect the health and safety of the public; LBP-06-1, 63 NRC 61 (2006); LBP-08-6, 67 NRC 337 (2008)
- Atomic Energy Act, 11e(2), 42 U.S.C. § 2014(e)
byproduct material is defined; LBP-06-1, 63 NRC 63 (2006); LBP-10-16, 72 NRC 376 n.5 (2010)
- Atomic Energy Act, 11s, 42 U.S.C. § 2014(s)
"person" is defined to include government agencies other than the Commission, as well as state and foreign governments; CLI-09-14, 69 NRC 607 (2009); LBP-09-6, 69 NRC 460, 463 (2009)
- Atomic Energy Act, 11s(1), 42 U.S.C. § 2014(s)(1); CLI-09-14, 69 NRC (2009)
DOE is not a "person" for purposes of this section; CLI-09-14, 69 NRC 607 (2009)
- Atomic Energy Act, 11z, 42 U.S.C. § 2014(z)
source material is defined; CLI-06-14, 63 NRC 517 n.38 (2006); LBP-06-1, 63 NRC 61 (2006); LBP-10-16, 72 NRC 376 n.5 (2010)
- Atomic Energy Act, 42 U.S.C. § 2014(aa)
special nuclear material includes plutonium, uranium-233, and enriched uranium; LBP-06-1, 63 NRC 56 n.12 (2006)
- Atomic Energy Act, 53
issues of foreign involvement of a uranium enrichment facility applicant shall be determined pursuant to sections 57 and 69, not sections 103, 104, or 193(f); CLI-09-15, 70 NRC 19 (2009)
- Atomic Energy Act, 57
an affirmative finding by the Commission that issuance of a license for a uranium enrichment facility will not be inimical to the common defense and security is required; CLI-09-15, 70 NRC 19 (2009)

LEGAL CITATIONS INDEX

STATUTES

- Atomic Energy Act, 62, 42 U.S.C. § 2092
a license is not required for quantities of source material which, in the opinion of the Commission, are unimportant; LBP-06-1, 63 NRC 62 (2006)
an NRC license is required to transfer or receive in interstate commerce any source material (such as uranium ore) only after removal from its place of deposit in nature; CLI-06-14, 63 NRC 512 (2006)
NRC authority over uranium ore and other source material attaches only after removal from its place of deposit in nature, and not when the ore is mined; CLI-06-14, 63 NRC 512 (2006)
- Atomic Energy Act, 63
issues of foreign involvement of a uranium enrichment facility applicant shall be determined pursuant to sections 57 and 69, not sections 103, 104, or 193(f); CLI-09-15, 70 NRC 19 (2009)
- Atomic Energy Act, 69, 42 U.S.C. § 2099
an affirmative finding by the Commission that issuance of a license for a uranium enrichment facility will not be inimical to the common defense and security is required; CLI-09-15, 70 NRC 19 (2009)
NRC regulations do not prohibit issuance of a materials license to a licensee wholly owned by a foreign parent, but NRC Staff must find that issuance of the license will not be inimical to the common defense and security or to the health and safety of the public; CLI-09-12, 69 NRC 571 (2009)
whether foreign ownership of applicant renders issuance of a license inimical to the common defense and security or to the health and safety of the public is discussed; LBP-09-1, 69 NRC 30 n.73 (2009)
- Atomic Energy Act, 101, 42 U.S.C. § 2131
a "person," as the term is used throughout the Atomic Energy Act, is required to be licensed in order to conduct nuclear activities; LBP-09-6, 69 NRC 463 (2009)
- Atomic Energy Act, 103, 42 U.S.C. § 2133
standards for issuance of a license for a particular nuclear power reactor do not require applicants to improve the general welfare, increase the standard of living, or strengthen free competition;
LBP-08-17, 68 NRC 451 (2008)
- Atomic Energy Act, 103d, 42 U.S.C. § 2012(d)
applications for nuclear power plants show that issuance of the license would not be inimical to, and will provide adequate protection to, the health and safety of the public; LBP-09-10, 70 NRC 124 (2009)
if in the opinion of the Commission the issuance of a license to a person would be inimical to the common defense and security or the health and safety of the public, such license should not be issued; LBP-08-6, 67 NRC 337 (2008)
materials license regulations contain no express prohibition against foreign ownership, but require NRC Staff to make a finding that issuance of the license will not be inimical to the common defense and security; CLI-09-9, 69 NRC 360 (2009)
no license for a production or utilization facility may be issued to an alien or any corporation or other entity if the Commission knows or has reason to believe it is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government; CLI-09-9, 69 NRC 360 n.151 (2009); LBP-09-4, 69 NRC 192 (2009)
no license may be issued to an alien or any corporation or other entity if the Commission knows or has reason to believe it is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government; LBP-08-6, 67 NRC 337 (2008); CLI-09-20, 70 NRC 919 (2009)
on AEA Safety Issue 1, the board must determine whether the application and the record of the proceeding contain sufficient information, and the review of the application by the NRC Staff has been adequate, to support a negative finding on the question of whether the issuance of the early site permit will be inimical to the common defense and security or to the health and safety of the public; LBP-07-9, 65 NRC 556, 598 (2007)
the foreign ownership provisions of this section do not apply to in-situ leach recovery licensees;
CLI-09-12, 69 NRC 568 n.146 (2009)
- Atomic Energy Act, 105
an enrichment facility is not a production or utilization facility and, therefore, NRC does not have antitrust responsibilities for it; CLI-09-15, 70 NRC 19 (2009)
- Atomic Energy Act, 141, 42 U.S.C. § 2161 (2000)
NRC is required to control information in a manner to assure the common defense and security;
CLI-08-1, 67 NRC 21 n.96 (2008)

LEGAL CITATIONS INDEX

STATUTES

- Atomic Energy Act, 147, 42 U.S.C. § 2167 (2000)
FOIA exemption 1 permits withholding classified information and exemption 3 supports withholding safeguards material; CLI-08-1, 67 NRC 15 (2008)
NRC is required to take actions to prohibit the unauthorized disclosure of information including security measures; CLI-08-1, 67 NRC 21 n.96 (2008)
safeguards information qualifies for the exemption from disclosure; LBP-10-2, 71 NRC 198 n.20 (2010)
Staff may withhold some facts underlying its findings and conclusions on terrorism-related risks as safeguards information or national security information; CLI-07-11, 65 NRC 151 (2007)
- Atomic Energy Act, 149
a completed Form FD-258 (fingerprint card), signed in original ink, and submitted in accordance with 10 C.F.R. 73.57(d) is required for access to safeguards information; CLI-09-15, 70 NRC 23-24 (2009)
- Atomic Energy Act, 161b, 42 U.S.C. § 2201(b)
NRC has general authority to impose reasonable restrictions on licenses to protect public health and safety and common defense and security; CLI-06-3, 63 NRC 30 (2005)
NRC's performance of its regulatory function to protect health and minimize danger to life or property is largely dependent on accurate self-reporting by licensed entities and their employees; LBP-09-24, 70 NRC 853 (2009)
- Atomic Energy Act, 161p, 42 U.S.C. § 2201(p)
DOE is authorized to make, promulgate, issue, rescind, and amend such rules and regulations as may be necessary to carry out the purposes of this Act; LBP-10-11, 71 NRC 623 n.38 (2010)
- Atomic Energy Act, 170, 42 U.S.C. § 2210
DOE will indemnify a uranium enrichment facility licensee against claims arising from nuclear incidents to the extent that licensee cannot obtain commercial insurance at reasonable rates; LBP-07-6, 65 NRC 463 (2007)
persons living near a proposed nuclear power plant have standing to challenge the constitutionality of the Price-Anderson Act; CLI-09-9, 69 NRC 340 (2009)
- Atomic Energy Act, 182, 42 U.S.C. § 2232
applicants must include information in an application that the Commission determines to be necessary; LBP-08-24, 68 NRC 750 n.333 (2008)
applications and statements made in connection with applications are required to be made under oath or affirmation; CLI-07-12, 65 NRC 208 (2007)
as part of its licensing and oversight responsibilities, the Commission may consider the adequacy of a licensee's corporate organization and the integrity of its management; LBP-10-15, 72 NRC 337 (2010)
decisions under the bad actor doctrine are generally quite fact specific; LBP-10-15, 72 NRC 337 n.91 (2010)
each application must specifically state such information as the Commission may determine to be necessary to decide the character of the applicant; LBP-10-15, 72 NRC 337 (2010)
- Atomic Energy Act, 182a, 42 U.S.C. § 2232(a)
adequate character and safety culture are licensing requirements of the NRC; LBP-09-6, 69 NRC 464 (2009)
application for a source materials license must specifically state the citizenship of the applicant; LBP-08-24, 68 NRC 746 (2008)
applications for nuclear power plants show that the issuance of the license would not be inimical to, and will provide adequate protection to, the health and safety of the public; LBP-09-10, 70 NRC 124 (2009)
citizenship of an applicant may be considered in the context of a license application; CLI-09-9, 69 NRC 359 (2009)
general information that must be included in any application for a license is described; LBP-09-6, 69 NRC 463 (2009)
license applications of private applicants or licensees shall provide information as the Commission may deem necessary to decide the character of the applicant; CLI-09-14, 69 NRC 605 (2009)
the Commission may issue a license only after finding that it is in accord with the common defense and security and will provide adequate protection to the health and safety of the public; CLI-08-23, 68 NRC 473 (2008); LBP-08-25, 68 NRC 785 (2008)

LEGAL CITATIONS INDEX

STATUTES

- the condition that requires investigation of an individual's character to grant access to restricted data is not linked to the general license criteria of this section; LBP-09-6, 69 NRC 464 (2009)
- Atomic Energy Act, 184, 42 U.S.C. § 2234
- creditor regulations in 10 C.F.R. 50.81 apply to the creation of creditor interests in equipment, devices, or important parts thereof, capable of separating the isotopes of uranium or enriching uranium in the isotope U-235; CLI-09-15, 70 NRC 19 (2009); CLI-10-4, 71 NRC 73 (2010)
- creditor regulations in 10 C.F.R. 70.44 apply to the creation of creditor interests in special nuclear material; CLI-10-4, 71 NRC 73 (2010)
- this section is applicable only to licenses to possess or use special nuclear material, and therefore does not apply to source material licensees; LBP-08-24, 68 NRC 750 n.333 (2008)
- transfer of any NRC license is precluded unless the Commission both finds the transfer in accordance with the AEA and gives its consent in writing; CLI-07-18, 65 NRC 405 n.2 (2007); CLI-07-19, 65 NRC 425 (2007)
- Atomic Energy Act, 185, 42 U.S.C. § 2235(a)
- rights under a construction permit are forfeited only when a construction permit has expired and has not been extended; CLI-10-6, 71 NRC 121 (2010)
- the scope of a construction permit extension proceeding is limited to direct challenges to the permit holder's asserted reasons that show "good cause" justification for the delay; LBP-10-7, 71 NRC 418 (2010)
- the term "reinstatement" is not directly or indirectly mentioned in this section; CLI-10-6, 71 NRC 120 (2010)
- the voluntary surrender of a construction permit that has not expired, that is, where the construction completion date had not yet arrived, does not constitute a situation to which the "forfeiture" provision applies; CLI-10-6, 71 NRC 121 (2010)
- Atomic Energy Act, 185a, 42 U.S.C. § 2235(a)
- a construction permit holder seeking an extension of the permit must provide good cause for the extension; LBP-10-7, 71 NRC 407 (2010)
- construction permits shall state the earliest and latest dates for completion of construction or modification, and unless the facility or modification is completed by the completion date, the permit shall expire and all rights thereunder be forfeited, unless upon good cause shown the Commission extends the completion date; LBP-10-7, 71 NRC 415 (2010)
- the construction permit specifies a date by which construction of the unit is to be completed; LBP-10-7, 71 NRC 406-07 (2010)
- Atomic Energy Act, 185b, 42 U.S.C. § 2235(b)
- with respect to combined licenses under 10 C.F.R. Part 52, interested persons may request a hearing as to the adequacy of construction after issuance of a combined license; CLI-09-2, 69 NRC 61 n.20 (2009)
- Atomic Energy Act, 186
- NRC may revoke any license for a material false statement in the application; CLI-07-12, 65 NRC 208 (2007)
- Atomic Energy Act, 186a, 42 U.S.C. § 2236(a)
- NRC is authorized to revoke licenses where there is wrongdoing or other misfeasance; CLI-10-6, 71 NRC 122 (2010)
- Atomic Energy Act, 189, 42 U.S.C. § 2239
- any change to a plant's licensing basis that requires a license amendment, i.e., a change in the technical specifications, will offer an opportunity for hearing; LBP-06-10, 63 NRC 389 (2006)
- intervenor do not have a right to an adjudicatory hearing on future determinations that may be made under license conditions; CLI-06-1, 63 NRC 4 (2006)
- Atomic Energy Act, 189a, 42 U.S.C. § 2239(a)
- a hearing must be granted in any licensing proceeding to any person whose interest may be affected by the proceeding; LBP-09-15, 70 NRC 221 (2009)
- if petitioner can show that new and materially different information has become available during the processing of the application, and petitioner promptly files a new contention based on this new information, then the new contention is admissible, assuming it also satisfies the six general contention admissibility standards; LBP-07-15, 66 NRC 267 n.12 (2007)

LEGAL CITATIONS INDEX

STATUTES

intervention petitioner must be able to show how it would have personally suffered or will suffer a distinct and palpable harm that constitutes injury in fact; LBP-09-18, 70 NRC 400 (2009)

members of the public with a cognizable interest in the particular license renewal application may obtain an independent adjudicatory review of their challenges to the application; CLI-08-23, 68 NRC 468 (2008)

NRC is required to hold hearings on applications for the construction of certain production and utilization facilities, including nuclear power plants, even if the proceedings are uncontested; CLI-06-20, 64 NRC 19 (2006)

the Commission must hold a hearing on each application for a construction permit for a facility, regardless of whether any person requests a hearing; LBP-07-9, 65 NRC 551, 554, 629 (2007)

the role of "private attorney general" is not contemplated under this section; CLI-08-19, 68 NRC 270 (2008)

to intervene as of right in any Commission licensing proceeding, petitioner must demonstrate that its interest may be affected by the proceeding; CLI-07-18, 65 NRC 408 (2007); CLI-07-22, 65 NRC 526 (2007); CLI-08-19, 68 NRC 258 (2008)

uncontested early site permit proceedings are still subject to a mandatory hearing; CLI-07-14, 65 NRC 217 (2007); CLI-07-12, 65 NRC 205 (2007); CLI-07-27, 66 NRC 221 (2007)

Atomic Energy Act, 189a(1)(A), 42 U.S.C. § 2239(a)(1)(A)

a construction permit and operating license were formerly issued separately, with hearing rights accruing separately as to each requested permission; LBP-10-7, 71 NRC 405 (2010)

an uncontested proceeding is subject to the mandatory hearing requirement; LBP-08-15, 68 NRC 301 (2008)

as long as DOE continues to create, generate, and make available new and material documentary material, potential participants will have the opportunity to file timely new and amended contentions in the HLW proceeding; LBP-08-1, 67 NRC 50 (2008)

if and when a combined license application is amended, petitioners must be given a fair opportunity to file new or amended contentions challenging these changes; LBP-09-10, 70 NRC 77 (2009)

in determining whether an individual or organization is an interested person that has standing as of right such that it can be granted party status in a proceeding, the Commission applies contemporaneous judicial standing concepts; LBP-10-1, 71 NRC 176 (2010); LBP-10-7, 71 NRC 410 (2010)

in determining whether petitioner is an "interested person" for the purposes of a standing determination, NRC is not strictly bound by judicial standing doctrines; CLI-09-20, 70 NRC 915 (2009)

issues material to the agency's licensing decision must be subject to adjudicatory challenge; LBP-10-21, 72 NRC 657 n.28 (2010)

NRC must hold a hearing on each application under AEA § 103 or 104b for a construction permit for a facility; LBP-07-1, 65 NRC 35 (2007); LBP-09-19, 70 NRC 456 (2009)

NRC shall grant a hearing upon the request of any person whose interests may be affected by the proceeding; CLI-09-20, 70 NRC 915 (2009); LBP-06-4, 63 NRC 103 (2006); LBP-06-7, 63 NRC 194 (2006); LBP-06-10, 63 NRC 327 (2006); LBP-06-20, 64 NRC 208 (2006); LBP-06-23, 64 NRC 269-70 (2006); LBP-07-4, 65 NRC 293 (2007); LBP-07-11, 66 NRC 51 (2007); LBP-07-14, 66 NRC 182 (2007); LBP-08-6, 67 NRC 270 (2008); LBP-08-14, 68 NRC 286 (2008); LBP-08-15, 68 NRC 302, 311 (2008); LBP-08-18, 68 NRC 538 (2008); LBP-08-24, 68 NRC 701 (2008); LBP-08-26, 68 NRC 910 (2008); LBP-09-1, 69 NRC 25 (2009); LBP-09-4, 69 NRC 177 (2009); LBP-09-10, 70 NRC 139 n.79 (2009); LBP-09-13, 70 NRC 175 (2009); LBP-09-16, 70 NRC 239 (2009); LBP-09-17, 70 NRC 321 (2009); LBP-09-20, 70 NRC 574 n.37 (2009); LBP-09-21, 70 NRC 590 (2009); LBP-10-4, 71 NRC 228 (2010); LBP-10-16, 72 NRC 380 (2010); LBP-10-17, 72 NRC 515 (2010)

NRC shall hold a hearing after 30 days' notice and publication once in the *Federal Register*, on each application for a construction permit for a production or utilization facility; LBP-06-28, 64 NRC 470 (2006)

postponement of consideration of important and material nuclear safety issues until after the license is issued improperly abridges hearing rights; LBP-08-25, 68 NRC 827 (2008)

the mandatory hearing requirement for the granting of a construction permit and the requirement for a hearing upon request for the granting, revoking, or amending of any permit or license does not undercut NRC authority to reinstate a surrendered construction permit; CLI-10-6, 71 NRC 122-23 (2010)

LEGAL CITATIONS INDEX

STATUTES

- where Congress provides for a hearing, and does not specify that the adjudicatory hearings are to be on-the-record, or conducted as an adjudication under 5 U.S.C. 554, 556, and 557 of the Administrative Procedure Act, it is presumed that informal hearings are sufficient; CLI-09-7, 69 NRC 280 n.261 (2009)
- with dismissal of petitioner's final contention, an early site permit adjudication becomes an uncontested proceeding subject to the mandatory hearing requirements; LBP-07-9, 65 NRC 552 (2007)
- Atomic Energy Act, 189a(1)(B), 42 U.S.C. § 2239(a)(1)(B)
with respect to combined licenses, interested persons may request a hearing as to the adequacy of construction after issuance of a combined license; CLI-09-2, 69 NRC 61 n.20 (2009)
- Atomic Energy Act, 189a(2)(A), 42 U.S.C. § 2239(a)(2)(A)
NRC is expressly authorized to grant license amendments, and to make them immediately effective, in advance of the holding and completion of any required hearing, as long as the NRC determines that the amendment involves no significant hazards consideration; CLI-06-8, 63 NRC 238 (2006); CLI-09-5, 69 NRC 122 n.29 (2009)
- Atomic Energy Act, 191, 42 U.S.C. 2241
the Commission could ultimately conduct licensing proceedings itself; CLI-06-20, 64 NRC 28 (2006)
- Atomic Energy Act, 191(a), 42 U.S.C. § 2241(a)
Congress considers the Atomic Safety and Licensing Board to be a panel of experts; CLI-10-17, 72 NRC 49 (2010)
the Commission has broad authority to delegate powers to the Atomic Safety and Licensing Boards; CLI-08-14, 67 NRC 405 n.14 (2008)
- Atomic Energy Act, 193
a materials license hearing will be conducted for a fuel enrichment facility according to the rules of practice in 10 C.F.R. Part 2, Subparts A, C, G, and to the extent that classified information becomes involved, Subpart I; CLI-09-15, 70 NRC 7 (2009)
- Atomic Energy Act, 193, as amended by the Solar, Wind, Waste, and Geothermal Power Production Incentives Act of 1990, Pub. L. No. 101-575, § 5, 104 Stat. 2834, 2835-36 (codified as amended at 42 U.S.C. § 2243)
a hearing on a uranium enrichment facility application will be conducted according to the rules of practice in 10 C.F.R. Part 2, Subparts A, C, G, and to the extent that classified information becomes involved, Subpart I; CLI-10-4, 71 NRC 61 (2010)
- Atomic Energy Act, 193b, 42 U.S.C. § 2243(b)
for license applications for uranium enrichment facilities, the NRC must hold a hearing even when the license is not contested; LBP-07-6, 65 NRC 435 (2007)
- Atomic Energy Act, 193b(1), 42 U.S.C. § 2243(b)(1)
the Commission must conduct a single hearing on the record with regard to the licensing of the construction and operation of a uranium enrichment facility; LBP-06-17, 63 NRC 762 (2006)
- Atomic Energy Act, 193c
prior to commencement of operations of a fuel enrichment facility, NRC will verify through inspection that the facility has been constructed in accordance with the requirements of the license for such construction and operation; CLI-09-15, 70 NRC 6-7 (2009); CLI-10-4, 71 NRC 60 (2010)
- Atomic Energy Act, 223, 42 U.S.C. § 2273
willful violations of 10 C.F.R. 63.11 and 63.73, among others, are subject to criminal penalties; CLI-08-11, 67 NRC 384 n.29 (2008)
- Atomic Energy Act, 234, 42 U.S.C. § 2282
a civil penalty of \$130,000 was imposed on licensee for failure of the radio-only activation feature of the emergency notification system to meet its test acceptance criteria; DD-09-1, 69 NRC 511-12 (2009)
- Atomic Energy Act, 274b, 42 U.S.C. § 2021(b)
agreement states have the authority, for the duration of the agreement, to regulate the materials covered by the agreement for the protection of the public health and safety from radiation hazards; LBP-06-8, 63 NRC 260 (2006)
NRC is authorized to enter into agreements with the Governor of any State in which the NRC relinquishes certain regulatory authority over particular radioactive materials, and the disposal of such materials, to the state; CLI-06-15, 63 NRC 691 n.13 (2006); LBP-06-8, 63 NRC 260 (2006)

LEGAL CITATIONS INDEX

STATUTES

- once the Commission and a state enter into an agreement, the Agreement State assumes all active regulatory authority with regard to the specified activities; LBP-06-8, 63 NRC 261 (2006)
- Atomic Energy Act, 42 U.S.C. § 2021c(b)(1)(D)
disposal of Greater-Than-Class-C waste is the responsibility of the federal government; LBP-08-15, 68 NRC 313 n.86 (2008); LBP-08-16, 68 NRC 414 (2008); LBP-09-16, 70 NRC 254 (2009)
- Atomic Energy Act, 274d, 42 U.S.C. § 2021(d)
before it can be authorized to participate in the Agreement State program, a state pursuing agreement state status must pass legislation establishing the authority for that state to conduct a radiation control program, and must further assume and implement that authority through the promulgation of state regulations; LBP-06-8, 63 NRC 260 (2006)
- Atomic Energy Act, 274d(1), 42 U.S.C. §§ 2021(d)(1)
an agreement state must demonstrate its willingness to assume regulatory responsibility for the materials covered by the proposed agreement under a regulatory regime that is equivalent to or more stringent than 10 C.F.R. Part 61; CLI-06-15, 63 NRC 691 n.13 (2006); LBP-06-8, 63 NRC 260 (2006)
if the Commission determines that a state's regulatory program is compatible with the Commission's corresponding program and adequate to protect the public health and safety, then the Commission shall enter into the agreement; CLI-10-8, 71 NRC 148 (2010)
the Commission must find that an Agreement State program is in accordance with the requirements of subsection 274o and in all other respects is compatible with the Commission's program for regulation of radioactive materials, and that the state program is adequate to protect the public health and safety with respect to the materials covered by the proposed agreement; CLI-10-8, 71 NRC 148 (2010)
to become an Agreement State, the governor must certify that the state has a program for the control of radiation hazards adequate to protect the public health and safety with respect to the materials within the state covered by the proposed agreement, and that the state desires to assume regulatory responsibility for such materials; CLI-10-8, 71 NRC 148 (2010)
- Atomic Energy Act, 274d(2), 42 U.S.C. § 2021(d)(2)
before it enters into an agreement with any state, the Commission must find the state radiation control program compatible in certain respects with that of the NRC and adequate to protect the public health and safety with respect to the materials covered by the proposed agreement; LBP-06-8, 63 NRC 261 (2006)
- Atomic Energy Act, 274j, 42 U.S.C. § 2021(j)
in its oversight role, NRC periodically reviews state radiation control programs to confirm that they remain compatible with the Commission's programs and adequately protect public health and safety; CLI-06-15, 63 NRC 699-700 (2006); CLI-06-22, 64 NRC 51 n.58 (2006); LBP-06-8, 63 NRC 261 (2006)
NRC retains the power to terminate or suspend an agreement with any state under certain circumstances if it determines that such action is required to ensure public health and safety; CLI-06-15, 63 NRC 700 (2006); LBP-06-8, 63 NRC 261 (2006); CLI-06-22, 64 NRC 51 n.58 (2006)
NRC Staff is required by law to conduct periodic reviews of the adequacy and compatibility of an Agreement State's regulatory program; CLI-10-8, 71 NRC 153 n.58 (2010)
- Atomic Energy Act, 274(l), 42 U.S.C. § 2021(l)
an interested state that has not been admitted as a party will be afforded a reasonable opportunity to participate in a hearing; LBP-06-7, 63 NRC 227 n.37 (2006)
states do not have an absolute right of cross-examination, but the Commission shall afford reasonable opportunity for state representatives to interrogate witnesses; LBP-06-20, 64 NRC 203 (2006)
- Atomic Energy Act, 274o, 42 U.S.C. § 2021(o)
before it can be authorized to participate in the Agreement State program, a state pursuing agreement state status must pass legislation establishing the authority for that state to conduct a radiation control program, and must further assume and implement that authority through the promulgation of state regulations; LBP-06-8, 63 NRC 260 (2006)
- Atomic Energy Act, 274o(2), 42 U.S.C. §§ 2021(o)(2)
an agreement state must demonstrate its willingness to assume regulatory responsibility for the materials covered by the proposed agreement under a regulatory regime that is equivalent to or more stringent than 10 C.F.R. Part 61; CLI-06-15, 63 NRC 691 n.13 (2006); LBP-06-8, 63 NRC 260 (2006)

LEGAL CITATIONS INDEX

STATUTES

- Brownfield and Contaminated Site Remediation Act, N.J. Stat. Ann. 7:28-12.11
there is flexibility in complying with the remediation standards, including the availability of a petition for alternative remediation standards; CLI-10-8, 71 NRC 161 n.95 (2010)
- Brownfield and Contaminated Site Remediation Act, N.J. Stat. Ann. 58:10B-1 et seq.
a provision for ALARA determinations allows the use of cost as a factor for determining what level of remediation is cost-effective below the standards; CLI-10-8, 71 NRC 160 n.95 (2010)
- Brownfield and Contaminated Site Remediation Act, N.J. Stat. Ann. 58:10B-1.2
strict standards coupled with a risk-based and flexible regulatory system will result in more cleanups and thus the elimination of the public's exposure to these hazardous substances and the environmental degradation that contamination causes; CLI-10-8, 71 NRC 160 n.95 (2010)
- Clean Air Act, 112(c)(2), 42 U.S.C. § 7412
the Environmental Protection Agency Administrator is responsible for establishing national emission standards for hazardous air pollutants, which are to be based upon EPA's determination of the maximum achievable control technology; LBP-08-15, 68 NRC 331 (2008)
- Clean Air Act, 112(d)(9), 42 U.S.C. § 7412(d)(9)
no NRC radionuclide emission standards need to be promulgated under CAA § 112 if the Environmental Protection Agency Administrator determines that the NRC regulatory program provides an ample margin of safety to protect public health; LBP-08-15, 68 NRC 331 (2008); LBP-08-16, 68 NRC 397 (2008)
- Clean Water Act, 101(f), 33 U.S.C. § 1251(f)
NRC abstinence from setting water quality standards is fully consistent with congressional general intent that the Clean Water Act is to be implemented in a way that will avoid needless duplication and unnecessary delays at all levels of government; CLI-07-16, 65 NRC 389 (2007)
- Clean Water Act, 316, 33 U.S.C. § 1326
Congress intended the word "effluent" to include heat; CLI-07-16, 65 NRC 377 n.17 (2007)
to discharge heated water into the ocean from a nuclear facility, the licensee needs an NPDES permit from the water supply and pollution control commission; CLI-07-16, 65 NRC 377 n.17 (2007)
- Clean Water Act, 316(a), 33 U.S.C. § 1326(a)
EPA's alternative thermal effluent limitations do not apply to a plant that employs closed-cycle cooling; CLI-07-25, 66 NRC 106 (2007)
NPDES permits may address thermal discharges into bodies of water; CLI-07-16, 65 NRC 377 (2007)
- Clean Water Act, 402, 33 U.S.C. § 1342
to discharge heated water into the ocean from a nuclear facility, the licensee needs an NPDES permit from the water supply and pollution control commission; CLI-07-16, 65 NRC 377 n.17 (2007)
- Clean Water Act, 402(b), 33 U.S.C. § 1342(b)
heat shock falls within the parameters of the NPDES; CLI-07-16, 65 NRC 376 (2007)
- Clean Water Act, 402(b)(1)(B), 33 U.S.C. § 1342(b)(1)(B)
state-issued SPDES permits must be renewed every 5 years; LBP-08-13, 68 NRC 156 (2008)
no state may issue an NPDES permit for a period longer than 5 years; CLI-07-16, 65 NRC 383 (2007)
- Clean Water Act, 502(11), 33 U.S.C. § 1362(11)
"effluent limitation" refers to chemical, physical, biological, and other constituents that are discharged from point sources into navigable waters, the waters of the contiguous zone, or the ocean; CLI-07-16, 65 NRC 377 n.17 (2007)
- Clean Water Act, 511(c), 33 U.S.C. § 1371(c)
the Commission cannot question or reexamine the effluent limitations or other requirements in permits issued by the relevant permitting authorities; CLI-07-16, 65 NRC 387 (2007)
- Clean Water Act, 511(c)(2), 33 U.S.C. § 1371(c)(2)
nothing in the National Environmental Policy Act shall be deemed to authorize any federal agency to review any effluent limitation or other requirement established pursuant to the Clean Water Act or to authorize any such agency to impose any effluent limitation other than those set by EPA or a state agency that has been delegated such authority; LBP-09-25, 70 NRC 885, 890 (2009)
NRC is precluded from either second-guessing the conclusions in NPDES permits or imposing its own effluent limitations, thermal or otherwise; CLI-07-16, 65 NRC 377 n.19 (2007); CLI-07-16, 65 NRC 387 (2007)

LEGAL CITATIONS INDEX

STATUTES

- NRC is prohibited from using NEPA to impose additional effluent limitations on an applicant's wastewater discharges to surface waters; LBP-10-14, 72 NRC 136-37 (2010)
- the permissible reach of the NRC's NEPA obligations with respect to discharges to groundwater are not affected by this section; LBP-09-25, 70 NRC 890 (2009)
- when enacting this section, Congress specifically intended to deprive the NRC's predecessor agency (the Atomic Energy Commission) of authority over pollutant discharges; CLI-07-16, 65 NRC 377 (2007)
- Communications Act of 1934, 312(g), 47 U.S.C. § 312(g)
- the Federal Communications Commission may reinstate a broadcasting station license that has expired; CLI-10-6, 71 NRC 123 (2010)
- Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9622(i)(1)
- public notice and comment are required for administrative settlements; LBP-06-18, 63 NRC 837 n.16 (2006)
- Energy and Water Development and Related Agencies Appropriations Act, 2010, Pub. L. No. 111-85, 123 Stat. 2845, 2864-65 (2009)
- Congress did not repeal the Nuclear Waste Policy Act or declare that the Yucca Mountain site is inappropriate; LBP-10-11, 71 NRC 628 (2010)
- Energy and Water Development and Related Agencies Appropriations Act, 2010, Pub. L. No. 111-85, 123 Stat. 2845, 2865 (2009)
- in appropriating funds for the Blue Ribbon Commission, Congress instructed the Commission to consider all alternatives for nuclear waste disposal, necessarily including a geologic repository at Yucca Mountain; LBP-10-11, 71 NRC 628 n.69 (2010)
- Energy and Water Development Appropriations Act of 1993, Pub. L. No. 102-377, Title V, § 502, 106 Stat. 1342 (1992)
- NRC appropriations shall not be used to pay the expenses of, or otherwise compensate, parties intervening in regulatory or adjudicatory proceedings; LBP-09-1, 69 NRC 43 (2009)
- Energy Policy Act of 1992, 801(a), 42 U.S.C. § 10141 note
- the Environmental Protection Agency is responsible for promulgating standards for environmental protection, and NRC is tasked with promulgating the criteria it will apply in the licensing proceeding; LBP-09-6, 69 NRC 421 (2009)
- Energy Policy Act of 1992, 801(b)(1), 42 U.S.C. § 10141, 42 U.S.C. § 10141
- NRC must modify its technical requirements and criteria for the high-level waste repository as necessary to be consistent with final EPA standards; CLI-08-20, 68 NRC 277 (2008)
- Energy Policy Act of 1992, 801(b)(1), 42 U.S.C. § 10141 note
- NRC's criteria must not be inconsistent with the Environmental Protection Agency's environmental protection standards; LBP-09-6, 69 NRC 421 (2009)
- Energy Policy Act of 2005, 651(b)
- licensees of plants located where there is a permanent population in excess of 15,000,000 within a 50-mile radius of the power plant are required to have backup power for the emergency notification system, including the emergency siren warning system; DD-09-1, 69 NRC 506 (2009)
- requirements for the backup power supply for the public alerting system are discussed; DD-09-1, 69 NRC 506-07 (2009)
- Energy Reorganization Act, 201, 42 U.S.C. § 5841
- action of the Commission is determined by a majority vote of the members present; CLI-09-1, 69 NRC 1 n.1 (2009)
- Energy Reorganization Act, 202(3), 42 U.S.C. § 5842
- even though DOE is not a "person" subject to regulation under the Atomic Energy Act, Congress provided the NRC with the licensing and related regulatory authority that authorize it to review the Yucca Mountain application; CLI-09-14, 69 NRC 608 n.160 (2009)
- Environmental Conservation Law, 17-0101, 17-0301, 17-0303, 17-0809
- applicant does not have the right to decide the current and future uses of groundwater for the residents of a state; LBP-08-13, 68 NRC 145 (2008)
- Exec. Order No. 12898
- the essence of an environmental justice claim arising under NEPA in an NRC proceeding is disproportionately high and adverse human health and environmental effects on minority and

LEGAL CITATIONS INDEX

STATUTES

- low-income populations that may be different from the impacts on the general population; LBP-06-10, 63 NRC 364 (2006)
- Exec. Order No. 13084, 63 Fed. Reg. 27,655 (May 14, 1998)
- “Indian tribe” is defined as an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994; LBP-09-13, 70 NRC 185 (2009)
- Federal Food, Drug, and Cosmetics Act, 21 U.S.C. §§ 321, 347(7), 348, 409
- the Commission seeks the parties’ views on whether in light of NEPA’s rule of reason, FDA’s comprehensive review and regulation of the safety of irradiated foods, including NEPA reviews, excuse NRC from considering food safety in its own NEPA reviews; CLI-08-4, 67 NRC 173 n.9 (2008)
- Federal Food, Drug, and Cosmetic Act, 201(s), 21 U.S.C. § 321(s)
- sources of irradiation, including radioactive isotopes, particle accelerators, and X-ray machines, intended for use in processing food are included in the term “food additives”; CLI-08-16, 68 NRC 223 (2008)
- Federal Food, Drug, and Cosmetic Act, 402(a)(7), 21 U.S.C. § 342(a)(7)
- any food that has been intentionally subjected to irradiation is considered adulterated and unsafe, and therefore cannot be marketed legally, unless the FDA Secretary has issued a regulation finding the specific use of the food irradiation safe, and prescribing the conditions under which the irradiation source (the food additive) may be safely used; CLI-08-16, 68 NRC 223 (2008)
- Federal Food, Drug, and Cosmetic Act, 409(c)(3)(A), 21 U.S.C. § 348(c)(3)(A)
- for FDA to determine that a food additive is safe, it must find, after a fair evaluation of the data, that there is a reasonable certainty in the minds of competent scientists that the substance is not harmful under all intended conditions of use; CLI-08-16, 68 NRC 224 (2008)
- no food additive shall be deemed to be safe if it is found to induce cancer when ingested by man or animal, or if it is found, after tests that are appropriate for the evaluation of the safety of food additives, to induce cancer in man or animal; CLI-08-16, 68 NRC 224 (2008)
- Federal Food, Drug, and Cosmetic Act, 409(c)(5), 21 U.S.C. § 348(c)(5)
- to determine that a food additive is safe, FDA must consider the probable consumption of the additive and of any substance formed in or on food because of its use and the cumulative effect of the additive in the diet, taking into account any chemically or pharmacologically related substance or substances in the diet; CLI-08-16, 68 NRC 224 (2008)
- Federal Records Act, 44 U.S.C. §§ 2101-2118, 2901-2909, 3101-3107, 3301-3324
- this series of statutes governs the creation, management, and disposal of records by federal agencies; CLI-08-23, 68 NRC 482 (2008)
- Federal Records Act, 44 U.S.C. § 3301
- agency “records” are defined; CLI-08-23, 68 NRC 482 (2008)
- Federal Register Act, 44 U.S.C. § 1508
- agency notices must provide at least 15 days before the opportunity for a hearing is forfeited unless a shorter period is reasonable; LBP-09-20, 70 NRC 570 (2009)
- Federal Water Pollution Control Act, 402, 33 U.S.C. § 1251 *et seq.*
- National Pollutant Discharge Elimination System permits are issued by the U.S. Environmental Protection Agency or by authorized states; LBP-06-20, 64 NRC 175 n.54 (2006)
- Federal Water Pollution Control Act, 511(c)(2), 33 U.S.C. § 1371(c)(2)
- nothing in NEPA authorizes any federal agency to review any effluent limitation or other requirement established pursuant to the Clean Water Act or impose any effluent limitations other than those established pursuant to FWPCA; LBP-06-20, 64 NRC 216 (2006)
- NRC is not relieved of its basic NEPA duty to do an environmental impact statement covering all environmental effects, including water quality, but NRC cannot second-guess or impose its own effluent limitations, or review other water quality requirements that EPA or the state may impose under the statute; LBP-06-20, 64 NRC 180 (2006)
- Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. § 479(a)
- “Indian tribe” is defined as an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe; LBP-09-13, 70 NRC 185 (2009)

LEGAL CITATIONS INDEX
STATUTES

- the Bureau of Indian Affairs is required to publish its list of federally recognized Indian tribes in the *Federal Register*; LBP-09-13, 70 NRC 185 (2009)
- Freedom of information Act, 5 U.S.C. § 552(b)
information underlying an environmental impact statement may be exempt from public disclosure pursuant to one of the nine exemptions; LBP-08-7, 67 NRC 370 (2008)
intrinsic to analyses of the FOIA exceptions is an assessment of harm based on public disclosure; LBP-06-25, 64 NRC 386 (2006)
- Freedom of Information Act, 5 U.S.C. § 552(b)(1)
classified information is exempt from disclosure; CLI-08-1, 67 NRC 15 (2008); LBP-10-2, 71 NRC 198 n.20 198 n.20 (2010)
- Freedom of Information Act, 5 U.S.C. § 552(b)(2)
Exemption 2 authorizes an agency to withhold matters that are related solely to the internal personnel rules and practices of an agency; LBP-08-7, 67 NRC 375 n.11 (2008)
- Freedom of Information Act, 5 U.S.C. § 552(b)(3)
Exemption 3 supports withholding safeguards material; CLI-08-1, 67 NRC 15 (2008)
the duty to make all documents available does not apply to records specifically exempted from disclosure by statute; LBP-10-2, 71 NRC 198 n.20 (2010)
- Freedom of Information Act, 5 U.S.C. § 552(b)(5)
intra-agency memoranda developed during the decisionmaking process are protected under the deliberative process privilege; CLI-08-23, 68 NRC 483 n.103 (2008)
the exemption of interagency or intra-agency memoranda or letters that would not be available by law to a party from disclosure is meant to encompass the common-law discovery exemptions for attorney work product and government deliberative process; LBP-06-25, 64 NRC 380 (2006)
- Freedom of Information Act, 5 U.S.C. § 552(b)(7)(C)
privacy interests are defined using FOIA's language but their weight is tempered by the capability in the discovery process of making limited disclosure to a litigant under a protective order, as contrasted with making the FOIA-required unconditional release to a member of the public; LBP-06-25, 64 NRC 384 (2006)
- Freedom of Information Act, 5 U.S.C. § 552(b)(9)
even if a document contains information that is exempt from disclosure, FOIA mandates that any reasonably segregable portion of the record shall be provided to any person requesting such record after deletion of the portions that are exempt; LBP-10-2, 71 NRC 198 (2010)
- Low-Level Radioactive Waste Policy Act of 1985, 42 U.S.C. § 2021b(7)
"disposal" is defined generally as the permanent isolation of low-level radioactive waste pursuant to the requirements established by the Nuclear Regulatory Commission under applicable laws; LBP-07-5, 65 NRC 362 (2007)
- Low-Level Radioactive Waste Policy Act of 1985, 42 U.S.C. § 2021c(a)(1)
the permanent isolation of low-level radioactive waste is not broadly required, but each state shall be responsible for providing, either by itself or in cooperation with other states, for the disposal of low-level radioactive waste generated within the state; LBP-07-5, 65 NRC 362 (2007)
- Low-Level Radioactive Waste Policy Amendments Act of 1985, 42 U.S.C. § 2021c(b)(1)(D)
greater-than-Class-C waste is the responsibility of the federal government; CLI-10-2, 71 NRC 47 (2010)
partial closure of a low-level waste disposal facility does not directly affect the disposal of Greater-Than-Class-C radioactive waste because disposal of that type of waste is the responsibility of the federal government; LBP-09-4, 69 NRC 221 (2009)
- Low-Level Radioactive Waste Policy Amendments Act of 1985, 4(a)(1), 42 U.S.C. § 2021d(a)(1)
states' responsibilities to dispose of low-level radioactive waste can be best handled on a regional basis; CLI-08-24, 68 NRC 494 (2008)
- Low-Level Radioactive Waste Policy Amendments Act of 1985, 4(a)(2), 42 U.S.C. § 2021d(a)(2)
creation of interstate compacts is authorized as may be necessary to provide for the establishment and operation of regional disposal facilities for low-level radioactive waste; CLI-08-24, 68 NRC 494 (2008)

LEGAL CITATIONS INDEX

STATUTES

- Low-Level Radioactive Waste Policy Amendments Act of 1985, 4(c), 42 U.S.C. § 2021d(c)
upon authorized by Congress, interstate compacts are allowed to restrict the use of regional disposal facilities under the compact to the disposal of low-level radioactive waste generated within the compact region; CLI-08-24, 68 NRC 494 (2008)
- N.J. Stat. Ann. § 26:2D-9(k)
upon the effective date of the agreement between NRC and the state, all active NRC licenses issued to facilities in the state will be recognized as state licenses; CLI-10-8, 71 NRC 162 (2010)
- N.M. Stat. § 69-36-3.H
New Mexico's laws address the process of obtaining useful minerals from the earth, with the exception of the extraction, processing, or disposal of commodities, byproduct materials or wastes, or other activities regulated by the NRC; CLI-06-14, 63 NRC 513 (2006)
- N.Y. Comp. Codes R. & Regs. tit. 6, Parts 701, 703
applicant does not have the right to decide the current and future uses of groundwater for the residents of New York State; LBP-08-13, 68 NRC 145 (2008)
- National Environmental Policy Act, 42 U.S.C. §§ 4321 et seq.
a license applicant is required to describe and the Staff is required to consider the potential environmental effects of the proposed agency action; LBP-06-8, 63 NRC 258 (2006)
NRC is not required to consider the environmental consequences of hypothetical terrorist attacks on NRC-licensed facilities; CLI-07-10, 65 NRC 145 (2007)
NRC is required to take a hard look at the potential environmental impacts of a license renewal; CLI-07-16, 65 NRC 376 (2007)
the potential impacts of terrorism fall outside the scope of a license renewal proceeding and are not appropriate subjects for analysis; CLI-07-9, 65 NRC 140-41 (2007)
- National Environmental Policy Act, 42 U.S.C. §§ 4321-4370f
this statute ensures that an agency considers every significant aspect of the environmental impact of a proposed action and informs the public that it has, in fact, considered environmental concerns in its decisionmaking process; LBP-06-19, 64 NRC 62 (2006)
- National Environmental Policy Act, 101(a), 42 U.S.C. § 4331(a)
the federal government's policy is to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans; LBP-07-9, 65 NRC 558 (2007)
- National Environmental Policy Act, 101(b), 42 U.S.C. § 4331(b)
federal agencies are required to consider the likely environmental impacts of the preferred course of action as well as reasonable alternatives; LBP-10-24, 72 NRC 729 n.16 (2010)
- National Environmental Policy Act, 102, 42 U.S.C. § 4332
every federal agency has the duty to examine to the fullest extent possible the environmental consequences of any proposed federal action that might significantly affect the quality of the human environment; LBP-09-6, 69 NRC 403 (2009)
federal agencies must include in every recommendation or report on major federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on the environmental impact of the proposed action; LBP-06-23, 64 NRC 277 (2006)
Staff's environmental impact statement for a combined license must discuss the reasonably foreseeable environmental impacts of the proposed project; CLI-10-2, 71 NRC 46 (2010)
when an agency proposes a major federal action significantly affecting the quality of the human environment, preparation of an environmental impact statement is required; LBP-10-24, 72 NRC 729 n.16 (2010)
- National Environmental Policy Act, 102(1), 42 U.S.C. § 4332(1)
to the fullest extent possible all agencies of the federal government shall comply with the procedures in NEPA § 102(2); LBP-07-9, 65 NRC 603 (2007)
- National Environmental Policy Act, 102(2)
a license renewal application must provide an analysis of severe accident mitigation alternatives; LBP-06-7, 63 NRC 199 (2006)
- National Environmental Policy Act, 102(2)(A), 42 U.S.C. § 4332(2)(A)
all federal agencies are required to use a systematic, interdisciplinary approach that will ensure the integrated use of the natural and social sciences and the environmental design arts in planning and in

LEGAL CITATIONS INDEX

STATUTES

- decisionmaking that may have an impact on the human environment; LBP-06-17, 63 NRC 826 n.55 (2006); LBP-06-28, 64 NRC 485 (2006); LBP-07-1, 65 NRC 101 (2007); LBP-07-6, 65 NRC 486 (2007); LBP-07-9, 65 NRC 604 (2007)
- National Environmental Policy Act, 102(2)(A), (C), & (E), 42 U.S.C. § 4332(2)(A), (C), & (E)
- all federal agencies are, to the fullest extent possible, to use a systematic and interdisciplinary approach in considering environmental issues and, before taking any major federal action significantly affecting the quality of the human environment, to generate a detailed environmental impact statement; LBP-07-9, 65 NRC 558, 602, 604-14 (2007)
 - in a mandatory proceeding, the licensing board acts as the initial decisionmaker, studying the FEIS, evaluating it, asking pertinent questions, and deciding whether the license should be issued, denied, or appropriately conditioned; LBP-07-9, 65 NRC 602-03 (2007)
- National Environmental Policy Act, 102(2)(C), 42 U.S.C. § 4332(2)(C)
- a more detailed environmental impact statement is not required unless the contemplated action is a major federal action significantly affecting the quality of the human environment; CLI-08-26, 68 NRC 514 (2008)
 - agencies are required to consider measures to mitigate environmental impacts; LBP-09-10, 70 NRC 107-08 (2009); LBP-09-19, 70 NRC 535-36 (2009)
 - agencies must consult with and obtain the comments of any federal agency that has jurisdiction by law or special expertise with respect to any environmental impact involved; LBP-06-17, 63 NRC 826 (2006); LBP-06-28, 64 NRC 486 (2006)
 - an environmental impact statement must address alternatives to the proposed action; LBP-09-19, 70 NRC 487 (2009)
 - an environmental impact statement must include a detailed statement on the environmental impact of the proposed action, any adverse environmental effects that cannot be avoided if the proposal is implemented, and alternatives to the proposed action; LBP-08-7, 67 NRC 365 n.1 (2008)
 - an environmental impact statement shall be made available to the public as provided by FOIA; LBP-08-7, 67 NRC 370 (2008)
 - before taking any action significantly affecting the quality of the human environment, a federal agency must prepare a detailed statement, which must be made available to the public, discussing the environmental impact of the proposed action and possible alternatives; LBP-06-19, 64 NRC 62, 72 (2006)
 - each agency must prepare an environmental impact statement for any major federal action significantly affecting the quality of the human environment; LBP-07-4, 65 NRC 309 (2007); LBP-07-9, 65 NRC 603 (2007); LBP-08-7, 67 NRC 365 n.1 (2008)
 - in every recommendation or report on major federal actions significantly affecting the quality of the human environment, federal agencies must include a detailed statement by the responsible official on the environmental impact of the proposed action; CLI-08-26, 68 NRC 531 (2008); LBP-07-11, 66 NRC 62 (2007); LBP-08-6, 67 NRC 321 (2008)
 - in its environmental impact statement, a federal agency must address the environmental impact of the proposed action, any adverse environmental effects that cannot be avoided, alternatives to the proposed action, the relationship between local short-term uses of the human environment and the maintenance and enhancement of long-term productivity, and any irreversible and irretrievable commitments of resources; CLI-10-18, 72 NRC 74 (2010); LBP-06-17, 63 NRC 826 (2006); LBP-06-28, 64 NRC 485 (2006)
- NRC may withhold from public disclosure any information that is exempt under the Freedom of Information Act; CLI-08-26, 68 NRC 523 (2008)
- NRC must consult with and obtain comments from other federal, state, and local agencies and from the public prior to making detailed statements on environmental impacts; LBP-07-1, 65 NRC 103 (2007)
- preparation of an environmental impact statement is required for all major federal actions significantly affecting the quality of the human environment; LBP-06-27, 64 NRC 456 (2006)
- primary obligation to satisfy the requirements of NEPA rests on the agency; CLI-10-18, 72 NRC 82 (2010)
- the link between NEPA and FOIA is spelled out; CLI-08-1, 67 NRC 15 (2008)

LEGAL CITATIONS INDEX

STATUTES

- National Environmental Policy Act, 102(2)(C)(i), 42 U.S.C. § 4332(2)(C)(i)
an environmental impact statement must provide a detailed statement concerning the environmental impact of the proposed action, any adverse environmental effects that cannot be avoided should the proposal be implemented, and any irreversible and irretrievable commitments of resources that would be involved in the proposed action should it be implemented; LBP-09-16, 70 NRC 258 (2009)
- National Environmental Policy Act, 102(2)(C)(i)-(v), 42 U.S.C. § 4332(2)(C)(i)-(v)
an agency must include a detailed statement on the environmental impact of the proposed action, any unavoidable adverse environmental effects, alternatives to the proposed action, the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and irreversible and irretrievable commitments of resources that would be involved in the proposed action should it be implemented; LBP-07-1, 65 NRC 102 (2007); LBP-07-6, 65 NRC 487 (2007)
the environmental report is required to address a list of environmental considerations that correspond to the environmental considerations that NEPA requires the agency to address in the environmental impact statement; LBP-09-16, 70 NRC 262 n.109 (2009)
- National Environmental Policy Act, 102(2)(C)(ii), 42 U.S.C. § 4332(2)(C)(ii)
alternatives to mitigate severe accidents must be considered for all plants that have not previously considered such alternatives; LBP-07-11, 66 NRC 64 n.88 (2007)
an environmental impact statement must provide a detailed statement concerning the environmental impact of the proposed action, any adverse environmental effects that cannot be avoided should the proposal be implemented, and any irreversible and irretrievable commitments of resources that would be involved in the proposed action should it be implemented; LBP-06-23, 64 NRC 279 n.78 (2006); LBP-09-16, 70 NRC 258 (2009)
applicant's environmental report must disclose any adverse environmental effects that cannot be avoided should the proposal be implemented; LBP-09-4, 69 NRC 229 (2009)
- National Environmental Policy Act, 102(2)(C)(iii), 42 U.S.C. § 4332(2)(C)(iii)
agencies must provide a detailed statement of reasonable alternatives to a proposed action; CLI-07-27, 66 NRC 222 (2007); LBP-09-7, 69 NRC 633 (2009)
although applicant's goals are given substantial weight, NEPA does not allow the applicant to define its goals so narrowly as to unreasonably circumscribe the range of alternatives that must be considered under this section; LBP-09-17, 70 NRC 379 (2009)
an agency must prepare a detailed statement on any adverse environmental effects that cannot be avoided should the proposal be implemented; LBP-07-4, 65 NRC 312 n.139 (2007)
an environmental impact statement must incorporate a hard look at alternatives to a proposed action; LBP-10-10, 71 NRC 580 (2010)
every federal agency for every major federal action significantly affecting the quality of the human environment must prepare a detailed statement on alternatives to the proposed action; LBP-07-1, 65 NRC 73 n.199 (2007); LBP-07-9, 65 NRC 587, 603, 606-13 (2007); LBP-10-24, 72 NRC 755 (2010)
NEPA does not require federal agencies to decide whether the applicant's environmental report is adequate, but it does require federal agencies to examine all reasonable alternatives; LBP-07-9, 65 NRC 635 (2007)
the method prescribed by NUREG-1555 for generating alternative sites is a reasonable and fair method for conducting the alternatives analysis; LBP-07-9, 65 NRC 612 (2007)
the requirement to discuss alternatives in the environmental report parallels NEPA's requirement that an environmental impact statement provide a detailed statement of reasonable alternatives to a proposed action; LBP-09-10, 70 NRC 126 (2009); LBP-09-16, 70 NRC 298 (2009)
- National Environmental Policy Act, 102(2)(C)(iv), 42 U.S.C. § 4332(2)(C)(iv)
the discussion of whether the FEIS adequately covers the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity should be performed if and when the early site permit holder applies for a construction permit or combined operating license; LBP-07-9, 65 NRC 613 (2007)
- National Environmental Policy Act, 102(2)(C)(v), 42 U.S.C. § 4332(2)(C)(v)
an environmental impact statement must provide a detailed statement concerning the environmental impact of the proposed action, any adverse environmental effects that cannot be avoided should the proposal

LEGAL CITATIONS INDEX

STATUTES

- be implemented, and any irreversible and irretrievable commitments of resources that would be involved in the proposed action should it be implemented; LBP-09-16, 70 NRC 258 (2009)
- the granting of an early site permit would not, in itself, authorize any activity that would have any irreversible or irretrievable commitments; LBP-07-9, 65 NRC 613-14 (2007)
- National Environmental Policy Act, 102(2)(E), 42 U.S.C. § 4332(2)(E)
- although the applicant's goals are given substantial weight, NEPA does not allow the applicant to define its goals so narrowly as to unreasonably circumscribe the range of alternatives that must be considered under this section; LBP-09-17, 70 NRC 379 (2009)
- although the discussion of alternatives in the environmental assessment need only be brief, it must be sufficient to fully comply with the requirement to study, develop, and describe appropriate alternatives; CLI-10-18, 72 NRC 70 (2010)
- an agency is required to consider alternatives that are appropriate alternatives to recommended courses of action; LBP-09-2, 69 NRC 108 n.84 (2009)
- as long as all reasonable alternatives have been considered and an appropriate explanation is provided as to why an alternative was eliminated, the regulatory requirement is satisfied; CLI-10-18, 72 NRC 70 (2010)
- federal agencies are required to study, develop, and describe appropriate alternatives to recommend courses of action in any proposal that involves unresolved conflicts concerning alternative uses of available resources; CLI-10-18, 72 NRC 75 (2010); LBP-06-17, 63 NRC 827 (2006); LBP-06-28, 64 NRC 486 (2006); LBP-07-1, 65 NRC 100, 103 (2007); LBP-07-6, 65 NRC 484, 489 (2007); LBP-09-10, 70 NRC 126 (2009)
- the alternatives provision of this section applies both when an agency prepares an environmental impact statement and when it prepares an environmental assessment; CLI-10-18, 72 NRC 75 (2010)
- the range of alternatives that must be considered need not extend beyond those reasonably related to the purposes of the project and a rule of reason necessarily informs that choice; CLI-10-18, 72 NRC 70 (2010)
- National Historic Preservation Act, 16 U.S.C. § 470
- there is no legal requirement that the applicant consult with state or tribal authorities; LBP-08-6, 67 NRC 326 (2008)
- National Historic Preservation Act, 16 U.S.C. § 470 *et seq.*
- Indian tribes have an interest in artifacts related to their heritage; CLI-09-9, 69 NRC 338 (2009)
- notification and consultation procedures that federal agencies must follow prior to a federal undertaking to consider the undertaking's effect on historic properties are provided; LBP-08-24, 68 NRC 713 n.105 (2008)
- Staff must consult with the Tribal Historic Preservation Officer before it approves a licensing action; CLI-09-9, 69 NRC 348 (2009)
- National Historic Preservation Act, 16 U.S.C. § 470 to 470x-6
- federal agencies must follow notification and consultation procedures prior to a federal undertaking to consider the undertaking's effect on historic properties; LBP-10-16, 72 NRC 392 n.111 (2010)
- National Historic Preservation Act, 16 U.S.C. § 470(b)(4)
- the nation's historical heritage is in the public interest so that its vital legacy of cultural, educational, aesthetic, inspirational, economic, and energy benefits will be maintained and enriched for future generations of Americans; LBP-10-16, 72 NRC 392 (2010)
- National Historic Preservation Act, 16 U.S.C. § 470(a) (1990)
- the consultation duty imposed on the Staff was added in 1992; CLI-09-9, 69 NRC 349 (2009)
- National Historic Preservation Act, 16 U.S.C. § 470(b)(4)
- the nation's historical heritage is in the public interest so that its vital legacy of cultural, educational, aesthetic, inspirational, economic, and energy benefits will be maintained and enriched for future generations of Americans; LBP-08-6, 67 NRC 328 (2008); LBP-08-24, 68 NRC 713 (2008)

LEGAL CITATIONS INDEX

STATUTES

- National Historic Preservation Act, 106, 16 U.S.C. 470a(a)
a federal agency, prior to the issuance of any license, must take into account the effect of the federal action on any area eligible for inclusion in the National Register of Historic Places; LBP-08-6, 67 NRC 328 (2008)
- National Historic Preservation Act, 106, 16 U.S.C. § 470f
a federal agency must consult with a tribe concerning a federal action that might affect sites of cultural interest to the tribe; CLI-09-9, 69 NRC 338 (2009)
a federal agency, prior to the issuance of any license, is required to take into account the effect of the federal action on any area eligible for inclusion in the National Register of Historic Places; CLI-06-9, 63 NRC 437 (2006); LBP-08-6, 67 NRC 328 (2008); LBP-08-24, 68 NRC 714 (2008); LBP-10-16, 72 NRC 392 (2010)
an agency official must complete the review process prior to the approval of the expenditure of any federal funds on the undertaking or prior to the issuance of any license or permit; CLI-06-11, 63 NRC 488 n.25 (2006)
Indian tribes have a procedural interest in identifying, evaluating, and establishing protections for historic and cultural resources; LBP-10-16, 72 NRC 391, 393 (2010)
no nomination or formal determination of eligibility is necessary to trigger a review; CLI-06-9, 63 NRC 441 (2006)
NRC Staff must conduct a general review, develop a plan for completing NHPA review of the sites on an incremental or phased basis, and publish its evaluation and its plans for completing its NHPA review in its final environmental impact statement; CLI-06-11, 63 NRC 486 (2006)
- Native American Graves Protection and Repatriation Act, 25 U.S.C. § 3001 *et seq.*
Indian tribes have an interest in artifacts related to their heritage; CLI-09-9, 69 NRC 338 (2009)
notification and inventory procedures are provided so that Indian cultural objects and burial remains found on federal lands will be repatriated to the appropriate tribe; LBP-08-24, 68 NRC 713 n.105 (2008)
- Native American Graves Protection and Repatriation Act, 25 U.S.C. §§ 3001-3013 (1990)
notification and inventory procedures are required so that Indian cultural objects and burial remains found on federal lands will be repatriated to the appropriate tribe; LBP-10-16, 72 NRC 392 n.111 (2010)
- New Mexico Mining Act, N.M. Stat. § 69-36-1 *et seq.* (1978)
New Mexico regulates conventional uranium mining within the state; CLI-06-14, 63 NRC 513 (2006)
- Northwest Interstate Compact on Low-Level Radioactive Waste Management, art. IV(2)
no facility located in any party state may accept low-level waste generated outside the region comprised of the party states, except under a specific procedure requiring approval by the member states; CLI-08-24, 68 NRC 494 (2008)
- Nuclear Waste Policy Act of 1982, 42 U.S.C. §§ 10101-10270 (2009)
any affected unit of local government need not address standing in the high-level waste proceeding, but rather shall be considered a party provided that it files at least one admissible contention in accordance with 10 C.F.R. 2.309(f); LBP-09-6, 69 NRC 381 (2009)
the Secretary of the Department of Energy does not have the discretion to substitute his policy for the one established by Congress that mandates progress toward a merits decision by NRC on the construction permit; LBP-10-11, 71 NRC 617 (2010)
- Nuclear Waste Policy Act of 1982, 2, 42 U.S.C. §§ 10101
any affected unit of local government need not address standing in the high-level waste proceeding, but rather shall be considered a party provided that it files at least one admissible contention in accordance with 10 C.F.R. 2.309(f); LBP-09-6, 69 NRC 381 (2009)
- Nuclear Waste Policy Act of 1982, 2(18), 42 U.S.C. § 10101(18)
“repository” is defined as any system licensed by the Commission that is intended to be used for, or may be used, for the permanent deep geologic disposal of high-level radioactive waste and spent nuclear fuel; LBP-09-6, 69 NRC 478 (2009)
- Nuclear Waste Policy Act of 1982, 2(31), 42 U.S.C. § 10101(31)
the definition of party implies that local governments enjoy standing as of right; LBP-08-10, 67 NRC 458 (2008)

LEGAL CITATIONS INDEX

STATUTES

- Nuclear Waste Policy Act of 1982, 111, 42 U.S.C. § 10131(a)(3)
federal efforts during the past 30 years to devise a permanent solution to the problems of civilian radioactive waste disposal have not been adequate; LBP-10-11, 71 NRC 618-19 (2010)
- Nuclear Waste Policy Act of 1982, 42 U.S.C. § 10131(b)(1)
Congress was to establish a schedule for the siting, construction, and operation of repositories that will provide reasonable assurance of safe disposal of high-level radioactive waste; LBP-10-11, 71 NRC 619 (2010)
- Nuclear Waste Policy Act of 1982, 42 U.S.C. § 10131(b)(2)
Congress enacted this law for the purpose of establishing a definite federal policy for the disposal of high-level radioactive waste and spent nuclear fuel; LBP-10-11, 71 NRC 618 (2010)
- Nuclear Waste Policy Act of 1982, 42 U.S.C. §§ 10132-10135
a detailed, specific procedure for site selection and review by the Secretary of Energy, the President, and the Congress, followed by submission of the application for a construction permit, review, and final decision thereon by the NRC is set out; LBP-10-11, 71 NRC 619 (2010)
- Nuclear Waste Policy Act of 1982, 113, 42 U.S.C. § 10133 (2006)
this section addresses site characterization, not the filing of the license application; LBP-08-5, 67 NRC 216 n.44 (2008)
- Nuclear Waste Policy Act of 1982, 113(c)(3), 42 U.S.C. § 10133(c)(3) (2006)
DOE is prohibited from filing a license application if it determines the site is unsuitable for a repository; LBP-08-5, 67 NRC 216 n.44 (2008)
DOE's statutory public safety obligations regarding the Yucca Mountain site are described; CLI-08-11, 67 NRC 381 (2008)
during site characterization, DOE may determine that the Yucca Mountain site is unsuitable for development as a repository; LBP-10-11, 71 NRC 620 (2010)
- Nuclear Waste Policy Act of 1982, 113(c)(3)(F), 42 U.S.C. § 10133(c)(3)(F)
steps that DOE must undertake in the event that it determines the Yucca Mountain site to be unsuitable for development as a repository are provided; LBP-10-11, 71 NRC 620 (2010)
- Nuclear Waste Policy Act of 1982, 114(a)(1)(D), 42 U.S.C. § 10134(a)(1)(D)
DOE is precluded from the need to consider alternatives to geologic disposal, or alternative sites to the Yucca Mountain site; LBP-09-6, 69 NRC 478 (2009)
- Nuclear Waste Policy Act of 1982, 114(b), 42 U.S.C. § 10134(b)
DOE is required to submit an application to construct a high-level-waste geologic repository at Yucca Mountain; LBP-10-11, 71 NRC 620 (2010)
DOE was required to submit an application for a construction authorization to the NRC, irrespective of DOE's National Environmental Policy Act analysis; LBP-09-6, 69 NRC 395 (2009)
withdrawal of an application after the issuance of a notice of hearing shall be on such terms as the presiding officer may prescribe; CLI-10-13, 71 NRC 388-89 (2010)
- Nuclear Waste Policy Act of 1982, 114(b)(2), 42 U.S.C. § 10134(b)(2) (2006)
the site characterization process must be completed before the site approval process begins, and once the site approval process is completed, DOE must submit its license application within 90 days; LBP-08-5, 67 NRC 216 n.44 (2008)
- Nuclear Waste Policy Act of 1982, 114(d), 42 U.S.C. § 10134(d) (2000)
because the significance of the current capacity limitation for the deep waste repository is unclear, a contention is admitted as a legal issue; LBP-09-6, 69 NRC 479 (2009)
submission of the application to construct a high-level-waste geologic repository at Yucca Mountain triggered a duty on NRC's part to consider and to render a decision on the application; LBP-10-11, 71 NRC 618, 620, 625 (2010)
the Commission decision approving the first construction authorization for the high-level waste repository application shall prohibit the emplacement in the first repository of a quantity of spent fuel containing in excess of 70,000 metric tons of heavy metal or a quantity of solidified high-level radioactive waste resulting from the reprocessing of such a quantity of spent fuel until such time as a second repository is in operation; CLI-09-14, 69 NRC 592 (2009)
the Commission may extend its deadline for completing its examination of DOE's application for construction of a high-level waste repository by an additional year; CLI-06-5, 63 NRC 146 n.8 (2006)

LEGAL CITATIONS INDEX

STATUTES

- to meet its statutory obligation, the Commission must complete its examination of DOE's application for construction of a high-level waste repository within 3 years of its filing; CLI-06-5, 63 NRC 146 (2006)
- when Congress designated DOE as the applicant for the high-level waste repository, it envisioned a situation where, after the Commission's review, the Commission could find that DOE, although the designated applicant, would not be the designated licensee; LBP-09-6, 69 NRC 464 (2009)
- withdrawal of an application after the issuance of a notice of hearing shall be on such terms as the presiding officer may prescribe; CLI-10-13, 71 NRC 388-89 (2010)
- Nuclear Waste Policy Act of 1982, 114(f)(2), 42 U.S.C. § 10134(f)(4)
- DOE need not consider alternatives to isolation in a repository; LBP-09-6, 69 NRC 478 (2009)
- Nuclear Waste Policy Act of 1982, 114(f)(4), 42 U.S.C. § 10134(f)(4)
- any environmental impact statement prepared in connection with a repository proposed to be constructed by DOE shall, to the extent practicable, be adopted by the NRC in connection with the issuance by the NRC of a construction authorization and license for such repository; LBP-09-6, 69 NRC 392 (2009)
- NRC must undertake its own assessment of DOE's environmental documents to determine whether it is practicable to adopt them; LBP-09-6, 69 NRC 405 (2009)
- to the extent any environmental impact statement prepared in connection with a repository is adopted by NRC, such adoption shall be deemed to also satisfy the responsibilities of NRC under NEPA and no further consideration shall be required, except that nothing in this subsection shall affect any independent responsibilities of the NRC to protect public health under the AEA; LBP-09-6, 69 NRC 392 (2009)
- Nuclear Waste Policy Act of 1982, 114(f)(5), 42 U.S.C. § 10134(f)(5)
- nothing in this statute detracts from the Commission's other applicable licensing requirements, which would include requirements pertaining to the qualifications of the applicant under the Atomic Energy Act; LBP-09-6, 69 NRC 464 (2009)
- this statute does not diminish any part of the Commission's authority to review license applications and issue licenses under the Atomic Energy Act; LBP-09-6, 69 NRC 464 (2009)
- Nuclear Waste Policy Act of 1982, 114(f)(6), 42 U.S.C. § 10134(f)(6)
- DOE was directed to limit its site selection efforts to Yucca Mountain and to provide for an orderly phase-out of site-specific activities at all candidate sites other than the Yucca Mountain site; LBP-10-11, 71 NRC 619 (2010)
- DOE's environmental impact statement is not to consider the need for the repository, the time of initial availability of a repository, alternative sites to the Yucca Mountain site, or nongologic alternatives to such site; LBP-10-11, 71 NRC 622 (2010)
- Nuclear Waste Policy Act of 1982, 121, 42 U.S.C. § 10141
- a challenge to the pending EPA proposed rule setting standards for offsite releases from radioactive materials that would be stored in the proposed Yucca Mountain high-level waste geologic repository is inadmissible; LBP-08-16, 68 NRC 422 (2008)
- Nuclear Waste Policy Act of 1982, 121(a), (b)(1)(A), 42 U.S.C. § 10141(a), (b)(1)(A)
- EPA is responsible for promulgating standards for environmental protection, and NRC is tasked with promulgating the criteria it will apply in the licensing proceeding; LBP-09-6, 69 NRC 421 (2009)
- Nuclear Waste Policy Act of 1982, 121(b)(1)(B), 42 U.S.C. § 10141(b)(1)(B) (2009)
- no requirement for a quantitative evaluation of an individual barrier's capabilities appears in the statutory language; LBP-10-22, 72 NRC 680 (2010)
- NRC is given flexibility in determining how best to provide for the use of a system of multiple barriers in the design of the repository; LBP-10-22, 72 NRC 681 (2010)
- NRC's licensing regulations must provide for the use of a system of multiple barriers in the design of the repository; LBP-10-22, 72 NRC 680 (2010)
- Nuclear Waste Policy Act of 1982, 121(b)(1)(C), 42 U.S.C. § 10141(b)(1)(C)
- NRC's criteria must not be inconsistent with the Environmental Protection Agency's environmental protection standards; LBP-09-6, 69 NRC 421 (2009)
- Nuclear Waste Policy Act of 1982, 42 U.S.C. § 10154
- Subpart K implements the totally new procedure established for adjudicating spent fuel storage controversies expeditiously; CLI-08-26, 68 NRC 513 (2008)

LEGAL CITATIONS INDEX

STATUTES

- Nuclear Waste Policy Act of 1982, 42 U.S.C. §§ 10172(a)
DOE was directed to limit its site selection efforts to Yucca Mountain and to provide for an orderly phase-out of site specific activities at all candidate sites other than the Yucca Mountain site; LBP-10-11, 71 NRC 619 (2010)
- Nuclear Waste Policy Act of 1982, 42 U.S.C. § 10172a(a)
DOE is prohibited from characterizing a second repository site unless Congress has specifically authorized and appropriated funds for such activities; LBP-10-11, 71 NRC 620-21 n.30 (2010)
- Nuclear Waste Policy Act of 1982, 218, 42 U.S.C. § 10198
development of dry cask storage and temporary storage facilities are encouraged; CLI-06-3, 63 NRC 31 (2005)
- Nuclear Waste Policy Act of 1982, 302(b)(1)(B), 42 U.S.C. § 10222(b)(1)(B)
NRC is authorized to predicate a reactor license on the licensee's first entering a waste disposal contract with DOE; CLI-06-3, 63 NRC 30 (2005)
- Price-Anderson Act, 42 U.S.C. § 2210(d)(2)(B)
the limit of liability for which DOE will indemnify a uranium enrichment facility licensee against claims arising from nuclear incidents is in excess of the liability insurance required under NRC regulations; LBP-07-6, 65 NRC 463 n.157 (2007)
- Pub. L. No. 97-88, Title V, § 502, 95 Stat. 1148 (1981)
funding to intervenors is proscribed; LBP-09-1, 69 NRC 43 (2009)
- Pub. L. No. 102-377, Title V, § 502, 106 Stat. 1342 (Oct. 2, 1992), 5 U.S.C. § 504 note
NRC is prohibited from paying the expenses of or otherwise compensating intervening in its proceedings; CLI-09-4, 69 NRC 82 (2009)
- Solar, Wind, Waste, and Geothermal Power Production Incentives Act of 1990, Pub. L. No. 101-575, § 5, 104 Stat. 2834, 2835-36 (codified as amended at 42 U.S.C. § 2243)
a materials license hearing will be conducted for a fuel enrichment facility according to the rules of practice in 10 C.F.R. Part 2, Subparts A, C, G, and to the extent that classified information becomes involved, Subpart I; CLI-09-15, 70 NRC 7 (2009)
- Speedy Trial Act, 18 U.S.C. § 3161(c)(1)
a criminal trial must start within 70 days of arraignment; LBP-06-13, 63 NRC 546 n.85 (2006)
- Tennessee Valley Authority Act of 1933, 16 U.S.C. § 831d(1)
TVA is authorized to produce, distribute, and sell electric power as well as manage water use in the Tennessee River Basin, and NRC has no authority to implement the act or enforce any of its provisions; LBP-08-16, 68 NRC 398 (2008)
- Treaty with the Sioux, Apr. 29, 1868, art. 3, 15 stat. 635
the relevance of the 1868 Fort Laramie Treaty to NRC licensing proceedings is discussed; LBP-08-6, 67 NRC 268 (2008)
- United Nations Declaration on the Rights of Indigenous Peoples art. 32
consultation responsibilities vis-a-vis tribal leaders are discussed; LBP-08-6, 67 NRC 268 (2008)
- Uranium Mill Tailings Radiation Control Act of 1978, 42 U.S.C. § 2114(a)(1) (2008)
NRC Staff must take appropriate steps to protect the public health and safety and the environment from radiological and nonradiological hazards associated with mining operations; LBP-08-24, 68 NRC 718 n.138 (2008)
- Uranium Mill Tailings Radiation Control Act of 1978, 42 U.S.C. § 7911(8)
"tailings" are defined as the remaining portion of a metal-bearing ore after some or all of such metal, such as uranium, has been extracted; LBP-06-1, 63 NRC 64 (2006)
- U.S. Const. amend. VI
as to criminal matters, an accused person is to be informed of the nature and cause of the accusation; LBP-09-24, 70 NRC 792-93 n.176 (2009)
- U.S. Const. art. II, § 3, cl. 4
the President shall take care that the laws be faithfully executed; LBP-10-11, 71 NRC 629 n.71 (2010)
- U.S. Const. art. III
federal courts are constitutionally limited by the case or controversy requirement of Article III; LBP-09-14, 70 NRC 195 (2009)

LEGAL CITATIONS INDEX

STATUTES

USEC Privatization Act, 3113, 42 U.S.C. § 2297h-11

DOE is required to accept for disposal any low-level radioactive waste generated by a domestic, NRC-licensed uranium enrichment facility and recoup its disposition costs plus a pro rata share of deconversion facility construction costs from the licensee or responsible third party; LBP-06-15, 63 NRC 618, 628 (2006)

DOE is required to accept for disposal depleted uranium from NRC-licensed uranium enrichment facilities as long as the depleted uranium is ultimately determined to be low-level radioactive waste; CLI-06-22, 64 NRC 39 (2006)

issuance of a uranium enrichment facility license is conditioned upon applicant providing decommissioning funding in an amount sufficient to cover, at any point during the life of the facility, the cost of DOE providing dispositioning services for the depleted uranium generated at the facility; LBP-06-15, 63 NRC 603 (2006); LBP-06-17, 63 NRC 772, 789 (2006)

neither an intervenor nor an applicant/licensee (nor seemingly the NRC) has the authority to challenge or direct DOE's estimates of the fees it will charge to a uranium enrichment facility that requests DOE to disposition its depleted uranium waste; CLI-06-22, 64 NRC 45 (2006)

transfer of depleted uranium to DOE for dispositioning is allowed for an NRC-licensed enrichment licensee; LBP-07-6, 65 NRC 474 (2007)

USEC Privatization Act, 3113(a), 42 U.S.C. § 2297h-11

if requested by an NRC-licensed uranium enrichment licensee, DOE is required to accept for disposal depleted uranium if it were ultimately determined to be a low-level radioactive waste; CLI-06-15, 63 NRC 705 n.86 (2006)

3 Vt. Stat. Ann. § 814(b)

the timely filing of an application to renew a state license tolls the license's expiration until the state's issuance of a final ruling on that application or, if the State denies the application, until either the last day for seeking judicial review of the ruling or a date fixed by the reviewing court; CLI-07-16, 65 NRC 379 (2007)

LEGAL CITATIONS INDEX
OTHERS

- ABA Comm. on Ethics and Prof'l Responsibility, Formal Op. 93-378 (1993)
ethics consequences of ex parte contacts with expert witnesses for other parties are discussed; LBP-06-10, 63 NRC 334 (2006)
- ABA Model Code of Judicial Conduct (Feb. 2007), Canon 1, Rule 1.1; Canon 2, Rules 2.2, 2.4
licensing boards must be independent in their decisionmaking, ruling without fear or favor, and base their rulings solely on the facts and the law applicable in any given case, no matter where this leads, whether for or against any party, including the NRC Staff, a license applicant, or a petitioner; LBP-07-4, 65 NRC 339 n.286 (2007)
- 15A Am. Jur. 2d *Compromise and Settlement* § 1 (2005)
a settlement agreement is an agreement to terminate, by means of mutual concessions, a claim that is disputed in good faith or unliquidated; LBP-06-18, 63 NRC 838 (2006)
- American Heritage Dictionary of the English Language* (4th ed. 2010)
a "means" either consists of or includes a "method" or "strategy" for achieving an end; LBP-10-20, 72 NRC 603 n.5 (2010)
a "means" is a method, a course of action, or an instrument by which an act can be accomplished or an end achieved; LBP-10-20, 72 NRC 603 n.5 (2010)
- Black's Law Dictionary* 865 (6th ed. 1990)
"justiciable controversy" is defined; LBP-08-6, 67 NRC 270 (2008)
- Black's Law Dictionary* 1405 (6th ed. 1990)
"standing to sue doctrine" is defined; LBP-08-6, 67 NRC 270 n.108 (2008)
the question of standing focuses on the question of whether the litigant is the proper party to fight the lawsuit as contrasted with the separate question of whether there is a justiciable or real and substantial controversy appropriate for judicial determination and not merely a hypothetical dispute; LBP-08-6, 67 NRC 270 (2008)
- Black's Law Dictionary* 328 (7th ed. 1999)
an ambiguous provision is construed most strongly against the person who selected the language; LBP-08-16, 68 NRC 382 (2008)
- Black's Law Dictionary*, pocket ed. (2d ed. 2001)
for purposes of NPDES permits, "effluent" is defined as liquid waste that is discharged into a river, lake, or other body of water; CLI-07-16, 65 NRC 377 n.16 (2007)
- Black's Law Dictionary* 459 (8th ed. 2004)
a conviction based on deliberate ignorance requires a finding that a defendant acted deliberately, and a deliberate action is one that is intentional, premeditated, and fully considered; LBP-09-24, 70 NRC 819 (2009)
- Black's Law Dictionary* 153 (9th ed. 2009)
"authority" is defined as a legal writing taken as definitive or decisive, especially a judicial or administrative decision cited as a precedent, or a source, such as a statute, case, or treatise, cited in support of a legal argument; LBP-10-21, 72 NRC 652 n.20 (2010)
- Black's Law Dictionary* 1310 (9th ed. 2009)
"prima facie case" is defined; LBP-10-15, 72 NRC 279, 302-03 (2010)
- Cambridge Dictionary of American English* (2d ed. 2010)
a "means" is a method or way of doing something; LBP-10-20, 72 NRC 603 n.5 (2010)

LEGAL CITATIONS INDEX

OTHERS

- Cohen's Handbook of Federal Indian Law §3.02[3], at 138 (2005 ed.)
federal recognition by the Bureau of Indian Affairs is a formal political act confirming a tribe's existence as a distinct political society, and institutionalizing the government-to-government relationship between the tribe and the federal government; LBP-09-13, 70 NRC 185 (2009)
- Collins English Dictionary — Complete and Unabridged* (2003)
a "means" is the medium, method, or instrument used to obtain a result or achieve an end; LBP-10-20, 72 NRC 603 n.5 (2010)
- 128 Cong. Rec. S4128 (1982)
NRC has been established as an independent body to check upon whether or not the administrative bodies are functioning according to the statutes and policies that have been already enacted; LBP-10-11, 71 NRC 626 (2010)
- D.C. Bar Bylaws, Art. III, §4(a) and (b)
nonpracticing lawyers or doctors who have voluntarily terminated their licenses may reinstate their licenses if they meet certain conditions; CLI-10-6, 71 NRC 123 (2010)
- D.C. Bar Rules XI, §4
the District of Columbia Bar's Board on Professional Responsibility is empowered to consider complaints on attorney discipline matters; CLI-08-11, 67 NRC 383 n.22 (2008)
- D.C. Rules of Prof'l Conduct R. 1.16
an attorney is not permitted to withdraw from representing a client unless withdrawal can be accomplished without material adverse effect to the client's interests; LBP-10-21, 72 NRC 638 n.6 (2010)
- D.C. Rules of Prof'l Conduct R. 3.3 (2007)
a lawyer shall not knowingly fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; LBP-08-6, 67 NRC 339 n.556 (2008)
- D.D.C. R. 83.6(c)
absent written consent of the party and the prior appearance of another attorney, many courts require that an attorney file a motion to withdraw; LBP-10-21, 72 NRC 638 n.6 (2010)
- District of Columbia Municipal Regulations for Medicine §§4606.1, 4606.4, and 4615.1
nonpracticing lawyers or doctors who have voluntarily terminated their licenses may reinstate their licenses if they meet certain conditions; CLI-10-6, 71 NRC 123 (2010)
- Fed. R. App. P. 4(a)(5)
a district court is authorized to extend time to file a notice of appeal; LBP-07-17, 66 NRC 370-71 n.59 (2007)
- Fed. R. App. P. 28(j)
generally, an additional authorities filing would be a submission that is the functional equivalent of a letter supplementing authorities; LBP-10-21, 72 NRC 652 n.20 (2010)
- Fed. R. App. P. 40
in cases where a federal agency is a party, a request for rehearing may be made within 45 days after entry of judgment; CLI-08-9, 67 NRC 354 (2008)
- Fed. R. App. P. 41
a mandate for stay must issue 7 calendar days after the time to request rehearing expires or a timely filed rehearing petition is denied, whichever is later; CLI-08-9, 67 NRC 354 (2008)
- Fed. R. Civ. P. 8(d)(3)
parties to litigation are entitled to make alternative arguments, even inconsistent ones; LBP-08-11, 67 NRC 504 (2008)
- Fed. R. Civ. P. 11
attorneys must assure that representations made in all pleadings to the best of their knowledge, information, and belief are true; LBP-06-10, 63 NRC 333, 370 (2006)
counsel have an ethical responsibility not to knowingly make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer; LBP-06-10, 63 NRC 333 (2006)
- Fed. R. Civ. P. 11(b)
representations of a summary disposition movant are described; LBP-09-22, 70 NRC 652 (2009)

LEGAL CITATIONS INDEX

OTHERS

- Fed. R. Civ. P. 12(b)(6)
prima facie case is one that is sufficient to withstand a demurrer, and is akin to the Federal Rules that allow for the dismissal of a lawsuit (without ever getting to a trial or motion for summary judgment) for failure to state a claim upon which relief can be granted; LBP-10-15, 72 NRC 303 n.52 (2010)
- Fed. R. Civ. P. 12(f)
although a court can act to order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter, there is no explicit mention of such a motion in NRC's Rules of Practice; LBP-08-2, 67 NRC 66 (2008); LBP-08-3, 67 NRC 96 (2008)
- Fed. R. Civ. P. 16(b)(5)
scheduling orders are to include provisions for disclosure of electronically stored information; LBP-09-22, 70 NRC 644 n.16 (2009)
- Fed. R. Civ. P. 26(a)(1)(A)(ii)
parties are required to make an initial disclosure including a copy, or a description by category and location, of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control; LBP-12-23, 72 NRC 707 (2010)
- Fed. R. Civ. P. 26(a)(2)
each expert witness is required to create, sign, and submit a written expert report; LBP-09-30, 70 NRC 1047 (2009)
- Fed. R. Civ. P. 26(b)(1)
although 10 C.F.R. 2.709 deals with special procedural norms for discovery against the Staff, there is no reason to believe, as to substantive content, that its repeated use of the relevance concept was not intended to embrace the universal understanding of that concept that shapes the scope and definition of discoverable evidence in both the federal courts and NRC adjudications; LBP-06-25, 64 NRC 390 n.102 (2006)
- it is not a ground for objection to discovery that the information sought will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence; LBP-12-23, 72 NRC 706 (2010)
- parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party; LBP-06-25, 64 NRC 376 (2006); LBP-10-2, 71 NRC 203 n.45 (2010)
- prior to trial, every party to a civil action is entitled to the disclosure of all relevant information in the possession of any person; LBP-06-25, 64 NRC 376 (2006)
- relevant information need not be admissible at a trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence; LBP-10-2, 71 NRC 203 n.45 (2010)
- the "need for SUNSI" inquiry is essentially a relevance inquiry just as a federal court litigant must show that information sought in discovery is relevant to its claims or defenses; CLI-10-24, 72 NRC 460 (2010)
- where the privilege and the need may be equally weak, but the privilege can be protected by other means, full and open discovery is the norm, and privileges that stand in the way of truth are disfavored, and relevancy, not need, becomes the determinative standard; LBP-06-25, 64 NRC 395 (2006)
- Fed. R. Civ. P. 26(b)(2)(B)
parties need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost; LBP-09-22, 70 NRC 644 n.16 (2009)
- Fed. R. Civ. P. 26(b)(3)
work product privilege covers only documents and tangible things that are prepared in anticipation of litigation or for trial by or for another party or its representative (including another party's attorney); CLI-08-6, 67 NRC 185 (2008)
- Fed. R. Civ. P. 26(b)(5)
a party's failure to notify the other parties that it is withholding materials under a certain privilege is viewed as a waiver of privilege; LBP-06-25, 64 NRC 378 n.34 (2006)
claims of privilege must be made expressly; LBP-06-25, 64 NRC 378 (2006)
- Fed. R. Civ. P. 26(c)
in certain narrow circumstances, the Federal Rules of Civil Procedure impose requirements similar to those in 10 C.F.R. 2.323(b); CLI-06-5, 63 NRC 129 n.17 (2006)

LEGAL CITATIONS INDEX

OTHERS

- in making discovery determinations, the court weighs the need to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense against litigants' need for materials; LBP-06-25, 64 NRC 387 (2006)
- Fed. R. Civ. P. 34(a)(1)
a party can request and obtain a copy of any document in the possession, custody, or control of the party upon whom the request is served; LBP-12-23, 72 NRC 707 (2010)
the rule is essentially the same as NRC's "production of documents" regulation, 10 C.F.R. 2.707(a)(1); LBP-12-23, 72 NRC 707 (2010)
- Fed. R. Civ. P. 37(a)(2)(A)
in certain narrow circumstances, the Federal Rules of Civil Procedure impose requirements similar to those in 10 C.F.R. 2.323(b); CLI-06-5, 63 NRC 129 n.17 (2006)
- Fed. R. Civ. P. 49
a special verdict is one where the jury answers specific questions submitted to it, thus enabling the court to determine the theory underlying the conviction; LBP-09-24, 70 NRC 722, 811 n.2 (2009)
- Fed. R. Civ. P. 56
if the presiding officer determines from affidavits filed by the party opposing summary disposition that the opposing party cannot present by affidavit the facts essential to justify its opposition, the presiding officer may order a continuance to permit such affidavits to be obtained, or may take other appropriate action; LBP-07-13, 66 NRC 131 (2007)
NRC standards governing summary disposition are based on those the federal courts apply to motions for summary judgment; CLI-06-5, 63 NRC 121 (2006); CLI-10-11, 71 NRC 297 (2010); LBP-07-12, 66 NRC 125 (2007)
- Fed. R. Civ. P. 56(f)
if it appears from the affidavits of a party opposing a motion for summary disposition or other dispositive motion that the opposing party cannot, for reasons stated, present by affidavit facts essential to justify the party's opposition, the board may refuse the application for summary disposition or may order a continuance as may be necessary or just; LBP-09-22, 70 NRC 653 (2009)
- Fed. R. Crim. P. 16
federal rules do not automatically provide for discovery using interrogatories and depositions, but NRC rules do; CLI-06-12, 63 NRC 502 n.22 (2006)
- Fed. R. Evid. 201(e)
a board rested its findings regarding a contention, in part, on certain facts that it officially noticed; CLI-10-17, 72 NRC 6 n.12 (2010)
because the board's decision rests in part on its official notice of parts of the license renewal application that were not introduced into evidence, any party wishing to controvert the facts officially noticed may do so by filing a motion for reconsideration or an appeal from the partial initial decision; LBP-08-25, 68 NRC 865 n.122, 896 (2008)
- Fed. R. Evid. 401
"relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence; LBP-12-23, 72 NRC 705 (2010)
- Federal Rules Decisions; Administrative Office of the U.S. Courts; Federal Rules of Civil Procedure; Adoption and Amendments to Civil Rules, 234 F.R.D. 219 (Apr. 12, 2006)
the Federal Rules of Civil Procedure were amended in 2006 to expressly include electronically stored information; LBP-12-23, 72 NRC 703 n.13 (2010)
- Hamilton, Robert W., & Richard A. Booth, *Corporations* 720 (5th ed. 2006)
"control" of a corporation is defined as management of the business; LBP-09-4, 69 NRC 192 (2009)
- Holmes, Oliver Wendell, Jr., *The Common Law* 1 (1881)
the life of the law has not been logic, it has been experience; LBP-09-24, 70 NRC 719 (2009)
- H.R. Rep. No. 93-707 (1973) at 25
with limited exceptions, the definitions in section 11 of the Atomic Energy Act apply to NRC and DOC; CLI-09-14, 69 NRC 608 n.160 (2009)
- H.R. Rep. No. 97-177, at 151 (1981)
by raising the admission standards for contentions, the Commission intended to obviate serious hearing delays caused in the past by poorly defined or supported contentions; LBP-06-10, 63 NRC 380 (2006)

LEGAL CITATIONS INDEX

OTHERS

- H.R. Rep. No. 97-491, pt. 1, at 29-30 (1982), *as reprinted in* 1982 U.S.C.C.A.N. 3792, 3796
allowing DOE to withdraw its application for a high-level waste repository is contrary to congressional intent; LBP-10-11, 71 NRC 621 (2010)
- H.R. Rep. No. 97-491, pt. 1, at 48 (1982)
throughout the repository development program, the Secretary and other agencies must meet the general requirements and the spirit of the National Environmental Policy Act; LBP-09-6, 69 NRC 397 (2009)
- H.R. Rep. No. 97-491, pt. 1, at 48, 53-54 (1982)
the Nuclear Waste Policy Act's mandate that the environmental impact statement be adopted by NRC to the extent practicable is intended to avoid duplication of the environmental review process but does not permit NRC to premise a construction-authorization or licensing decision upon an EIS that does not meet the substantive requirements of the National Environmental Policy Act or the Council on Environmental Quality's NEPA regulations; LBP-09-6, 69 NRC 397 (2009)
- H.R. Rep. No. 103-888, §2.5 (1995)
functions of the Energy Research and Development Administration were transferred to DOE upon its creation in 1977 by the Department of Energy Organization Act; CLI-09-14, 69 NRC 607 (2009)
- MacMillan English Dictionary* (American English ed.) (2010)
a "means" is a method for doing or achieving something; LBP-10-20, 72 NRC 603 n.5 (2010)
- Malsch, Martin G., *The Purchase of U.S. Nuclear Power Plants by Foreign Entities*, 20 Energy L.J. 263, 275-277 (1999)
it is not inimical to the national defense and security to grant transfer ownership to foreign entities whose influence is primarily economic; LBP-09-4, 69 NRC 193 (2009)
- Marcus, Jonathan L., *Model Penal Code Section 2.02(7) and Willful Blindness*, 102 Yale L.J. 2231, 2239 (1993)
deliberate ignorance is materially different from negligence and recklessness, because the latter two theories require a consciousness of something far less than probability; LBP-09-24, 70 NRC 819 (2009)
- Marcus, Jonathan L., *Model Penal Code Section 2.02(7) and Willful Blindness*, 102 Yale L.J. 2231, 2239 n.40 (1993)
courts generally refer to actual knowledge as knowledge derived from direct evidence, whereas knowledge based on the deliberate ignorance theory is derived from circumstantial evidence; LBP-09-24, 70 NRC 819-20 (2009)
- Mendelker, Daniel R., NEPA Law and Litigation §§ 1.1, 8.18 (2d ed. 2008)
the National Environmental Policy Act applies to agencies of the federal government, not apply to private parties such as applicants for NRC licenses; LBP-09-10, 70 NRC 87 (2009)
- Model Code of Prof'l Responsibility DR 7-102(A)(5) (1980)
attorneys must not knowingly make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer; LBP-06-10, 63 NRC 333, 370 (2006)
counsel have an ethical responsibility not to knowingly make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer; LBP-06-10, 63 NRC 333 (2006)
- Model Code of Prof'l Responsibility R. 3.3 (2004)
counsel have an ethical duty as officers of the court to alert NRC adjudicatory bodies to information relevant to the matters being adjudicated; LBP-08-6, 67 NRC 339 n.556 (2008)
- Model Penal Code § 2.02(7) (1962)
when knowledge of the existence of a particular fact is an element of an offense, such knowledge is established if a person is aware of a high probability of its existence, unless he actually believes that it does not exist; LBP-09-24, 70 NRC 817, 818 (2009)
- Model Rules of Prof'l Conduct R. 1.1 (2003)
a lawyer shall provide competent representation to a client, which requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation; LBP-06-10, 63 NRC 370 n.3, 386 (2006)

LEGAL CITATIONS INDEX

OTHERS

- Model Rules of Prof'l Conduct R. 3.3 (2003)
attorneys must not knowingly make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer; LBP-06-10, 63 NRC 333, 370 (2006)
counsel have an ethical responsibility not to knowingly make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer; LBP-06-10, 63 NRC 333 (2006)
- Model Rules of Prof'l Conduct R. 3.3 (2009)
ethics rules in most jurisdictions require, and the board expects, that counsel will promptly correct statements of material fact that are no longer true; LBP-09-28, 70 NRC 1023 n.19 (2009)
- Moore, James Wm., et al., Moore's Federal Practice ¶34.12[2][a] (3d ed. 2010) at 34-71
the phrase "possession, custody, or control" is in the disjunctive, and only one of the enumerated requirements need be met; LBP-12-23, 72 NRC 707 (2010)
- Moore, James Wm., et al., Moore's Federal Practice ¶34.12[2][a] (3d ed. 2010) at 34-75
documents are deemed to be within the control of a party if the party has the right to obtain the documents on demand; LBP-12-23, 72 NRC 707-08 (2010)
the term "control" is broadly construed; LBP-12-23, 72 NRC 707 n.21 (2010)
- Moore, James Wm., et al., Moore's Federal Practice ¶34.12[2][a] (3d ed. 2010) at 34-79
the concept of control extends to situations in which the party has the practical ability to obtain materials in the possession of another, even if the party cannot compel the other person or entity to produce the requested materials; LBP-12-23, 72 NRC 708 n.23 (2010)
- Moore, James Wm., et al., Moore's Federal Practice ¶34.12[2][a] (3d ed. 2010) at 34-80
practical control by a party over the person in possession of the document is deemed sufficient to require that the party produce the document; LBP-12-23, 72 NRC 708 n.24 (2010)
- Moore, James Wm., Moore et al., Moore's Federal Practice ¶34.12[2][a] (3d ed. 2010) at 37-73
legal ownership of documents for which discovery is sought is not required, nor is actual possession necessary if the party has control; LBP-12-23, 72 NRC 707 n.20 (2010)
- Moore, James Wm., et al., Moore's Federal Practice ¶34.12[2][a] (3d ed. 2010) at 37-74
a document is deemed to be within a party's control if it is held by the party's attorney, expert, insurance company, accountant, or agent; LBP-12-23, 72 NRC 708 n.23 (2010)
- N.J. Admin. Code §7:28-2.8
the state may provide exemptions from its rules upon application and a showing of hardship or compelling need, with the approval of the Commission on Radiation Protection; CLI-10-8, 71 NRC 160 (2010)
- N.J. Admin. Code §7:28-6.1(d)(2)
licensee's decommissioning plan would have to show that the maximum annual dose to any person is as low as is reasonably achievable below 15 mrem; CLI-10-8, 71 NRC 157 (2010)
- N.J. Admin. Code §7:28-12.8(a)
New Jersey's restricted release criteria are compatible with NRC rules; CLI-10-8, 71 NRC 158 n.82 (2010)
- N.J. Admin. Code §7:28-12.8(a)(1)
dose limits for sites to be remediated are specified; CLI-10-8, 71 NRC 156 n.71 (2010)
- N.J. Admin. Code §7:28-12.10(d)
requirement of a calculation of up to peak dose is consistent with the essential objective of NRC's rule; CLI-10-8, 71 NRC 158 (2010)
- N.J. Admin. Code 7:28-12.11(a)
filing of a petition for alternative soil remediation standards is permitted as long as the resulting dose would not exceed 15 mrem per year; CLI-10-8, 71 NRC 160 n.94 (2010)
- N.J. Admin. Code §7:28-12.11(f)(2)(iii)
requirement of a calculation of up to peak dose is consistent with the essential objective of NRC's rule; CLI-10-8, 71 NRC 158 (2010)
- N.J. Admin. Code §7:28-12.12
requirements pertaining to engineering or institutional controls are compatible with NRC rules; CLI-10-8, 71 NRC 158 n.82 (2010)

LEGAL CITATIONS INDEX

OTHERS

- N.J. Admin. Code §7:28-58.1
if licensee perceives a difficulty in meeting the deadline for submission of a revised decommissioning plan, it may request an extension of time from the Agreement State; CLI-10-8, 71 NRC 153 n.56 (2010)
- O'Connor, Sandra Day, *Professionalism*, 76 WASH. U. L.Q. 5 (1998)
a decline in professionalism among lawyers is responsible for the diminishing image and reputation of lawyers in society; LBP-06-10, 63 NRC 371 (2006)
- Ohio Disciplinary Code of Prof'l Responsibility DR 7-102(A)(5) (2003)
counsel have an ethical responsibility not to knowingly make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer; LBP-06-10, 63 NRC 333 (2006)
counsel must not knowingly make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer; LBP-06-10, 63 NRC 333, 370 (2006)
- Oxford Dictionaries Online, <http://oxforddictionaries.com/view/entry/m.en.us1266773#m.en.us1266773>
a "means" is an action or system by which a result is achieved — a method; LBP-10-20, 72 NRC 603 n.5 (2010)
- Pollack, Milton, *Parallel Civil and Criminal Proceedings*, 129 F.R.D. 201, 201 (1990)
in considering the reason for a requested delay, it is important to consider which party initiated the civil action and which party is seeking relief from its going forward; LBP-06-13, 63 NRC 539 n.49 (2006)
- Pollack, Milton, *Parallel Civil and Criminal Proceedings*, 129 F.R.D. 201, 202 (1990)
stay of the civil proceeding is not always appropriate when there is a parallel criminal proceeding; LBP-06-13, 63 NRC 540 n.50 (2006)
- Pollack, Milton, *Parallel Civil and Criminal Proceedings*, 129 F.R.D. 201, 210 (1990)
the policy underlying the limited scope of discovery under the criminal rules is rooted in concerns about possible perjury, manufacture of false evidence, and intimidation of confidential government informants; LBP-06-13, 63 NRC 539 n.48 (2006)
- Pollack, Milton, *Parallel Civil and Criminal Proceedings*, 129 F.R.D. 201, 211 (1990)
a general stay of all civil discovery is not by any means the best option available to the court or to the litigants; LBP-06-13, 63 NRC 538 n.43 (2006)
- Rothstein, Paul F., & Susan Crump, *Federal Testimonial Privileges* § 5:10 (2d ed. 2005)
five factors are applied to test for qualifying the deliberative process privilege; LBP-06-3, 63 NRC 92 n.10 (2006)
- S. Rep. No. 1699-83, at 7 (1954), *reprinted in* 1954 U.S.C.C.A.N. 3456, 3464
the condition that requires investigation of an individual's character to grant access to restricted data is not linked to the general license criteria of Atomic Energy Act § 182(a); LBP-09-6, 69 NRC 464 (2009)
- S. Rep. No. 1699-83, at 9 (1954), *reprinted in* 1954 U.S.C.C.A.N. 3456, 3464
references to the word "private" in the legislative history of the Atomic Energy Act appear in the context of a general discussion of the purpose of the AEA, which recognized that the prior law placed prohibitions on private participation in atomic energy; LBP-09-6, 69 NRC 463 (2009)
- S. Rep. No. 85-2422, at 6 (1958)
FDA's review does not take into account commercial interests or whether such approval will be beneficial to the producer of the additive, but is squarely focused upon assuring that there is proof of a reasonable certainty that no harm will result from a proposed use of an additive; CLI-08-16, 68 NRC 226 n.27 (2008)
- S. Rep. No. 85-2422, at 63 (1958)
sources of irradiation, including radioactive isotopes, particle accelerators, and X-ray machines, intended for use in processing food are included in the term "food additives"; CLI-08-16, 68 NRC 223 (2008)
- S. Rep. No. 87-1677 (1962), *as reprinted in* 1962 U.S.C.C.A.N. 2207, 2214
Congress authorized the Commission to establish one or more licensing boards largely because it was believed that with decisions being made by a semi-independent and technically qualified body, public confidence in the regulatory process will be further enhanced; LBP-07-6, 65 NRC 490 n.299 (2007)

LEGAL CITATIONS INDEX

OTHERS

- S. Rep. No. 92-1236, 92d Cong., 2d Sess. (1972) (Conference Report on S. 2770), *Legislative History* at 198
when enacting section 511(c)(2) of the Clean Water Act, Congress specifically intended to deprive the NRC's predecessor agency (the Atomic Energy Commission) of authority over pollutant discharges; CLI-07-16, 65 NRC 377 n.20 (2007)
- Sup. Ct. R. 10
a conflict in the Circuits is a key criterion informing the exercise of the Supreme Court's certiorari jurisdiction; CLI-07-8, 65 NRC 129 n.15 (2007)
- 1A Sutherland, *Statutory Construction* § 31.06 (4th ed. 1984)
interpretation of any regulation must begin with the language and structure of the provision itself; LBP-09-15, 70 NRC 215 (2009)
- 2A Sutherland, *Statutory Construction* § 46.06 (4th ed. 1984)
in interpreting any regulation, the entirety of the provision must be given effect; LBP-09-15, 70 NRC 215 (2009)
- Webster's New College Dictionary* (2d ed. 2001)
a practical definition of the word reasonable for use when selecting alternative concepts would be an alternative is reasonable if it is both feasible (possible, viable) and nonspeculative; LBP-10-10, 71 NRC 604 n.4 (2010)
- Webster's New College Dictionary* 448 (3d ed. 2005)
"forfeit" is defined as something surrendered as punishment for a crime, offense, error, or breach of contract; CLI-10-6, 71 NRC 121 (2010)
- Webster's Third New International Dictionary (Unabridged)* 74 (1976)
"amplify" means to enlarge, expand, or extend (a statement or other expression of idea in words) by addition of detail or illustration or by logical development; LBP-08-6, 67 NRC 258 (2008)
- Webster's Third New International Dictionary (Unabridged)* 616 (1976)
the word "details" has a pejorative connotation, i.e., that intervenors or the board is asking for minutiae or matters that relate to minute points, small and subordinate parts, or minor parts; LBP-10-20, 72 NRC 599 (2010)
- Webster's Third New International Dictionary (Unabridged)* 909 (1976)
one who does something "frequently" does so at frequent or short intervals, "frequent" being defined as often or habitually; LBP-10-1, 71 NRC 178 (2010)
- Webster's Third New International Dictionary (Unabridged)* 1310 (1976)
the term "likely" in 10 C.F.R. 2.326(a)(3) is construed to be synonymous with "probable" or "more likely than not"; LBP-08-12, 68 NRC 23 n.16 (2008)
- Webster's Third New International Dictionary (Unabridged)* 1913 (1976)
one who performs an act "regularly" does so in a regular, orderly, or methodical way; LBP-10-1, 71 NRC 178 (2010)
- Webster's Third International Dictionary (Unabridged)* 1933 (1976)
the relevant definition of "resolve" is to reach a decision about or make an official determination concerning an issue; LBP-08-15, 68 NRC 305-306 (2008)
- Webster's Third New International Dictionary (Unabridged)* 2116 (1976)
the ordinary meaning of "significant" is "having meaning," "full of import," "indicative," "having or likely to have influence or effect," "deserving to be considered; LBP-10-24, 72 NRC 736 (2010)
- Webster's Third New International Dictionary (Unabridged)* (1986)
a practical definition of the word reasonable for use when selecting alternative concepts would be an alternative is reasonable if it is both feasible (possible, viable) and nonspeculative; LBP-10-10, 71 NRC 604 n.4 (2010)
- Webster's Third New International Dictionary of the English Language* 105 (1993)
an "application" is the act of applying, where "apply" means to make an appeal or a request especially formally and often in writing and usually for something of benefit to oneself; CLI-06-5, 63 NRC 154 n.37 (2006)
- Webster's Third New International Dictionary of the English Language* (1993)
a "claim" is an assertion, statement, or implication; LBP-09-30, 70 NRC 1048 (2009)

LEGAL CITATIONS INDEX

OTHERS

- Webster's Third New International Dictionary of the English Language* 1925 (1993)
a "report" is a usually formal and sometimes official statement giving the conclusions and recommendations of a person or group authorized or delegated to consider a proposal; CLI-06-5, 63 NRC 154 n.37 (2006)
- Webster's Third New International Dictionary of the English Language* 2268 (1993)
a "study" is a careful examination or analysis of a phenomenon, development, or question usually within a limited area of investigation; CLI-06-5, 63 NRC 154 n.37 (2006)
- Wright, Charles Alan, *Federal Practice and Procedure: Federal Rules of Criminal Procedure* § 252 (3d ed. 2000)
discovery in criminal cases is a matter of course; LBP-06-13, 63 NRC 552 n.103 (2006)
- Wright, Charles Alan, et al., *Federal Practice and Procedure* § 2001 (2d ed. 1994)
prior to trial, every party to a civil action is entitled to the disclosure of all relevant information in the possession of any person; LBP-06-25, 64 NRC 376 (2006)
- 10A Wright, Charles Alan, et al., *Federal Practice and Procedure* § 2720 (3d ed. 1998)
a procedure that amounts to a trial of the action and technically is not a disposition by summary judgment is appropriate only if it is clear that there is nothing else to be offered by the parties and there is no prejudice in proceeding in this fashion; LBP-07-12, 66 NRC 127 n.71 (2007)
- 10A Wright, Charles Alan, et al., *Federal Practice and Procedure* § 2727 (3d ed. 1998)
a summary disposition movant fails to meet its burden when the filings demonstrate the existence of a genuine material fact, when the evidence introduced does not show that the nonmovant's position is a sham, when the matters presented fail to foreclose the possibility of a factual dispute, or when there is an issue as to the credibility of the moving party's evidentiary material; CLI-06-5, 63 NRC 122 (2006); LBP-07-12, 66 NRC 125 (2007)
- 10A Wright, Charles Alan, et al., *Federal Practice and Procedure* § 2727, at 93-95 (1983)
factual disputes that are irrelevant or unnecessary will not be counted; LBP-07-13, 66 NRC 140 (2007)
- 13A Wright, Charles Alan, et al., *Federal Practice and Procedure* § 3533.2 (2d ed. 1984)
when a claim becomes moot, a decision on the merits may be appropriate if the same basic dispute is likely to recur in the future, unless it seems sufficient to await the event or better to defer to another court; LBP-09-15, 70 NRC 210 (2009)
- 18 Wright, Charles Alan, et al., *Federal Practice and Procedure* § 4403 (2d ed. 1987)
the collateral estoppel doctrine promotes the compelling public interest in preserving the acceptability of judicial dispute resolution against the corrosive disrespect that would follow if the same matter were twice litigated to inconsistent results; LBP-09-24, 70 NRC 809-10, 822 (2009)
- 18 Wright, Charles Alan, et al., *Federal Practice and Procedure* §§ 4416, 4419 (2d ed. 2002)
collateral estoppel bars parties from relitigating issues actually and necessarily decided in prior litigation between the same parties; LBP-08-15, 68 NRC 310 (2008)
- 18A Wright, Charles Alan, et al., *Federal Practice and Procedure: Jurisdiction* 2d § 4433 (1981)
a court inclined to apply collateral estoppel based on a judgment that is subject to appeal may want to avoid the question by staying the case pending the appeal; LBP-09-24, 70 NRC 713 (2009)
- 26A Wright, Charles Alan, and Kenneth W. Graham, Jr., *Federal Practice and Procedure* § 5690 (1992 & Supp. 2005)
the importance of the evidence to the case is generally determinative in the balancing test for qualifying the deliberative process privilege; LBP-06-3, 63 NRC 92 (2006)

SUBJECT INDEX

ABEYANCE OF CONTENTION

- a board could refer a contention relating to a certified design to the Staff for consideration in the design certification rulemaking and hold that contention in abeyance if the contention is otherwise admissible; CLI-08-15, 68 NRC 1 (2008); LBP-10-21, 72 NRC 616 (2010)
- a contention asserting omissions from the combined license application that is not admissible need not be referred to the Staff and held in abeyance; LBP-09-10, 70 NRC 51 (2009)
- a contention may be held in abeyance by a licensing board pending completion of a rulemaking, but the contention must be otherwise admissible; LBP-09-18, 70 NRC 385 (2009); LBP-10-9, 71 NRC 493 (2010)
- a contention raised in a combined license hearing challenging information in a design certification rulemaking, if otherwise admissible, should be referred to the Staff for consideration in the rulemaking, and held in abeyance by the licensing board pending outcome of the rulemaking; CLI-09-4, 69 NRC 80 (2009); LBP-09-3, 69 NRC 139 (2009)
- before a board may refer a design certification-related contention to the Staff and hold it in abeyance, the contention must first be admissible; CLI-10-1, 71 NRC 1 (2010)

ABEYANCE OF HEARING REQUEST

- application for license to import low-level radioactive waste from Italy for processing and ultimate disposal in Utah is held in abeyance; CLI-08-24, 68 NRC 491 (2008)
- the Commission holds a hearing request in abeyance because Staff action may obviate the need for the Commission to address the hearing request or the dispute may be resolved by binding arbitration; CLI-07-15, 65 NRC 221 (2007)

ABEYANCE OF PROCEEDING

- a government motion for an indefinite enforcement hearing delay must be denied when the government fails to show that the prompt conduct of the NRC hearing process would interfere with the government's prosecution of the criminal charges and when the subject of the order has shown that the delay would continue to deprive him of his chosen livelihood and its anticipated income; LBP-06-13, 63 NRC 523 (2006)
- a petition seeking review of an order granting or denying an abeyance motion meets NRC's standard for interlocutory review because the appealed order would have an immediate and serious irreparable impact which, as a practical matter, could not be alleviated through a petition for review of the presiding officer's final decision; CLI-07-6, 65 NRC 112 (2007)
- although the civil discovery process could lead to the tainting of evidence in a criminal case and to the defendant's obtaining access to evidence that would provide him an unfair advantage over the government, the moving party must provide some practical applicability to the particular circumstances of the case in order for it to obtain the delay sought; LBP-06-13, 63 NRC 523 (2006)
- assertion of a hearing right weighs against granting the abeyance, but this factor is, by its nature, merely procedural, and consequently is of little importance when balancing real-life equities; CLI-06-12, 63 NRC 495 (2006)
- assertion of hearing right and risk of erroneous deprivation generally are given less weight unless the assertion was dilatory or perfunctory or the risk can be shown to be either quite high or vanishingly low; LBP-06-13, 63 NRC 523 (2006)
- because of his decision not to challenge the immediate effectiveness of his enforcement order, less weight is accorded to the severity of the potential harm to the subject of an enforcement order from holding a proceeding in abeyance; CLI-07-6, 65 NRC 112 (2007)

SUBJECT INDEX

consideration of pending issues will not be postponed until the resolution of other issues unrelated to the adjudication; CLI-10-17, 72 NRC 1 (2010)

for purpose of interlocutory review, a board decision is “pervasive” and “unusual” when it stops the entire proceeding in its tracks and because the Commission and its boards have rarely, if ever, held an enforcement proceeding in abeyance for an indeterminate length of time; CLI-06-12, 63 NRC 495 (2006)

harm from a delay of the enforcement proceeding is a key issue in any abeyance ruling; CLI-06-19, 64 NRC 9 (2006)

in analyzing the abeyance question, the risk of harm that the subject of the enforcement action could suffer from an abeyance order is balanced against the risk of harm DOJ could suffer from the NRC Staff moving forward in its enforcement hearing; LBP-06-13, 63 NRC 523 (2006); CLI-07-6, 65 NRC 112 (2007)

in determining whether there is good cause to delay a proceeding challenging an immediately effective license suspension order, NRC evaluates five factors; LBP-06-13, 63 NRC 523 (2006)

in witness-intensive cases, delay is tolerable only if the Staff can demonstrate an important government interest coupled with factors minimizing the risk of an erroneous deprivation; CLI-06-12, 63 NRC 495 (2006)

NRC generally defers to the Department of Justice when it seeks a delay in NRC enforcement proceedings pending the conclusion of DOJ’s own criminal investigations or proceedings; CLI-06-12, 63 NRC 495 (2006)

NRC is loath to permit a criminal defendant to use its procedures to do an end run around rules prescribed by the Supreme Court and implicitly approved by Congress; CLI-07-6, 65 NRC 112 (2007)

pendency of a criminal trial does not automatically toll the time for instituting a civil proceeding; LBP-06-13, 63 NRC 523 (2006)

prejudice to the enforcement target’s ability to litigate the enforcement proceeding and prejudice to his employment interests must be considered in ruling on an abeyance request; CLI-06-19, 64 NRC 9 (2006)

request that a combined license application be held in abeyance until the design certification is completed must be denied; LBP-09-18, 70 NRC 385 (2009)

saying the government needs to demonstrate the potential for the tainting of evidence is not the equivalent of insisting that the government establish that perjury or intimidation would necessarily take place; LBP-06-13, 63 NRC 523 (2006)

the burden of participating in a proceeding is not a harm that can form the basis for holding a proceeding in abeyance; CLI-09-8, 69 NRC 317 (2009)

the Commission is generally inclined to accommodate an abeyance request from DOJ as long as it provides at least some showing of potential detrimental effect on its parallel criminal case; CLI-07-6, 65 NRC 112 (2007)

the Federal Rules of Criminal Procedure prescribe the disclosures necessary for a fair balance between criminal defendants’ and prosecutors’ interests; CLI-06-12, 63 NRC 495 (2006)

the party supporting delay of an enforcement proceeding based on the pendency of a criminal case involving the same facts carries the burden of proof and must make at least some showing of potential detrimental effect on the criminal case; CLI-06-12, 63 NRC 495 (2006)

the question whether to hold an NRC enforcement proceeding in abeyance pending a related criminal prosecution is generally suitable for interlocutory Commission review because, unlike most interlocutory questions, the abeyance issue cannot await the end of the proceeding because it becomes moot; CLI-06-19, 64 NRC 9 (2006); CLI-10-29, 72 NRC 556 (2010)

the U.S. Attorney’s voluntary adoption of an “open file” discovery process undercuts any complaint that allowing civil discovery to proceed would alter the usual balance as to just how much discovery a defendant can obtain; LBP-06-13, 63 NRC 523 (2006)

the weight to be given the proponent’s reason for seeking an abeyance turns on the quality of the factual record on which the proponent relies; CLI-06-12, 63 NRC 495 (2006)

the weight to be given the Staff’s reason for seeking an abeyance turns on the quality of the factual record; CLI-06-19, 64 NRC 9 (2006); CLI-07-6, 65 NRC 112 (2007)

SUBJECT INDEX

when determining whether good cause exists for delay of a proceeding, the decisionmaker must consider both the public interest as well as the interests of the person subject to the immediately effective order; CLI-06-12, 63 NRC 495 (2006)

when the party opposing a motion to stay an enforcement proceeding does not express undue concern that delay will diminish the quality of the evidence, that possibility may be put aside as nonspecific and not credited as prejudicing the subject of the order; LBP-06-13, 63 NRC 523 (2006)

where the length of the requested delay would depend on factors outside the Commission's control, the absence of control weighs against holding the case in abeyance; CLI-06-12, 63 NRC 495 (2006)

whether continuation of an NRC enforcement adjudication could at least arguably jeopardize a related criminal proceeding is a key factor in any abeyance ruling in an NRC enforcement proceeding; CLI-06-19, 64 NRC 9 (2006)

ABUSE OF DISCRETION

a board abused its discretion in reformulating and admitting contentions; LBP-10-16, 72 NRC 361 (2010)

the Commission defers to a board's rulings on standing and contention admissibility unless the appeal points to an error of law or abuse of discretion; CLI-09-14, 69 NRC 580 (2009); CLI-10-1, 71 NRC 1 (2010); CLI-10-2, 71 NRC 27 (2010); CLI-10-9, 71 NRC 245 (2010); CLI-10-12, 71 NRC 319 (2010); CLI-10-17, 72 NRC 1 (2010); CLI-10-20, 72 NRC 185 (2010); CLI-10-21, 72 NRC 197 (2010)

the Commission will review decisions on evidentiary questions under an abuse of discretion standard; CLI-10-5, 71 NRC 90 (2010); CLI-10-18, 72 NRC 56 (2010)

ACCESS AUTHORIZATION

a person may be denied access at a licensee facility based on NRC requirements such as falsification of information, trustworthiness or reliability issues, and issues related to fitness for duty; DD-10-2, 72 NRC 163 (2010)

an individual requiring clarification or resolution of an access authorization concern must resolve the issue with the licensee where unescorted access was last held or otherwise denied; DD-10-2, 72 NRC 163 (2010)

each licensee must evaluate access denial status on a case-by-case basis and make a determination of trustworthiness and reliability; DD-10-2, 72 NRC 163 (2010)

nuclear industry was required to develop, implement, and maintain an industry database accessible by NRC-licensed facilities to share information, including determination of whether an individual is denied access at any other NRC-licensed facility; DD-10-2, 72 NRC 163 (2010)

potentially disqualifying information for unescorted access authorization may include unfavorable information from an employer, developed or disclosed criminal history, credit history, judgments, unfavorable reference information, evidence of drug or alcohol abuse, discrepancies between information disclosed and developed; DD-10-2, 72 NRC 163 (2010)

See also Controlled Access

ACCIDENTS

events having a less than a one in one million probability of occurring are not credible events; LBP-09-4, 69 NRC 170 (2009)

if chelating agents are to be comingled in radioactive waste liquids or used to mitigate an accidental release, then they have to be specifically accounted for in the dose analyses; LBP-09-19, 70 NRC 433 (2009)

if the accident sought to be considered is sufficiently unlikely, such that it can be characterized fairly as remote and speculative, then consideration under the National Environmental Policy Act is not required as a matter of law; LBP-09-4, 69 NRC 170 (2009)

low probability is the key to applying NEPA's rule-of-reason test to contentions that allege that a specified accident scenario presents a significant environmental impact that must be evaluated; LBP-09-26, 70 NRC 939 (2009)

the potential for an overfilled uranium hexafluoride transportation cylinder to rupture and release uranium hexafluoride is discussed; LBP-06-17, 63 NRC 747 (2006)

See also Design Basis Accident; Severe Accident Mitigation Alternatives Analysis

ACCIDENTS, LOSS-OF-COOLANT

in applicant's safety assessment, the fission product releases in question are associated with accidents that have generally been assumed to result in substantial meltdown of the core with subsequent release into the containment of appreciable quantities of fission products; LBP-09-19, 70 NRC 433 (2009)

SUBJECT INDEX

protection against a highly unlikely LOCA has long been an essential part of the defense-in-depth concept used by the nuclear power industry and the AEC to ensure the safety of nuclear power plants; LBP-08-12, 68 NRC 5 (2008)

See also Severe Accident Mitigation Alternatives Analysis

ACCIDENTS, SEVERE

- a contention challenging the absence in the environmental report of consideration of impacts from a severe radiological accident at one unit on other collocated units is admitted; LBP-09-17, 70 NRC 311 (2009)
- a contention that impacts from a severe radiological accident at any one unit on operation of other units at the site had not been, and should be, considered in the application's environmental report is found to be moot; LBP-10-10, 71 NRC 529 (2010)
- after the Three Mile Island accident, it is irrational for NRC to maintain that severe accident risks are too remote to require consideration; LBP-10-10, 71 NRC 529 (2010)
- although "severe accident," "severe accident mitigation alternatives," and "SAMA" are not defined in NRC's NEPA regulations, the NRC policy documents that originated the terms clearly limit them to nuclear reactors and do not include spent fuel pools or storage; LBP-10-15, 72 NRC 257 (2010)
- analysis of the postulated fission product release must be performed to evaluate the offsite radiological consequences of an accident; LBP-09-19, 70 NRC 433 (2009)
- applicant's environmental report for its license renewal application must include a severe accident mitigation alternatives analysis, outlining the costs and benefits of potential mitigation measures to reduce severe accident risk or consequences; CLI-10-30, 72 NRC 564 (2010)
- combined license applications must describe plans for implementing guidance and strategies intended to maintain or restore core cooling, containment, and spent fuel pool cooling capabilities if large areas of the plant are lost due to explosions or fire; LBP-10-5, 71 NRC 329 (2010)
- contention alleging a failure to evaluate the impact of a severe accident at one unit on other units when the initiating event is an external event such as an earthquake is found inadmissible; LBP-10-10, 71 NRC 529 (2010)
- contention that applicant failed to address the impact of a chain reaction that leads to more than one unit experiencing a severe accident is found inadmissible; LBP-10-10, 71 NRC 529 (2010)
- contention that applicant's failure to address externally initiated accident scenarios is a material omission from the environmental report is inadmissible; LBP-10-10, 71 NRC 529 (2010)
- early site permit applicants must submit a safety assessment that includes an analysis of a fission product release from an accident, using the expected demonstrable containment leak rate and any fission product cleanup systems intended to mitigate the consequences of the accidents; LBP-09-19, 70 NRC 433 (2009)
- in applicant's safety assessment, the fission product releases in question are associated with accidents that have generally been assumed to result in substantial meltdown of the core with subsequent release into the containment of appreciable quantities of fission products; LBP-09-19, 70 NRC 433 (2009)
- in license renewal proceedings, the term "severe accidents" encompasses only reactor accidents and not spent fuel pool accidents, which fall within the analysis of the generic Category 1 issue of onsite storage of spent fuel; LBP-06-23, 64 NRC 257 (2006)
- individuals located at the boundary of the exclusion area cannot be exposed to more than 25 rem total effective dose equivalent in any 2-hour period, and any individual located at the outer boundary of the low population zone cannot be exposed to more than 25 rem TEDE during the entire period of any radioactive release; LBP-09-19, 70 NRC 433 (2009)
- it is not only the statistical improbability of a severe accident that bears on the determination whether, in a given circumstance, a severe accident should be anticipated and thereby considered in the context of a combined license application; LBP-10-10, 71 NRC 529 (2010)
- low probability is the key to applying NEPA's rule-of-reason test to contentions that allege that a specified accident scenario presents a significant environmental impact that must be evaluated; LBP-10-10, 71 NRC 529 (2010)
- NEPA mandates neither mitigative action against harmful effects of major federal actions nor in-depth statements of planned actions to be taken to dull such impacts; LBP-10-13, 71 NRC 673 (2010)
- NRC safety regulations require that the combined license application address the mitigation and potential consequences of a beyond-design-basis accident; LBP-09-10, 70 NRC 51 (2009)

SUBJECT INDEX

- omitting consideration of accident scenarios anticipated under 10 C.F.R. 50.150 and 50.54(hh) is contrary to the requirements of 42 U.S.C. § 2133(d); LBP-10-10, 71 NRC 529 (2010)
- one in a million per year is the threshold above which accident scenarios should be evaluated for NEPA consideration; LBP-10-10, 71 NRC 529 (2010)
- petitioner failed to provide any evidence to challenge NRC's conclusion that the environmental effects of a hypothetical terrorist attack on a nuclear plant would be no worse than those caused by a severe accident; LBP-10-10, 71 NRC 529 (2010)
- petitioner has presented a prima facie showing for waiver of the NRC regulation covering the environmental impacts of spent fuel pool accidents generically, and has shown that its contention concerning earthquake-induced spent fuel pool accidents is otherwise admissible; LBP-10-15, 72 NRC 257 (2010)
- SAMA contentions will be admitted in license renewal proceedings only if it looks genuinely plausible that inclusion of an additional factor or use of other assumptions or models may change the cost-benefit conclusions for the SAMA candidates evaluated; LBP-10-13, 71 NRC 673 (2010)
- the final safety analysis report of a combined license application must contain analysis of a severe accident involving a fission product release from the core into the containment including any fission product cleanup systems intended to mitigate the consequences of the accidents; LBP-09-10, 70 NRC 51 (2009)
- the fission product release assumed for the final safety analysis report is based on a major accident assumed to result in substantial meltdown of the core with subsequent release into the containment of appreciable quantities of fission products; LBP-09-10, 70 NRC 51 (2009)
- the licensing board rules on issues that concern guidance and strategies for addressing certain circumstances that might arise from potential beyond-design-basis explosions and fires; LBP-10-5, 71 NRC 329 (2010)
- the safety analysis report component of an application for a Standard Design Certification must analyze and address the problem of extremely low probability for accidents that could result in the release of significant quantities of radioactive fission products; LBP-09-10, 70 NRC 51 (2009)
- this type of reactor accident is more severe than a design basis accident and results in substantial damage to the reactor core, whether or not there are serious offsite consequences; LBP-09-10, 70 NRC 51 (2009); LBP-09-19, 70 NRC 433 (2009)
- uranium enrichment facility applicants must identify and assess all credible accident sequences and identify appropriate mitigation measures, commonly referred to as items relied on for safety, to prevent or mitigate the consequences of such accidents; LBP-06-17, 63 NRC 747 (2006)
- ACTION ITEMS**
- these identify significant information requirements that do not affect Staff's ability to make the requisite safety findings for issuance of an early site permit, but nevertheless merit tracking and resolution during the safety review performed for a subsequent CP or COL application referencing the ESP; CLI-07-27, 66 NRC 215 (2007)
- ADJUDICATORY BOARDS**
- the Commission will not be drawn into commercial contractual disputes, absent a concern for the public health and safety or the common defense and security, except to carry out its responsibilities to act to enforce its licenses, orders, and regulations; CLI-07-15, 65 NRC 221 (2007)
- ADJUDICATORY PROCEEDINGS**
- a proceeding commences when a notice of hearing or notice of proposed action is issued; CLI-08-14, 67 NRC 402 (2008)
- although NRC guidance documents are entitled to some weight, they do not have the force of a legally binding regulation and, like any guidance document, may be challenged; LBP-08-22, 68 NRC 590 (2008)
- as long as the administrative proceedings walk, talk, and squawk very much like an Article III judicial proceeding, they should be open to the public; LBP-10-2, 71 NRC 190 (2010)
- challenges to the Waste Confidence Rule must be made in the context of a rulemaking, not in the context of an adjudicative proceeding; CLI-10-19, 72 NRC 98 (2010)
- collateral estoppel may be applied in administrative adjudicatory proceedings; LBP-09-24, 70 NRC 676 (2009)

SUBJECT INDEX

- compliance with NRC guidance documents is neither necessary nor necessarily sufficient to satisfy the legal requirements that each application must meet under the Atomic Energy Act; LBP-08-25, 68 NRC 763 (2008)
- if petitioners or intervenors are dissatisfied with NRC's generic approach to a problem, their remedy lies in the rulemaking process, not in adjudication; CLI-10-19, 72 NRC 98 (2010); LBP-09-18, 70 NRC 385 (2009)
- it is not for any court to examine the strength of the evidence upon which Congress based its judgment to approve the Yucca Mountain site; LBP-10-11, 71 NRC 609 (2010)
- no rule or regulation of the Commission concerning the licensing of production and utilization facilities is subject to attack by way of discovery, proof, argument, or other means in any adjudicatory proceeding; LBP-10-14, 72 NRC 101 (2010)
- NRC proceedings are not open forums for discussing the country's need for energy and spent fuel storage; CLI-10-10, 71 NRC 281 (2010)
- NRC shall conduct a single hearing on the record with regard to the licensing of the construction and operation of a uranium enrichment facility; CLI-09-15, 70 NRC 1 (2009)
- petitioner cannot seek to use a specific adjudicatory proceeding to attack generic NRC regulations and requirements or express generalized grievances about NRC policies; CLI-08-15, 68 NRC 1 (2008); CLI-08-17, 68 NRC 231 (2008)
- the Commission acts as adjudicator and in that light considers the reinstatement of a construction permit afresh, without regard for its earlier views; CLI-10-6, 71 NRC 113 (2010)
- the scope of proceedings is specified by the Notice of Hearing; LBP-09-25, 70 NRC 867 (2009)
- with certain very limited exceptions, all NRC hearings will be public; LBP-10-2, 71 NRC 190 (2010)
- with respect to a prosecutor's role, government lawyers should understand and follow the venerable maxim that the government wins when justice is done; LBP-09-24, 70 NRC 676 (2009)
- See also Abeyance of Proceeding; Closed Hearings; Combined License Proceedings; Decommissioning Proceedings; Delay of Proceeding; Early Site Permit Proceedings; Enforcement Proceedings; Evidentiary Hearings; High-Level Waste Repository Proceeding; Informal Hearings; Informal Proceedings; License Renewal Proceedings; License Transfer Proceedings; Materials License Proceedings; Materials License Renewal Proceedings; NRC Proceedings; Public Hearings; Uranium Enrichment Facility Proceedings
- ADMINISTRATIVE DISPUTE RESOLUTION**
- challenges to NRC's authority to engage in ADR is beyond the scope of enforcement proceedings; LBP-08-14, 68 NRC 279 (2008)
- ADMINISTRATIVE PROCEDURE ACT**
- an order modifying a license, such as a Staff order, falls well within the APA's definition of adjudication, and as such, the Staff order does not trigger the notice-and-comment procedures applicable to rulemakings; CLI-10-3, 71 NRC 49 (2010)
- if a board does not explain how it had arrived at its findings of fact, it would fail to comply with its responsibilities under the Act to issue a reasoned decision; CLI-10-23, 72 NRC 210 (2010)
- review of agency action is directed to determine if its decision is a product of consideration of relevant factors and whether a clear error of judgment has occurred; LBP-10-10, 71 NRC 529 (2010)
- the Commission has discretion to impose binding, prospectively applicable legal requirements by either rulemaking or adjudication; CLI-10-3, 71 NRC 49 (2010)
- the opportunity for cross-examination under Subpart L is equivalent to the opportunity for cross-examination under the Administrative Procedure Act; LBP-07-4, 65 NRC 281 (2007); LBP-08-6, 67 NRC 241 (2008)
- there is no absolute right to conduct cross-examination; LBP-10-15, 72 NRC 257 (2010)
- ADMISSIBILITY OF EVIDENCE**
- relevant information need not be admissible at a trial if the discovery appears reasonably calculated to lead to admissible evidence; LBP-10-2, 71 NRC 190 (2010)
- ADOPTION OF CONTENTIONS**
- petitioner who has not submitted an admissible contention is not allowed adopt the contentions of other petitioners; LBP-08-13, 68 NRC 43 (2008)

SUBJECT INDEX

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS

a board may ask Staff to produce ACRS documents that it reviewed in conducting its license application review, but Staff need not obtain additional ACRS documents that it never saw in conducting its review; CLI-06-20, 64 NRC 15 (2006)

ADVISORY OPINIONS

because NRC is not subject to the jurisdictional limitations placed on federal courts by the case or controversy provision in Article III of the Constitution, there is no insuperable barrier to its rendition of an advisory opinion on issues that have been indisputably mooted by events occurring subsequent to a licensing board decision; LBP-09-15, 70 NRC 198 (2009)

issuance of advisory opinions is generally disfavored by the Commission; CLI-08-21, 68 NRC 351 (2008)

AFFIDAVITS

a petition for rule waiver must be accompanied by an affidavit, but affiant need not be an expert; LBP-10-15, 72 NRC 257 (2010)

a purely legal-issue contention need not allege facts or present arguments by affidavit; LBP-09-6, 69 NRC 367 (2009)

all pleadings are expected to be relevant, material, and reliable; LBP-09-6, 69 NRC 367 (2009)

an affidavit supporting representational standing must describe precisely how the affiant is aggrieved, whether based on employment, residence, or activities; CLI-08-19, 68 NRC 251 (2008)

any request for waiver of or exception to a rule must be accompanied by an affidavit that identifies with particularity the special circumstances alleged to justify the waiver or exception requested; CLI-10-10, 71 NRC 281 (2010); LBP-08-17, 68 NRC 431 (2008)

authorization for organizational representation is to be filed with specific reference to the proceeding in which standing is sought and petitioners given the opportunity to cure such defects in their affidavits; CLI-09-9, 69 NRC 331 (2009); LBP-09-13, 70 NRC 168 (2009)

bare assertions and speculation do not supply the requisite support and a judge's dissenting opinion cannot substitute for the affidavit required to be submitted to the board, with a motion to reopen, in the first instance; CLI-08-28, 68 NRC 658 (2008)

detail sufficient to support a tribunal's plenary assessment of the validity of a claimed exemption under the Freedom of Information Act must be provided; LBP-08-7, 67 NRC 361 (2008)

each factual environmental contention must be accompanied by one or more affidavits, but a purely legal-issue contention cannot logically require affidavit support, as by definition such a contention alleges no facts that require support; LBP-09-6, 69 NRC 367 (2009)

even though members' affidavits did not explicitly authorize the organizations to represent them, this was implicit in their providing the affidavits; LBP-07-11, 66 NRC 41 (2007)

evidence supporting motions to reopen must meet the regulatory admissibility standards of relevance, materiality, and reliability; LBP-08-12, 68 NRC 5 (2008)

expert affidavits supporting motions to reopen must be presented by competent individuals with knowledge of the facts alleged or by experts in the appropriate disciplines, and the evidence must meet admissibility standards; CLI-09-7, 69 NRC 235 (2009)

for factual disputes, petitioner need not proffer facts in formal affidavit or evidentiary form, sufficient to withstand a summary disposition motion, but must present sufficient information to show a genuine dispute and reasonably indicating that a further inquiry is appropriate; LBP-09-16, 70 NRC 227 (2009); LBP-09-17, 70 NRC 311 (2009); LBP-09-27, 70 NRC 992 (2009); LBP-10-24, 72 NRC 720 (2010)

if it appears from the affidavits of a party opposing a motion for summary disposition or other dispositive motion that the opposing party cannot, for reasons stated, present by affidavit, facts essential to justify the party's opposition, the board may refuse the application for summary disposition or may order a continuance as may be necessary or just; LBP-09-22, 70 NRC 640 (2009)

if none of the affidavits submitted in support of a hearing request indicates that an organization seeking to intervene represents the interests of the submitter, the organization has failed to establish that it has standing; LBP-08-16, 68 NRC 361 (2008)

if summary disposition movant satisfies its initial burden and supports its motion by affidavit, opponent must either proffer rebutting evidence or submit an affidavit explaining why it is impractical to do so; LBP-07-12, 66 NRC 113 (2007)

if the presiding officer determines from affidavits filed by the party opposing summary disposition that the opposing party cannot present by affidavit the facts essential to justify its opposition, the presiding

SUBJECT INDEX

officer may order a continuance to permit such affidavits to be obtained, or may take other appropriate action; LBP-07-12, 66 NRC 113 (2007)

in evaluating the validity of a claimed FOIA exemption, the experience and expertise of an affiant, coupled with a detailed and specific affidavit, lends special weight to the affiant's statements and conclusions; LBP-08-7, 67 NRC 361 (2008)

in ruling on a motion for summary disposition, a licensing board or presiding officer should not conduct a trial on affidavits; CLI-10-11, 71 NRC 287 (2010)

it is not necessary for petitioners to allege facts under section 2.309(f)(1)(v) or to provide an affidavit that sets out the factual and/or technical bases under section 51.109(a)(2) to support a purely legal contention; CLI-09-14, 69 NRC 580 (2009)

motions to reopen must be accompanied by affidavits of qualified experts presenting the factual and/or technical bases for the claim that there is a significant safety issue, together with evidence that satisfies admissibility standards; CLI-08-28, 68 NRC 658 (2008); CLI-09-5, 69 NRC 115 (2009); CLI-09-7, 69 NRC 235 (2009)

motions to reopen must be accompanied by affidavits that set forth the factual and/or technical bases for movant's claim that the criteria of section 2.326(a) have been satisfied, including addressing each of the reopening criteria separately with a specific explanation of why it has been met; LBP-08-12, 68 NRC 5 (2008); LBP-10-19, 72 NRC 529 (2010); LBP-10-21, 72 NRC 616 (2010)

petitioner does not need to provide expert opinion or a substantive affidavit in order to satisfy 10 C.F.R. 2.309(f)(1)(v); LBP-10-15, 72 NRC 257 (2010)

representational standing will not be granted where petitioner has provided no supporting affidavits or other evidence that any member has authorized it to represent their interests in the proceeding; LBP-09-28, 70 NRC 1019 (2009)

requests for rule waiver or exception must be accompanied by an affidavit that identifies with particularity the special circumstances alleged to justify the waiver or exception requested; LBP-09-6, 69 NRC 367 (2009)

specificity and support are required for the positions parties take in their filings; LBP-07-13, 66 NRC 131 (2007)

SUNSI requests need not be accompanied by affidavits or include lengthy, detailed justifications addressing the likelihood of standing; LBP-09-5, 69 NRC 303 (2009)

support for a motion to reopen must provide a prima facie showing that a deficiency exists in the license renewal application and the deficiency presents a significant safety issue; LBP-08-12, 68 NRC 5 (2008)

support for environmental contentions in the high-level waste proceeding must set forth significant and substantial grounds for the claim that it is not practicable to adopt the environmental impact statement for the proposed repository prepared by DOE; LBP-09-6, 69 NRC 367 (2009)

the assertion of deliberative process privilege should provide the basis for the withholding and a statement of specific harm, applicable to the circumstances of the case, that would result from disclosure; LBP-06-25, 64 NRC 367 (2006)

there is no requirement that an expert's opinion must include specific references to supporting sources and documents; LBP-09-6, 69 NRC 367 (2009)

were the Commission to accept and consider a belatedly submitted representative-standing affidavit attached to a reply brief, the applicant would be deprived of the right to challenge the substantive sufficiency of the affidavit; CLI-08-19, 68 NRC 251 (2008)

written testimony shall be under oath or by an affidavit so that it is suitable for being received into evidence directly, in exhibit form; LBP-09-22, 70 NRC 640 (2009)

AGING MANAGEMENT

a contention stating that monitoring activities may not be sufficient to identify and control the effects of aging that will occur during the 20-year renewal period falls within the scope of a license renewal proceeding; LBP-06-7, 63 NRC 188 (2006)

a contention that alleges that the applicant's plan to manage metal fatigue is too vague and is really only a "plan to develop a plan" raises an admissible and material issue as to whether the applicant has met its requirement to demonstrate that the effects of aging will be adequately managed; LBP-06-20, 64 NRC 131 (2006)

SUBJECT INDEX

- a license renewal applicant seeking to satisfy aging management requirements by reliance on existing time-limited aging analyses in its current licensing basis would rely on 54.21(c)(1)(i) or (ii); CLI-10-17, 72 NRC 1 (2010)
- a list of time-limited aging analyses together with a demonstration that the analyses have been projected to the end of the period of extended operation must be included in the license renewal application; CLI-08-28, 68 NRC 658 (2008)
- a program for license renewal is intended to manage the effects of aging on a particular component by ensuring that the component does not exceed the design code limit; CLI-10-17, 72 NRC 1 (2010)
- a program that consists solely of bald statements does not satisfy the requirement that an applicant demonstrate that it will adequately manage aging; LBP-08-25, 68 NRC 763 (2008)
- after issuance of a renewed license, licensee may demonstrate that its use of an aging management program identified in the GALL Report constitutes reasonable assurance that it will manage the targeted aging effect during the renewal period; CLI-10-17, 72 NRC 1 (2010)
- age-related degradation can affect a number of reactor and auxiliary systems, including the reactor vessel, the reactor coolant system pressure boundary, steam generators, electrical cables, the pressurizer, heat exchangers, and the spent fuel pool; LBP-07-4, 65 NRC 281 (2007)
- all non-safety-related structures, systems, and components whose failure could prevent satisfactory accomplishment of any of the safety functions identified in 10 C.F.R. 54.4(a)(1), including auxiliary systems necessary for the function of safety-related systems, are subject to safety review for license renewal; CLI-10-14, 71 NRC 449 (2010)
- all structures, systems, and components relied on in safety analyses or plant evaluations to perform a function that demonstrates compliance with the NRC's regulations for fire protection, environmental qualification, pressurized thermal shock, anticipated transients without scram, and station blackout are subject to safety review for license renewal; CLI-10-14, 71 NRC 449 (2010)
- although a contention challenging whether a new proposed fire protection program effectively addresses all relevant aging issues is denied, it could be refiled at a later point in the license renewal proceeding; LBP-07-11, 66 NRC 41 (2007)
- AMPs are both a required element of the license renewal application and a central finding that NRC must make before it can issue a license renewal; LBP-08-25, 68 NRC 763 (2008)
- an analysis may be performed showing that the aging mechanism will not cause failure of the component; LBP-08-26, 68 NRC 905 (2008)
- an issue can be related to plant aging and still not warrant review at the time of a license renewal application, if the aging-related issue is adequately dealt with by regulatory processes on an ongoing basis; LBP-06-10, 63 NRC 314 (2006); LBP-06-23, 64 NRC 257 (2006); LBP-07-11, 66 NRC 41 (2007)
- analysis and management of age-related degradation must be elevated before a renewed operating license is issued and will be critical to safety during the term of the renewed license; LBP-08-25, 68 NRC 763 (2008)
- applicant may demonstrate compliance with 10 C.F.R. 54.21(c)(1)(ii) by showing that the cumulative usage factor calculations have been reevaluated based on an increased number of assumed transients to bound the period of extended operation and that the resulting CUF remains less than or equal to 1.0 for the period of extended operation; CLI-10-17, 72 NRC 1 (2010)
- applicant moves for summary disposition of a contention involving whether leak detection through monitoring wells is necessary as part of the plant's aging management program; LBP-07-12, 66 NRC 113 (2007)
- applicant must demonstrate, by a preponderance of the evidence, that its aging management program provides reasonable assurance that activities authorized by the renewed license will be conducted in a manner consistent with the current licensing basis, and that the effects of aging will be detected and corrected; LBP-07-17, 66 NRC 327 (2007)
- applicant must establish an AMP that is adequate to provide reasonable assurance that the intended function of the piping subject to flow accelerated corrosion will be maintained in accordance with the current licensing basis for the period of extended operation; LBP-08-25, 68 NRC 763 (2008)
- applicant's commitment to repair or replace affected locations before exceeding a cumulative usage factor of 1.0 does not meet the "demonstration" requirement of the regulations; LBP-08-13, 68 NRC 43 (2008)

SUBJECT INDEX

applicants for license renewal must demonstrate how their programs will be effective during the period of extended operations and identify any additional actions that will need to be taken; LBP-08-22, 68 NRC 590 (2008)

burden is on applicant to show that concrete in containment structures will maintain its integrity during the extended period of operations or to develop an aging management plan that ensures that any indication of degradation is detected and remediated; LBP-08-13, 68 NRC 43 (2008)

conservatism in use of Green's function to determine cumulative usage factor for metal fatigue in the recirculation nozzle is discussed; LBP-08-12, 68 NRC 5 (2008)

cracking of a nonsafety-related steam dryer could cause a release of loose parts that could have an adverse impact on safety-related equipment and thus it is within the scope of aging management review in a license renewal proceeding; LBP-08-25, 68 NRC 763 (2008)

each application must contain an Integrated Plant Assessment for which specified components will demonstrate that the effects of aging will be adequately managed so that the intended function(s) will be maintained consistent with the current licensing basis for the period of extended operation; LBP-08-13, 68 NRC 43 (2008)

even if a particular system falls within the scope of Part 54, not all structures and components comprising that system will necessarily be subject to Part 54 aging management requirements; LBP-08-22, 68 NRC 590 (2008)

even if the TLAA's predict that the component will fail during the period of extended operation, a license renewal can still be granted if applicant demonstrates that the effects of aging will be adequately managed during the period of extended operation; LBP-08-25, 68 NRC 763 (2008)

for license renewal, feedwater, core spray, and reactor recirculation outlet nozzles, as part of the reactor coolant pressure boundary, must meet the metal-fatigue requirements for Class 1 components in section III of the ASME Code; CLI-10-17, 72 NRC 1 (2010)

for license renewal, NRC considers this to be the most significant overall safety concern posed by extended reactor operation; LBP-06-10, 63 NRC 314 (2006)

for systems, structures, and components subject to aging management review, discussion of proposed inspection and monitoring details will come before a board only as they are needed to demonstrate that the intended function of relevant SSCs will be maintained for the license renewal period; LBP-08-13, 68 NRC 43 (2008)

general categories of structures, systems, and components falling within the initial focus of the safety review for license renewal are outlined; CLI-10-14, 71 NRC 449 (2010)

if aging-related analysis fails, then the application must include a specific aging program to manage the effects of aging on that component; LBP-08-26, 68 NRC 905 (2008)

if applicant can demonstrate by plant operating experience that the initially predicted number of stress cycles would not be exceeded even in the extended 20-year operating period, then 10 C.F.R. 54.21(c)(1)(i) would be satisfied; CLI-10-17, 72 NRC 1 (2010)

if the cumulative usage factor environmental metal fatigue analysis produces a value of greater than unity, then the analysis indicates that the component would be likely to develop metal fatigue cracks that might affect their function during the 20-year license renewal period of extended operation, and thus requires an aging management program; LBP-08-13, 68 NRC 43 (2008); LBP-09-9, 70 NRC 41 (2009)

in a license renewal proceeding, safety contentions must focus on topics related to the detrimental effects of aging and related time-limited issues; LBP-07-15, 66 NRC 261 (2007)

license renewal applicant who addresses the cumulative usage factor issue via an aging management program may reference Chapter X of the Generic Aging Lessons Learned Report; CLI-10-17, 72 NRC 1 (2010)

license renewal applicant who chooses to rely upon an existing time-limited aging analysis may demonstrate compliance with 10 C.F.R. 54.21(c)(1)(i) by showing that the existing cumulative usage factor calculations remain valid because the number of assumed transients would not be exceeded during the period of extended operation; CLI-10-17, 72 NRC 1 (2010)

license renewal applications must include an evaluation of time-limited aging analyses demonstrating that the analyses will remain valid for the period of extended operation, have been projected to the end of the period of extended period of operation, or the effects of aging on the intended functions will be adequately managed for the period of extended operation; CLI-10-17, 72 NRC 1 (2010)

SUBJECT INDEX

license renewal safety review focuses on structures and components that perform passive functions, with no moving parts or changes in configuration or properties; CLI-10-14, 71 NRC 449 (2010)

licensee must comply with Part 50 regulations, including the provisions requiring compliance with the ASME Code, during the period of extended operation; CLI-10-17, 72 NRC 1 (2010)

licensees and applicants are expected to adjust their programs to reflect lessons learned in the future through individual and industrywide experiences; CLI-08-23, 68 NRC 461 (2008)

metal fatigue is an example of age-related degradation that properly falls within the scope of a license renewal proceeding; LBP-07-15, 66 NRC 261 (2007)

motion to reopen to introduce a new contention asserting issues related to aging management of effects of moist or wet environments on buried, below-grade, underground, or hard-to-access safety-related electrical cables is denied; LBP-10-19, 72 NRC 529 (2010)

NRC's public health and safety review for a license renewal ordinarily is limited to a review of the plant structures and components that will require an aging management review for the period of extended operation and the plant's systems, structures, and components that are subject to an evaluation of time-limited aging analyses; LBP-06-7, 63 NRC 188 (2006)

NUREG-1801 identifies generic aging management programs that the Staff has determined to be acceptable, based on the experiences and analyses of existing programs at operating plants during the initial license period; CLI-08-23, 68 NRC 461 (2008)

quality assurance programs must include written test procedures that incorporate the requirements and acceptance limits contained in applicable design documents, and, as appropriate, proof tests prior to installation, preoperational tests, and operational tests during nuclear power plant operation, of structures, systems, and components; LBP-08-22, 68 NRC 590 (2008)

quality assurance requirements apply to license renewals; LBP-08-22, 68 NRC 590 (2008)

renewal applicants must demonstrate that they will adequately manage the detrimental effects of aging for all important components and structures, with attention, for example, to metal fatigue, erosion, corrosion, thermal and radiation embrittlement, microbiologically induced effects, creep, and shrinkage; CLI-06-24, 64 NRC 111 (2006)

review does not cover active components because routine surveillance and maintenance programs detect and manage the effects of aging on these components; CLI-08-23, 68 NRC 461 (2008)

review for operating license renewal addresses activities identified in 10 C.F.R. 54.21(a)(3) and (c)(1) regarding the integrated plant assessment; CLI-10-17, 72 NRC 1 (2010)

safety review for license renewal focuses on those systems, structures, and components that are of principal importance to safety; CLI-10-14, 71 NRC 449 (2010)

scope of a license renewal proceeding under 10 C.F.R. Part 54 encompasses a review of the plant structures and components that will require an aging management review for the period of extended operation and the plant's systems, structures, and components that are subject to time-limited aging analyses; CLI-10-17, 72 NRC 1 (2010); LBP-10-13, 71 NRC 673 (2010); LBP-10-21, 72 NRC 616 (2010)

section 54.21(c)(1)(i)-(iii) requires that the applicant make its demonstration that the effects of aging will be adequately managed during the period of extended operation in the application, which is necessarily before the license may be granted; LBP-08-25, 68 NRC 763 (2008)

section 54.29(a) speaks of both past and future actions, referring specifically to those that have been or will be taken with respect to managing the effects of aging and time-limited aging analyses; CLI-10-17, 72 NRC 1 (2010)

Staff's audit, or sampling, method of verifying a license renewal applicant's aging management programs, together with the other components of its review, enables the Staff to make the safety findings necessary for issuance of a renewed license; CLI-08-23, 68 NRC 461 (2008)

structures, systems, and components that are relied upon to remain functional during and following design-basis events to ensure the integrity of the reactor coolant pressure boundary, the capability to shut down the reactor and maintain it in a safe shutdown condition, or the capability to prevent or mitigate the consequences of accidents that could result in potential offsite exposures are subject to safety review for license renewal; CLI-10-14, 71 NRC 449 (2010)

technical information that must be included in a license renewal application as part of the time-limited aging analyses is described; CLI-08-28, 68 NRC 658 (2008)

SUBJECT INDEX

- terrorism contentions are, by their very nature, directly related to security and are therefore, under NRC's license renewal rules, unrelated to the detrimental effects of aging, and, consequently, are beyond the scope of, not material to, and inadmissible in, a license renewal proceeding; CLI-07-9, 65 NRC 139 (2007)
- the aging management review for license renewal does not focus on all aging-related issues; CLI-10-27, 72 NRC 481 (2010)
- the general scope of the license renewal safety review is outlined in 10 C.F.R. 54.4; CLI-10-14, 71 NRC 449 (2010)
- the Generic Aging Lessons Learned Report sets forth three ways that a license renewal applicant proposing to use an aging management program may comply with the requirements of 10 C.F.R. 54.21(c)(1)(iii); CLI-10-17, 72 NRC 1 (2010)
- the licensing basis for a nuclear power plant during the renewal term consists of the current licensing basis together with new commitments to monitor, manage, and correct age-related degradation unique to license renewal; LBP-08-25, 68 NRC 763 (2008)
- the only safety issue where the regulatory process may not adequately maintain a plant's current licensing basis involves the potential detrimental effects of aging on the functionality of certain systems, structures, and components in the period of extended operations; CLI-10-27, 72 NRC 481 (2010)
- the portion of the current licensing basis that can be affected by the detrimental effects of aging is limited to the design basis aspects of the CLB; LBP-10-15, 72 NRC 257 (2010)
- the scope of license renewal proceedings is limited to the potential detrimental effects of aging that are not routinely addressed by ongoing regulatory oversight programs; LBP-06-23, 64 NRC 257 (2006); LBP-07-4, 65 NRC 281 (2007); LBP-07-11, 66 NRC 41 (2007); LBP-07-17, 66 NRC 327 (2007)
- the standard review plan presents one acceptable methodology for calculating the environmentally adjusted cumulative usage factor; CLI-10-17, 72 NRC 1 (2010)
- the statutory conditions for grant of a license renewal are described; LBP-08-25, 68 NRC 763 (2008)
- the ten elements of an effective aging management program must be addressed only when an applicant's AMP differs from the relevant AMP identified in the GALL Report; LBP-08-26, 68 NRC 905 (2008)
- the term "demonstrate" as used in 10 C.F.R. 54.21 is a strong, definitive verb that logically requires an applicant to provide a reasonably thorough description of its aging management program and to show conclusively how this program will ensure that the effects of aging will be managed for its specific plant; LBP-08-25, 68 NRC 763 (2008)
- to satisfy the reasonable assurance standard for its aging management program, a license renewal applicant must make a showing that meets the preponderance of the evidence threshold of compliance with the applicable regulations, not a 95% confidence level of compliance; CLI-09-7, 69 NRC 235 (2009)
- whether a plan is necessary to manage the cumulative effects of embrittlement of the reactor pressure vessels and associated internals is within the scope of a license renewal proceeding; LBP-08-13, 68 NRC 43 (2008)
- AGREEMENT STATE PROGRAMS**
- before entering into an agreement with any state, NRC is required to find the state radiation control program compatible in certain respects with that of the NRC, and adequate to protect the public health and safety with respect to the materials covered by the proposed agreement; LBP-06-8, 63 NRC 241 (2006)
- before it is granted authority to participate in the Agreement State program, a state must pass legislation establishing the authority for that state to conduct a radiation control program, and must further assume and implement that authority through the promulgation of state regulations; LBP-06-8, 63 NRC 241 (2006)
- by its terms, 10 C.F.R. 2.342(a) applies to a stay of a decision or action of a presiding officer or licensing board and therefore does not apply to NRC's approval of a state's application to become an Agreement State; CLI-10-8, 71 NRC 142 (2010)
- challenges to an Agreement State's program may be raised in a section 2.206 petition; CLI-10-8, 71 NRC 142 (2010)
- filing of a petition for alternative soil remediation standards is permitted as long as the resulting dose would not exceed 15 mrem per year; CLI-10-8, 71 NRC 142 (2010)

SUBJECT INDEX

- if certain conditions are met, the Commission will discontinue its regulatory authority over certain categories of material, which authority then is assumed by the state; CLI-10-8, 71 NRC 142 (2010)
- if licensee perceives a difficulty in meeting the deadline for submission of a revised decommissioning plan, it may request an extension of time from the Agreement State; CLI-10-8, 71 NRC 142 (2010)
- if licensee wishes to challenge the compatibility category that is assigned to a particular regulation, including the license termination rule, it may do so at any time through submission of a petition for rulemaking; CLI-10-8, 71 NRC 142 (2010)
- New Jersey's requirement of a calculation of up to peak dose is consistent with the essential objective of NRC's rule; CLI-10-8, 71 NRC 142 (2010)
- New Jersey's requirements pertaining to engineering or institutional controls are compatible with NRC rules; CLI-10-8, 71 NRC 142 (2010)
- New Jersey's restricted release criteria are compatible with NRC rules; CLI-10-8, 71 NRC 142 (2010)
- NRC is authorized to transfer authority to any state government to regulate byproduct materials, source materials, and small quantities of special nuclear materials, including the disposal of such materials; LBP-06-8, 63 NRC 241 (2006)
- NRC is required to conduct regular reviews of a state's radiation control program; LBP-06-8, 63 NRC 241 (2006)
- NRC retains only oversight authority over the specific activities covered by the agreement, while the Agreement State assumes all active regulatory authority with regard to those specified activities; LBP-06-8, 63 NRC 241 (2006)
- NRC retains the power to terminate or suspend an agreement with any state under certain circumstances if it determines that such action is required to ensure public health and safety; LBP-06-8, 63 NRC 241 (2006)
- NRC Staff is required by law to conduct periodic reviews of the adequacy and compatibility of an Agreement State's regulatory program; CLI-10-8, 71 NRC 142 (2010)
- states may provide exemptions from their rules upon application and a showing of hardship or compelling need, with the approval of the Commission on Radiation Protection; CLI-10-8, 71 NRC 142 (2010)
- the Commission must find that a program is in accordance with the requirements of Atomic Energy Act § 274o and in all other respects is compatible with the Commission's program for regulation of radioactive materials, and that the state program is adequate to protect the public health and safety with respect to the materials covered by the proposed agreement; CLI-10-8, 71 NRC 142 (2010)
- AGREEMENT STATES**
- states have the authority, for the duration of the agreement, to regulate the materials covered by the agreement for the protection of the public health and safety from radiation hazards; LBP-06-8, 63 NRC 241 (2006)
- the appropriate state or federal regulatory authority will conduct any necessary site-specific evaluation to confirm that applicable radiological dose limits and standards for disposal of depleted uranium can be met at a particular site; CLI-06-15, 63 NRC 687 (2006)
- to become an Agreement State, the governor must certify that the state has a program for the control of radiation hazards adequate to protect the public health and safety with respect to the materials within the state covered by the proposed agreement, and that the state desires to assume regulatory responsibility for such materials; CLI-10-8, 71 NRC 142 (2010)
- AGREEMENTS**
- non-disparagement clauses in retention bonus agreements are common in employment agreements and NRC should not interfere with these agreements unless it finds such a clause violates 10 C.F.R. 50.7(f) or is applied in a fashion that prevents or retaliates against an employee for engaging in protected activities such as communicating with NRC; DD-10-1, 72 NRC 149 (2010)
- AIRCRAFT CRASHES**
- a contention asserting that a license application for an irradiator sited at an airport fails to analyze aircraft crash probabilities and consequences presents a genuine dispute on a material issue; LBP-06-12, 63 NRC 403 (2006)
- although analysis of aircraft impact is required, reactors whose construction permits were issued prior to July 13, 2009, are excluded, and the rule is not NEPA-based; LBP-09-26, 70 NRC 939 (2009)

SUBJECT INDEX

- amendment of a combined license application to comply with an amended aircraft impacts rule during the pendency of the combined license application could form the basis for a late-filed contention; CLI-10-1, 71 NRC 1 (2010)
- contention challenging applicant's failure to consider deliberate and malicious crashes in its environmental report is inadmissible in a combined license proceeding; LBP-08-21, 68 NRC 554 (2008)
- events that could cause radioactive releases, including aircraft impact events, are included within the set of design basis events required to be analyzed and designed against only if the probability of such events is above one in one million per year; LBP-09-2, 69 NRC 87 (2009)
- NEPA imposes no duty on NRC to consider intentional malevolent acts in a license renewal proceeding; LBP-07-11, 66 NRC 41 (2007)
- the agency decided not to include the threat of air attacks in the 2007 revision to the design-basis threat rule, a decision upheld by the Ninth Circuit; CLI-10-9, 71 NRC 245 (2010)
- the need for design features to guard against design basis threats is outside the scope of a combined license proceeding because it is the subject of an ongoing rulemaking; LBP-09-2, 69 NRC 87 (2009)
- where petitioner has not shown a reasonably close causal relationship between an aircraft attack and the relicensing proceeding at issue, such an attack does not warrant NEPA evaluation; CLI-10-9, 71 NRC 245 (2010)
- with respect to aircraft crash as an element of the design-basis threat, adequate protection against an air threat is assured by the active defenses provided by other federal agencies, together with what reasonably could be expected of licensees; CLI-10-1, 71 NRC 1 (2010)
- ALARA**
- a combined license application must include a description of equipment and measures taken to ensure that any exposures to radioactive materials such as low-level radioactive waste are kept as low as reasonably achievable, including a description of the provisions for storage of solid waste containing radioactive materials; LBP-09-10, 70 NRC 51 (2009)
- a decommissioning plan for a restricted release site will be judged exclusively upon whether residual radioactivity levels will be as low as is reasonably achievable and the total effective dose equivalent to offsite human beings will be below 25 mrem; LBP-08-4, 67 NRC 105 (2008)
- a provision for ALARA determinations allows the use of cost as a factor for determining what level of remediation is cost-effective below the standards, but is not allowed by the New Jersey Agreement State program; CLI-10-8, 71 NRC 142 (2010)
- applicant must have a program to achieve occupational doses and doses to members of the public that are as low as is reasonably achievable; LBP-10-20, 72 NRC 571 (2010)
- DOE need not weigh ALARA considerations outside the geologic repository operations area for which it is responsible; LBP-10-22, 72 NRC 661 (2010)
- each licensee must evaluate the extent of radiation hazards that may be present; DD-10-3, 72 NRC 171 (2010)
- for applications filed after January 2, 1971, applicant must identify design objectives and means to maintain levels of radioactive effluents as low as is reasonably achievable; LBP-09-19, 70 NRC 433 (2009)
- licensees, including Part 63 licensees, are required to use, to the extent practical, procedures and engineering controls based upon sound radiation protection principles to achieve occupational doses and doses to members of the public that are as low as is reasonably achievable; CLI-09-14, 69 NRC 580 (2009); CLI-09-16, 70 NRC 33 (2009); LBP-10-22, 72 NRC 661 (2010)
- petitioner alleges that routine unprotected handling of an unshielded neutron source by licensed operators and uncontrolled access by untrained and unlicensed facility visitors to this neutron source violated ALARA requirements; DD-10-3, 72 NRC 171 (2010)
- the geologic repository operations area must meet the requirements of 10 C.F.R. Part 20; CLI-09-14, 69 NRC 580 (2009)
- ALARA PRINCIPLE**
- a site will be considered for restricted release if further reductions in residual radioactivity necessary to comply with the provisions of 10 C.F.R. 20.1402 would result in net public or environmental harm or need not be made because residual levels associated with the restricted conditions are as low as reasonably achievable; CLI-09-1, 69 NRC 1 (2009)

SUBJECT INDEX

ALARA is defined as every reasonable effort to maintain exposures to radiation as far below the dose limits in Part 20 as is practical consistent with the purpose for which the licensed activity is undertaken; CLI-10-8, 71 NRC 142 (2010)

NRC regulations set a minimum standard for safety, not a maximum; LBP-10-22, 72 NRC 661 (2010) unless and until specific numerical guidelines for maintaining effluent releases ALARA for non-LWRs are implemented, compliance with ALARA requirements will be determined on a case-by-case basis in the context of a future COL or CP application referencing the early site permit; CLI-07-27, 66 NRC 215 (2007)

ALTERNATIVES

See Consideration of Alternatives

AMENDMENT

changes in a combined license application to comply with an amended aircraft impacts rule during the pendency of the COL application could form the basis for a late-filed contention; CLI-10-1, 71 NRC 1 (2010)

even if an environmental impact statement prepared by the Staff is found to be inadequate in certain respects, the board's findings, as well as the adjudicatory record, become, in effect, part of the final EIS; LBP-09-7, 69 NRC 613 (2009)

license applications may be modified or improved during the NRC review process and changed may be significant; LBP-10-17, 72 NRC 501 (2010)

when a board decision supplements or differs from the findings of the Staff as set forth in its final environmental impact statement, the FEIS is deemed modified by the board's decision to that extent; LBP-06-8, 63 NRC 241 (2006)

See also Amendment of Contentions; License Amendments; Operating License Amendment Applications; Operating License Amendments

AMENDMENT OF CONTENTIONS

a petitioner may not rectify its contention pleading inadequacies in its reply; LBP-06-12, 63 NRC 403 (2006)

a reply cannot be used to substantively supplement or amend a contention; LBP-08-18, 68 NRC 533 (2008)

a reply cannot expand the scope of the arguments set forth in the original pleading; CLI-06-17, 63 NRC 727 (2006)

a reply to an answer may not be used as a vehicle to raise new arguments or claims not found in the original contention or be used to cure an otherwise deficient contention; LBP-07-4, 65 NRC 281 (2007)

after the initial filing, permission of the board must be sought to file new or amended contentions; LBP-07-14, 66 NRC 169 (2007)

after the Staff's technical review has been completed and the documents associated with it are made publicly available, the board will enter an order providing petitioner with a reasonable opportunity to review those documents and to decide whether it wishes to make changes in the contentions it has presented to the board; LBP-06-6, 63 NRC 167 (2006)

an amended or new contention must be submitted in a timely fashion based on the availability of the subsequent information; LBP-09-27, 70 NRC 992 (2009)

an intervenor attempting to litigate an issue based on expressed concerns about the DEIS may need to amend the admitted contention or, if the information in the DEIS is sufficiently different from that in the ER that supported the contention's admission, submit a new contention; LBP-08-2, 67 NRC 54 (2008); LBP-08-3, 67 NRC 85 (2008)

by definition, contentions admitted under 10 C.F.R. 2.309(f)(2)(i)-(iii) are timely because they are founded on material new information that was not available at the time when the petition was initially due; LBP-09-10, 70 NRC 51 (2009)

contentions may be filed after the initial 60-day deadline if petitioner shows that the information on which the amended or new contention is based was not previously available and is materially different than information previously available; and the amended or new contention has been submitted in a timely fashion based on the availability of the subsequent information; LBP-09-26, 70 NRC 939 (2009)

contentions must be based on documents or other information available at the time the petition is to be filed; LBP-08-27, 68 NRC 951 (2008)

SUBJECT INDEX

for a contention of omission, if the information is later supplied by applicant or considered by Staff in a draft EIS, the contention is moot and intervenors must timely file a new or amended contention in order to raise specific challenges regarding the new information; LBP-10-14, 72 NRC 101 (2010)

for timely new or amended contentions, the pleading shall include a motion for leave to file the contention showing that it satisfies 10 C.F.R. 2.309(f)(1); LBP-09-22, 70 NRC 640 (2009)

if a combined license application is amended or material new information subsequently becomes available, petitioners must be given a fair opportunity to file new or amended contentions challenging these changes; LBP-09-10, 70 NRC 51 (2009)

if a contention as originally pled did not cite adequate documentary support, the petitioner cannot remediate the deficiency in its reply brief by introducing documents that were available to it during the time frame for initially filing contentions; CLI-06-17, 63 NRC 727 (2006)

if new information becomes available in the course of Waste Confidence Rulemaking proceedings that contravenes the combined license application, petitioner may file a motion to admit a new or amended contention; LBP-09-18, 70 NRC 385 (2009)

in addition to demonstrating compliance with other applicable requirements set forth in 10 C.F.R. 2.309, amended contentions in the high-level waste repository proceeding shall follow the prescribed format for initial petitions and contentions; LBP-08-10, 67 NRC 450 (2008)

in addition to general contention admissibility requirements, amended or new contentions filed after an intervenor's initial filing will be admitted only upon leave of the presiding officer and a demonstration that information on which the contention is based was not previously available and is materially different than information previously available and has been submitted in a timely fashion based on the availability of the subsequent information; LBP-10-13, 71 NRC 673 (2010)

intervenors must comply with procedural requirements for the filing of new or amended contentions, including the requirement that the contentions be submitted in a timely fashion based on the availability of the subsequent information; LBP-10-17, 72 NRC 501 (2010)

intervenors may not freely change the focus of an admitted contention at will to add a host of new issues and objections that could have been raised at the outset; CLI-10-11, 71 NRC 287 (2010)

intervenors must move for leave to file a timely new or amended contention under 10 C.F.R. 2.309(c), (f)(2); LBP-10-14, 72 NRC 101 (2010)

intervenors must timely file a new or amended contention that addresses the factors in section 2.714(b) in order to raise specific challenges regarding new information; LBP-10-10, 71 NRC 529 (2010)

new bases for a contention cannot be introduced in a reply brief, or any other time after the date the original contentions are due, unless the petitioner meets the late-filing criteria; CLI-06-17, 63 NRC 727 (2006)

new or amended contentions can be filed with leave of the board if the information upon which the amended or new contention is based was not previously available, the information is materially different from information previously available, and the contention has been submitted in a timely fashion based on the availability of the subsequent information; LBP-08-27, 68 NRC 951 (2008); LBP-10-14, 72 NRC 101 (2010)

new or amended contentions in the high-level waste repository proceeding should be presumed timely if they are filed within 30 days after the availability of new or materially different information; LBP-08-10, 67 NRC 450 (2008)

new or amended contentions may be filed only with leave of the presiding officer upon a showing that satisfies the three criteria set out in 10 C.F.R. 2.309(f)(2); CLI-09-7, 69 NRC 235 (2009)

non-NEPA-related contentions may be amended or new contentions filed after the initial filing only with leave of the presiding officer; LBP-10-1, 71 NRC 165 (2010)

NRC adjudicatory proceedings would prove endless if parties were free to introduce entirely new claims that they either originally opted not to make or that simply did not occur to them at the outset; CLI-10-11, 71 NRC 287 (2010)

NRC regulations preserve the right to a hearing when an application is amended by allowing new or amended contentions to be filed in response to material new information; LBP-10-17, 72 NRC 501 (2010)

NRC Staff communications that are declarations of programmatic policy or regulatory conclusions that, for example, might be analogized to conclusions in an environmental impact statement, could trigger a petitioner's right to amend or file new contentions; LBP-06-11, 63 NRC 391 (2006)

SUBJECT INDEX

once a petition to intervene and request for hearing have been granted and contentions are admitted for hearing, appeals of board rulings on new or amended contentions are treated under section 2.341(f)(2), regardless of their subject matter; CLI-10-16, 71 NRC 486 (2010)

once the deadline for filing an initial intervention petition has passed, a party wishing to submit new or amended contentions on matters not associated with issuance of the Staff's draft or final environmental impact statement must satisfy the requirements of 10 C.F.R. 2.309(f)(2); LBP-10-21, 72 NRC 616 (2010)

opportunities are provided to file new or amended contentions to address new developments when they arise; CLI-09-4, 69 NRC 80 (2009)

petitioner may amend contentions or file new contentions on issues arising under NEPA if there are data or conclusions in the NRC environmental documents that differ significantly from the data or conclusions in the applicant's documents; LBP-10-1, 71 NRC 165 (2010)

petitioner must file contentions based on the applicant's environmental report, but may amend those contentions or file new contentions if the NRC draft or final environmental impact statement, environmental assessment, or any supplements relating thereto differs significantly from the data or conclusions in the applicant's documents; CLI-06-9, 63 NRC 433 (2006); CLI-06-15, 63 NRC 687 (2006)

petitioner must show that the information upon which the contention is based was not previously available or is materially different than information previously available, and the amended or new contention has been submitted in a timely fashion based on the availability of the subsequent information; LBP-06-11, 63 NRC 391 (2006); LBP-06-22, 64 NRC 229 (2006); LBP-09-26, 70 NRC 939 (2009); LBP-09-27, 70 NRC 992 (2009)

petitioners seeking admission of new or amended contentions under 10 C.F.R. 2.309(f)(2) must also satisfy the standard admissibility requirements in 10 C.F.R. 2.309(f)(1); LBP-06-11, 63 NRC 391 (2006)

petitions and contentions filed after the initial 60-day deadline are admissible only upon a balancing of eight factors of 10 C.F.R. 2.309(c); LBP-09-26, 70 NRC 939 (2009)

the February 2004 revision of the NRC procedural rules no longer permits the amendment and supplementation of petitions and filing of contentions after the original filing of petitions; LBP-07-11, 66 NRC 41 (2007)

the filing of new or amended contentions based on new information is permitted if sufficient justification is provided; LBP-09-15, 70 NRC 198 (2009)

the standard for amendment of a contention is whether the information was available to the public, not whether the petitioner has recently found it; LBP-09-26, 70 NRC 939 (2009)

to be admitted in a proceeding, a new contention must meet the new or amended contention requirements as well as the general contention admissibility requirements; LBP-09-9, 70 NRC 41 (2009)

to the extent that the draft or final supplemental environmental impact statement contains data or conclusions that differ significantly from the data or conclusions in the applicant's environmental report or in the generic environmental impact statement, a petitioner is entitled to use 10 C.F.R. 2.309(f)(2) as the grounds to file a new or amended contention; LBP-06-20, 64 NRC 131 (2006)

under appropriate circumstances, petitions to intervene, requests for hearing, and new and amended contentions may be filed after the initial 30-day deadline; LBP-08-1, 67 NRC 37 (2008)

when an intervenor's challenges in an admitted contention are directed at a draft environmental impact statement because the FEIS has not yet been issued by the Staff, the contention can be construed as a challenge to the FEIS without the need for further modification; LBP-06-8, 63 NRC 241 (2006)

when facility proponents bring forward a solution that allegedly cures the deficiency alleged in a contention and then move to dismiss the contention, this triggers a period during which petitioners can amend the original contention to challenge the solution's substance; LBP-07-14, 66 NRC 169 (2007)

when new contentions are based on breaking developments of information, they are to be treated as new or amended, not as nontimely; LBP-07-14, 66 NRC 169 (2007); LBP-08-27, 68 NRC 951 (2008)

where a contention alleges the omission of particular information or an issue from an application, and the information is later supplied by the applicant or considered by the Staff in a draft EIS, intervenors must timely file a new or amended contention that addresses the factors in section 2.714(b) in order to raise specific challenges regarding the new information; LBP-09-27, 70 NRC 992 (2009)

SUBJECT INDEX

where warranted, NRC allows for amendment of admitted contentions, but does not allow distinctly new complaints to be added at will as litigation progresses, stretching the scope of admitted contentions beyond their reasonably inferred bounds; CLI-10-11, 71 NRC 287 (2010)

AMENDMENT OF HEARING REQUESTS

licensing boards have been lenient in permitting pro se petitioners the opportunity to cure procedural defects in petitions to intervene regarding standing; LBP-09-18, 70 NRC 385 (2009)

petitions will not be entertained absent a determination by the Commission, the licensing board, or a presiding officer that a balancing of the factors specified in 10 C.F.R. 2.309(c)(1)(i)-(viii) favors admission; CLI-10-4, 71 NRC 56 (2010)

AMENDMENT OF REGULATIONS

notice-and-comment rulemaking is required only when NRC is attempting to change a regulation; CLI-10-6, 71 NRC 113 (2010)

AMICUS CURIAE

a petitioner denied discretionary intervention could still participate as amicus curiae or as an expert witness; CLI-06-16, 63 NRC 708 (2006)

appellate briefs are welcomed from parties in other Commission adjudications that have presented similar issues; CLI-10-17, 72 NRC 1 (2010)

Native American tribes are entitled to a reasonable opportunity to participate in NRC proceedings; LBP-08-6, 67 NRC 241 (2008)

NRC regulations contemplate briefs only after the Commission grants a petition for review, and do not provide for amicus briefs supporting or opposing petitions for review; CLI-10-17, 72 NRC 1 (2010)

petitioners may protect their interests by participating as appropriate, as amici curiae; CLI-10-12, 71 NRC 319 (2010)

AMICUS PLEADINGS

all motions are required to include a certification that the sponsor of the motion has made a sincere effort to contact the other parties and to resolve the issues raised in the motion; CLI-08-22, 68 NRC 355 (2008)

although an amicus brief that supplies a perspective that would materially aid a licensing board's deliberations would be permissible, a brief that injects new issues into the proceeding and alters the content of the record developed by the parties would not be; LBP-08-6, 67 NRC 241 (2008)

although NRC rules do not explicitly authorize amicus briefs at the licensing board level, such briefs might still be granted in appropriate circumstances; LBP-08-6, 67 NRC 241 (2008)

briefs must be filed by the same deadline as the brief of the party whose side the amicus brief supports, unless the Commission provides otherwise; CLI-08-22, 68 NRC 355 (2008); LBP-08-6, 67 NRC 241 (2008)

permission to file an amicus brief under 10 C.F.R. 2.315(d) is at the discretion of the Commission; CLI-08-22, 68 NRC 355 (2008)

the general rule, 10 C.F.R. 2.315(d), as a formal matter applies only to petitions for review filed under section 2.341 or to matters taken up by the Commission sua sponte, not to appeals filed under section 2.1015; CLI-08-22, 68 NRC 355 (2008)

ANTICIPATED TRANSIENTS WITHOUT SCRAM

all structures, systems, and components relied on in safety analyses or plant evaluations to perform a function that demonstrates compliance with the NRC's regulations are subject to aging management review for license renewal; CLI-10-14, 71 NRC 449 (2010)

ANTITRUST REVIEW

an enrichment facility is not a production or utilization facility and, therefore, NRC does not have antitrust responsibilities for it; CLI-09-15, 70 NRC 1 (2009)

APPEAL BOARDS

although the Commission abolished the Atomic Safety and Licensing Appeal Board in 1991, its decisions still carry precedential weight; CLI-08-19, 68 NRC 251 (2008)

APPEAL PANEL

although the Atomic Safety and Licensing Appeal Board was disbanded in 1991, its decisions still carry precedential value; CLI-09-2, 69 NRC 55 (2009)

SUBJECT INDEX

APPEALS

- a board's determination on a request for access to sensitive unclassified nonsafeguards information is reviewed de novo; CLI-10-24, 72 NRC 451 (2010)
- a court inclined to apply collateral estoppel based on a judgment that is subject to appeal may want to avoid the question by staying the case pending the appeal; LBP-09-24, 70 NRC 676 (2009)
- a licensing board order is final for appellate purposes where it either disposes of at least a major segment of the case or terminates a party's right to participate, and rulings that do neither are interlocutory; CLI-06-18, 64 NRC 1 (2006)
- a no-reactor or no-action alternative that was not raised before the board is therefore improperly raised on appeal; CLI-10-9, 71 NRC 245 (2010)
- a successful challenge to a contention admissibility ruling must demonstrate that the ruling either constitutes clear error or reflects an abuse of discretion; CLI-10-17, 72 NRC 1 (2010)
- a SUNSI requester may challenge NRC Staff's adverse determination with respect to access to SUNSI by filing a challenge with the presiding officer, and the NRC Staff may file a reply to the requester's challenge; LBP-09-5, 69 NRC 303 (2009)
- a winner cannot appeal a judgment; CLI-10-17, 72 NRC 1 (2010)
- absent extreme circumstances, the Commission will not consider on appeal either new arguments or new evidence supporting a contention that the licensing board never had the opportunity to consider; CLI-06-10, 63 NRC 451 (2006)
- agency decisions on rulemaking petitions are judicially reviewable; CLI-07-13, 65 NRC 211 (2007)
- an appeal as of right from a board's ruling on an intervention petition is permitted upon denial of a petition to intervene and/or request for hearing on the question as to whether it should have been granted or upon the granting of a petition to intervene and/or request for hearing, on the question as to whether it should have been wholly denied; CLI-10-16, 71 NRC 486 (2010)
- an automatic right to appeal a board decision denying a petition to intervene exists; CLI-07-25, 66 NRC 101 (2007)
- an immediate right to appeal a board ruling selecting a hearing procedure is provided; CLI-09-12, 69 NRC 535 (2009)
- an order denying a petition to intervene and/or request for hearing may be appealed to the Commission on the question of whether the petition and/or request should have been granted; CLI-10-20, 72 NRC 185 (2010)
- any appeal by petitioners of the admitted contentions must abide the end of the case, i.e., wait approximately 2 or 3 years until the Staff issues the final safety evaluation report and final environmental impact statement and the final disposition of the evidentiary hearing on the three admitted contentions; LBP-09-10, 70 NRC 51 (2009)
- arguments made before the board that are abandoned on appeal are deemed to be waived; CLI-10-9, 71 NRC 245 (2010)
- arguments or legal theories not raised before a presiding officer or licensing board are deemed waived; CLI-06-29, 64 NRC 417 (2006)
- arguments or new facts raised for the first time on appeal are not considered unless their proponent can demonstrate that the information was previously unavailable; CLI-10-3, 71 NRC 49 (2010)
- care should be taken in dealing with judgments that are final, but still subject to direct review, so as to avoid the risks of denying relief on the basis of a judgment that is subsequently overturned; LBP-09-24, 70 NRC 676 (2009)
- certain specified decisions of the pre-license application presiding officer and the presiding officer are appealable; CLI-10-10, 71 NRC 281 (2010)
- challenges to the admissibility of less than all admitted contentions must abide the end of the case; CLI-06-13, 63 NRC 508 (2006)
- in situations in which a board denies a petition to intervene in its entirety or grants a petition to intervene that, according to an opposing litigant, should have been denied in its entirety, the losing litigant has a right to Commission review; CLI-09-6, 69 NRC 128 (2009)
- in the event of some 11th hour unforeseen development, a party may tender a document belatedly, but the tender must be accompanied by a motion for leave to file out-of-time that satisfactorily explains not only the reason for the lateness, but also why a motion for an extension of time could not have been seasonably submitted; CLI-10-26, 72 NRC 474 (2010)

SUBJECT INDEX

in the interest of efficient case management and prompt resolution of adjudications, the Commission has generally enforced the 10-day deadline for appeals strictly, excusing it only in unavoidable and extreme circumstances; CLI-10-26, 72 NRC 474 (2010)

initial decisions or partial initial decisions of the presiding officer in the high-level waste repository proceeding may be appealed; CLI-10-10, 71 NRC 281 (2010)

interlocutory rulings may be reviewed, if necessary, on appeals from partial initial decisions or other final appealable orders; CLI-09-6, 69 NRC 128 (2009)

motions filed under 10 C.F.R. 2.323 are not a legitimate means to bring challenges to board decisions to the Commission; CLI-10-28, 72 NRC 553 (2010)

no appeals may be taken from any presiding officer order or decision, except as otherwise permitted by 10 C.F.R. 2.1015(a); CLI-10-10, 71 NRC 281 (2010)

NRC Staff is permitted an appeal as of right on the question of whether a request for access to sensitive unclassified nonsafeguards information should have been denied in whole or in part; CLI-10-24, 72 NRC 451 (2010)

on fact-specific technical issues, where a presiding officer has reviewed an extensive record in detail with the assistance of a technical advisor, the Commission is disinclined to upset the presiding officer's findings and conclusions, particularly where the submissions of experts have been weighed; CLI-06-29, 64 NRC 417 (2006)

parties are expected to file motions for extensions of time so that they are received by NRC well before the time specified expires; CLI-10-26, 72 NRC 474 (2010)

pendency of an appeal need not preclude reliance on the lower court's decision being appealed to estop relitigation of the same matter in another forum; LBP-09-24, 70 NRC 676 (2009)

petitioners cannot raise new contentions for the first time on appeal to the Commission; CLI-06-24, 64 NRC 111 (2006)

petitioners may not seek to skirt contention rules by initially filing unsupported contentions, and later recasting or modifying their contentions on appeal with new arguments never raised before the board; CLI-08-17, 68 NRC 231 (2008)

potentially duplicative and unnecessary litigation in the second forum does not take place while an appeal is pending, but if the appeal later proves successful, thus invalidating the original judgment upon which collateral estoppel had been based, then the litigation in the second forum is allowed to proceed; LBP-09-24, 70 NRC 676 (2009)

regulations governing appeals from the denial of intervention provide for a notice of appeal with a supporting brief, and for a brief opposing the appeal, but do not provide for reply briefs; CLI-06-9, 63 NRC 433 (2006)

the Commission defers to a board's rulings on standing and contention admissibility in the absence of clear error or abuse of discretion; CLI-07-20, 65 NRC 499 (2007); CLI-09-8, 69 NRC 317 (2009); CLI-09-9, 69 NRC 331 (2009); CLI-09-22, 70 NRC 932 (2009); CLI-10-3, 71 NRC 49 (2010)

the Commission generally defers to the board in matters of case management, such as censure orders; CLI-07-28, 66 NRC 275 (2007)

the Commission is generally loath to interfere with the board's management of its cases, absent an abuse of power; CLI-08-29, 68 NRC 899 (2008)

the Commission may reject an appeal summarily for violating NRC procedural regulations; CLI-08-17, 68 NRC 231 (2008)

the Commission usually defers to boards' fact-based decisions; CLI-06-19, 64 NRC 9 (2006)

the Commission will not consider information that was not raised before the board; CLI-10-9, 71 NRC 245 (2010)

the fact that a party may have other obligations does not relieve that party of its hearing obligations; CLI-10-26, 72 NRC 474 (2010)

the pendency of an appeal has no effect on the finality or binding effect of a trial court's holding; LBP-09-24, 70 NRC 676 (2009)

the purpose of an appeal is to point out errors made in the board's decision, not to attempt to cure deficient contentions by presenting arguments and evidence never provided to the board; CLI-07-20, 65 NRC 499 (2007)

the standard of review on appeal is abuse of discretion; CLI-10-24, 72 NRC 451 (2010)

SUBJECT INDEX

there is an automatic right to appeal a licensing board standing and contention admissibility decision on the issue of whether the request for hearing or petition to intervene should have been wholly denied; CLI-06-24, 64 NRC 111 (2006); CLI-09-22, 70 NRC 932 (2009); CLI-10-1, 71 NRC 1 (2010); CLI-10-9, 71 NRC 245 (2010); CLI-10-12, 71 NRC 319 (2010)

unfamiliarity with NRC's Rules of Practice is not sufficient excuse for late filings, particularly where the order that is being challenged expressly advised petitioner of his appellate rights and of the time within which those rights had to be exercised; CLI-10-26, 72 NRC 474 (2010)

when intervenor has no claim remaining in either adjudication, a request for judicial review must be brought immediately if at all; CLI-07-13, 65 NRC 211 (2007)

where a board's decision rests in part on facts officially noticed, any party wishing to controvert the facts officially noticed may do so by filing a motion for reconsideration or an appeal from the decision; LBP-08-25, 68 NRC 763 (2008)

See also Appellate Review; Briefs, Appellate

APPEALS, INTERLOCUTORY

a board decision is "pervasive" and "unusual" when it stops the entire proceeding in its tracks and because the Commission and its boards have rarely, if ever, held an enforcement proceeding in abeyance for an indeterminate length of time; CLI-06-12, 63 NRC 495 (2006)

a licensing board order canceling oral argument on the admissibility of petitioner's proposed contention did not cause serious and irreparable harm to petitioner; CLI-08-7, 67 NRC 187 (2008)

a ruling granting summary disposition on a single contention, where other contentions are still pending in an adjudication, is not a final decision, and is not susceptible to Commission review; CLI-08-2, 67 NRC 31 (2008)

although review is denied, the Commission exercises its inherent supervisory authority over adjudications to take sua sponte review of a board Order; CLI-10-27, 72 NRC 481 (2010)

an applicant has the right to file an interlocutory appeal of board orders admitting contentions, but only if the appeal challenges the admissibility of all admitted contentions; CLI-06-13, 63 NRC 508 (2006)

appeals of rejected contentions are permitted only when a petitioner claims that the board wrongly rejected all contentions; CLI-07-2, 65 NRC 10 (2007)

as a general matter, a board ruling denying a waiver request is interlocutory in nature, and therefore not appealable until the board has issued a final decision resolving the case; CLI-08-27, 68 NRC 655 (2008)

as long as one contention is admitted, dismissal of other contentions is deemed interlocutory in nature, and those dismissals are therefore not subject to appeal by petitioners until the proceeding is later terminated or unless the Commission directs otherwise; LBP-08-11, 67 NRC 460 (2008)

because it disfavors piecemeal appeals, the Commission will grant interlocutory review only in extraordinary circumstances; CLI-10-29, 72 NRC 556 (2010)

certain rulings relating to sensitive unclassified nonsafeguards information are subject to interlocutory appeal; LBP-10-2, 71 NRC 190 (2010)

Commission rules in 10 C.F.R. 2.311(d) set a 10-day limit for appealing the selection of a particular hearing procedure because an appeal cannot wait until a board issues a decision on the merits of a contention; CLI-09-7, 69 NRC 235 (2009)

deferral of review of board denial of rule waiver petition did not cause irreparable injury; CLI-10-29, 72 NRC 556 (2010)

imminent mootness of an issue has been cause for taking interlocutory review if the issue sought to be reviewed would have become moot by the time the board issued a final decision; CLI-10-29, 72 NRC 556 (2010)

in exceptional instances, the Commission may in its discretion grant a petition for interlocutory review, when a party demonstrates that a ruling threatens it with immediate and serious irreparable impact or affects the basic structure of the proceeding in a pervasive or unusual matter; CLI-07-2, 65 NRC 10 (2007)

interlocutory review may be granted if the challenged order affects the basic structure of the proceeding in a pervasive or unusual manner; CLI-09-2, 69 NRC 55 (2009)

it is within Commission discretion to grant interlocutory review; CLI-10-29, 72 NRC 556 (2010)

SUBJECT INDEX

license applicants may appeal contention admissibility rulings within 10 days after a board grants a petition to intervene, but only if the license applicant argues the petition should have been wholly denied; CLI-06-25, 64 NRC 128 (2006)

licensing board decisions denying a petition for waiver are interlocutory and not reviewable until the board has issued a final decision resolving the case, unless a party seeking review shows that one of the grounds for interlocutory review has been met; CLI-10-29, 72 NRC 556 (2010)

mere legal error is not enough to warrant interlocutory review because interlocutory errors are correctable on appeal from final board decisions; CLI-08-2, 67 NRC 31 (2008)

NRC regulations do not provide a right to appeal interlocutory orders; CLI-06-12, 63 NRC 495 (2006)

once a petition to intervene and request for hearing have been granted and contentions are admitted for hearing, appeals of board rulings on new or amended contentions are treated under section 2.341(f)(2), regardless of their subject matter; CLI-10-16, 71 NRC 486 (2010)

petitioners may request, and the Commission, in its discretion, may grant interlocutory review if it is shown that the issue threatens petitioners with immediate and serious irreparable impacts or affects the basic structure of the proceeding in a pervasive manner; LBP-09-10, 70 NRC 51 (2009)

rejection or admission of a contention where petitioner has been admitted as a party and has other contentions pending neither constitutes serious and irreparable impact nor affects the basic structure of the proceeding in a pervasive and unusual manner; CLI-08-7, 67 NRC 187 (2008); CLI-09-9, 69 NRC 331 (2009); CLI-10-16, 71 NRC 486 (2010)

review at the end of the case would be meaningless because the Commission cannot later, on appeal from a final board decision, rectify an erroneous disclosure order; CLI-10-29, 72 NRC 556 (2010)

review is granted where the issues are significant, have potentially broad impact, and may well recur in the likely license renewal proceedings for other plants; CLI-10-27, 72 NRC 481 (2010)

review of the presiding officer's decision will be granted where the decision either threatens the party adversely affected by it with immediate and serious irreparable impact which, as a practical matter, could not be alleviated through a petition for review, or affects the basic structure of the proceeding in a pervasive or unusual manner; CLI-09-9, 69 NRC 331 (2009)

showing necessary for grant of a petition for interlocutory review is described; CLI-10-29, 72 NRC 556 (2010)

the Commission generally declines to interfere with a board's day-to-day case management decisions unless there has been an abuse of power; CLI-08-7, 67 NRC 187 (2008)

the Commission generally disfavors interlocutory, piecemeal appeals; CLI-07-2, 65 NRC 10 (2007)

the Commission may consider the criteria listed in 10 C.F.R. 2.786(b)(4) when reviewing interlocutory matters on the merits, but when determining whether to undertake such review the standards in section 2.786(g) control the determination; CLI-10-29, 72 NRC 556 (2010)

the provision expressly permitting immediate review of a partial initial decision is an exception to the Commission's established policy of disfavoring interlocutory appeals; CLI-08-2, 67 NRC 31 (2008)

the question whether to hold an NRC enforcement proceeding in abeyance pending a related criminal prosecution is generally suitable for interlocutory Commission review because, unlike most interlocutory questions, the abeyance issue cannot await the end of the proceeding because it becomes moot; CLI-06-19, 64 NRC 9 (2006); CLI-10-29, 72 NRC 556 (2010)

the standard for review of an interlocutory board order is whether the ruling threatens the petitioner with immediate and serious, irreparable impact or will affect the basic structure of the proceeding in a pervasive and unusual manner; CLI-08-7, 67 NRC 187 (2008)

when a board has not made even a threshold ruling on petitioner's standing and contentions, the Commission considers a petition under its usual standard for review of an interlocutory board order; CLI-08-7, 67 NRC 187 (2008)

when considering whether to undertake pendent appellate review of otherwise unappealable issues, the Commission has expressed a willingness to take up otherwise unappealable issues that are "inextricably intertwined" with appealable issues; CLI-08-27, 68 NRC 655 (2008)

See also Review, Interlocutory

APPEALS, UNTIMELY

intervenor's appeal 3 days out of time was accepted when applicants' motion to strike failed to even hint at prejudice; LBP-10-21, 72 NRC 616 (2010)

SUBJECT INDEX

the Commission elaborates on the standards for accepting an appeal filed out of time; LBP-10-21, 72 NRC 616 (2010)

APPELLATE BRIEFS

a notice of appeal must be accompanied by a brief; CLI-06-6, 63 NRC 161 (2006)

amicus curiae briefs are welcomed from parties in other Commission adjudications that have presented similar issues; CLI-10-17, 72 NRC 1 (2010)

an appeal that merely recites earlier arguments without explaining how they demonstrate legal error or abuse of discretion on the board's part does not satisfy NRC pleading standards; CLI-10-21, 72 NRC 197 (2010)

appeals of partial initial decisions are not the proper procedural context in which to revise contentions; CLI-10-17, 72 NRC 1 (2010)

arguments that are not mentioned on appeal are considered waived; CLI-10-3, 71 NRC 49 (2010)

because appellant submitted no offer of proof, its case could be so weak that the denial of a right to reply by the licensing board would have been harmless error; CLI-10-23, 72 NRC 210 (2010)

cursory, unsupported arguments will not be considered; CLI-10-17, 72 NRC 1 (2010)

generalized claims followed by unelaborated references to oral arguments and multiple pages run afoul of NRC page limitation rules; CLI-06-10, 63 NRC 451 (2006)

litigants in NRC proceedings cannot raise entirely new arguments; CLI-07-25, 66 NRC 101 (2007)

materiality is a requirement for any fact-based argument in a petition for review; CLI-10-17, 72 NRC 1 (2010)

mere demonstration that a board erred is not sufficient to warrant appellate relief, but rather the complaining party must demonstrate actual prejudice, i.e., that the ruling had a substantial effect on the outcome of the proceeding; CLI-10-23, 72 NRC 210 (2010)

new information, not part of the original contention, may not be introduced for the first time on appeal; CLI-07-8, 65 NRC 124 (2007)

NRC regulations contemplate amicus curiae briefs only after the Commission grants a petition for review, and do not provide for amicus briefs supporting or opposing petitions for review; CLI-10-17, 72 NRC 1 (2010)

parties taking appeals on purely procedural points are expected to explain precisely what injury to them was occasioned by the asserted error; CLI-10-23, 72 NRC 210 (2010)

petitioner is limited to the contention as initially filed and may not rectify its deficiencies through a reply brief or on appeal; CLI-09-12, 69 NRC 535 (2009); CLI-09-14, 69 NRC 580 (2009)

petitioners may not skirt contention rules by initially filing unsupported contentions, and later recasting or modifying their contentions on appeal with new arguments never raised before the board; CLI-09-5, 69 NRC 115 (2009)

petitions for review may not exceed 25 pages; CLI-10-17, 72 NRC 1 (2010)

requests for extension of time to file a petition for review are to be determined by the relevant appellate body, and accordingly must be directed to that body; LBP-07-17, 66 NRC 327 (2007)

the Commission disapproves of incorporation by reference in petitions for review, where it has the effect of bypassing the page limits set forth in NRC regulations; CLI-10-17, 72 NRC 1 (2010)

the Commission has discretion to allow oral argument upon the request of a party made in a petition for review, brief on review, or upon its own initiative; CLI-10-9, 71 NRC 245 (2010)

APPELLATE REVIEW

a board did not act unreasonably in basing standing on potential harm from new operations that would be similar to harm that petitioner claims he has suffered from existing operations; CLI-09-12, 69 NRC 535 (2009)

a board order is appealable when it disposes of a major segment of the case or terminates a party's right to participate; CLI-08-2, 67 NRC 31 (2008)

a petition for review does not automatically prevent issuance of a renewed operating license; CLI-09-7, 69 NRC 235 (2009)

a petition for review may be granted in the Commission's discretion; CLI-10-11, 71 NRC 287 (2010)

a presiding officer's ruling that is without governing precedent is appropriate for review; CLI-06-7, 63 NRC 165 (2006)

SUBJECT INDEX

- a standing ruling in one proceeding is not dispositive of a determination in another proceeding with the same petitioner because the ruling was not the subject of appellate review; LBP-09-18, 70 NRC 385 (2009)
- absent extreme circumstances, the Commission will not consider on appeal either new arguments or new evidence supporting the contentions which a board never had the opportunity to consider; CLI-10-21, 72 NRC 197 (2010)
- although a petition for review does not challenge anything the boards actually decided, the Commission addresses the merits of the request as an exercise of its ultimate supervisory control over NRC proceedings; CLI-09-10, 69 NRC 521 (2009)
- although the Commission has authority to make de novo findings of fact, it does not do so where a licensing board has issued a plausible decision that rests on carefully rendered findings of fact; CLI-06-12, 63 NRC 495 (2006); CLI-06-15, 63 NRC 687 (2006); CLI-06-22, 64 NRC 37 (2006); CLI-09-7, 69 NRC 235 (2009); CLI-10-18, 72 NRC 56 (2010)
- an abuse of discretion standard is applied to Commission review of decisions on evidentiary questions; CLI-10-18, 72 NRC 56 (2010)
- an exception to the general policy limiting interlocutory review permits an appeal of a board's ruling on contention admissibility when a board grants a petition to intervene following consideration of the full petition; CLI-09-18, 70 NRC 859 (2009)
- because the board's declining to refer petitioners' request for a stay of construction to the Commission is the equivalent of the direct denial of a stay motion, a petition for review may be filed; LBP-08-11, 67 NRC 460 (2008)
- before an early site permit can be made effective, the Commission must review and approve the Atomic Safety and Licensing Board's initial decision authorizing its issuance; CLI-07-23, 66 NRC 35 (2007); CLI-07-4, 65 NRC 24 (2007)
- Commission review is in the public interest if the decision could affect pending and future license renewal determinations; CLI-10-17, 72 NRC 1 (2010)
- Commission will take early review as to matters involving novel legal or policy questions; CLI-10-24, 72 NRC 451 (2010)
- denial of review is not a decision on the merits, but simply indicates that the appealing party identified no clearly erroneous factual finding or important legal error requiring Commission correction; LBP-06-1, 63 NRC 41 (2006)
- discretionary Commission review of a presiding officer's initial decision is allowed under 10 C.F.R. 2.341(b)(1); CLI-10-17, 72 NRC 1 (2010)
- failure to submit a brief, including legal argument and citations to the record, is reason enough to reject an appeal; CLI-06-6, 63 NRC 161 (2006)
- filing of a petition for review is mandatory for a party to exhaust its administrative remedies before seeking judicial review; LBP-09-9, 70 NRC 41 (2009)
- granting of petitions for review is discretionary, given due weight to the existence of a substantial question with respect to the five considerations listed in 10 C.F.R. 2.341(b)(4); CLI-09-7, 69 NRC 235 (2009); CLI-10-14, 71 NRC 449 (2010); CLI-10-18, 72 NRC 56 (2010)
- if a board erroneously rejected petitioner's motions, but the record does not suggest that petitioner suffered any prejudicial error, Commission review is not warranted; CLI-10-14, 71 NRC 449 (2010)
- if appellant had submitted an offer of proof, indicating what rebuttal evidence it would have offered to the board, then the Commission might have had some basis for determining whether that evidence would be substantial enough to justify a remand to the board; CLI-10-23, 72 NRC 210 (2010)
- if there is nothing that can be done by way of judicial review to redress the adverse consequences that petitioners say they are suffering, review will be denied; LBP-10-11, 71 NRC 609 (2010)
- initial decisions are not effective until they are reviewed by the Commission; LBP-09-19, 70 NRC 433 (2009)
- legal determinations made on appeal in a case are controlling precedent, becoming the law of the case for all later decisions in the same case, with only limited exceptions; LBP-06-11, 63 NRC 483 (2006)
- legal issues are reviewed de novo, but the Commission generally defers to board findings of fact, unless they are clearly erroneous; CLI-10-17, 72 NRC 1 (2010)
- licensing board findings of fact that turn on witness credibility receive the Commission's highest deference on appeal; CLI-10-23, 72 NRC 210 (2010)

SUBJECT INDEX

licensing boards have authority to regulate the course of proceedings, and the Commission generally defers to the boards on case management decisions; CLI-10-28, 72 NRC 553 (2010)

mere demonstration that a board erred is not sufficient to warrant appellate relief, but rather the complaining party must demonstrate actual prejudice, i.e., that the ruling had a substantial effect on the outcome of the proceeding; CLI-10-23, 72 NRC 210 (2010)

pendency of a petition for Commission review does not absolve petitioner of its duty to file a motion to reopen in a timely fashion; LBP-10-19, 72 NRC 529 (2010)

petition for review satisfies 10 C.F.R. 2.341(b)(4)(ii), (iii), and (v) of the standards for review because the challenged portions of the initial decision address significant issues of law and policy that lack governing precedent and raise issues that could affect other license renewal determinations; CLI-10-17, 72 NRC 1 (2010)

petitioner's argument regarding rejection of its contention satisfies the prejudicial procedural error standard for review; CLI-10-17, 72 NRC 1 (2010)

petitioners may not skirt contention rules by initially filing unsupported contentions and later recasting or modifying their contentions on appeal with new arguments never raised before the board; CLI-09-5, 69 NRC 115 (2009)

requests for extension of time to file a petition for review are to be determined by the relevant appellate body, and accordingly must be directed to that body; LBP-07-17, 66 NRC 327 (2007)

requirement to show distinct new harm from a license amendment application would not preclude standing to contest commencement of new operations at a separate site, where petitioner showed potential for harm to himself from new operation; CLI-09-12, 69 NRC 535 (2009)

Staff's petition for review is granted on the grounds that Staff has demonstrated substantial questions as to the board's correct application of NEPA jurisprudence, and as to whether certain actions taken by the board constituted prejudicial procedural error; CLI-10-18, 72 NRC 56 (2010)

the Commission cannot find clear error in a board's failure to acknowledge an argument that was not brought to its attention and to which the petitioners had no opportunity to respond; CLI-09-12, 69 NRC 535 (2009)

the Commission defers to a board's rulings on standing and contention admissibility unless the appeal points to an error of law or abuse of discretion; CLI-08-17, 68 NRC 231 (2008); CLI-09-7, 69 NRC 235 (2009); CLI-09-12, 69 NRC 535 (2009); CLI-09-14, 69 NRC 580 (2009); CLI-09-16, 70 NRC 33 (2009); CLI-09-20, 70 NRC 911 (2009); CLI-10-2, 71 NRC 27 (2010); CLI-10-7, 71 NRC 133 (2010); CLI-10-9, 71 NRC 245 (2010); CLI-10-12, 71 NRC 319 (2010); CLI-10-20, 72 NRC 185 (2010); CLI-10-21, 72 NRC 197 (2010)

the Commission does not entertain on appeal arguments not raised before a licensing board; CLI-09-12, 69 NRC 535 (2009)

the Commission found fault with the board's failure to identify clearly which of the diffuse and, in some cases, unsupported claims were admitted for hearing; CLI-10-2, 71 NRC 27 (2010)

the Commission grants review of a licensing board decision that dismissed a contention on summary disposition, reversing the decision in part, and remanding the contention to the board for hearing, as limited by the Commission's ruling; CLI-10-11, 71 NRC 287 (2010)

the Commission has discretion to allow oral argument upon the request of a party made in a petition for review, brief on review, or upon its own initiative; CLI-10-9, 71 NRC 245 (2010)

the Commission has discretion to grant a petition for review, giving due weight to the existence of a substantial question with respect to any of the grounds listed in the Commission's regulations as potential justification; LBP-06-11, 63 NRC 483 (2006)

the Commission is entitled to review the record itself and amplify the board's findings; CLI-09-14, 69 NRC 580 (2009)

the Commission is loath to address complaints concerning a board's skepticism of expert witness's testimony, given that the Commission lacks the board's ability to observe the demeanor of the parties' expert witnesses in general and petitioner's witness in particular; CLI-10-17, 72 NRC 1 (2010)

the Commission may grant a petition for review at its discretion, giving due weight to the existence of a substantial question with respect to the five considerations listed in 10 C.F.R. 2.341(b)(4); CLI-08-28, 68 NRC 658 (2008)

SUBJECT INDEX

the Commission may review a board ruling pursuant to the inherent supervisory powers where a significant issue may affect multiple pending or imminent licensing proceedings; CLI-08-2, 67 NRC 31 (2008)

the Commission may take discretionary review of a licensing board's initial decision; CLI-10-23, 72 NRC 210 (2010)

the Commission reviews legal questions de novo and will reverse a licensing board's legal rulings if they are a departure from or contrary to established law; CLI-09-7, 69 NRC 235 (2009); CLI-10-18, 72 NRC 56 (2010)

the Commission routinely accords substantial deference to licensing boards on matters involving standing and credibility determinations, and thus does not lightly set aside a board's grant of discretionary intervention; CLI-06-16, 63 NRC 708 (2006)

the Commission will consider a petition for review if it raises a substantial question with respect to one or more of the five paragraphs of 10 C.F.R. 2.341(b)(4); CLI-10-17, 72 NRC 1 (2010)

the Commission will not consider cursory, unsupported arguments; CLI-10-23, 72 NRC 210 (2010)

the Commission will not consider information that is introduced for the first time on appeal in an attempt to cure deficient contentions; CLI-10-1, 71 NRC 1 (2010)

the Commission will not overturn a hearing judge's findings simply because the Commission might have reached a different result; CLI-10-23, 72 NRC 210 (2010)

the Commission will reverse a licensing board's determination on discretionary intervention only if the board has abused its discretion; CLI-06-16, 63 NRC 708 (2006)

the Commission's standard of clear error for overturning a board's factual finding is quite high, and the Commission defers to its boards' findings unless they are not plausible even in light of the record viewed in its entirety; CLI-09-7, 69 NRC 235 (2009); CLI-10-18, 72 NRC 56 (2010)

the fact that the board accorded greater weight to one party's evidence than to the other's is not a basis for overturning the initial decision; CLI-10-23, 72 NRC 210 (2010)

the section 2.341(a)(2) sua sponte review process that applies to a licensing board determination approving a settlement agreement affords the Commission the opportunity to correct any participant or board misapprehensions regarding the items contemplated in the settlement agreement; LBP-09-23, 70 NRC 659 (2009)

to be appealable, a disputed order must dispose of the entire petition so that a successful appeal by a nonpetitioner will terminate the proceeding as to the appellee petitioner; CLI-09-18, 70 NRC 859 (2009)

to satisfy the "clearly erroneous" standard, a litigant must show that the board's findings are not even plausible in light of the record viewed in its entirety; CLI-10-17, 72 NRC 1 (2010); CLI-10-23, 72 NRC 210 (2010)

under its inherent supervisory power over adjudications, the Commission accepts review because licensing boards are conducting the first mandatory hearings in more than two decades and additional Commission guidance is deemed appropriate; CLI-06-20, 64 NRC 15 (2006)

unless there is a strong reason to believe that in a particular case a board has overlooked or misunderstood important evidence, the Commission will defer to its findings of fact; CLI-09-7, 69 NRC 235 (2009)

unreviewed board rulings have no precedential effect; CLI-09-14, 69 NRC 580 (2009); CLI-10-29, 72 NRC 556 (2010); CLI-10-30, 72 NRC 564 (2010)

when a presiding officer has reviewed an extensive record in detail, with the assistance of a technical advisor, the Commission is generally disinclined to upset his findings and conclusions, particularly on matters involving fact-specific issues or where the affidavits or submissions of experts must be weighed; CLI-06-1, 63 NRC 1 (2006)

when a substantial and important question of law is presented, Commission review is appropriate; CLI-06-7, 63 NRC 165 (2006)

when intervenors have not identified any clearly erroneous factual finding or significant legal error, plenary review is not warranted; CLI-06-1, 63 NRC 1 (2006)

when the Commission reviews board rulings on contention admissibility, it employs the clear error and abuse of discretion standards of review; CLI-10-17, 72 NRC 1 (2010)

where a party merely complains that the board improperly weighed the evidence and identifies no clear board factual or legal error requiring further Commission consideration on appellate review, the

SUBJECT INDEX

Commission is disinclined to second-guess the board's assessment of the party's affidavits; CLI-08-28, 68 NRC 658 (2008)

where intervenors have filed new contentions based on a supplement to the COL application, in advance of a full board ruling on the original contentions, no appeal lies until the board acts on all contentions, both the original and the newly filed ones; CLI-09-18, 70 NRC 859 (2009)

whether collateral estoppel should be applied is a legal question that the Commission reviews de novo; CLI-10-23, 72 NRC 210 (2010)

with respect to an applicant's appeal, applicant must contend that, after considering all pending contentions, the board has erroneously granted a hearing to the petitioner; CLI-09-18, 70 NRC 859 (2009)

See also Appeals

APPLICANTS

absent evidence to the contrary, it is assumed NRC licensees will not contravene agency regulations; LBP-07-10, 66 NRC 1 (2007)

although the contention admissibility rule imposes on a petitioner the burden of going forward with a sufficient factual basis, it does not shift the ultimate burden of proof from applicant to petitioner; LBP-10-24, 72 NRC 720 (2010)

although the primary duties of NEPA fall on the NRC Staff in NRC proceedings, the initial requirement to analyze the environmental impacts of an action, including license renewal, is directed to applicants; LBP-07-4, 65 NRC 281 (2007); LBP-07-11, 66 NRC 41 (2007); LBP-08-6, 67 NRC 241 (2008); LBP-10-10, 71 NRC 529 (2010); LBP-10-16, 72 NRC 361 (2010)

an environmental report for license renewal must contain a description of the proposed action, including plans to modify the facility or its administrative control procedures, and must describe in detail the modifications directly affecting the environment or affecting plant effluents that affect the environment; LBP-06-23, 64 NRC 257 (2006)

applicants must demonstrate that all important systems, structures, and components will continue to perform their intended function in the period of extended operation and must identify any additional actions that will need to be taken to adequately manage the detrimental effects of aging; LBP-08-22, 68 NRC 590 (2008)

as the proponent of the agency action at issue, applicant generally has the burden of proof in a licensing proceeding, but when environmental contentions are involved, the burden shifts to the Staff, because NRC, not an applicant, has the burden of complying with the National Environmental Policy Act; LBP-09-7, 69 NRC 613 (2009)

because Staff relies heavily upon applicant's environmental report in preparing the environmental impact statement, should applicant become a proponent of a particular challenged position set forth in the EIS, applicant also has the burden on that matter; LBP-09-7, 69 NRC 613 (2009)

burden is on applicant to show that concrete in containment structures will maintain its integrity during the extended period of operations or to develop an aging management plan that ensures that any indication of degradation is detected and remediated; LBP-08-13, 68 NRC 43 (2008)

citizenship of an applicant may be considered in the context of a license application; CLI-09-9, 69 NRC 331 (2009)

commitment of one party to fulfill its statutory duties in the application process is not enough to demonstrate that the issue will be properly addressed; LBP-08-24, 68 NRC 691 (2008)

contention admissibility rulings may be appealed within 10 days after a board grants a petition to intervene, but only if applicant argues the petition should have been wholly denied; CLI-06-25, 64 NRC 128 (2006)

contention alleging foreign ownership of applicant, failure to disclose, and various ramifications of such ownership, is found to be admissible; LBP-09-1, 69 NRC 11 (2009)

contentions that DOE lacks management integrity to operate a high-level waste geologic repository are impermissible challenges to the Nuclear Waste Policy Act and are therefore beyond the scope of the proceeding; CLI-09-14, 69 NRC 580 (2009)

each combined license applicant will have to determine whether it will adopt *in toto* the certified design, or whether it will take exemptions thereto and/or departures therefrom; LBP-09-2, 69 NRC 87 (2009)

failure of an applicant to address any guidance topics or deviation from the guidance provided does not rise to the level of failure to comply with NRC regulations; LBP-08-9, 67 NRC 421 (2008)

SUBJECT INDEX

information provided to the Commission by an applicant must be complete and accurate in all material respects; CLI-08-23, 68 NRC 461 (2008)

it is applicant, not NRC Staff, that has the burden of proof in litigation; CLI-08-23, 68 NRC 461 (2008)

it is not the duty of applicant to consult with a tribe regarding cultural resources at a proposed site, but instead is the duty of the agency to initiate and follow through with the consultation process; LBP-10-16, 72 NRC 361 (2010)

license renewal applicant must demonstrate, by a preponderance of the evidence, that its aging management program provides reasonable assurance that activities authorized by the renewed license will be conducted in a manner consistent with the current licensing basis, and that the effects of aging will be detected and corrected; LBP-07-17, 66 NRC 327 (2007)

NRC rules permit the filing of a combined license application during the pendency of a design certification rulemaking; CLI-10-9, 71 NRC 245 (2010)

the burden that the contention admissibility rules impose on petitioners to put forth a sufficient factual basis does not shift the ultimate burden of proof from the applicant to the petitioner; LBP-06-10, 63 NRC 314 (2006)

the National Environmental Policy Act applies only to NRC and not to the applicant; LBP-09-10, 70 NRC 51 (2009)

the potential environmental effects of a proposed agency action must be described; LBP-06-8, 63 NRC 241 (2006)

the proponent of the license bears the burden of proof; LBP-09-10, 70 NRC 51 (2009)

the ultimate burden of proof on the question of whether a permit or license should be issued is on the applicant, but the party contending that the permit or license should be denied has the burden of going forward with evidence to buttress that contention; CLI-09-7, 69 NRC 235 (2009)

to demonstrate financial qualification, applicant for a combined license must show that it possesses funds or has reasonable assurance of obtaining funds necessary to cover estimated construction and fuel cycle costs; LBP-09-10, 70 NRC 51 (2009)

under 10 C.F.R. 2.325, applicant has the burden of proving that it has met the reasonable assurance standard of 10 C.F.R. 54.29; LBP-08-25, 68 NRC 763 (2008)

when an applicant receives a construction permit, it proceeds at its own risk, regardless of the amount of money that it may have expended during construction; LBP-10-7, 71 NRC 391 (2010)

when NRC reviews an application filed by a private entity, as opposed to a project initiated by the federal government, it may accord substantial weight to the applicant's preferences with regard to consideration of alternatives, including choices regarding site selection and project design; CLI-06-10, 63 NRC 451 (2006); LBP-06-8, 63 NRC 241 (2006); LBP-09-7, 69 NRC 613 (2009)

with respect to an applicant's appeal, applicant must contend that, after considering all pending contentions, the board has erroneously granted a hearing to the petitioner; CLI-09-18, 70 NRC 859 (2009)

See also Licensees

AQUATIC IMPACTS

an environmental analysis relating to aquatic impacts must, as a practical matter, have a baseline from which to operate; LBP-07-3, 65 NRC 237 (2007)

analysis of entrainment and impingement of fish, and heat shock, is required only for plants with once-through cooling or cooling ponds because it has been determined generically that such impacts are small for plants that use cooling towers; LBP-07-4, 65 NRC 281 (2007)

asserted deficiencies in the environmental report intake/discharge impact discussion as it is associated with the baseline discussion of aquatic resources, if properly supported, can be admitted for further litigation; LBP-08-16, 68 NRC 361 (2008)

direct, indirect, and cumulative impingement/entrainment and thermal effluent discharge impacts of the proposed cooling system intake and discharge structures on aquatic resources are discussed; LBP-09-7, 69 NRC 613 (2009)

except for its overall NEPA balancing, the NRC can limit its analysis of aquatic impacts to those determined by the Environmental Protection Agency, when EPA has analyzed an alternative technology extensively and made conclusions as to its suitability; LBP-07-3, 65 NRC 237 (2007)

extent and duration of dredging, its impacts on water quality, the disposal of any dredged material, and the impacts on aquatic biota are discussed; LBP-09-7, 69 NRC 613 (2009)

SUBJECT INDEX

nothing in the agency's Part 51 NEPA regulations or the Staff's ER preparation guidance in regard to providing a description of the local environment indicates exactly how, as a general matter, a baseline for NEPA analysis is to be established; LBP-07-3, 65 NRC 237 (2007)

ARCHAEOLOGICAL RESOURCES PROTECTION ACT

criteria and procedures pursuant to which a federal land manager may issue excavation permits for federal lands are provided as well as notification to Indian tribes if permits may result in harm to cultural or religious sites; LBP-10-16, 72 NRC 361 (2010)

ARSENIC

a board erred in admitting a contention on adverse health effects of exposure to arsenic, where petitioners had not laid a foundation and their arguments were speculative; CLI-09-9, 69 NRC 331 (2009)

contention based on a recent study suggesting a link between low levels of arsenic in drinking water and diabetes is rejected; CLI-09-12, 69 NRC 535 (2009)

contention on health effects of contamination of drinking water from mining operations is admissible in materials license amendment proceeding; LBP-09-1, 69 NRC 11 (2009)

ASME CODE

a combined license application must include a description of the programs, and their implementation, necessary to ensure that the systems and components meet the requirements of the ASME Boiler and Pressure Vessel Code in accordance with 10 C.F.R. 50.55a; LBP-10-21, 72 NRC 616 (2010)

as Class I components, the feedwater, reactor recirculation, and core spray outlet nozzles on a boiling water reactor must be designed, fabricated, erected, and tested to the highest quality standards practical as specified in Part 50, Appendix A, GDC 30; LBP-08-25, 68 NRC 763 (2008)

components that are part of the reactor coolant pressure boundary must meet the requirements of Class 1 components in Section III of the ASME Boiler and Pressure Vessel Code; LBP-08-25, 68 NRC 763 (2008)

for license renewal, feedwater, core spray, and reactor recirculation outlet nozzles, as part of the reactor coolant pressure boundary, must meet the metal-fatigue requirements for Class 1 components in Section III of the Code; CLI-10-17, 72 NRC 1 (2010)

if applicant's metal fatigue analyses on Class I components do not comply with the ASME Code and do not provide reasonable assurance as required by 10 C.F.R. 54.21(c)(1) and 54.29(a), then a license renewal cannot be issued; LBP-08-25, 68 NRC 763 (2008)

in the license renewal context, regulations established under Part 50, including compliance with the ASME Code, must be followed during the period of extended operation; CLI-08-28, 68 NRC 658 (2008)

intervenor are precluded from challenging ASME inspection requirements in a combined license proceeding because NRC regulations directly incorporate ASME inspection requirements by reference; LBP-10-21, 72 NRC 616 (2010)

license renewal applicant demonstrates compliance with the ASME Code by projecting the fatigue analysis for the nozzle through the extended operating period; CLI-08-28, 68 NRC 658 (2008)

licensee must comply with Part 50 regulations, including the provisions requiring compliance with the ASME Code, during the period of extended operation; CLI-10-17, 72 NRC 1 (2010)

the containment vessel is identified as an ASME Code Class MC component in both the inservice inspection subsection of section 50.55a as well as the inspection requirements subsection of the AP1000 DCD; LBP-10-21, 72 NRC 616 (2010)

use of a simplified Green's function methodology for the environmentally adjusted cumulative usage factor metal fatigue analyses for the core spray and reactor recirculation outlet nozzles is inconsistent with the ASME Code and thus cannot serve as the analysis-of-record and does not satisfy the requirements of 10 C.F.R. 54.21(c)(1) or 54.29(a); LBP-08-25, 68 NRC 763 (2008)

ASSUMPTION OF RISK

the civil law concept requires not merely general knowledge of a risk but also that the risk assumed be specifically known, understood, and appreciated; CLI-10-23, 72 NRC 210 (2010)

ATOMIC ENERGY ACT

a board shall determine whether, taking into consideration the site criteria contained in 10 C.F.R. Part 100, a reactor having characteristics that fall within the parameters for the site, and which meets the terms and conditions proposed by the Staff in the Safety Evaluation Report, can be constructed and operated without undue risk to the health and safety of the public; LBP-06-28, 64 NRC 460 (2006)

SUBJECT INDEX

- a construction permit will not expire and no rights under the permit will be forfeited unless the facility is not completed and the latest date for completion has passed; CLI-10-6, 71 NRC 113 (2010)
- a hearing on a uranium enrichment facility application will be held under the authority of sections 53, 63, 189, 191, and 193; CLI-10-4, 71 NRC 56 (2010)
- all NRC hearings are to be public except as requested under section 181 of the Act or otherwise ordered by the Commission; LBP-10-5, 71 NRC 329 (2010)
- allowing applicant to postpone the performance of an analysis-of-record time-limited aging analysis until after the license renewal is issued would violate the intervenor's hearing rights; LBP-08-25, 68 NRC 763 (2008)
- an affirmative finding by the Commission that issuance of a license for a uranium enrichment facility will not be inimical to the common defense and security is required; CLI-09-15, 70 NRC 1 (2009)
- an application to renew the operating license of a commercial nuclear power plant may be granted only if the Commission finds that the continued operation of the facility will be in accord with the common defense and security and will provide adequate protection to the health and safety of the public; LBP-08-25, 68 NRC 763 (2008)
- an organization's promotion of the public interest, environmental protection, and consumer protection are broad interests shared with many others and too general to constitute a protected interest; CLI-07-18, 65 NRC 399 (2007)
- analysis of compliance with section 103d of the Atomic Energy Act is a function performed by the NRC Staff as part of its evaluation of the combined license application; CLI-09-20, 70 NRC 911 (2009)
- before a uranium enrichment facility can be licensed, a hearing is required to be held on that license application; LBP-06-17, 63 NRC 747 (2006)
- before entering into an agreement with any state, NRC is required to find the state radiation control program compatible in certain respects with that of the NRC, and adequate to protect the public health and safety with respect to the materials covered by the proposed agreement; LBP-06-8, 63 NRC 241 (2006)
- boards should restrict their inquiry in a construction permit reinstatement proceeding, including their consideration of contention admissibility matters, in line with the good cause standard; LBP-10-7, 71 NRC 391 (2010)
- broad responsibility is reposed in the administering agency, free of close prescription in its charter as to how it shall proceed in achieving the statutory objective; CLI-10-6, 71 NRC 113 (2010); LBP-10-11, 71 NRC 609 (2010)
- Commission policy of permitting the conduct of an adjudicatory proceeding on a combined license that references a design certification that the Commission has not approved does not violate the Atomic Energy Act, 10 C.F.R. Part 52, or judicial decisions; CLI-09-4, 69 NRC 80 (2009)
- Congress considers the Atomic Safety and Licensing Board to be a panel of experts; CLI-10-17, 72 NRC 1 (2010)
- creditor interests are created in equipment, devices, or important parts thereof, capable of separating the isotopes of uranium or enriching uranium in the isotope U-235; CLI-09-15, 70 NRC 1 (2009)
- creditor regulations may be augmented by license conditions as necessary to allow ownership arrangements, such as sale and leaseback, provided it can be found that such arrangements are not inimical to the common defense and security of the United States; CLI-09-15, 70 NRC 1 (2009)
- determination of what constitutes adequate protection under the Act is a situation in which the Commission should be permitted to have discretion to make case-by-case judgments based on its technical expertise and on all the relevant information; CLI-10-14, 71 NRC 449 (2010)
- DOE is authorized to make, promulgate, issue, rescind, and amend such rules and regulations as may be necessary to carry out the purposes of this Act; LBP-10-11, 71 NRC 609 (2010)
- for license applications for uranium enrichment facilities, NRC shall conduct a single adjudicatory hearing on the record with regard to the licensing of the construction and operation of the facility; LBP-07-6, 65 NRC 429 (2007)
- in ruling on petitioner's standing, boards should consider the nature of petitioner's right under the Atomic Energy Act or the National Environmental Policy Act to be made a party to the proceeding, the nature and extent of petitioner's property, financial, or other interest in the proceeding, and the possible effect of any decision or order that may be issued in the proceeding on the petitioner's interest; LBP-09-13, 70 NRC 168 (2009)

SUBJECT INDEX

interest in the promotion of economic use of energy falls outside the protected zone of interests; CLI-07-18, 65 NRC 399 (2007)

judicial standing concepts are applied in NRC proceedings; LBP-10-1, 71 NRC 165 (2010)

no license may be issued to an alien or any corporation or other entity if the Commission knows or has reason to believe it is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government; CLI-09-20, 70 NRC 911 (2009)

NRC authority over uranium ore and other source material attaches only after removal from its place of deposit in nature and not when the ore is mined; CLI-06-14, 63 NRC 510 (2006)

NRC cannot generically dispense with the consideration of SAMAs, under NEPA, through a policy statement issued pursuant to its AEA authority; LBP-10-13, 71 NRC 673 (2010)

NRC is authorized to enter into agreements with the governor of any state to transfer authority to regulate byproduct materials, source materials, and small quantities of special nuclear materials, including the disposal of such materials; LBP-06-8, 63 NRC 241 (2006)

NRC may grant license amendments, and make them immediately effective, in advance of the holding and completion of any required hearing, as long as NRC determines that the amendment involves no significant hazards consideration; CLI-06-8, 63 NRC 235 (2006)

NRC may use its broad discretion of authority under the Act to reinstate expired construction permits that the licensee inadvertently failed to renew; CLI-10-6, 71 NRC 113 (2010)

NRC must hold a hearing on each application for a construction permit for a facility; LBP-07-1, 65 NRC 27 (2007)

NRC must provide a hearing upon the request of any person whose interest may be affected by the proceeding; CLI-09-20, 70 NRC 911 (2009); LBP-06-23, 64 NRC 257 (2006); LBP-07-4, 65 NRC 281 (2007); LBP-07-11, 66 NRC 41 (2007); LBP-08-6, 67 NRC 241 (2008); LBP-08-14, 68 NRC 279 (2008); LBP-08-24, 68 NRC 691 (2008); LBP-09-13, 70 NRC 168 (2009); LBP-09-20, 70 NRC 565 (2009); LBP-09-21, 70 NRC 581 (2009); LBP-10-4, 71 NRC 216 (2010); LBP-10-16, 72 NRC 361 (2010); LBP-10-17, 72 NRC 501 (2010)

NRC possesses broad discretion to act when the statute is otherwise silent; CLI-10-6, 71 NRC 113 (2010)

NRC shall conduct a hearing on each application under 42 U.S.C. 2133 or 2134(b) for a construction permit for a facility; LBP-09-19, 70 NRC 433 (2009)

NRC shall conduct a single adjudicatory hearing on the record with regard to the licensing of the construction and operation of a uranium enrichment facility; CLI-09-15, 70 NRC 1 (2009)

on uncontested issues in an early site permit proceeding, the board must independently evaluate the record and the adequacy of the Staff's review and then decide six fundamental issues that are specified by the law and regulations; LBP-07-9, 65 NRC 539 (2007)

"person" is defined to include government agencies other than the Commission, as well as state and foreign governments; LBP-09-6, 69 NRC 367 (2009)

references to the word "private" in the legislative history appear in the context of a general discussion of the purpose of the Atomic Energy Act, which recognized that the prior law placed prohibitions on private participation in atomic energy; LBP-09-6, 69 NRC 367 (2009)

regardless of whether there is a challenge to a petitioner's standing, the board has an independent obligation to make a standing determination; LBP-10-1, 71 NRC 165 (2010)

rights under a construction permit are forfeited only when a construction permit has expired and has not been extended; CLI-10-6, 71 NRC 113 (2010)

section 189(a)'s hearing requirement does not unduly limit the Commission's wide discretion to structure its licensing hearings in the interests of speed and efficiency; CLI-08-28, 68 NRC 658 (2008)

severe accident mitigation alternatives analysis must be site specific and given careful consideration in order to comply with safety requirements; LBP-09-10, 70 NRC 51 (2009)

the 10 C.F.R. Part 50 licensing process that was formerly applied to commercial nuclear power plants required that an applicant first obtain a construction permit for the facility, followed by an operating license; LBP-10-7, 71 NRC 391 (2010)

the "direct participation of local citizens in nuclear reactor licensing" is not a right to have all legal arguments on contention admissibility take place near the facility at issue, but rather the right of persons with standing to file contentions in licensing proceedings and litigate admissible contentions; LBP-08-23, 68 NRC 679 (2008)

SUBJECT INDEX

- the board in an uncontested early site permit proceeding must decide whether, taking into consideration the site criteria contained in 10 C.F.R. Part 100, a reactor or reactors having the characteristics that fall within the parameters for the site can be constructed without undue risk to the health and safety of the public; LBP-07-9, 65 NRC 539 (2007)
- the Commission, if certain conditions are met, may discontinue its regulatory authority over certain categories of material, which authority then is assumed by the state; CLI-10-8, 71 NRC 142 (2010)
- the construction permit specifies a date by which construction of the unit is to be completed; LBP-10-7, 71 NRC 391 (2010)
- the Department of Energy is not a "person" for purposes of Atomic Energy Act § 11s; CLI-09-14, 69 NRC 580 (2009)
- the restriction on foreign ownership focuses on safeguarding access to nuclear materials, a security issue, and not on other licensing matters; LBP-09-4, 69 NRC 170 (2009)
- the role of "private attorney general" is not contemplated; CLI-08-19, 68 NRC 251 (2008)
- the term "reinstatement" is not directly or indirectly mentioned in section 185; CLI-10-6, 71 NRC 113 (2010)
- the ultimate test for standing is not whether NRC's test conforms to that applied by federal courts, but whether NRC's test represents a reasonable construction of section 189a of the Atomic Energy Act; LBP-09-4, 69 NRC 170 (2009)
- the voluntary surrender of a construction permit that has not expired, i.e., where the construction completion date has not yet arrived, does not constitute a situation to which the "forfeiture" provision applies; CLI-10-6, 71 NRC 113 (2010)
- there is no inherent right, based on U.S. citizenship or otherwise, to participate as a party in a proceeding; LBP-08-18, 68 NRC 533 (2008)
- there is no relationship between the legislative purpose underlying the safety provisions of the Act and petitioner's interest in protecting its reputation and avoiding damage suits; CLI-08-19, 68 NRC 251 (2008)
- there is no statutory or regulatory bar, per se, on a foreign-owned or -controlled company holding a source materials license, whether as a licensee or as a parent entity; CLI-09-9, 69 NRC 331 (2009)
- to establish standing petitioner must show that it has suffered or will suffer a distinct and palpable injury that constitutes injury-in-fact within the zones of interests arguably protected by the governing statutes, the injury is fairly traceable to the challenged action, and the injury is likely to be redressed by a favorable decision; LBP-10-1, 71 NRC 165 (2010)
- totally risk-free siting is not required; LBP-08-22, 68 NRC 590 (2008)
- ATOMIC SAFETY AND LICENSING APPEAL BOARD**
- although this board was disbanded in 1991, its decisions still carry precedential value; CLI-07-16, 65 NRC 371 (2007)
- ATTORNEY CONDUCT**
- absent written consent of the party and the prior appearance of another attorney, many courts require that an attorney file a motion to withdraw; LBP-10-21, 72 NRC 616 (2010)
- all counsel have a continuing duty to update a tribunal about any development that may conceivably affect the outcome of litigation; LBP-06-10, 63 NRC 314 (2006)
- an attorney is not permitted to withdraw from representing a client unless withdrawal can be accomplished without material adverse effect to the client's interests; LBP-10-21, 72 NRC 616 (2010)
- because of an attorney's previous disregard of the NRC's practices and procedures, the Commission orders the Office of the Secretary to screen all filings bearing the offender's signature and not to accept or docket them unless they meet all procedural requirements; CLI-06-4, 63 NRC 32 (2006)
- counsel have an ethical responsibility not to knowingly make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer; LBP-06-10, 63 NRC 314 (2006)
- counsel have an obligation to assure that, to the best of their knowledge, information, and belief, representations made in all pleadings are true; LBP-06-10, 63 NRC 314 (2006)
- counsel's alleged unfamiliarity with the agency's rules of practice or counsel's asserted busy schedule are not satisfactory explanations for late filings; LBP-10-21, 72 NRC 616 (2010)

SUBJECT INDEX

dismissal due to counsel's malfeasance is a logical extension of the board's disciplinary authority to reprimand, censure, or suspend from a proceeding any party or representative who refuses to comply with its directions; CLI-08-29, 68 NRC 899 (2008)

NRC may not disqualify attorneys representing multiple witnesses, unless it has concrete evidence that the attorney will obstruct and impede the investigation; CLI-08-11, 67 NRC 379 (2008)

parties and their representatives are expected to conduct themselves as they should before a court of law; LBP-10-21, 72 NRC 616 (2010)

Staff counsel had a duty to inform the board of a telephone call from a former expert witness of petitioners because she knew that this information was conceivably relevant to a ruling on a contention; LBP-06-10, 63 NRC 314 (2006)

Staff counsel's imparting of the information about a telephone call from petitioner's former expert witness did not violate any ethical prohibitions because the expert in question was not represented by petitioners' counsel, the call was initiated by the expert, and no deception or coercion was in any way involved; LBP-06-10, 63 NRC 314 (2006)

the Commission could disqualify a party's counsel from participating in an NRC proceeding upon a concrete showing that a conflict of interest or other ethics concern would obstruct its obtaining a full range of necessary safety or environmental information, or would otherwise threaten the integrity of its regulatory process; CLI-08-11, 67 NRC 379 (2008)

the Commission takes seriously any allegation that an unresolved conflict of interest or other ethical breach threatens the integrity of an NRC licensing proceeding; CLI-08-11, 67 NRC 379 (2008)

the District of Columbia Bar's Board on Professional Responsibility is empowered to consider complaints on attorney discipline matters; CLI-08-11, 67 NRC 379 (2008)

ATTORNEY WORK PRODUCT

the privilege covers only documents and tangible things that are prepared in anticipation of litigation or for trial by or for another party or its representatives; CLI-08-6, 67 NRC 179 (2008)

the privilege protects both fact work product, which consists of documents prepared by an attorney that do not contain the attorney's mental impressions, and opinion work product, which does contain an attorney's mental impressions; CLI-08-6, 67 NRC 179 (2008)

ATTORNEY-CLIENT PRIVILEGE

communications between company employees and an attorney conducting an internal investigation presumptively fall within the attorney-client privilege; CLI-08-6, 67 NRC 179 (2008)

if a company claims that its internal investigation establishes that it has met its obligation, then the company has waived the privilege associated with the internal investigation; CLI-08-6, 67 NRC 179 (2008)

implied waiver of the privilege exists when a regulated company voluntarily discloses investigative materials to a government agency; CLI-08-6, 67 NRC 179 (2008)

the privilege belongs to the client, not to the lawyer, and thus the client may waive the privilege, either by an express waiver or by an implied waiver; CLI-08-6, 67 NRC 179 (2008)

BACKFITTING

a request that the Commission require licensees to return spent fuel pools to their original low-density storage configuration and to use dry storage for any excess fuel is not appropriate for litigation in a license renewal hearing; CLI-06-26, 64 NRC 225 (2006)

if the Commission determines that there is a substantial increase in overall protection of public health and safety or common defense and security and that direct and indirect costs of implementation for that facility are justified, it may impose a license condition to implement severe accident mitigation alternatives; LBP-10-13, 71 NRC 673 (2010)

NRC Staff could impose license conditions that are necessary to protect the environment under backfit procedures; CLI-10-30, 72 NRC 564 (2010)

once an early site permit is issued, the Commission may not impose new requirements on the site unless they are necessary to ensure adequate protection of the public health and safety or the common defense and security; LBP-07-9, 65 NRC 539 (2007)

petitions to require backfitting to protect against spent fuel pool accidents are more appropriately filed as a request for NRC enforcement action than in a license renewal proceeding; LBP-06-23, 64 NRC 257 (2006)

SUBJECT INDEX

BACKGROUND RADIATION

- all uranium and thorium are source material, but the NRC does not regulate source material in unprocessed ores and source material with insignificant concentrations of radionuclides; CLI-06-14, 63 NRC 510 (2006)
- emissions not directly tied to licensed activity are excluded from total effective dose equivalent calculations; CLI-06-14, 63 NRC 510 (2006)
- in the regulatory definition, because the regulatory words “source, byproduct, [and] special nuclear materials” are followed by a clause that is applicable as much to the first and other words as to the last, the natural construction of the language demands that the clause be read as applicable to all; LBP-06-1, 63 NRC 41 (2006)
- inclusion of technologically enhanced naturally occurring radioactive material as a subset of naturally occurring radioactive material was implicit at the time the regulatory definition of background radiation was promulgated; CLI-06-14, 63 NRC 510 (2006)
- mine spoil is a subset of naturally occurring radioactive material; CLI-06-14, 63 NRC 510 (2006)
- radon is not included in the definition except as a decay product of source or special nuclear material; LBP-06-1, 63 NRC 41 (2006)
- the phrase “not under the control of the licensee” was added to the definition of background radiation when the Commission amended the definition to include fallout from past nuclear accidents such as Chernobyl; LBP-06-1, 63 NRC 41 (2006)

BENEFIT-COST ANALYSIS

- a contention that fails to provide even a ballpark figure for the cost of implementing any proposed severe accident mitigation alternatives is inadmissible because it is difficult to assess whether a SAMA may be cost-beneficial and thus warrant serious consideration; LBP-09-26, 70 NRC 939 (2009)
- a SAMA analysis contention was found to be inadmissible because it lacked supporting information regarding the relative costs and benefits of the proposed alternative; LBP-10-15, 72 NRC 257 (2010)
- accuracy of project cost estimates only becomes relevant if an environmentally preferable alternative has been identified; LBP-09-2, 69 NRC 87 (2009)
- additional briefing is requested on whether any additional severe accident mitigation alternatives should have been identified as potentially cost-beneficial, not whether further analysis may refine the details in the SAMA NEPA analysis; CLI-09-11, 69 NRC 529 (2009)
- although economic benefits are properly considered in an environmental impact statement, NEPA does not transform financial costs and benefits into environmental costs and benefits; CLI-06-19, 63 NRC 19 (2006)
- an environmental report prepared for a license renewal need not discuss economic or technical benefits and costs of the proposed action or alternatives except as they are either essential for determining whether an alternative should be included or relevant to mitigation; LBP-08-13, 68 NRC 43 (2008)
- applicant is required to present a cost-benefit analysis (and therefore provide cost estimates) for nuclear power plants and facilities only where the applicant’s alternatives analysis indicates that there is an environmentally preferable alternative; LBP-08-21, 68 NRC 554 (2008)
- at the early site permit stage, applicant is excused from examination, in its environmental report, of the benefits of the proposed project or analysis regarding energy alternatives, and relevant regulations may not be construed to require that the draft or final environmental impact statement include an assessment of the benefits of the proposed action; LBP-06-28, 64 NRC 460 (2006)
- benefits described by the project’s purpose and need are among the factors that are weighed against the project’s costs in striking the balance required by NEPA in the final environmental impact statement; LBP-06-19, 64 NRC 53 (2006)
- contention is rejected as lacking support for the premise that ongoing mining operations will drain or contaminate wetlands, such that their economic benefits will be decreased; LBP-10-16, 72 NRC 361 (2010)
- contention raising question of whether a quantitative as opposed to qualitative analysis of terrorist attacks and the alternatives for mitigation and prevention is necessary is referred to the Commission as a novel issue; LBP-10-15, 72 NRC 257 (2010)
- contention that worldwide uranium supplies will be inadequate to permit the anticipated power production benefits during the license term is potentially material to the licensing proceeding; LBP-08-15, 68 NRC 294 (2008)

SUBJECT INDEX

deferral of the NEPA analysis of the need for power until the combined operating license stage does not violate NEPA; LBP-07-9, 65 NRC 539 (2007)

determination of economic benefits and costs that are tangential to environmental consequences are within a wide area of agency discretion; LBP-10-24, 72 NRC 720 (2010)

energy sales projections are inherently uncertain, and the Commission is clear that it does not impose burdensome attempts to predict future conditions, and that it should be sufficient to reasonably characterize the costs and benefits associated with proposed licensing actions; LBP-10-6, 71 NRC 350 (2010)

if an alternative to the applicant's proposal is environmentally preferable, then NRC must determine whether the environmental benefits conferred by that alternative are worthwhile enough to outweigh any additional cost needed to achieve them; CLI-10-1, 71 NRC 1 (2010)

if the adverse environmental effects of the proposed action are adequately identified and evaluated, the agency is not constrained by NEPA from deciding that other values outweigh the environmental costs; LBP-07-4, 65 NRC 281 (2007); LBP-09-16, 70 NRC 227 (2009)

in its SAMA analysis, Staff compares the estimated equivalent dollar amount of computed reduction in the risk of a severe accident associated with implementation of a particular mitigation alternative with the estimated potential cost of implementation of that alternative; LBP-07-13, 66 NRC 131 (2007)

inherent in any forecast of future electric power demands is a substantial margin of uncertainty; LBP-10-24, 72 NRC 720 (2010)

issues related to costs only become relevant if an intervenor identifies an environmentally preferable, reasonable alternative; LBP-10-10, 71 NRC 529 (2010)

licensing board may disapprove a site for a new reactor only upon one of two findings; LBP-10-24, 72 NRC 720 (2010)

NEPA charges federal agencies with weighing the environmental effects and impacts of the proposed project and its alternatives against each other and balancing those effects against the benefits of each such project; LBP-09-2, 69 NRC 87 (2009)

NRC is required to evaluate and balance both the claimed benefits and the environmental costs of a proposed new reactor; LBP-09-16, 70 NRC 227 (2009)

NRC must analyze the need for additional power when it relies on a benefit in performing the balancing of benefits and costs; LBP-09-16, 70 NRC 227 (2009)

NRC's obligations under the National Environmental Policy Act focus on the adjective "environmental," and NEPA does not require the agency to assess every impact or effect, but only the impact or effect on the environment; LBP-09-2, 69 NRC 87 (2009)

once the adverse environmental effects of a proposed action are adequately identified and evaluated, the agency is not constrained from deciding that other values outweigh the environmental costs; LBP-09-7, 69 NRC 613 (2009)

purpose of the analysis called for by NEPA is to identify each significant environmental cost and to determine whether, all other factors considered, on balance the incurring of that cost is warranted; LBP-10-24, 72 NRC 720 (2010)

quibbling over the details of an economic analysis amounts to standing NEPA on its head by asking that the license be rejected not due to environmental costs, but because the economic benefits are not as great as estimated; LBP-09-2, 69 NRC 87 (2009)

severe accident mitigation alternatives analyses are rooted in a cost-benefit assessment and the purpose of the assessment is to identify plant changes whose costs would be less than their benefit; LBP-10-14, 72 NRC 101 (2010)

Staff's environmental impact statement for an early site permit need not include an assessment of the benefits such as need for power; LBP-07-1, 65 NRC 27 (2007)

the analysis among alternatives must consider and weigh the environmental effects of the proposed action and the alternatives available for reducing or avoiding adverse environmental effects; LBP-06-19, 64 NRC 53 (2006)

the analysis involves the scrutiny of many factors, among them, offsetting benefits, available alternatives, and the possible means (and attendant costs) of reducing the environmental harm; LBP-10-24, 72 NRC 720 (2010)

the analysis is employed to determine a practicable dose limit; CLI-10-8, 71 NRC 142 (2010)

SUBJECT INDEX

the environmental costs of a uranium enrichment facility must be compared to the Staff's assessment of the benefits derived from the additional domestic supply of enriched uranium and the presence of upgraded enrichment technology in the United States; LBP-07-6, 65 NRC 429 (2007)

the environmental report associated with each application for a standard design certification must address the costs and benefits of severe accident design mitigation alternatives; LBP-09-10, 70 NRC 51 (2009)

the general rule applicable to cases involving differences or changes in demand forecasts is not whether applicant will need additional generating capacity but when; LBP-10-24, 72 NRC 720 (2010)

the permitting agency determines what cooling system a nuclear power facility may use, and NRC factors the impacts resulting from use of that system into the NEPA analysis; CLI-07-16, 65 NRC 371 (2007)

there is no statutory or regulatory requirement that an applicant demonstrate any benefit from a requested license amendment; LBP-09-1, 69 NRC 11 (2009)

to challenge a SAMA analysis, petitioner must, at a minimum, address the approximate relative cost and benefit of the SAMA; LBP-08-13, 68 NRC 43 (2008)

unless it looks genuinely plausible that inclusion of an additional factor or use of other assumptions or models may change the cost-benefit conclusions for the SAMA candidates evaluated, no purpose would be served to further refine the SAMA analysis, whose goal is only to determine what safety enhancements are cost-effective to implement; CLI-10-11, 71 NRC 287 (2010)

BIAS

a judge's use of strong language toward a party or in expressing his views on matters before him does not constitute evidence of personal bias; CLI-10-17, 72 NRC 1 (2010)

an agency official should be disqualified only when a disinterested observer may conclude that the official has in some measure adjudged the facts as well as the law of a particular case in advance of hearing it; CLI-10-17, 72 NRC 1 (2010)

extra-record conduct such as stares, glares, and scowls do not constitute evidence of personal bias, nor do occasional outbursts toward counsel; CLI-10-17, 72 NRC 1 (2010)

friction between the court and counsel, including intemperate and impatient remarks by the judge, does not constitute evidence of personal bias; CLI-10-17, 72 NRC 1 (2010)

mere experience or background in a relevant technical field does not imply knowledge of the specific disputed facts in a case; CLI-10-22, 72 NRC 202 (2010)

that an unreasonable person, focusing on only one aspect of the story, might perceive a risk of bias is irrelevant; CLI-10-22, 72 NRC 202 (2010)

the mere fact of adverse findings and rulings on the merits does not imply a biased attitude on the board's part; CLI-10-17, 72 NRC 1 (2010)

to prevail on a disqualification motion, petitioner first must demonstrate that the purported instances of bias had a substantial impact on the outcome of the proceeding; CLI-10-17, 72 NRC 1 (2010)

to prevail on a disqualification motion, petitioner must show either a bias against petitioner or its counsel based on matters outside the record or a pervasive bias against petitioner based upon matters in the record; CLI-10-17, 72 NRC 1 (2010)

BOARDS

See Appeal Boards; Licensing Boards, Authority; Licensing Boards, Jurisdiction

BREACH OF CONTRACT

ratepayers are not third-party beneficiaries of the Standard Contract and therefore cannot sue for breach of contract when DOE fails to dispose of nuclear waste by the statutory deadline; LBP-10-11, 71 NRC 609 (2010)

BRIEFS

a request for briefs on legal issues is one of the many tools available to a presiding officer generally in the conduct of a proceeding; CLI-09-14, 69 NRC 580 (2009)

additional briefing is requested on whether any additional severe accident mitigation alternatives should have been identified as potentially cost-beneficial, not whether further analysis may refine the details in the SAMA NEPA analysis; CLI-09-11, 69 NRC (2009)

the Commission should not be expected to sift unaided through earlier briefs or other documents filed before the board to piece together and discern a party's argument and the grounds for its claims; CLI-09-11, 69 NRC 529 (2009)

See also Appellate Briefs; Reply Briefs

SUBJECT INDEX

BURDEN OF PERSUASION

absent an obvious potential for harm, it is a petitioner's burden to show how harm will or may occur; LBP-09-28, 70 NRC 1019 (2009)

although petitioner bears the burden of demonstrating standing, in ruling on standing a licensing board is to construe the petition in favor of petitioner; LBP-09-1, 69 NRC 11 (2009)

applicant has the burden of persuasion on whether its test program assures that all testing required to demonstrate that SSC will perform satisfactorily in service is identified and performed; LBP-07-2, 65 NRC 153 (2007)

boards may appropriately view petitioners' support for contentions in a light favorable to petitioners, but it is petitioners' burden to establish the admissibility of a contention; LBP-09-17, 70 NRC 311 (2009)

burden is on petitioner to allege a specific and plausible means by which contaminants from mining activities may adversely affect him or her; LBP-10-16, 72 NRC 361 (2010)

existence of a prima facie case is determined based on the sufficiency of the movant's assertions and informational/evidentiary support alone; LBP-10-15, 72 NRC 257 (2010)

in a materials licensing proceeding, petitioners have the burden to show a specific and plausible means whereby the licensing decision may harm them; CLI-09-9, 69 NRC 331 (2009)

in source materials cases, petitioner has the burden of showing a specific and plausible means by which the proposed license activities may affect him or her; LBP-09-13, 70 NRC 168 (2009); LBP-10-16, 72 NRC 361 (2010)

on issues of whether a contention has been rendered moot by provision of information by an applicant, the applicant bears the burden of persuasion; LBP-10-10, 71 NRC 529 (2010)

opponents of summary disposition must counter any adequately supported material facts provided by the movant with their own separate, short, and concise statement of the material facts as to which it is contended there exists a genuine issue to be heard; LBP-08-2, 67 NRC 54 (2008); LBP-08-3, 67 NRC 85 (2008)

petitioner bears the burden to provide facts sufficient to establish standing; CLI-10-7, 71 NRC 133 (2010)

petitioner has the burden to demonstrate proximity-based standing; CLI-08-19, 68 NRC 251 (2008)

prima facie case is defined as establishment of a legally required rebuttable presumption or a party's production of enough evidence to allow the fact-trier to infer the fact at issue and rule in the party's favor; LBP-10-15, 72 NRC 257 (2010)

proponents of a summary disposition motion bear the burden of making the requisite showing by providing a separate, short, and concise statement of the material facts as to which the moving party contends that there is no genuine issue to be heard; LBP-08-2, 67 NRC 54 (2008); LBP-08-3, 67 NRC 85 (2008)

proponents of motions to reopen the record bear a heavy burden; CLI-09-2, 69 NRC 55 (2009)

summary disposition movant bears the burden of showing the absence of a genuine issue as to any material fact; LBP-07-12, 66 NRC 113 (2007)

BURDEN OF PROOF

a board may view a petitioner's supporting information in a light favorable to the petitioner, but it cannot do so by ignoring contention admissibility rules, which require the petitioner (not the board) to supply all required elements for a valid intervention petition; CLI-09-7, 69 NRC 235 (2009)

a board's standing analysis must avoid the familiar trap of confusing the standing determination with the assessment of a petitioner's case on the merits; LBP-10-16, 72 NRC 361 (2010)

a mere showing of a possible violation is not enough to reopen a record; CLI-09-7, 69 NRC 235 (2009)

a party is not required to prove its case in making or opposing a motion for summary disposition; LBP-07-13, 66 NRC 131 (2007)

a party seeking to reopen a closed record to raise a new matter faces an elevated burden to lay a proper foundation for its claim; CLI-08-28, 68 NRC 658 (2008)

although the contention admissibility rule imposes on a petitioner the burden of going forward with a sufficient factual basis, it does not shift the ultimate burden of proof from applicant to petitioner; LBP-09-27, 70 NRC 992 (2009); LBP-10-24, 72 NRC 720 (2010)

applicant, as the proponent of the license, bears the burden of proof; LBP-09-10, 70 NRC 51 (2009)

applicant has the burden to show that concrete in containment structures will maintain its integrity during the extended period of operations or to develop an aging management plan that ensures that any indication of degradation is detected and remediated; LBP-08-13, 68 NRC 43 (2008)

SUBJECT INDEX

applicants must demonstrate that all important systems, structures, and components will continue to perform their intended function in the period of extended operation and must identify any additional actions that will need to be taken to adequately manage the detrimental effects of aging; LBP-08-22, 68 NRC 590 (2008)

as the proponent of the agency action at issue, applicant generally has the burden of proof in a licensing proceeding, but when environmental contentions are involved, the burden shifts to the Staff, because NRC, not an applicant, has the burden of complying with the National Environmental Policy Act; LBP-09-7, 69 NRC 613 (2009)

bare assertions and speculation do not supply the requisite support and a judge's dissenting opinion cannot substitute for the affidavit required to be submitted to the board, with a motion to reopen, in the first instance; CLI-08-28, 68 NRC 658 (2008)

because Staff relies heavily upon applicant's environmental report in preparing the environmental impact statement, should applicant become a proponent of a particular challenged position set forth in the EIS, applicant also has the burden on that matter; LBP-09-7, 69 NRC 613 (2009)

if it seeks to withhold a document from a party or the public, or to bar a party or member of the public from attending any adjudicatory proceeding before a licensing board, NRC Staff must carry the burden of proving that the document or situation fits one of FOIA's specifically enumerated exceptions; LBP-10-2, 71 NRC 190 (2010)

if the support a party offers to demonstrate that a genuine dispute exists as to a material fact indicates that, after expanding that support to its logical limits, it cannot support a finding of fact material to the determination the agency must make, that party's position cannot prevail; LBP-07-13, 66 NRC 131 (2007)

impact of proposed energy conservation alternatives regarding demand for energy must be susceptible to a reasonable degree of proof; LBP-10-10, 71 NRC 529 (2010)

in addition to having the burden on immediate effectiveness, the target of an enforcement order is expected to address the merits at the immediate effectiveness review as well; LBP-09-24, 70 NRC 676 (2009)

in cases where the record fails to support the existence of a significant source of radioactivity producing an obvious potential for offsite consequences at a particular distance frequented by a petitioner, it becomes petitioner's burden to show a specific and plausible means of how the challenged action may harm him or her; LBP-10-4, 71 NRC 216 (2010)

in proceedings where petitioner's factual assertions in support of standing are challenged, untenable, conjectural, or conclusory, a board need not uncritically accept such assertions; LBP-10-4, 71 NRC 216 (2010)

in ruling on summary disposition motions, the evidence of the nonmovant is to be believed, and all justifiable inferences are to be drawn in his favor; CLI-10-11, 71 NRC 287 (2010)

intervenor should not be held to a prima facie burden at the contention admissibility stage of a proceeding, but its showing should be sufficient to require reasonable minds to inquire further; LBP-10-10, 71 NRC 529 (2010)

it is applicant, not NRC Staff, that has the burden in litigation; CLI-08-23, 68 NRC 461 (2008)

it is enough that petitioner has demonstrated a realistic threat of sustaining a direct injury as a result of contaminated groundwater flowing from the site to his property; LBP-10-16, 72 NRC 361 (2010)

it is reasonable to expect that movant will buttress its motion with some concrete evidence, usually in the form of an affidavit or declaration by a person with asserted knowledge of the fact or facts upon which the motion is based; LBP-08-5, 67 NRC 205 (2008)

license renewal applicant must demonstrate, by a preponderance of the evidence, that its aging management program provides reasonable assurance that activities authorized by the renewed license will be conducted in a manner consistent with the current licensing basis, and that the effects of aging will be detected and corrected; LBP-07-17, 66 NRC 327 (2007)

motions to reopen must be accompanied by affidavits of qualified experts presenting the factual and/or technical bases for the claim that there is a significant safety issue, together with evidence that satisfies admissibility standards; CLI-09-7, 69 NRC 235 (2009)

new information sufficient to reopen a closed hearing record at the last minute must be significant and plausible enough to require reasonable minds to inquire further; CLI-08-28, 68 NRC 658 (2008)

SUBJECT INDEX

NRC Staff's role in an enforcement proceeding is akin to that of a prosecutor, and it has the burden to prove its allegations by a preponderance of the reliable, probative, and substantial evidence; LBP-09-24, 70 NRC 676 (2009)

once an intervenor has introduced sufficient evidence to establish a prima facie case, the burden of proof shifts to the applicant who must provide sufficient rebuttal to satisfy the board that it should reject the contention as a basis for denial of the permit or license; CLI-09-7, 69 NRC 235 (2009)

once the requesting party meets its burden of demonstrating a need for a document, the burden is upon the claimant of executive privilege to demonstrate a proper entitlement to exemption from disclosure; LBP-10-2, 71 NRC 190 (2010)

opponent of summary disposition must counter any adequately supported material facts provided by the movant with its own separate, short, and concise statement of the material facts as to which it is contended there exists a genuine issue to be heard; LBP-10-8, 71 NRC 433 (2010)

perfection in applicant's QA program is not required, but once a pattern of QA violations has been shown, applicant has the burden of showing that the license may be granted notwithstanding the violations; LBP-10-9, 71 NRC 493 (2010)

petitioner bears the burden of establishing its standing in a proceeding; LBP-07-10, 66 NRC 1 (2007)

petitioner, especially one represented by counsel, bears the burden of going forward and specifically addressing each of the six elements in 10 C.F.R. 2.309(f)(1); LBP-10-16, 72 NRC 361 (2010)

petitioner has the burden of demonstrating that there is warrant for waiver of a rule prohibiting consideration of the need for power and energy alternatives at the operating license stage; LBP-10-12, 71 NRC 656 (2010)

petitioner has the burden to plead sufficient, plausible facts to demonstrate standing; LBP-10-4, 71 NRC 216 (2010)

petitioner is not required to prove its case at the contention admission stage; LBP-10-24, 72 NRC 720 (2010)

petitioners are not required to demonstrate their asserted injury with certainty at the contention admission stage, or to provide extensive technical studies in support of their standing argument; LBP-10-16, 72 NRC 361 (2010)

proponent of a protective order bears the burden of proof; LBP-10-2, 71 NRC 190 (2010)

proponent of a summary disposition motion bears the burden of making the requisite showing by providing a separate, short, and concise statement of the material facts as to which the moving party contends that there is no genuine issue to be heard; LBP-10-8, 71 NRC 433 (2010)

summary disposition movant bears the burden of demonstrating that there is no genuine issue as to any material fact; LBP-10-20, 72 NRC 571 (2010)

the burden of satisfying the reopening requirements is a heavy one, and proponents of a reopening motion bear the burden of meeting all of these requirements; CLI-08-28, 68 NRC 658 (2008); CLI-09-7, 69 NRC 235 (2009)

the burden that the contention admissibility rules impose on petitioners to put forth a sufficient factual basis does not shift the ultimate burden of proof from the applicant to the petitioner; LBP-06-10, 63 NRC 314 (2006)

the initial burden of showing whether a contention meets the Commission's admissibility standards lies with the petitioner; CLI-09-8, 69 NRC 317 (2009)

the opponent of summary disposition cannot rest on the mere allegations or denials of a pleading, but must go beyond the pleadings and by the party's own affidavits, or by the depositions, answers to interrogatories, and admissions on file, designate specific facts showing that there is a genuine issue for trial; LBP-08-7, 67 NRC 361 (2008)

the party supporting abeyance of an enforcement proceeding based on the pendency of a criminal case involving the same facts carries the burden of proof and must make at least some showing of potential detrimental effect on the criminal case; CLI-06-12, 63 NRC 495 (2006)

the proponent of summary disposition bears the initial burden of informing the tribunal of the basis for its motion and identifying those portions of the record that demonstrate the absence of a genuine issue of material fact; LBP-08-7, 67 NRC 361 (2008)

the ultimate burden of proof on the question of whether a permit or license should be issued is on the applicant, but the party contending that the permit or license should be denied, has the burden of going forward with evidence to buttress that contention; CLI-09-7, 69 NRC 235 (2009)

SUBJECT INDEX

to meet its burden, it is generally sufficient if petitioner provides plausible factual allegations that satisfy each element of standing; LBP-10-4, 71 NRC 216 (2010)

to prevail in establishing that the accused's actions constituted a violation, Staff must demonstrate by a preponderance of the evidence that the accused had actual knowledge of the information associated with his actions and that he deliberately acted contrary to that knowledge; LBP-09-24, 70 NRC 676 (2009)

to the degree the response to a summary disposition motion fails to contravene any adequately supported material facts proffered by the movant, the movant's facts will be considered to be admitted; LBP-10-8, 71 NRC 433 (2010)

under 10 C.F.R. 2.325, applicant has the burden of proving that it has met the reasonable assurance standard of 10 C.F.R. 54.29; LBP-08-25, 68 NRC 763 (2008)

where the nonmoving party declines to oppose a motion for summary disposition, the moving party is not perforce entitled to a favorable judgment, but has the burden to show that he is entitled to judgment under established principles; LBP-08-7, 67 NRC 361 (2008)

BYPRODUCT MATERIALS

for tailings or wastes to fall within the definition of byproduct material, the plain statutory and regulatory language requires that such tailings or wastes be produced from ore that has been processed for its source material content; LBP-06-1, 63 NRC 41 (2006)

petitioner alleges release of controlled byproduct nuclear materials in containers not certified for transport of such materials on public roads and not labeled with the required labeling; DD-10-3, 72 NRC 171 (2010)

CABLES

motion to reopen to introduce a new contention asserting issues related to aging management of effects of moist or wet environments on buried, below-grade, underground, or hard-to-access safety-related electrical cables is denied; LBP-10-19, 72 NRC 529 (2010)

CANCER

a contention that new and significant information about cancer rates in communities around a plant shows that another 20 years of operations may result in greater offsite radiological impacts on human health than was previously known is denied; LBP-06-23, 64 NRC 257 (2006)

contention on health effects of arsenic contamination of drinking water from mining operations is admissible in a materials license amendment proceeding; LBP-09-1, 69 NRC 11 (2009)

contention that the environmental report's analysis of cancer deaths and illnesses relative to natural radiation source exposures is inadequate is inadmissible; LBP-08-16, 68 NRC 361 (2008)

releases from the nuclear fuel cycle in general, incidences of childhood cancers near nuclear power plants, and a request for the NRC to address radioactive releases from the burning of coal at fossil fuel plants are outside the scope of a combined license proceeding; LBP-09-16, 70 NRC 227 (2009)

CASE MANAGEMENT

a request for briefs on legal issues is one of the many tools available to a presiding officer generally in the conduct of a proceeding; CLI-09-14, 69 NRC 580 (2009)

a spectrum of sanctions from minor to severe may be employed by a board to assist in the management of a proceeding; LBP-10-21, 72 NRC 616 (2010)

adjudicatory boards have broad discretion to regulate the course of proceedings and the conduct of participants, and the Commission is reluctant to embroil itself in day-to-day case management issues; CLI-08-14, 67 NRC 402 (2008)

allowing discovery or an evidentiary hearing with respect to safety-related issues to proceed before the final safety evaluation report is issued will serve to further the Commission's objective to ensure a fair, prompt, and efficient resolution of contested issues; CLI-09-15, 70 NRC 1 (2009)

although a presiding officer should issue a separate partial initial decision regarding a limited work authorization request, the board finds no practical or logical basis for separating its consideration of the adequacy of the LWA request from its determination regarding the early site permit with which it is associated; LBP-09-19, 70 NRC 433 (2009)

an initial scheduling order is designed to ensure proper case management; LBP-09-22, 70 NRC 640 (2009)

binding requirements and related recommendations pertaining to petitions to intervene, contentions, responses and replies, standing arguments, and referencing or attaching supporting materials are provided for high-level waste repository proceeding; LBP-08-10, 67 NRC 450 (2008)

SUBJECT INDEX

boards are authorized to hold prehearing conferences to simplify or clarify the issues for hearing, after which they may admit a revised contention, as long as the revised contention does not add material not raised by the intervenor to make it admissible; LBP-10-14, 72 NRC 101 (2010)

boards have an obligation to establish a case scheduling order, and to advise the Commission of any significant delay in meeting major activities set forth in the hearing schedule; CLI-09-17, 70 NRC 309 (2009)

boards have discretion to reframe a contention for purposes of clarity, succinctness, and a more efficient proceeding; LBP-06-22, 64 NRC 229 (2006)

boards have the duty to conduct a fair and impartial hearing according to law, to take appropriate action to control the prehearing and hearing process, to avoid delay, and to maintain order; LBP-09-22, 70 NRC 640 (2009)

boards' case management decisions, such as determinations of whether to permit additional slide shows or enlarged exhibits, lie well within the discretion of the board; CLI-10-17, 72 NRC 1 (2010)

decisions on evidentiary questions fall within boards' authority to regulate hearing procedures; CLI-10-5, 71 NRC 90 (2010); CLI-10-18, 72 NRC 56 (2010)

examples of sanctions include warning a party that offending conduct will not be tolerated in the future, refusing to consider a filing, denying the right to cross-examine or present evidence, dismissing contentions, imposing sanctions on counsel, or dismissing the party from the proceeding; LBP-10-21, 72 NRC 616 (2010)

if no particular procedure is compelled, the board must exercise its discretion and select the hearing procedure most appropriate for the newly admitted contentions; LBP-10-15, 72 NRC 257 (2010)

if the board concludes that it has no questions for any witness concerning a particular contention, it will so advise the parties and will resolve that contention; LBP-09-22, 70 NRC 640 (2009)

in addressing a petition for a rule waiver, the board, in lieu of holding oral argument to obtain answers to its questions, poses questions for NRC Staff about the waiver petition; LBP-09-29, 70 NRC 1028 (2009)

in establishing and enforcing schedule deadlines, boards must take care not to compromise the Commission's fundamental commitment to a fair and thorough hearing process; LBP-10-21, 72 NRC 616 (2010)

in procedural and scheduling matters, where first-hand contact with and appreciation for all the circumstances surrounding a case are necessary, maximum reliance on the proper discretion of a presiding officer is essential; CLI-10-17, 72 NRC 1 (2010)

in the interest of efficient case management and prompt resolution of adjudications, the Commission has generally enforced the 10-day deadline for appeals strictly, excusing it only in unavoidable and extreme circumstances; CLI-10-26, 72 NRC 474 (2010)

in uncontested cases, boards are expected to issue their final initial decisions generally within 4 to 6 months of the Staff's safety evaluation report and final environmental impact statement issuances; CLI-06-20, 64 NRC 15 (2006)

licensing boards are expected to use the applicable techniques to ensure prompt and efficient resolution of contested issues; CLI-10-4, 71 NRC 56 (2010)

licensing boards have authority to control the schedule for a proceeding to ensure that intervenors have adequate time to prepare new or amended contentions in response to new information; LBP-10-17, 72 NRC 501 (2010)

licensing boards have authority to regulate the course of proceedings, and the Commission generally defers to the boards on case management decisions; CLI-07-28, 66 NRC 275 (2007); CLI-10-28, 72 NRC 553 (2010)

licensing boards have broad discretion to issue procedural orders to regulate the course of proceedings and the conduct of participants; CLI-08-7, 67 NRC 187 (2008)

licensing boards have substantial authority to regulate hearing procedures; LBP-10-21, 72 NRC 616 (2010)

licensing boards may reformulate contentions to eliminate extraneous issues or to consolidate issues for a more efficient proceeding; CLI-09-12, 69 NRC 535 (2009); CLI-10-2, 71 NRC 27 (2010); LBP-10-14, 72 NRC 101 (2010)

licensing boards normally have considerable discretion in making evidentiary rulings; CLI-10-5, 71 NRC 90 (2010)

SUBJECT INDEX

NRC rules of procedure authorize boards to hold prehearing conferences for the purposes of simplifying or clarifying the issues for hearing, after which a board might admit a revised contention; CLI-09-12, 69 NRC 535 (2009)

NRC's expanding adjudicatory docket makes it critically important that parties comply with NRC pleading requirements and that the board enforce those requirements; CLI-10-27, 72 NRC 481 (2010)

only in truly unavoidable and extreme circumstances are late filings to be accepted; LBP-10-21, 72 NRC 616 (2010)

selection of hearing procedures for contentions at the outset of a proceeding is not immutable because the availability of Subpart G procedures depends critically on whether the credibility of eyewitnesses is important in resolving a contention, and witnesses relevant to each contention are not identified until after contentions are admitted; LBP-10-16, 72 NRC 361 (2010)

strict enforcement of deadlines furthers the dual interests of efficient case management and prompt resolution of adjudications; LBP-10-21, 72 NRC 616 (2010)

the Commission generally declines to interfere with a board's day-to-day case management decisions unless there has been an abuse of power; CLI-08-7, 67 NRC 187 (2008)

the Commission regards good sense, judgment, and managerial skills as the proper guideposts for conducting an efficient hearing; LBP-10-21, 72 NRC 616 (2010)

the initial scheduling order is to be issued within 55 days of the board decision granting intervention and admitting contentions; LBP-09-22, 70 NRC 640 (2009)

the licensing board shall not entertain motions for summary disposition in a uranium enrichment facility proceeding unless the board finds that such motions, if granted, are likely to expedite the proceeding; CLI-09-15, 70 NRC 1 (2009); LBP-09-22, 70 NRC 640 (2009)

the presiding officer is authorized to hold conferences before or during the hearing for settlement, simplification of contentions, or any other proper purpose; LBP-08-11, 67 NRC 460 (2008)

to avoid unnecessary delays in a uranium enrichment facility proceeding, the licensing board should not routinely grant requests for extensions of time and should manage the schedule such that the overall hearing process is completed within 28-1/2 months; CLI-09-15, 70 NRC 1 (2009)

to the extent applicant may be subject to unreasonable or burdensome discovery requests in the future, it is free to seek relief from the board, which has ample authority to prevent or modify unreasonable discovery demands; CLI-09-6, 69 NRC 128 (2009)

upon admission of a contention in a licensing proceeding, the board must identify the specific hearing procedures to be used to settle the contention; LBP-10-16, 72 NRC 361 (2010)

with an eye toward mitigating prejudice to nonbreaching participants, boards must tailor sanctions to bring about improved future compliance; LBP-10-21, 72 NRC 616 (2010)

CASE OR CONTROVERSY

a justiciable controversy must involve adverse parties representing a true clash of interests and the questions raised must be presented in an adversary context and in a form historically viewed as capable of resolution through the judicial process; LBP-09-14, 70 NRC 193 (2009); LBP-09-25, 70 NRC 867 (2009)

although the Commission is not strictly bound by the mootness doctrine, the agency's adjudicatory tribunals have generally adhered to the principle; LBP-09-15, 70 NRC 198 (2009)

the mootness doctrine derives from the Constitution's limitation of federal courts' jurisdiction to cases or controversies; LBP-09-15, 70 NRC 198 (2009)

this requirement of Article III is rooted in the separation of powers; LBP-09-15, 70 NRC 198 (2009)

when a federal court dismisses a claim as moot and avoids any further consideration of the merits of that claim, it does so because the claim no longer satisfies the case or controversy requirement of Article III; LBP-09-15, 70 NRC 198 (2009)

CATEGORICAL EXCLUSION

certain actions are designated as categorically excluded from the requirement to prepare an environmental assessment or an environmental impact statement; CLI-10-18, 72 NRC 56 (2010)

such actions do not individually or cumulatively have a significant effect on the human environment and thus neither an environmental assessment nor an environmental impact statement is required; CLI-10-18, 72 NRC 56 (2010)

the Commission may find special circumstances warranting a categorical exclusion upon its own initiative, or upon the request of an interested person; CLI-10-18, 72 NRC 56 (2010)

SUBJECT INDEX

CERTIFICATION

applicant, 2 years before and 1 year before the scheduled date for the initial fuel loading, shall submit a report to NRC containing a certification updating the financial information, including a copy of the financial instrument to be used; LBP-09-18, 70 NRC 385 (2009)

because petitioner had not made a prima facie case for rule waiver, the Board declined to certify the matter to the Commission and found that it was prohibited from considering the matter further; CLI-10-29, 72 NRC 556 (2010)

boards must certify the matter of rule waiver to the Commission for a determination of whether the application of the regulation should be waived or an exception granted under the specific circumstances presented; LBP-10-12, 71 NRC 656 (2010)

for combined license applications, the report must contain a certification that financial assurance for decommissioning will be provided no later than 30 days after the Commission publishes notice in the *Federal Register* of the initial fuel load; LBP-09-18, 70 NRC 385 (2009)

if applicant chooses to submit a complete and integrated emergency plan at the early site permit stage, applicant also is required to make a good-faith effort to obtain a certification from federal, state, and local governmental agencies with emergency planning responsibilities; LBP-09-19, 70 NRC 433 (2009)

if petitioner has made a prima facie showing of special circumstances for rule waiver, then the board certifies the matter to the Commission; LBP-10-15, 72 NRC 257 (2010)

in the pre-license application phase, the board denies the Department of Energy's motion to strike the State of Nevada's certification that it has made all its documentary material available on the Licensing Support Network; LBP-08-5, 67 NRC 205 (2008)

licensing boards must promptly certify to the Commission all novel legal or policy issues that would benefit from early Commission consideration; CLI-09-15, 70 NRC 1 (2009)

motions will be rejected if they do not include certification by the attorney or representative of the moving party that they have made a sincere effort to contact the other parties in the proceeding, to explain to them the factual and legal issues raised in the motion, and to resolve those issues; LBP-09-22, 70 NRC 640 (2009)

section 2.1009(b) requires certification to the Pre-License Application Presiding Officer that the party or potential party has complied with the implementation procedures of section 2.1009(a)(2) and that to the best of his or her knowledge, the documentary material specified in 10 C.F.R. 2.1003 has been identified and made electronically available; LBP-09-6, 69 NRC 367 (2009)

the board may refer certain rulings to the Commission, and certain participants in the proceeding may request that the presiding officer certify to the Commission rulings not otherwise immediately appealable pursuant to 10 C.F.R. 2.1015(b); CLI-10-10, 71 NRC 281 (2010)

to certify a waiver petition to the Commission, the board must find that petitioner has met extremely high standards showing the existence of compelling circumstances in which the rationale of the regulation is undercut; LBP-10-12, 71 NRC 656 (2010)

See also Design Certification; Directed Certification; Reactor Design Certification

CERTIFIED QUESTIONS

boards are encouraged to certify, as soon as possible, novel legal or policy questions related to admitted issues; CLI-08-4, 67 NRC 171 (2008)

outside the context of petitions for interlocutory review, the Commission may take interlocutory review of questions or rulings that a licensing board either refers or certifies to the Commission; CLI-07-1, 65 NRC 1 (2007)

the Commission addresses a certified question by a licensing board on the admissibility of proposed contentions involving the Waste Confidence Rule; CLI-10-19, 72 NRC 98 (2010)

where appropriate, the Commission will exercise its authority to instruct the board to certify novel license renewal issues; CLI-07-1, 65 NRC 1 (2007)

CERTIORARI

a conflict in the Circuits is a key criterion informing the exercise of the Supreme Court's certiorari jurisdiction; CLI-07-8, 65 NRC 124 (2007)

CHEMICAL SPILLS

hydrofluoric acid exposure to licensee operators is assessed a civil monetary penalty in the amount of \$32,500 on the basis of a determined Severity Level III violation; LBP-10-18, 72 NRC 519 (2010)

SUBJECT INDEX

CIVIL PENALTIES

for failure of the radio-only activation feature of the emergency notification system to meet its test acceptance criteria, a civil penalty of \$130,000 was imposed on licensee; DD-09-1, 69 NRC 501 (2009)
hydrofluoric acid exposure to licensee operators is assessed a civil monetary penalty in the amount of \$32,500 on the basis of a determined Severity Level III violation; LBP-10-18, 72 NRC 519 (2010)

CLASSIFIED INFORMATION

a dispute over the Commission's authority to direct the Department of Energy to disclose classified information to cleared state representatives over DOE's objection as the originating agency is deferred until there is an actual controversy over a specific document request; CLI-08-21, 68 NRC 351 (2008)
access to such information for introduction into a proceeding or for the preparation of a party's case is controlled by 10 C.F.R. 2.905; CLI-08-21, 68 NRC 351 (2008)

all decisions on questions of classification or declassification of information shall be made by appropriate classification officials in the NRC and are not subject to de novo review; CLI-09-15, 70 NRC 1 (2009)

documents containing classified information or safeguards information must be evaluated paragraph by paragraph and those paragraphs containing classified information or SGI are to be redacted and the remaining paragraphs not containing such sensitive material are to be made available for disclosure to the public; LBP-10-2, 71 NRC 190 (2010)

FOIA exemption from disclosure applies; LBP-10-2, 71 NRC 190 (2010)

guidance governing the classification of information related to the design, construction, operation, and safeguarding of a uranium enrichment facility is described; CLI-09-15, 70 NRC 1 (2009)

hearings on alternative terrorist scenario claims could not be conducted in a meaningful way without substantial disclosure of classified and safeguards information on threat assessments and security arrangements and without substantial litigation over their significance; CLI-08-26, 68 NRC 509 (2008)
hearings on the essentially limitless range of conceivable but highly unlikely terrorist scenarios could not be meaningfully conducted without substantial disclosure of classified and safeguards information on threat assessments and security arrangements and without substantial litigation over their significance; CLI-08-1, 67 NRC 1 (2008)

NRC Staff must include a notice of intent to introduce classified information in the notice of hearing, if it would be impracticable to avoid such introduction; CLI-08-21, 68 NRC 351 (2008)

persons needing access to classified portions of a uranium enrichment facility license application will be required to have the appropriate security clearance for the level of classified information to which access is required; CLI-09-15, 70 NRC 1 (2009)

CLEAN WATER ACT

Congress severely limited NRC's scope of inquiry into section 316(a) determinations to examining whether the EPA or the state agency considered its permit to be a section 316(a) determination; CLI-07-16, 65 NRC 371 (2007)

for purposes of NPDES permits, effluent is defined as liquid waste that is discharged into a river, lake, or other body of water, and it includes heat; CLI-07-16, 65 NRC 371 (2007)

if applicant's plant utilizes a once-through cooling system, applicant shall provide a copy of a Clean Water Act § 316a variance or equivalent state permit and supporting documentation; CLI-07-16, 65 NRC 371 (2007)

NPDES permits may address thermal discharges into bodies of water; CLI-07-16, 65 NRC 371 (2007)

regulation of discharges to groundwater is not authorized by the act, and so applicant's environmental report must address those discharges; LBP-10-14, 72 NRC 101 (2010)

CLIMATE CHANGE

allegation that the Final Safety Analysis report must address the impact of global warming on the transmission grid and the increased probability of loss of offsite power events is inadmissible; LBP-08-16, 68 NRC 361 (2008)

applicant may perform its climate change analysis for the high-level waste repository using a specified percolation rate; LBP-10-22, 72 NRC 661 (2010)

applicant's climate change analysis for the 990,000-year period may be limited to the effects of increased water flow through the repository as a result of climate change; LBP-10-22, 72 NRC 661 (2010)

climate projections should be based on cautious but reasonable assumptions; LBP-10-22, 72 NRC 661 (2010)

SUBJECT INDEX

contention alleging that the environmental report failed to address the alleged greenhouse gas and global climate disruption impacts resulting from prematurely killing trees is inadmissible; LBP-09-10, 70 NRC 51 (2009)

DOE may elect to use the method specified in 10 C.F.R. 63.342(c)(2) to analyze the effects of climate change during the post-10,000-year period, regardless of whether it is required to analyze the effects of climate change during the initial 10,000-year period; LBP-10-22, 72 NRC 661 (2010)

DOE must assess the effects of climate change during the 990,000-year period regardless of whether it necessarily must assess climate change during the initial 10,000-year period under the criteria set forth in section 63.342(a) and (b); LBP-10-22, 72 NRC 661 (2010)

the plain language of 10 C.F.R. 63.305 does not say anything about analyzing future climate based upon the historical geological record; LBP-10-22, 72 NRC 661 (2010)

this issue clearly falls within any reasonable consideration of the concepts expressed in 10 C.F.R. 51.45; LBP-08-6, 67 NRC 241 (2008)

CLOSED HEARINGS

all NRC hearings are to be public except as requested under section 181 of the Atomic Energy Act or otherwise ordered by the Commission; LBP-10-5, 71 NRC 329 (2010)

before a licensing board will close future proceedings, the party seeking closure must demonstrate that the need to close the hearing outweighs the strong presumption that all licensing board proceedings will be open to the public; LBP-10-2, 71 NRC 190 (2010)

during closed portions of oral argument, only the board, NRC Staff, applicant, and individuals who signed nondisclosure affidavits pursuant to protective order would be permitted to remain in the hearing room; LBP-10-5, 71 NRC 329 (2010)

legal authority exists for nondisclosure and protection of security-related information concerning the physical protection of nuclear power plants under 10 C.F.R. 2.390(d)(1); LBP-10-5, 71 NRC 329 (2010)

licensing boards have authority to hold in camera hearings under 10 C.F.R. 2.390(b)(6); LBP-10-5, 71 NRC 329 (2010)

parties can propose creation of a public copy of the transcript, with appropriate redactions for protected information; LBP-10-5, 71 NRC 329 (2010)

section 2.390(d)(1) of 10 C.F.R. provides legal authority for nondisclosure and protection of security-related information concerning the physical protection of nuclear power plants, and for the closing of portions of hearings and other sessions in which such information will necessarily be discussed; LBP-10-5, 71 NRC 329 (2010)

to determine whether a tribunal should block public access to a judicial proceeding, a two-part experience and logic test is applied; LBP-10-2, 71 NRC 190 (2010)

COLLATERAL ESTOPPEL

a board in one proceeding is not constrained to follow the rulings of another board absent explicit affirmation by the Commission; LBP-08-24, 68 NRC 691 (2008)

a court inclined to apply collateral estoppel based on a judgment that is subject to appeal may want to avoid the question by staying the case pending the appeal; LBP-09-24, 70 NRC 676 (2009)

a party's failure to advance a collateral estoppel argument does not perforce trigger the waiver principle, thus precluding a tribunal from applying collateral estoppel; LBP-09-24, 70 NRC 676 (2009)

a tribunal, when considering the applicability of collateral estoppel, may not look behind the decision to determine whether its findings of fact and conclusions of law were well founded; LBP-09-24, 70 NRC 676 (2009)

an exception to the application of collateral estoppel occurs when broad public policy considerations or special public interest factors are involved such that an agency's need for flexibility outweighs the reasons underlying this repose doctrine so as to favor relitigation of a particular issue; LBP-09-24, 70 NRC 676 (2009)

application is appropriate in administrative adjudicatory proceedings; LBP-09-24, 70 NRC 676 (2009)

boards have some leeway to consider the existence of other factors that could outweigh the jurisprudential reasons for applying the doctrine; LBP-09-24, 70 NRC 676 (2009)

collateral estoppel effect is given to judgments granting a motion to dismiss, when the party against which collateral estoppel is invoked had a full and fair opportunity to oppose the dismissal; LBP-08-23, 68 NRC 679 (2008)

SUBJECT INDEX

correctness of a prior decision is not a public policy factor upon which the application of the doctrine depends; CLI-10-23, 72 NRC 210 (2010)

in ASLBP proceedings, collateral estoppel may bar a party from relitigating the admissibility of a contention when an earlier board refused to admit the same contention in an earlier proceeding involving the same facility; LBP-08-23, 68 NRC 679 (2008)

in determining whether to apply collateral estoppel, a board should not look into the jury trial to determine whether the verdict was correct; CLI-10-23, 72 NRC 210 (2010)

issues not decided by special verdict are difficult to decipher for collateral estoppel purposes because of the uncertainty whether the precise issue was actually determined in the prior criminal case; CLI-10-23, 72 NRC 210 (2010)

licensing boards may give collateral estoppel effect to issues previously decided in a district court proceeding; CLI-10-23, 72 NRC 210 (2010)

pendency of an appeal need not preclude reliance on the lower court's decision being appealed to estop relitigation of the same matter in another forum; LBP-09-24, 70 NRC 676 (2009)

potentially duplicative and unnecessary litigation in the second forum does not take place while an appeal is pending, but if the appeal later proves successful, thus invalidating the original judgment upon which collateral estoppel had been based, then the litigation in the second forum is allowed to proceed; LBP-09-24, 70 NRC 676 (2009)

questions over the equivalence of the "knowledge" standard that governed the jury and the standard applicable in the administrative proceeding can lead a board to exercise its discretion not to apply collateral estoppel; LBP-09-24, 70 NRC 676 (2009)

relitigation of issues of law or fact that have been finally adjudicated by a tribunal of competent jurisdiction in a proceeding involving the same parties or their privies is precluded; CLI-10-23, 72 NRC 210 (2010); LBP-08-15, 68 NRC 294 (2008)

the board is prohibited from considering in a COL proceeding matters that were resolved in an ESP proceeding when the COL application references the ESP; LBP-08-23, 68 NRC 679 (2008)

the doctrine has long been recognized as part of NRC adjudicatory practice; CLI-10-23, 72 NRC 210 (2010)

the doctrine is applicable if the issue sought to be precluded is the same as that involved in the prior action, the issue was actually litigated in a prior action, there is a valid and final judgment in the prior action, and the determination was essential to the prior judgment; CLI-10-23, 72 NRC 210 (2010)

the doctrine is grounded on considerations of economy of judicial time and the public policy favoring the establishment of certainty in legal relations; LBP-09-24, 70 NRC 676 (2009)

the doctrine promotes the compelling public interest in preserving the acceptability of judicial dispute resolution against the corrosive disrespect that would follow if the same matter were twice litigated to inconsistent results; LBP-09-24, 70 NRC 676 (2009)

the party against which collateral estoppel is applied must have had a full and fair opportunity to litigate its position, but it need not necessarily have had discovery or an evidentiary hearing; LBP-08-23, 68 NRC 679 (2008)

the party to be prevented from relitigating an issue must have been a party to the prior action, but the party seeking to prevent relitigation through the application of collateral estoppel need not have been a party; CLI-10-23, 72 NRC 210 (2010)

the possibility that the jury verdict was internally inconsistent can lead a board to exercise its discretion not to apply collateral estoppel; LBP-09-24, 70 NRC 676 (2009)

this form of issue preclusion prevents the relitigation of issues of law or fact that have been finally adjudicated by a tribunal of competent jurisdiction in a proceeding involving the same parties or their privies; LBP-09-24, 70 NRC 676 (2009)

to determine whether to apply collateral estoppel to a general verdict, a trial judge is to examine the record of the prior trial in detail to see if the jury might have disbelieved some aspects of the acts charged; LBP-09-24, 70 NRC 676 (2009)

to preclude the relitigation of an issue, four factors must be present; LBP-09-24, 70 NRC 676 (2009)

where all factors are met, the application of collateral estoppel by the subsequent tribunal is to some degree a discretionary matter; LBP-09-24, 70 NRC 676 (2009)

SUBJECT INDEX

where the impact of delay is a concern, the desirability of avoiding any further delay in reaching a final merits determination can be a key discretionary factor counseling nonreliance upon the collateral estoppel principle, even if that doctrine otherwise appeared applicable; LBP-09-24, 70 NRC 676 (2009)
whether collateral estoppel should be applied is a legal question that the Commission reviews de novo; CLI-10-23, 72 NRC 210 (2010)

COLOCATED UNITS

a contention challenging the absence in the environmental report of consideration of impacts from a severe radiological accident at one unit on other collocated units is admitted; LBP-09-17, 70 NRC 311 (2009)
a contention that impacts from a severe radiological accident at any one unit on operation of other units at the site had not been, and should be, considered in the application's environmental report is found to be moot; LBP-10-10, 71 NRC 529 (2010)
contention that applicant failed to address the impact of a chain reaction that leads to more than one unit experiencing a severe accident is found inadmissible; LBP-10-10, 71 NRC 529 (2010)

COMBINED LICENSE APPLICATION

a challenge to applicant's site-specific measurements of adsorption and retention coefficients relative to hydrological radionuclide transport is an admissible contention; LBP-09-16, 70 NRC 227 (2009)
a COLA must include a description of the programs, and their implementation, necessary to ensure that the systems and components meet the requirements of the ASME Boiler and Pressure Vessel Code in accordance with 10 C.F.R. 50.55a; LBP-10-21, 72 NRC 616 (2010)
a contention asserting that the COLA is incomplete because it incorporates by reference a standard design certification and a pending application for a revision to that certified design is inadmissible; LBP-09-10, 70 NRC 51 (2009)
a contention was found to be inadmissible because the COL application contained petitioner's asserted omissions; CLI-10-1, 71 NRC 1 (2010)
a description of equipment and measures taken to ensure that any exposures to radioactive materials such as low-level radioactive waste are kept as low as reasonably achievable, including a description of the provisions for storage of solid waste containing radioactive materials is required; LBP-09-10, 70 NRC 51 (2009)
a license application will not be held in abeyance until the design certification rulemaking is completed; LBP-09-16, 70 NRC 227 (2009)
a NEPA analysis is not the vehicle for exploring questions about the potential for a terrorist attack upon a proposed nuclear facility; LBP-08-16, 68 NRC 361 (2008)
a report must be included that indicates how reasonable assurance will be provided that funds will be available to decommission the facility; LBP-09-18, 70 NRC 385 (2009)
a Staff request to an applicant for more information does not make an application incomplete; CLI-08-15, 68 NRC 1 (2008)
agencies are to exercise a degree of skepticism in dealing with the self-serving statements from the prime beneficiary of a project and to look at the general goal of the project, rather than only those alternatives by which a particular applicant can reach its own specific goals; LBP-09-10, 70 NRC 51 (2009)
although petitioners need to explain how or why they disagree with statements in the application or environmental report, there is no presumption that statements and assessments in the application or ER are correct or accurate; LBP-09-10, 70 NRC 51 (2009)
amendment of a combined license application to comply with an amended aircraft impacts rule during the pendency of the COL application could form the basis for a late-filed contention; CLI-10-1, 71 NRC 1 (2010)
amendments to license applications are not limited to minor details, but may include significant changes; LBP-10-17, 72 NRC 501 (2010)
an agency is not authorized to grant conditional approval to plans that do nothing more than promise to do tomorrow what the statute requires today; LBP-10-20, 72 NRC 571 (2010)
an application's lack of consideration of any alternative to offsite disposal of low-level radioactive waste is a material issue for litigation; LBP-09-18, 70 NRC 385 (2009)

SUBJECT INDEX

an Atomic Safety and Licensing Board should hold any contentions on the reactor design filed in the COLA adjudication in abeyance, pending the results of the rulemaking proceeding on the design certification; CLI-09-4, 69 NRC 80 (2009)

analysis of compliance with section 103d of the Atomic Energy Act is a function performed by the NRC Staff as part of its evaluation of the COLA; CLI-09-20, 70 NRC 911 (2009)

applicant fails to address the management of low-level radioactive waste plan for a longer term than envisioned in the COLA; LBP-10-20, 72 NRC 571 (2010)

applicant for a combined license is expressly authorized by NRC's regulations to incorporate by reference a certified design; CLI-09-8, 69 NRC 317 (2009); LBP-09-2, 69 NRC 87 (2009); LBP-09-8, 69 NRC 736 (2009)

applicant for a construction permit or a combined license may, at its own risk, reference in its application a design for which a design certification application has been docketed but not granted; CLI-10-1, 71 NRC 1 (2010); LBP-09-10, 70 NRC 51 (2009); LBP-09-17, 70 NRC 311 (2009); LBP-09-18, 70 NRC 385 (2009); LBP-10-17, 72 NRC 501 (2010); LBP-10-20, 72 NRC 571 (2010)

applicant is required to present a cost-benefit analysis (and therefore provide cost estimates) for nuclear power plants and facilities only where the applicant's alternatives analysis indicates that there is an environmentally preferable alternative; LBP-08-21, 68 NRC 554 (2008)

applicant may not define the objectives of its action in terms so unreasonably narrow that only one alternative would accomplish the applicant's goals because this would make the agency's EIS alternatives analysis a foreordained formality; LBP-09-10, 70 NRC 51 (2009)

applicant may reference a design certification that the Commission has docketed but not granted; LBP-08-17, 68 NRC 431 (2008); LBP-09-16, 70 NRC 227 (2009); LBP-10-9, 71 NRC 493 (2010)

applicant may reference both an early site permit and a standard design certification in its application; LBP-09-19, 70 NRC 433 (2009)

applicant must describe plans for implementing guidance and strategies intended to maintain or restore core cooling, containment, and spent fuel pool cooling capabilities if large areas of the plant are lost due to explosions or fire; LBP-10-5, 71 NRC 329 (2010)

applicant must describe the means for controlling and limiting the radioactive effluents and radiation exposures from the proposed nuclear reactors; LBP-10-20, 72 NRC 571 (2010)

applicant must file an environmental report that describes the proposed action, states its purposes, describes the environment affected, and discusses the project's environmental impacts in proportion to their significance and alternatives to the proposal; CLI-10-2, 71 NRC 27 (2010)

applicant must have a program to achieve occupational doses and doses to members of the public that are as low as is reasonably achievable; LBP-10-20, 72 NRC 571 (2010)

applicant must include the proposed inspections, tests, and analyses, including those applicable to emergency planning, to be performed and the acceptance criteria that are necessary and sufficient to support the Commission's finding that a COL can be granted; LBP-09-19, 70 NRC 433 (2009)

applicant should explain its current plan for management of low-level radioactive waste, given the lack of an offsite disposal facility, and the potential environmental impact of retaining LLRW at the reactor site for an extended period; LBP-09-16, 70 NRC 227 (2009); LBP-09-27, 70 NRC 992 (2009)

applicant's COLA discussion of LLRW management contained no omission where the applicant addressed the closure of the Barnwell LLRW disposal facility, discussed in detail additional waste minimization measures, and committed to build an additional storage facility in accordance with NRC guidelines if further additional storage became necessary; LBP-10-20, 72 NRC 571 (2010)

applicant's contingent long-term onsite low-level radioactive waste storage facility and the contents of its final safety analysis report with regard to that facility are not governed by 10 C.F.R. 52.79(a)(4) as a part of the reactor facilities to be constructed under the requested combined licenses; LBP-10-8, 71 NRC 433 (2010)

applicant's environmental report is required to analyze the alternatives available for reducing or avoiding adverse environmental effects; LBP-09-10, 70 NRC 51 (2009)

applicant's environmental report must address the environmental costs of management of low-level wastes and high-level wastes related to uranium fuel cycle activities; LBP-08-15, 68 NRC 294 (2008)

applicants are not required to address or demonstrate whether the issuance of a COL will improve the general welfare, increase the standard of living, or strengthen free competition in private enterprise; LBP-08-17, 68 NRC 431 (2008)

SUBJECT INDEX

applicants are to consider long-term onsite low-level radioactive waste storage, but 10 C.F.R. 52.79(a)(3) sets no quantity or time restrictions relative to onsite storage of such waste; CLI-09-16, 70 NRC 33 (2009)

applicants must submit a decommissioning report containing a certification that the funding assurance will be provided no later than 30 days after the NRC publishes notice in the *Federal Register* of its scheduled date for initial fuel loading; LBP-09-18, 70 NRC 385 (2009); LBP-09-21, 70 NRC 581 (2009)

applications may be modified or improved during the NRC review process; LBP-10-17, 72 NRC 501 (2010)

at the time the COLA is submitted, it must identify the method of decommissioning funding assurance that the applicant proposes to use and to show that the method complies with any applicable financial test; LBP-09-18, 70 NRC 385 (2009)

because a contention focuses on the safety-related aspects of a COL application, it is not apparent that the issue resolved in the board's admissibility ruling has any particular implications for a contention challenging the environmental impacts of long-term onsite low-level radioactive waste storage admitted and pending in another proceeding; LBP-10-8, 71 NRC 433 (2010)

because the environmental report is the only environmental document available when NRC issues its notice of opportunity to request a hearing, all initial contentions necessarily focus on the adequacy of the applicant's ER, but the public will have a new opportunity to file environmental contentions when the NRC Staff issues the environmental impact statement or environmental analysis; LBP-09-10, 70 NRC 51 (2009)

because the requirement of 10 C.F.R. 50.75(b)(3) applies to the amount of financial assurance specified in the decommissioning report, it is readily apparent that the report must explain how that requirement will be fulfilled; LBP-09-15, 70 NRC 198 (2009)

challenges to the Commission regulations regarding the design certification process are inadmissible; LBP-09-18, 70 NRC 385 (2009)

Commission policy of permitting the conduct of an adjudicatory proceeding on a combined license that references a design certification that the Commission has not approved does not violate the Atomic Energy Act of 1954, 10 C.F.R. Part 52, or judicial decisions; CLI-09-4, 69 NRC 80 (2009)

design certification rulemaking and individual combined license adjudicatory proceedings may proceed simultaneously, and issues raised in an adjudicatory proceeding that are appropriately addressed in the generic design certification rulemaking are to be referred to the rulemaking for resolution; CLI-09-8, 69 NRC 317 (2009)

detailed design, location, and health impacts information on low-level radioactive waste storage is not required in the combined license application; LBP-10-20, 72 NRC 571 (2010)

docketing decisions are not challengeable in an adjudicatory proceeding; CLI-08-15, 68 NRC 1 (2008)

each environmental report must take Table S-3 as the basis for evaluating the contribution of the environmental effects of the fuel cycle to the environmental costs of licensing the reactor; CLI-09-21, 70 NRC 927 (2009)

electric utilities need not include operating and maintenance costs in their demonstration of financial qualifications; LBP-09-10, 70 NRC 51 (2009)

emergency planning information for the emergency planning zone, generally consisting of an area with a 10-mile radius from the proposed reactor, must be included; LBP-09-10, 70 NRC 51 (2009)

environmental reports and environmental impact statements must include an assessment of all environmental impacts and alternatives, even though NRC has no jurisdiction to regulate such impacts or jurisdiction to impose such alternatives; LBP-09-10, 70 NRC 51 (2009)

focus of a contention must be on the COLA as it exists when the contention is filed and must point out an omission or deficiency with regard to the application as of that moment in time; LBP-09-10, 70 NRC 51 (2009)

for a contention of omission, petitioner need only identify the regulatively required missing information and provide enough facts to show that the application is incomplete; LBP-09-3, 69 NRC 139 (2009)

from a safety standpoint, the required low-level radioactive waste storage information is tied to the COL applicant's particular plans for compliance through design, operational organization, and procedures; CLI-10-2, 71 NRC 27 (2010)

SUBJECT INDEX

- if a COLA is amended or material new information subsequently becomes available, petitioners must be given a fair opportunity to file new or amended contentions challenging these changes; LBP-09-10, 70 NRC 51 (2009)
- if new information becomes available in the course of Waste Confidence Rulemaking proceedings that contravenes the COLA, petitioner may file a motion to admit a new or amended contention; LBP-09-18, 70 NRC 385 (2009)
- if the application references an early site permit, applicant must demonstrate that the chosen design falls within the parameters specified in the ESP or, on the safety side, request a variance; LBP-09-19, 70 NRC 433 (2009)
- if the environmental impact of mining activities is potentially significant, then the failure of the environmental report to disclose the location of the offsite mine does not immunize it from being the subject of a legitimate contention; LBP-09-10, 70 NRC 51 (2009)
- in adjudicatory proceedings it is the license application, not the NRC Staff review, that is at issue; CLI-08-15, 68 NRC 1 (2008)
- including language deferring the obligation that would otherwise apply to COL applicants in 10 C.F.R. 50.75(b)(4), but including no equivalent provision in section 50.75(b)(3), confirms that the Commission did not intend to defer the requirement of section 50.75(b)(3) until after the license is issued; LBP-09-15, 70 NRC 198 (2009)
- information in the form of a report, as described in 10 C.F.R. 50.75, indicating how reasonable assurance will be provided that funds will be available to decommission the facility must be included; LBP-09-15, 70 NRC 198 (2009)
- information on kinds and quantities of materials expected to be produced during plant operation and the means for controlling and limiting radioactive effluents and radiation exposures to comply with Part 20 limits must be included; CLI-09-16, 70 NRC 33 (2009)
- information required in a COLA by section 52.79(a)(3) is largely dependent on the individual applicant's plans; LBP-09-27, 70 NRC 992 (2009)
- it is not only the statistical improbability of a severe accident that bears on the determination whether a severe accident should be anticipated and thereby considered in the context of a combined license application; LBP-10-10, 71 NRC 529 (2010)
- low-level radioactive waste storage information required by 10 C.F.R. 52.79(a)(3) is tied to the COL applicant's particular plans for compliance through design, operational organization, and procedures; LBP-10-20, 72 NRC 571 (2010)
- NRC is required to consider measures to mitigate the environmental impacts of the project; LBP-09-10, 70 NRC 51 (2009)
- NRC regulations permit an applicant to reference a docketed, but not yet certified, design; CLI-10-9, 71 NRC 245 (2010)
- NRC safety regulations require that applicant address the mitigation and potential consequences of a severe accident; LBP-09-10, 70 NRC 51 (2009)
- NRC Staff issuance of a request for additional information does not alone establish deficiencies in an application, and intervention petitioner must do more than merely quote an RAI to justify admission of a contention; CLI-09-16, 70 NRC 33 (2009); LBP-09-10, 70 NRC 51 (2009)
- paragraph (4) of 10 C.F.R. 52.79(a) governs only those structures that are a component of the facility to be constructed under the combined license; LBP-10-8, 71 NRC 433 (2010)
- Part 51 does not authorize NRC to regulate or enforce compliance with all other environmental laws and regulations; LBP-09-10, 70 NRC 51 (2009)
- perfection in applicant's QA program is not required, but once a pattern of QA violations has been shown, applicant has the burden of showing that the license may be granted notwithstanding the violations; LBP-10-9, 71 NRC 493 (2010)
- petitioner is obligated to read the pertinent portions of the license application, state the applicant's position and the petitioner's opposing view, and explain why it disagrees with the applicant; LBP-09-25, 70 NRC 867 (2009)
- petitioners' claim that applicant must pursue the prepayment method for decommissioning conflicts with NRC guidance and rules and so is outside the permissible scope of the COL proceeding; LBP-09-21, 70 NRC 581 (2009)

SUBJECT INDEX

petitioners' request for additional information on redacted portions of the combined license application is denied because the public record indicates the nature of the redacted information; CLI-09-4, 69 NRC 80 (2009)

purported failures to provide detailed information regarding design, location, and worker health impacts do not identify a deficiency in final safety analysis report low-level radioactive waste information that is required to be provided in the COL application; LBP-10-8, 71 NRC 433 (2010)

reasonable assurance of adequate decommissioning funding must be provided, and this assurance must identify the method or methods of funding the applicant plans to use, and the assurance must provide the information required by 10 C.F.R. 50.75(e)(1)(iii)(B) if applicant plans to use a parent company guarantee; LBP-09-15, 70 NRC 198 (2009)

reference to an early site permit must include a safety analysis report that either includes or incorporates by reference the ESP site safety analysis report and that contains additional information and analyses sufficient to demonstrate that the design of the facility falls within the site characteristics and design parameters specified in the ESP; LBP-09-19, 70 NRC 433 (2009)

safety regulations in 10 C.F.R. 52.79(a)(3) require applicant to describe the kinds and quantities of radioactive materials that will be produced in operating a proposed new power plant and to describe the means for controlling and limiting the radioactive effluents and radiation exposures; CLI-10-2, 71 NRC 27 (2010)

section 2.309(f)(1)(vi) is not a second hurdle of materiality that an intervenor must meet, but rather requires that intervenor identify the specific parts of the COLA that it disputes and show that resolution of those disputes is material to the licensing decision; LBP-09-27, 70 NRC 992 (2009)

severe accident mitigation alternatives analysis must be site specific and given careful consideration in order to comply with the Atomic Energy Act and the National Environmental Policy Act; LBP-09-10, 70 NRC 51 (2009)

the application must explain how applicant intends to manage low-level radioactive waste in the absence of an offsite disposal facility; LBP-09-4, 69 NRC 170 (2009)

the board did not create a new regulatory requirement in finding that an application must show how the proposed facility will deal with long-term storage of low-level radioactive waste; CLI-10-2, 71 NRC 27 (2010)

the environmental report is required to address a list of environmental considerations that correspond to the environmental considerations that NEPA § 102(2)(C)(i)-(v) requires the agency to address in the environmental impact statement; LBP-09-16, 70 NRC 227 (2009)

the environmental report shall discuss the impacts of the proposed action on the environment in proportion to their significance; LBP-09-25, 70 NRC 867 (2009)

the fact that a COL is subject to, or even expected to, change does not make it legally deficient because NRC follows a dynamic licensing process; LBP-09-10, 70 NRC 51 (2009)

the fact that an extended low-level radioactive waste storage plan is contingent does not mean that it does not need to comply with 10 C.F.R. 52.79 or that it is subject to a relaxed standard; LBP-10-20, 72 NRC 571 (2010)

the final safety analysis report must contain analysis of a severe accident involving a fission product release from the core into the containment including any fission product cleanup systems intended to mitigate the consequences of the accidents; LBP-09-10, 70 NRC 51 (2009)

the final safety analysis report must include the kinds and quantities of radioactive materials expected to be produced by low-level radioactive waste in the operation and the means for controlling and limiting radioactive effluents and radiation exposures within the limits set forth in 10 C.F.R. Part 20; LBP-10-20, 72 NRC 571 (2010)

the FSAR shall include a level of information sufficient to enable the Commission to reach a final conclusion on all safety matters that must be resolved by the Commission before issuance of a combined license; LBP-10-20, 72 NRC 571 (2010)

the issue of need for power is a part of NRC's COL NEPA review process; LBP-08-16, 68 NRC 361 (2008)

the requirement of Part 51 that the environmental report cover all significant environmental impacts associated with a project includes offsite as well as onsite impacts; LBP-09-10, 70 NRC 51 (2009)

SUBJECT INDEX

the requirement that the designated amount of financial assurance be covered by an acceptable method arises concurrently with the requirement that the applicant submit a decommissioning report to NRC; LBP-09-15, 70 NRC 198 (2009)

there is no prohibition on an applicant using a plan for compliance with section 52.79(a)(3) that includes contingent plans should future low-level radioactive waste storage become necessary; LBP-10-20, 72 NRC 571 (2010)

there is no requirement in section 52.79(a)(3) for applicant's FSAR to include details regarding building materials and high-integrity containers, exact location, or health impacts on employees for the contingent onsite long-term LLRW storage facility; LBP-10-20, 72 NRC 571 (2010)

topics that must be covered in the final safety analysis report and the level of information that is sufficient for each topic are specified in 10 C.F.R. 52.79; LBP-10-20, 72 NRC 571 (2010)

when a COLA references an early site permit, neither applicant nor Staff needs to address environmental issues resolved in the ESP proceeding unless new and significant information arises on those issues; LBP-10-1, 71 NRC 165 (2010)

when an applicant decides it no longer wishes to have the agency evaluate its application, the usual approach is for the applicant to request that the agency permit it to withdraw its licensing request; LBP-09-23, 70 NRC 659 (2009)

COMBINED LICENSE PROCEEDING

any power level selected at the COL stage other than the target value used in the environmental impact statement's alternative energy analysis for the early site permit would constitute new information that, if found to be significant, would have to be evaluated at the construction permit or combined license application stage; CLI-07-14, 65 NRC 216 (2007)

compliance with applicable radiation standards is deferred at the early site permit stage, and can only be determined in a COL or CP proceeding; CLI-07-27, 66 NRC 215 (2007)

it is appropriate to defer issues concerning the effects of short-term damage to the environment and the irretrievable commitment of resources to the construction permit or combined license stage; CLI-07-14, 65 NRC 216 (2007)

when one or more particular environmental impacts cannot be meaningfully assessed at the ESP stage, those matters may be designated as "unresolved," provided they do not interfere with the Staff's ability to determine whether there is any obviously superior alternative to the proposed site; CLI-07-27, 66 NRC 215 (2007)

COMBINED LICENSE PROCEEDINGS

a claim of deficiency in construction of the concrete containment is insufficient because it was not linked to the application at issue in the proceeding; CLI-10-9, 71 NRC 245 (2010)

a contention alleging a breakdown of applicant's quality assurance program must provide evidence that there is legitimate doubt as to whether the plant can be operated safely; LBP-10-9, 71 NRC 493 (2010)

a contention arising from a matter resolved in an early site permit proceeding is within the scope of a combined license proceeding that references the ESP if it concerns whether emergency planning matters resolved in the ESP should be revisited; LBP-08-15, 68 NRC 294 (2008)

a contention challenging information in a design certification rulemaking, if otherwise admissible, should be referred to the Staff for consideration in the rulemaking, and held in abeyance by the licensing board pending the outcome of the rulemaking; LBP-09-3, 69 NRC 139 (2009)

a contention that challenges compliance with fire protection regulations at an existing unit is outside the scope of a combined license proceeding; CLI-10-9, 71 NRC 245 (2010)

a decision dismissing the contested adjudication relating to a COL has no impact on the subsequent need to conduct a mandatory hearing relating to the COLA, over which the Commission would preside; LBP-09-23, 70 NRC 659 (2009)

a matter need not be actually litigated in order to be "resolved" in an early site permit proceeding; LBP-08-15, 68 NRC 294 (2008)

a safety contention arising from a matter resolved in an early site permit proceeding is within the scope of a combined license proceeding that references the ESP if it concerns whether the site characteristics and design parameters or a term or condition specified in the ESP have been met or whether a variance from the ESP requested by the COL applicant is unwarranted or should be modified; LBP-08-15, 68 NRC 294 (2008)

SUBJECT INDEX

a well-pleaded environmental contention concerning the effects of long-term onsite management of low-level radioactive waste is admissible; CLI-10-2, 71 NRC 27 (2010)

adequacy of applicant's control room and equipment design for radiological protections, in light of the fact that the reactor is proposed to be located within the EPZ of an existing reactor, is an issue that is appropriate in a combined license or standard design certification proceeding; LBP-09-10, 70 NRC 51 (2009)

all proffered contentions must be within the scope of the proceeding as defined by the Commission in its initial hearing notice and order referring the proceeding to the licensing board; LBP-09-3, 69 NRC 139 (2009)

allegation that NRC has inadequately characterized human health impacts of radiation exposure from the high-level waste repository is inadmissible in a combined license proceeding; LBP-08-16, 68 NRC 361 (2008)

an environmental contention is not litigable in a COL proceeding if it has already been resolved in an early site permit proceeding; CLI-09-3, 69 NRC 68 (2009)

an environmental contention may be admitted during a COL proceeding if it concerns a significant issue that was not resolved in the early site permit proceeding or if it involves the impacts of construction and operation of the facility and significant new information has been identified; LBP-08-15, 68 NRC 294 (2008)

an uncontested proceeding is subject to the mandatory hearing requirements; LBP-08-15, 68 NRC 294 (2008)

any contention directed at a design undergoing rulemaking review fails on its face to satisfy the admission requirements because all matters that are the subject of a rulemaking are outside the scope of licensing proceedings; LBP-09-8, 69 NRC 736 (2009)

applicant's plan for storage of low-level radioactive waste is a litigable issue because it is material to the findings the NRC must make to support the action that is involved in a combined license proceeding; LBP-08-15, 68 NRC 294 (2008)

assertion that applicant might need to obtain a Part 72 license is irrelevant, because a grant of the COL could be accompanied by grant of a Part 72 general license if the applicant complies with certain conditions; LBP-09-21, 70 NRC 581 (2009)

assertions that building two new nuclear reactors in a troubled economy is fiscally irresponsible is outside the scope the proceeding; LBP-09-10, 70 NRC 51 (2009)

business strategies in the context of need for power and any challenges to them are outside the scope of a licensing proceeding; LBP-10-10, 71 NRC 529 (2010)

challenges to a severe accident mitigation design alternatives analysis are within the scope of COL proceedings; LBP-10-14, 72 NRC 101 (2010)

character or integrity issues are expected to be directly germane to the challenged licensing action; CLI-10-9, 71 NRC 245 (2010)

claims related to the decommissioning of the facility are not currently ripe for review and are outside the scope of the proceeding; LBP-09-16, 70 NRC 227 (2009)

contention alleging that the environmental report failed to address the alleged greenhouse gas and global climate disruption impacts resulting from prematurely killing trees is inadmissible; LBP-09-10, 70 NRC 51 (2009)

contention alleging that the threatened eastern fox snake inhabits the nuclear plant site and that construction activities for the new reactor will kill snakes, destroy their habitat, and might eliminate them from the area is within the scope of the proceeding; LBP-09-16, 70 NRC 227 (2009)

contention challenging applicant's failure to consider deliberate and malicious aircraft crashes in its environmental report is inadmissible; LBP-08-21, 68 NRC 554 (2008)

contention that concerns onsite and offsite impacts of active and passive dewatering associated with the proposed project satisfies the admissibility criteria; LBP-09-10, 70 NRC 51 (2009)

contentions concerning an applicant's plan for disposal of Greater-Than-Class-C radioactive waste cannot be admitted because disposal of that type of waste is the responsibility of the federal government; LBP-09-4, 69 NRC 170 (2009)

contentions on information a COL applicant should supply in order to satisfy NRC regulations regarding the safety of long-term storage of low-level radioactive waste are application-specific and thus would benefit from further development by the board and the parties; CLI-09-16, 70 NRC 33 (2009)

SUBJECT INDEX

- contentions on the environmental impacts of spent fuel storage are inadmissible; LBP-09-18, 70 NRC 385 (2009)
- controls other countries may impose on mining and milling, and the impacts of such activities, are outside the scope of the proceeding; LBP-09-17, 70 NRC 311 (2009)
- even assuming arguendo that applicant might someday require a permit under Part 61 for a disposal facility, that issue is too speculative at the combined license stage and is therefore not material to the findings the NRC must make to support the action that is involved in the COL proceeding; LBP-09-27, 70 NRC 992 (2009)
- failure to frame a safety concern arising from the interaction of the proposed design certification document amendment with the existing certified standard design and/or a facility-specific provision of the COLA leaves the contention as an inadmissible challenge to the Part 52 regulatory framework; LBP-09-3, 69 NRC 139 (2009)
- generic issues are to be resolved as part of the design certification rulemaking process, and any concerns related to those issues must be addressed in the rulemaking and not within the scope of a COL proceeding; LBP-09-8, 69 NRC 736 (2009)
- given that the *Federal Register* notice defines the scope of the issues that may properly be raised in a request for a hearing, it also defines the scope of the issues that could reasonably be deemed resolved during an ESP proceeding; LBP-08-15, 68 NRC 294 (2008)
- how applicant intends to handle low-level radioactive waste in the absence of an offsite disposal facility is material to the findings the agency must make on a combined license; LBP-09-3, 69 NRC 139 (2009)
- if a combined license application references a design certification, then the presiding officer shall not admit a contention concerning severe accident design mitigation alternatives unless the contention demonstrates that the site characteristics fall outside the site parameters in the standard design certification; LBP-09-10, 70 NRC 51 (2009)
- if applicant proceeds with a site-specific reactor design instead of a certified design, any admissible issues would have to be addressed in the licensing adjudication; CLI-08-15, 68 NRC 1 (2008)
- if applicant requests a Commission finding on the completion of inspections, tests, analyses, and acceptance criteria needed for issuance of a COL, the Commission is required to identify these ITAAC in the notice of hearing published in the *Federal Register* for the proceeding; LBP-09-19, 70 NRC 433 (2009)
- if petitioner identifies specific omissions in the combined license application, those omissions should be addressed in a contention to the board which, in turn, should refer such a contention to the Staff for consideration in the design certification rulemaking, and hold that contention in abeyance, if it is otherwise admissible; LBP-08-21, 68 NRC 554 (2008)
- in a future proceeding, petitioner could proffer an application-specific contention suitable for litigation on the subject of onsite storage of low-level radioactive waste; CLI-09-3, 69 NRC 68 (2009)
- in ASLBP proceedings, collateral estoppel may bar a party from relitigating the admissibility of a contention when an earlier board refused to admit the same contention in an earlier proceeding involving the same facility; LBP-08-23, 68 NRC 679 (2008)
- in cases involving construction or operation of a nuclear power reactor, proximity to the proposed facility has been considered sufficient to establish the requisite standing elements; LBP-09-3, 69 NRC 139 (2009)
- in determining whether an individual or organization should be granted party status in a proceeding based on standing as of right, the agency applies contemporaneous judicial standing concepts; LBP-09-3, 69 NRC 139 (2009)
- in the absence of a 10 C.F.R. 2.335 waiver petition, any challenge brought to aspects of a referenced certified reactor design is outside the scope of a COL proceeding; LBP-08-16, 68 NRC 361 (2008)
- in the overall COLA/DCD process, petitioners will have an opportunity to file new contentions related to material new information regarding site-specific plant design issues; LBP-09-8, 69 NRC 736 (2009)
- inadequacy of environmental report's reliance on Table S-3 regarding radioactive effluents from the uranium fuel cycle is not litigable in a COL proceeding; LBP-08-16, 68 NRC 361 (2008)
- issues concerning a reactor design certification application should be resolved in the design certification rulemaking and not in an individual COL proceeding; CLI-08-15, 68 NRC 1 (2008)

SUBJECT INDEX

items for which sufficient information is lacking at the early site permit stage of the licensing process may be subject to deferral for consideration at the combined license stage; LBP-09-19, 70 NRC 433 (2009)

licensing boards should refer contention challenging a reactor design certification to the Staff for consideration in the design certification rulemaking, and hold that contention in abeyance, if it is otherwise admissible; CLI-08-15, 68 NRC 1 (2008)

low-level radioactive waste disposal contentions have been admitted when that issue was not sufficiently discussed in the applications and there was no mention of the closure of the Barnwell facility; LBP-09-18, 70 NRC 385 (2009)

matters resolved in an early site permit proceeding are considered resolved in a subsequent COL proceeding when the COL application references the ESP, subject to certain exceptions; LBP-08-15, 68 NRC 294 (2008)

members of intervenor organizations who reside, work, or recreate within 50 miles of the proposed nuclear power plant have proximity-based standing; LBP-10-9, 71 NRC 493 (2010)

NRC adjudicatory hearings are not EIS editing sessions; LBP-10-10, 71 NRC 529 (2010)

only the management of Class B and Class C wastes is properly the subject of a contention in a combined license proceeding; LBP-09-16, 70 NRC 227 (2009)

Part 61 is inapplicable in a combined license proceeding because it applies only to land disposal facilities that receive waste from others, not to onsite facilities where licensee intends to store its own low-level radioactive waste; LBP-09-27, 70 NRC 992 (2009)

petitioner has not met the pleading requirements because it has not demonstrated any link between the purported violations at an existing unit and any future noncompliance or resulting safety risk affecting proposed units; CLI-10-9, 71 NRC 245 (2010)

petitioner's assertions regarding the historical fire protection situation at the existing unit is outside the scope of the combined license proceeding; LBP-08-21, 68 NRC 554 (2008)

petitioner's challenge to the one-fire assumption in the AP1000 design constitutes an impermissible challenge to Commission regulations; CLI-10-9, 71 NRC 245 (2010)

petitioner's dispute with the combined license application concerning completeness of the AP1000 Design Certification Document is referred to Staff for resolution during the rulemaking on the certification of the AP1000 design and any hearing on the merits is held in abeyance pending the outcome of the rulemaking; LBP-08-21, 68 NRC 554 (2008)

petitioners may not attack Commission regulations; CLI-08-15, 68 NRC 1 (2008)

petitioners' concerns regarding applicant's commitments to relax conservatism in its laboratory testing and groundwater release analysis are in regard to the revised analysis to be submitted in response to the Staff request for additional information and therefore are dismissed as outside the scope of the proceeding; LBP-09-16, 70 NRC 227 (2009)

portions of a contention that allege that the environmental report also failed to adequately address the zone of environmental impact, impact on listed species, and appropriate mitigation are admissible; LBP-09-10, 70 NRC 51 (2009)

questions of the safety and environmental impacts of onsite low-level waste storage are largely site- and design-specific and appropriately decided in an individual licensing proceeding, provided that litigants proffer properly framed and supported contentions; LBP-09-10, 70 NRC 51 (2009); LBP-09-16, 70 NRC 227 (2009)

ratepayer impacts are outside the scope of the proceeding because the state, not the NRC, is charged with protecting ratepayers' interests; LBP-09-10, 70 NRC 51 (2009)

rationale for and scope of process are explained; LBP-10-7, 71 NRC 391 (2010)

releases from the nuclear fuel cycle in general, incidences of childhood cancers near nuclear power plants, and a request for the NRC to address radioactive releases from the burning of coal at fossil fuel plants are outside the scope of the proceeding; LBP-09-16, 70 NRC 227 (2009)

request that a combined license application be held in abeyance until the design certification is completed must be denied; LBP-09-18, 70 NRC 385 (2009)

revenue decoupling is a state regulatory matter that is outside the scope of, and not material to, the NRC licensing process; LBP-09-10, 70 NRC 51 (2009)

SUBJECT INDEX

- standing to intervene in proceedings involving nuclear power reactors without the need to plead injury, causation, and redressability is presumed if petitioner lives within 50 miles of the nuclear power reactor; LBP-08-15, 68 NRC 294 (2008)
- state agencies may participate as nonparty interested states; LBP-08-15, 68 NRC 294 (2008)
- Table S-3 does not include health effects from the effluents described in the table, and that issue may be the subject of litigation in individual licensing proceedings; LBP-09-16, 70 NRC 227 (2009)
- the appropriate path for any petitioner's challenges to proposed reactor design revisions is through participation in those rulemaking proceedings, not through a combined license proceeding; LBP-09-2, 69 NRC 87 (2009)
- the board is prohibited from considering in a COL proceeding matters that were resolved in an ESP proceeding when the COL application references the ESP; LBP-08-23, 68 NRC 679 (2008)
- the Commission may have more to offer regarding the need for a NEPA carbon footprint analysis in new reactor licensing proceedings; LBP-09-19, 70 NRC 433 (2009)
- the design certification rulemaking and individual COL adjudicatory proceedings may proceed simultaneously, and issues raised in an adjudicatory proceeding that are appropriately addressed in the generic design certification rulemaking are to be referred to the rulemaking for resolution; LBP-10-17, 72 NRC 501 (2010)
- the environmental impacts related to storage of spent fuel under Part 72 have been generically evaluated under two previous rulemakings and the Commission's waste confidence proceedings, and thus need not be reassessed; LBP-09-21, 70 NRC 581 (2009)
- the fact that disposal of dredged or fill material in wetlands is regulated by the Environmental Protection Agency and the U.S. Army Corps of Engineers does not render a contention inadmissible; LBP-09-10, 70 NRC 51 (2009)
- the licensing board rules on issues that concern guidance and strategies for addressing certain circumstances that might arise from potential beyond-design-basis explosions and fires; LBP-10-5, 71 NRC 329 (2010)
- the need for design features to guard against design basis threats is outside the scope of a COL proceeding because it is the subject of an ongoing rulemaking; LBP-09-2, 69 NRC 87 (2009)
- the proximity presumption applies to hearings on combined licenses; LBP-09-16, 70 NRC 227 (2009)
- the scope of the proceeding and thus of admissible contentions is defined by the Commission in its initial hearing notice and order referring the proceeding to the Licensing Board; LBP-10-9, 71 NRC 493 (2010)
- the universe of potential contentions includes site-specific contentions that do not implicate issues appropriately considered in a design certification rulemaking; CLI-09-8, 69 NRC 317 (2009)
- the Waste Confidence Rule is applicable to all new reactor proceedings and contentions challenging the rule or seeking its reconsideration are inadmissible; LBP-09-18, 70 NRC 385 (2009)
- to the degree the general precept that a rule, including a design certification, cannot be challenged in an adjudication might be seen as placing such matters outside the scope of the proceeding; LBP-10-21, 72 NRC 616 (2010)
- use of the term "resolved" in 10 C.F.R. 52.39(a) implies an intent to grant preclusive effect only when the appropriate agency official makes a determination concerning the issue in dispute; LBP-08-15, 68 NRC 294 (2008)
- whether applicant will improve the general welfare, increase the standard of living, or strengthen free competition in private enterprise is not a litigable issue; LBP-08-16, 68 NRC 361 (2008)
- whether other permits may be required from other agencies is outside the scope of NRC proceedings, and those concerns are properly raised before those respective permitting authorities; LBP-09-21, 70 NRC 581 (2009)
- COMBINED LICENSES**
- a COL is issued for a period of 40 years; LBP-09-16, 70 NRC 227 (2009)
- a license will not be prohibited if the foreign entity's influence is on other licensing activities not of primary concern to the NRC, or if the corporation follows NRC-implemented conditions to isolate safety matters from foreign control; LBP-09-4, 69 NRC 170 (2009)
- absent a future exemption request, applicant cannot obtain a combined license for its proposed facility until the design certification rulemaking process for a COLA-referenced revision to the

SUBJECT INDEX

COLA-referenced design certification document is completed by incorporating the revision into the certified standard design; LBP-09-3, 69 NRC 139 (2009)

action items identify significant information requirements that do not affect Staff's ability to make the requisite safety findings for issuance of an early site permit, but nevertheless merit tracking and resolution during the safety review performed for a subsequent CP or COL application referencing the ESP; CLI-07-27, 66 NRC 215 (2007)

an opportunity for hearing will be provided in the *Federal Register* notice of fuel loading, regarding whether inspections, tests, or analyses that have not been found to have been met under 10 C.F.R. 52.97(a)(2) prior to issuance of the COL; LBP-09-19, 70 NRC 433 (2009)

any permit conditions imposed that are not met before a combined license referencing the early site permit is issued will attach to the COL; LBP-09-19, 70 NRC 433 (2009)

applicant is required to establish a quality assurance program and to apply that program to its safety-related activities; LBP-10-9, 71 NRC 493 (2010)

applicant must obtain the financial instrument for decommissioning funding and submit a copy to the Commission as provided in 10 C.F.R. 50.75(e)(3); LBP-09-15, 70 NRC 198 (2009)

applicant who may apply for a construction permit under Part 50, or a COL under Part 52, may apply for an early site permit; LBP-09-19, 70 NRC 433 (2009)

applicant will also have to demonstrate that the site-specific parameters are bounded by the parameters developed for the certified design; LBP-09-2, 69 NRC 87 (2009)

decommissioning plans are not required until the applicant files a post-shutdown decommissioning activities report, which is not due until 2 years before permanent cessation of operation; LBP-09-21, 70 NRC 581 (2009)

each combined license applicant will have to determine whether it will adopt *in toto* the certified design, or whether it will take exemptions thereto and/or departures therefrom; LBP-09-2, 69 NRC 87 (2009)

funding for financial assurance for decommissioning must be covered by prepayment, an external sinking fund, or a surety method, insurance, or other guarantee including a parent company guarantee; LBP-09-18, 70 NRC 385 (2009)

holder of a combined license must begin filing biannual reports on the status of decommissioning funding once the Commission has made a finding that all acceptance criteria in the license have been met; LBP-09-15, 70 NRC 198 (2009)

if licensee changes its method of decommissioning funding assurance, the new method will also have to pass any applicable financial test; LBP-09-15, 70 NRC 198 (2009)

in making the findings required for issuance of a combined license, the Commission shall treat as resolved those matters resolved in connection with the issuance or renewal of a design certification rule; LBP-10-21, 72 NRC 616 (2010)

interested persons may request a hearing as to the adequacy of construction after issuance of a combined license; CLI-09-2, 69 NRC 55 (2009)

no later than 1 year after issuance of the COL or at the start of construction, whichever is later, the COL licensee must submit its schedule for completing the inspections, tests, or analyses and provide schedule updates; LBP-09-19, 70 NRC 433 (2009)

Part 61 only applies to the land disposal of radioactive waste received from other persons and is therefore inapplicable to the issue of low-level waste generated and managed onsite at the nuclear power plant; LBP-09-10, 70 NRC 51 (2009)

perfection in plant construction and the construction quality assurance program is not a precondition for a license, but rather what is required is reasonable assurance that the plant, as built, can and will be operated without endangering the public health and safety; LBP-10-9, 71 NRC 493 (2010)

procedures for issuance of a combined construction permit and conditional operating license for a nuclear power plant and the conduct of the hearing are described; LBP-10-7, 71 NRC 391 (2010)

representations, assumptions, and unresolved issues discussed in the final environmental impact statement neither place limitations on the ESP or the ESP holder, nor bind a CP or COL applicant in the preparation of future applications referencing the ESP; CLI-07-27, 66 NRC 215 (2007)

Staff's environmental impact statement for a COL must discuss the reasonably foreseeable environmental impacts of the proposed project; CLI-10-2, 71 NRC 27 (2010)

the financial test for a parent company guarantee is a material issue because the Staff must decide whether the test is satisfied in order to grant the COL; LBP-09-15, 70 NRC 198 (2009)

SUBJECT INDEX

the parent company guarantee is based on a financial test and may only be used if the guarantee and test are as contained in Appendix A to 10 C.F.R. Part 30; LBP-09-18, 70 NRC 385 (2009)

the process for taking exemptions to and departures from a certified design is set forth in 10 C.F.R. Part 52, App. D, § VIII; LBP-09-2, 69 NRC 87 (2009)

the purpose of the financial qualification requirements of 10 C.F.R. 50.33(f) is to ensure the protection of public health and safety and the common defense and security, not to evaluate the financial wisdom of the proposed project; LBP-09-10, 70 NRC 51 (2009)

the requirements of 10 C.F.R. 50.75 are intended to ensure that entities who construct and operate a nuclear power plant will have sufficient funds at the end of the operational life of the plant to complete the decommissioning of the plant; LBP-09-15, 70 NRC 198 (2009)

the Waste Confidence Rule applies to the spent fuel discharged from any new generation of reactor designs; LBP-08-21, 68 NRC 554 (2008)

the Waste Confidence Rule covers the storage of spent fuel in new or existing facilities; LBP-09-10, 70 NRC 51 (2009); LBP-09-17, 70 NRC 311 (2009)

to demonstrate financial qualification, applicant must show that it possesses funds or has reasonable assurance of obtaining funds necessary to cover estimated construction and fuel cycle costs; LBP-09-10, 70 NRC 51 (2009)

COMITY

the Commission's decision not to entertain a state intervenor's integrity and competence contentions in the high-level waste repository proceeding is consistent with its practice of extending comity to other governmental entities; CLI-09-14, 69 NRC 580 (2009)

COMMENTS

the draft environmental impact statement is distributed for public comment and, based on the comments received, a review of information provided by the applicant, and supplemental independent information and analysis, the Staff prepares and issues a final EIS; LBP-09-7, 69 NRC 613 (2009)

COMMISSIONERS, AUTHORITY

NRC may not disqualify attorneys representing multiple witnesses, unless it has concrete evidence that the attorney will obstruct and impede the investigation; CLI-08-11, 67 NRC 379 (2008)

NRC regulations do not address conflicts of interest as such, but the absence of a specific rule does not interfere with the Commission's inherent supervisory authority over the conduct of adjudicatory proceedings; CLI-08-11, 67 NRC 379 (2008)

the Commission could disqualify a party's counsel from participating in an NRC proceeding upon a concrete showing that a conflict of interest or other ethics concern would obstruct its obtaining a full range of necessary safety or environmental information, or would otherwise threaten the integrity of its regulatory process; CLI-08-11, 67 NRC 379 (2008)

the Commission has plenary supervisory authority to interpret and customize its process for individual cases; CLI-08-11, 67 NRC 379 (2008)

COMMON DEFENSE AND SECURITY

a board must determine whether an ESP application and the record of the proceeding contain sufficient information, and the review of the application by the NRC Staff has been adequate, to support a negative finding on the question of whether the issuance of an early site permit will be inimical to the common defense and security or to the health and safety of the public; LBP-07-9, 65 NRC 539 (2007)

a domestic corporation in which a foreign entity has an ownership interest is considered controlled or dominated if its will is subjugated to the will of the foreign entity on primary safety matters or access policies that may be inimical to the national defense and security of the United States; LBP-09-4, 69 NRC 170 (2009)

an affirmative finding by the Commission that issuance of a license for a uranium enrichment facility will not be inimical to the common defense and security is required; CLI-09-15, 70 NRC 1 (2009)

an application to renew the operating license of a commercial nuclear power plant may be granted only if the Commission finds that the continued operation of the facility will be in accord with the common defense and security and will provide adequate protection to the health and safety of the public; LBP-08-24, 68 NRC 691 (2008); LBP-08-25, 68 NRC 763 (2008)

congressional intent for the phrase "common defense and security," is analyzed in the context of foreign ownership prohibitions; LBP-08-6, 67 NRC 241 (2008)

SUBJECT INDEX

creditor regulations may be augmented by license conditions as necessary to allow ownership arrangements, such as sale and leaseback, not covered by this section, provided it can be found that such arrangements are not inimical to the common defense and security of the United States; CLI-09-15, 70 NRC 1 (2009); CLI-10-4, 71 NRC 56 (2010)

in cases involving no concern over import or export of nuclear materials, common defense and security considerations under 10 C.F.R. 40.32(d) are not implicated; LBP-09-1, 69 NRC 11 (2009)

in the absence of unusual circumstances, the Commission need not look beyond the nonproliferation safeguards in determining whether the common defense and security standard is met; LBP-09-1, 69 NRC 11 (2009)

intervenor are not entitled to litigate common defense and security considerations under 10 C.F.R. 40.32(d) unless the specific common defense and security risk asserted is reasonably related to, and would arise as a direct result of, the specific license amendments that the Commission is asked to approve; LBP-09-1, 69 NRC 11 (2009)

intervenor's nuclear proliferation concern is premised upon future third-party activities that are unrelated to the specific activities authorized by license amendments and is not litigable because it is not a direct consequence of the proposed license amendments or the Commission's approval thereof; LBP-09-1, 69 NRC 11 (2009)

NRC case law and precedent do not prohibit considering the percentage of foreign ownership as one element in NRC's overall analysis and finding of whether the foreign entity is a threat to the national defense and security of the United States; LBP-09-4, 69 NRC 170 (2009)

the requirement that materials licenses not be inimical to the common defense and security has been interpreted as referring to the absence of foreign control over the applicant; LBP-09-1, 69 NRC 11 (2009)

this standard refers principally to the safeguarding of special nuclear material, the absence of foreign control over the applicant, the protection of restricted data, and the availability of special nuclear material for defense needs; CLI-09-9, 69 NRC 331 (2009)

COMPENSATORY DAMAGES

licensing boards have awarded payment of litigation fees and expenses from a licensee to an intervenor if there has been legal harm to the intervenors caused by some activity or action of the licensee; LBP-09-1, 69 NRC 11 (2009)

COMPLIANCE

a declaration of compliance is not a demonstration of compliance; LBP-08-25, 68 NRC 763 (2008)

compliance with NRC guidance documents is neither necessary nor necessarily sufficient to satisfy the legal requirements that each application must meet under the Atomic Energy Act; LBP-08-25, 68 NRC 763 (2008)

failure of an applicant to address any guidance topics or deviation from the guidance provided does not rise to the level of failure to comply with NRC regulations; LBP-08-9, 67 NRC 421 (2008)

in the absence of evidence to the contrary, NRC does not presume that a licensee will violate agency regulations wherever the opportunity arises; LBP-10-20, 72 NRC 571 (2010)

with an eye toward mitigating prejudice to nonbreaching participants, boards must tailor sanctions to bring about improved future compliance; LBP-10-21, 72 NRC 616 (2010)

COMPUTER MODELING

applicant's claim that computer models should be excused from the mandatory disclosure requirements because they entail proprietary information is rejected; LBP-10-23, 72 NRC 692 (2010)

applicant's "control" of computer models prepared by and in possession of a contractor is illustrated by the fact that if NRC Staff requested these documents, applicant could obtain and provide them; LBP-10-23, 72 NRC 692 (2010)

the term "document" as used in 10 C.F.R. 2.336 includes computer models and associated electronic inputs, outputs, data, and software; LBP-10-23, 72 NRC 692 (2010)

to rule that disclosure under 10 C.F.R. 2.336(a)(2)(i) is limited to formal contractual deliverables would encourage applicants to draft consulting contracts to insulate themselves from the obligation to disclose critical computer modeling information; LBP-10-23, 72 NRC 692 (2010)

SUBJECT INDEX

CONCLUSIONS OF LAW

the Commission will review legal questions de novo, and will reverse a licensing board's legal rulings if they are a departure from or contrary to established law; CLI-09-7, 69 NRC 235 (2009); CLI-10-5, 71 NRC 90 (2010); CLI-10-18, 72 NRC 56 (2010)

CONCRETE

a claim of deficiency in construction of the concrete containment is insufficient because it was not linked to the application at issue in the proceeding; CLI-10-9, 71 NRC 245 (2010)
burden is on applicant to show that concrete in containment structures will maintain its integrity during the extended period of operations or to develop an aging management plan that ensures that any indication of degradation is detected and remediated; LBP-08-13, 68 NRC 43 (2008)
the stability of ISFSI concrete pads holding dry spent fuel storage casks during earthquakes is addressed; DD-07-2, 65 NRC 365 (2007)

CONDUCT OF PARTIES

licensing boards have broad discretion to sanction willful, prejudicial, and bad-faith behavior; LBP-09-1, 69 NRC 11 (2009)
parties and their representatives are expected to conduct themselves as they should before a court of law; LBP-10-21, 72 NRC 616 (2010)

CONFIDENTIAL INFORMATION

although the SUNSI access procedures do not impose a high threshold for demonstrating need, they must be applied consistent with the principle that it is important to prevent unnecessary disclosure of sensitive information; LBP-09-5, 69 NRC 303 (2009)
handling of confidential commercial or financial (proprietary) information that has been submitted to the agency is governed by 10 C.F.R. 2.390; CLI-10-24, 72 NRC 451 (2010)
if applicants and petitioners cannot agree on the terms of a confidentiality and nondisclosure agreement, then they shall inform the presiding officer, indicate specifically the areas where they disagree, and then move the presiding officer for issuance of a protective order; CLI-07-18, 65 NRC 399 (2007)
if petitioners offer a reason for needing such information material to the findings a licensing board must make and otherwise explain why publicly available versions of the application would not be sufficient to provide the basis and specificity for a proffered contention, they would satisfy the need criterion; LBP-09-5, 69 NRC 303 (2009)
NRC records are protected from disclosure under FOIA Exemption 2 to the extent they contain internal analytic guidance, operating rules, or practices, the disclosure of which would aid terrorists or saboteurs seeking to circumvent security measures designed to protect nuclear materials; LBP-08-7, 67 NRC 361 (2008)
petitioner's lack of access to SUNSI may hinder it in its ability to demonstrate why publicly available versions of the application would not be sufficient to provide the basis and specificity for a proffered contention, but this does not absolve a petitioner from at least endeavoring to address this criterion; LBP-09-5, 69 NRC 303 (2009)
the condition that requires investigation of an individual's character to grant access to restricted data is not linked to the general license criteria; LBP-09-6, 69 NRC 367 (2009)
the procedure for seeking access to SUNSI does not provide a method for general or topical access, but only access to information necessary to meaningfully participate in an adjudicatory proceeding and to provide the basis and specificity of a proffered contention; LBP-09-5, 69 NRC 303 (2009)
the requirement to discuss the basis for a proffered contention to obtain access to SUNSI is not to be equated with the discussion that would be necessary to support an admissible contention; LBP-09-5, 69 NRC 303 (2009)

CONFIRMATORY ANALYSIS

NRC Staff's revision of the Final Safety Evaluation Report to account for applicant's confirmatory analysis would not, standing alone, be a materially different result that justifies reopening the record, because it would neither change the outcome of the renewal proceeding nor impose a different licensing condition on an applicant; LBP-08-12, 68 NRC 5 (2008)

CONFIRMATORY ORDER

claims by a nonlicensee to the effect that the root causes or facts underpinning a confirmatory order are inaccurate are not valid claims in an enforcement proceeding; LBP-08-14, 68 NRC 279 (2008)

SUBJECT INDEX

it is unlikely that petitioners will often obtain hearings on confirmatory enforcement orders because such orders presumably enhance rather than diminish public safety; LBP-08-14, 68 NRC 279 (2008); LBP-09-20, 70 NRC 565 (2009)

petitioners may not seek to enhance the measures outlined in an enforcement order; LBP-08-14, 68 NRC 279 (2008)

the scope of an enforcement proceeding is limited to whether an enforcement order should be sustained; LBP-07-16, 66 NRC 277 (2007)

CONFLICT OF INTEREST

NRC may not disqualify attorneys representing multiple witnesses, unless it has concrete evidence that the attorney will obstruct and impede the investigation; CLI-08-11, 67 NRC 379 (2008)

NRC regulations do not address conflicts of interest as such, but the absence of a specific rule does not interfere with the Commission's inherent supervisory authority over the conduct of adjudicatory proceedings; CLI-08-11, 67 NRC 379 (2008)

the Commission could disqualify a party's counsel from participating in an NRC proceeding upon a concrete showing that a conflict of interest or other ethics concern would obstruct its obtaining a full range of necessary safety or environmental information, or would otherwise threaten the integrity of its regulatory process; CLI-08-11, 67 NRC 379 (2008)

the Commission takes seriously any allegation that an unresolved conflict of interest or other ethical breach threatens the integrity of an NRC licensing proceeding; CLI-08-11, 67 NRC 379 (2008)

CONSERVATION

See Energy Conservation

CONSIDERATION OF ALTERNATIVES

a categorical exclusion exists for materials licenses associated with irradiators; CLI-10-18, 72 NRC 56 (2010)

a federal agency must study, develop, and describe appropriate alternatives to the recommended courses of action in any proposal that involves unresolved conflicts concerning alternative uses of available resources; LBP-06-28, 64 NRC 460 (2006)

a no-reactor or no-action alternative that was not raised before the board is therefore improperly raised on appeal; CLI-10-9, 71 NRC 245 (2010)

a practical definition of "reasonable" for use when selecting alternative concepts would be that an alternative is reasonable if it is both feasible (possible, viable) and nonspeculative; LBP-10-10, 71 NRC 529 (2010)

a reviewing agency determines whether an alternative is appropriate by looking at the objectives (i.e., purpose and need) of a project sponsor; LBP-09-2, 69 NRC 87 (2009)

a rule of reason governs the agency's duty to identify and consider all reasonable alternatives under the National Environmental Policy Act; LBP-09-10, 70 NRC 51 (2009); LBP-09-17, 70 NRC 311 (2009); LBP-09-26, 70 NRC 939 (2009)

a rule of reason is implicit in NEPA's requirement that an agency consider reasonable alternatives to a proposed action; CLI-10-18, 72 NRC 56 (2010); CLI-10-22, 72 NRC 202 (2010)

a SAMA analysis contention was found to be inadmissible because it lacked supporting information regarding the relative costs and benefits of that proposed alternative; LBP-10-15, 72 NRC 257 (2010)

a solely wind- or solar-powered facility could not satisfy the project's purpose to generate baseload power; LBP-09-17, 70 NRC 311 (2009); LBP-10-6, 71 NRC 350 (2010)

accuracy of project cost estimates only becomes relevant if an environmentally preferable alternative has been identified; LBP-09-2, 69 NRC 87 (2009)

adequacy of the draft environmental impact statement's evaluation of alternatives is a material issue in a licensing proceeding; LBP-10-24, 72 NRC 720 (2010)

adequacy of the final environmental impact statement discussion and analysis of the alternative of implementing a dry cooling system for the proposed units is decided; LBP-09-7, 69 NRC 613 (2009)

adequacy of the NEPA alternatives analysis is judged on the substance rather than the sheer number of the alternatives examined; CLI-10-18, 72 NRC 56 (2010)

agencies are not allowed to define objectives of a project so narrowly as to preclude a reasonable consideration of alternatives; CLI-10-18, 72 NRC 56 (2010)

agencies are required to exercise a degree of skepticism in dealing with self-serving statements from the prime beneficiary of a project and to look at the general goal of the project, rather than only those

SUBJECT INDEX

alternatives by which a particular applicant can reach its own specific goals; LBP-09-10, 70 NRC 51 (2009); LBP-09-17, 70 NRC 311 (2009)

agencies are required to study, develop, and describe appropriate alternatives to recommended courses of action in any proposal that involves unresolved conflicts concerning alternative uses of available resources and include a detailed statement of the alternatives to the proposed action in its environmental impact statement; LBP-09-10, 70 NRC 51 (2009); LBP-09-19, 70 NRC 433 (2009)

agencies need only consider those alternatives that can achieve the purposes of the project; CLI-06-10, 63 NRC 451 (2006)

agencies need only discuss those alternatives that are reasonable and will bring about the ends of the proposed action; LBP-10-6, 71 NRC 350 (2010)

all reasonable alternatives to the site proposed for the early site permit are to be identified; LBP-09-19, 70 NRC 433 (2009)

alternative energy sources that will be dependent on future environmental safeguards and technological developments need not be considered; LBP-09-7, 69 NRC 613 (2009)

alternatives that are remote and speculative do not require detailed discussion in an environmental impact statement; LBP-10-10, 71 NRC 529 (2010)

alternatives that do not advance the purpose of the project will not be considered reasonable or appropriate; CLI-10-18, 72 NRC 56 (2010)

although applicant's goals are given substantial weight, the National Environmental Policy Act does not allow applicant to define its goals so narrowly as to unreasonably circumscribe the range of alternatives that must be considered; LBP-09-10, 70 NRC 51 (2009); LBP-09-17, 70 NRC 311 (2009)

although substantial weight is accorded to a license applicant's preferences, if the identified purpose of a proposed project reasonably may be accomplished at locations other than the proposed site, the board may require consideration of those alternative sites; CLI-10-18, 72 NRC 56 (2010)

although the discussion of alternatives in the environmental assessment need only be brief, it must be sufficient to fully comply with the requirement to study, develop, and describe appropriate alternatives; CLI-10-18, 72 NRC 56 (2010)

an adverse effect is a required precondition under the National Historic Preservation Act; CLI-06-9, 63 NRC 433 (2006)

an agency cannot redefine the applicant's goals, and the environmental impact statement alternatives analysis should be based around the applicant's goals, including its economic goals; LBP-09-17, 70 NRC 311 (2009)

an agency is required to address the purpose of the proposed project, reasonable alternatives to the project, and to what extent the agency should explore each particular reasonable alternative; CLI-10-18, 72 NRC 56 (2010)

an agency must consider all reasonable alternatives but is not required to choose the most environmentally benign site; LBP-07-9, 65 NRC 539 (2007)

an agency must consider alternatives that are appropriate alternatives to recommended courses of action; LBP-09-2, 69 NRC 87 (2009)

an agency must take into account the needs and goals of the parties involved in the application; LBP-10-10, 71 NRC 529 (2010)

an agency's consideration of alternatives is sufficient if it considers an appropriate range of alternatives, even if it does not consider every available alternative; LBP-10-24, 72 NRC 720 (2010)

an agency's environmental review must consider not every possible alternative, but every reasonable alternative; LBP-10-6, 71 NRC 350 (2010); LBP-10-10, 71 NRC 529 (2010)

an environmental impact statement must describe the potential environmental impact of a proposed action and discuss any reasonable alternatives; LBP-10-10, 71 NRC 529 (2010)

an environmental impact statement must incorporate a hard look at alternatives to a proposed action; LBP-10-10, 71 NRC 529 (2010)

an environmental impact statement must rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives that were eliminated from detailed study, briefly discuss the reasons for their having been eliminated; LBP-10-10, 71 NRC 529 (2010); LBP-10-24, 72 NRC 720 (2010)

an environmental report and an environmental impact statement for a materials license must include a statement on the alternatives to the proposed action, including a discussion of the no-action alternative; CLI-09-15, 70 NRC 1 (2009)

SUBJECT INDEX

an environmental report must identify all reasonable alternatives; LBP-10-10, 71 NRC 529 (2010)

an environmental report prepared for a license renewal need not discuss economic or technical benefits and costs of the proposed action or alternatives except as they are either essential for determining whether an alternative should be included or relevant to mitigation; LBP-08-13, 68 NRC 43 (2008)

an otherwise reasonable alternative will not be excluded from discussion in an environmental impact statement solely on the ground that it is not within the jurisdiction of the NRC; LBP-09-10, 70 NRC 51 (2009); LBP-09-17, 70 NRC 311 (2009); LBP-10-10, 71 NRC 529 (2010)

analysis of alternatives is the heart of the environmental impact statement; LBP-10-24, 72 NRC 720 (2010)

applicant is not obliged to examine general efficiency or conservation proposals that would do nothing to satisfy the particular project's goals of producing baseload power; LBP-09-17, 70 NRC 311 (2009); LBP-09-21, 70 NRC 581 (2009)

applicant is required to evaluate only alternatives that support the purpose of the project; LBP-09-21, 70 NRC 581 (2009)

applicant is required to present a cost-benefit analysis (and therefore provide cost estimates) for nuclear power plants and facilities only where the applicant's alternatives analysis indicates that there is an environmentally preferable alternative; LBP-08-21, 68 NRC 554 (2008)

applicant may not define the objectives of its action in terms so unreasonably narrow that only one alternative would accomplish the applicant's goals because this would make the agency's EIS alternatives analysis a foreordained formality; LBP-09-10, 70 NRC 51 (2009)

applicant's comparison of the environmental impacts of nuclear and wind/compressed air energy storage is inadequate to adequately inform decision makers about the competing choices; LBP-10-10, 71 NRC 529 (2010)

applicant's decision to exclude renewable energy options from its alternatives analysis is reasonable because these sources are not always available and, with the current technology, cannot meet the goals of the license renewal application; LBP-08-13, 68 NRC 43 (2008)

applicant's environmental report must contain a discussion of alternatives sufficiently complete to aid the Commission in developing and exploring, pursuant to section 102(2)(E) of NEPA, appropriate alternatives to recommended courses of action; LBP-10-6, 71 NRC 350 (2010)

applicant's environmental report must include an evaluation of alternative sites to determine whether there is any obviously superior alternative to the site proposed; LBP-09-19, 70 NRC 433 (2009)

applicant's initial consideration of DOE's Portsmouth, Ohio, and SRS sites as alternative sites was reasonable as part of its alternative site analysis for an early site permit; LBP-09-19, 70 NRC 433 (2009)

as long as all reasonable alternatives have been considered and an appropriate explanation is provided as to why an alternative was eliminated, the regulatory requirement is satisfied; CLI-10-18, 72 NRC 56 (2010)

as long as applicant has not set forth an unreasonably narrow objective of its project, NRC adheres to the principle that when the purpose is to accomplish one thing, it makes no sense to consider alternative ways by which another thing might be accomplished; LBP-09-2, 69 NRC 87 (2009)

at the early site permit stage, applicant is excused from examination, in its environmental report, of the benefits of the proposed project or analysis regarding energy alternatives, and relevant regulations may not be construed to require that the draft or final environmental impact statement include an assessment of the benefits of the proposed action; LBP-06-28, 64 NRC 460 (2006)

at the operating license stage, licensing boards will not admit contentions concerning the need for power or alternative energy sources; LBP-10-12, 71 NRC 656 (2010)

because blending down highly enriched uranium for reactor fuel would not promote applicant's primary purpose of maintaining the viability of a dwindling domestic uranium industry, it is outside the scope of reasonable alternatives that must be considered under NEPA; LBP-06-19, 64 NRC 53 (2006)

because demand-side management reduces by a small portion applicant's demand for power, it should be analyzed in this instance as a surrogate for need for power; LBP-10-6, 71 NRC 350 (2010)

because petitioners fail to create a genuine issue, the board need not resolve whether applicant's purpose is unreasonably narrow or whether a proposed alternative is so far beyond the realm of reason that it must be rejected out of hand; LBP-09-21, 70 NRC 581 (2009)

SUBJECT INDEX

boards must decide whether the final environmental impact statement alternatives discussion is sufficiently complete to aid the Commission in developing and exploring appropriate alternatives to recommended courses of action in any proposal that involves unresolved conflicts concerning alternative uses of available resources; LBP-09-7, 69 NRC 613 (2009)

brownfield sites owned by companies other than the applicant may reasonably be excluded as alternative sites; LBP-09-19, 70 NRC 433 (2009)

business decisions of licensees or applicants are beyond NRC purview; CLI-10-1, 71 NRC 1 (2010)

consideration of energy efficiency is not a reasonable alternative, where that alternative would not achieve applicant's goal of providing additional power to sell on the open market, and is not possible for an applicant who has no transmission or distribution system of its own, and no link to the ultimate power consumer; CLI-10-21, 72 NRC 197 (2010)

consideration of environmental impacts need not address every impact that could possibly result, but rather only those that are reasonably foreseeable or have some likelihood of occurring; LBP-09-7, 69 NRC 613 (2009)

cost issues only become relevant if an intervenor identifies an environmentally preferable, reasonable alternative; LBP-10-10, 71 NRC 529 (2010)

discussion of the no-action alternative in a final environmental impact statement is governed by a rule of reason and need not be exhaustive or inordinately detailed; LBP-06-19, 64 NRC 53 (2006)

DOE is precluded from the need to consider alternatives to geologic disposal, or alternative sites to the Yucca Mountain site; LBP-09-6, 69 NRC 367 (2009)

DOE's environmental impact statement is not to consider the need for the repository, the time of initial availability of a repository, alternative sites to the Yucca Mountain site, or nongeologic alternatives to such site; LBP-10-11, 71 NRC 609 (2010)

energy sales projections are inherently uncertain, and the Commission does not impose burdensome attempts to predict future conditions, and it should be sufficient to reasonably characterize the costs and benefits associated with proposed licensing actions; LBP-10-6, 71 NRC 350 (2010)

environmental reports must include an analysis that considers and balances the environmental effects of the proposed action, the environmental impacts of alternatives to the proposed action, and alternatives available for reducing or avoiding adverse environmental effects; LBP-10-16, 72 NRC 361 (2010)

existence of reasonable but unexamined alternatives renders an environmental impact statement inadequate; LBP-10-24, 72 NRC 720 (2010)

failure to provide facts or expert opinion sufficient to show that the environmental report disregarded a feasible alternative based on either wind power, solar power, or some combination of the two renders a contention inadmissible; LBP-09-16, 70 NRC 227 (2009)

federal agencies are required to study, develop, and describe appropriate alternatives to recommend courses of action in any proposal that involves unresolved conflicts concerning alternative uses of available resources; CLI-10-18, 72 NRC 56 (2010); LBP-06-17, 63 NRC 747 (2006)

federal agencies must take a hard look at the environmental impacts of a proposed action, as well as reasonable alternatives to that action; LBP-09-7, 69 NRC 613 (2009)

federal courts and the NRC use a rule of reason in identifying alternatives and do not require that unreasonable alternatives be examined; LBP-07-9, 65 NRC 539 (2007)

for an early site permit, NRC is required to provide a detailed statement on alternatives to the proposed action; CLI-07-27, 66 NRC 215 (2007)

for purposes of the environmental impact statement, the potential construction and operation of the plant or plants for which the early site permit is being obtained is the proposed action that must be the focus of the board's NEPA review; LBP-07-1, 65 NRC 27 (2007)

further review of need for power and alternative energy sources is precluded once a construction permit has been issued; CLI-10-29, 72 NRC 556 (2010)

goals of a project's sponsor are given substantial weight in determining whether a NEPA alternative is reasonable; LBP-09-10, 70 NRC 51 (2009); LBP-09-17, 70 NRC 311 (2009)

if an alternative to the applicant's proposal is environmentally preferable, then NRC must determine whether the environmental benefits conferred by that alternative are worthwhile enough to outweigh any additional cost needed to achieve them; CLI-10-1, 71 NRC 1 (2010)

if NRC Staff has not previously considered severe accident mitigation alternatives for the applicant's plant in an environmental impact statement or related supplement or in an environmental assessment, a

SUBJECT INDEX

consideration of alternatives to mitigate severe accidents must be provided; LBP-07-13, 66 NRC 131 (2007)

if petitioner has proffered an admissible contention asserting an environmentally preferable alternative to the proposed reactors, this also would trigger the requirement that the environmental report contain cost estimates; CLI-10-9, 71 NRC 245 (2010)

if the proposed siting of a plant slated for an early site permit involves unresolved conflicts concerning alternative uses of available resources, then this discussion must be sufficiently complete to allow the Staff to develop and to explore appropriate alternatives to the ESP pursuant to NEPA § 102(2)(E); LBP-09-19, 70 NRC 433 (2009)

impact of proposed energy conservation alternatives regarding demand for energy must be susceptible to a reasonable degree of proof; LBP-10-10, 71 NRC 529 (2010)

implicit in NEPA is a rule of reason, under which the agency may limit the alternatives discussion where there is no environmental effect or where an effect is simply not significant; LBP-10-10, 71 NRC 529 (2010)

in its environmental review of a private applicant's proposed project, the agency may accord appropriate deference to the applicant's proposed siting and design plans; LBP-06-19, 64 NRC 53 (2006)

in the context of appropriately defining terms and reconciling concepts such as "reasonable," "feasible," and "reasonably available," a problem for agencies is that even the term "alternatives" is not self-defining; LBP-10-10, 71 NRC 529 (2010)

inaccurate, incomplete, or misleading information in an environmental impact statement concerning the comparison of alternatives is itself sufficient to render the EIS unlawful and to compel its revision; LBP-10-24, 72 NRC 720 (2010)

it is inappropriate for the agency to consider economic costs when no environmentally preferable alternative has been identified; CLI-10-1, 71 NRC 1 (2010)

it is not enough to consider only the proposed action and the no-action alternative in an environmental assessment; CLI-10-18, 72 NRC 56 (2010)

it is not reasonable or necessary to consider, as a system design alternative to the application for an early site permit for Units 3 and 4, the imposition of water conservation measures on preexisting Units 1 and 2; LBP-07-9, 65 NRC 539 (2007)

neither NRC nor applicant has the mission or authority to implement a general societal interest in energy efficiency; LBP-08-13, 68 NRC 43 (2008)

NEPA imposes no obligation to select the most environmentally benign alternative; LBP-06-19, 64 NRC 53 (2006)

NEPA requires consideration only of feasible, nonspeculative alternatives; LBP-10-10, 71 NRC 529 (2010)

NEPA requires federal agencies to consider the likely environmental impacts of the preferred course of action as well as reasonable alternatives; LBP-10-24, 72 NRC 720 (2010)

NEPA requires the NRC to provide a reasonable mitigation alternatives analysis, containing reasonable estimates, including full disclosures of any known shortcomings in methodology, incomplete or unavailable information and significant uncertainties; CLI-10-22, 72 NRC 202 (2010)

NEPA's rule of reason does not demand an analysis of energy efficiency because conservation measures are beyond the ability of an applicant to implement, and are therefore outside the scope required by a NEPA review of reasonable alternatives; LBP-08-13, 68 NRC 43 (2008)

no discussion of need for power or alternative energy sources is required in a supplemental environmental report at the operating license stage; LBP-09-26, 70 NRC 939 (2009)

no-action alternative discussions can be brief and can incorporate by reference other sections of an environmental report discussing the project's adverse consequences; LBP-07-3, 65 NRC 237 (2007)

noninclusion of DOE sites in alternative sites analysis that are far outside applicant's region of interest is reasonable; LBP-09-19, 70 NRC 433 (2009)

NRC has broad discretion to determine how thoroughly it needs to analyze a particular subject for NEPA compliance; LBP-10-14, 72 NRC 101 (2010)

NRC is not required to consider every imaginable alternative to a proposed action, but rather only reasonable alternatives; LBP-10-14, 72 NRC 101 (2010)

NRC regulations do not impose a numerical floor on alternatives to be considered; CLI-10-18, 72 NRC 56 (2010)

SUBJECT INDEX

NRC Staff is required under NEPA to evaluate reasonable technological and geographical alternatives to a proposed irradiator; CLI-10-18, 72 NRC 56 (2010)

NRC Staff's environmental impact statement prepared during review of an early site permit application must include an evaluation of alternative sites to determine whether there is any obviously superior alternative to the site proposed; LBP-09-19, 70 NRC 433 (2009)

NRC Staff's final environmental impact statement need not include a discussion of the need for power or alternative energy sources; LBP-10-12, 71 NRC 656 (2010)

NRC's alternatives analysis should be based around the applicant's goals, including the applicant's economic goals; LBP-07-9, 65 NRC 539 (2007)

NRC's NEPA responsibilities and, by extension, the applicant's responsibilities under 10 C.F.R. Part 51, are subject to a rule of reason; LBP-10-6, 71 NRC 350 (2010)

petition for waiver of regulation excluding consideration of alternatives and need for power from the operating license phase must establish that all of applicant's fossil fuel baseload generation that is less efficient than the facility under consideration has been accounted for; LBP-10-12, 71 NRC 656 (2010)

petitioner did not properly challenge applicant's conclusion that no environmentally preferable alternative existed where the only alternative that petitioner mentions on appeal is the no-reactor option, and petitioner neither raised that option before the board nor supported its argument that it would always be environmentally preferable; LBP-10-6, 71 NRC 350 (2010)

presentation of alternatives in an applicant's environmental report and in an NRC environment impact statement must be in comparative form; LBP-09-19, 70 NRC 433 (2009)

presentation of an alternative analysis is, without more, insufficient to support a contention alleging that the original analysis failed to meet applicable requirements; LBP-08-13, 68 NRC 43 (2008)

project goals are to be determined by the applicant, not the agency; CLI-10-18, 72 NRC 56 (2010)

reasonable alternatives for license renewal proceedings are limited to discrete electric generation sources that are technically feasible and commercially available; LBP-08-13, 68 NRC 43 (2008)

reasonable alternatives under the National Environmental Policy Act do not include alternatives that are impractical, that present unique problems, or that cause extraordinary costs; LBP-09-7, 69 NRC 613 (2009); LBP-09-16, 70 NRC 227 (2009)

regarding consideration of specific combination alternatives, the burden rests upon a petitioner to propose a particular alternative, and bare generalizations will not support an admissible contention; LBP-10-6, 71 NRC 350 (2010)

rejection of even viable and reasonable alternatives, after an appropriate evaluation, is not arbitrary and capricious; LBP-10-10, 71 NRC 529 (2010)

request for waiver of application of 10 C.F.R. 51.53(b), 51.95(b), and 51.106(c) precluding consideration of need for power and alternative energy sources from a Part 50 operating license proceeding fails to provide the prima facie showing required; LBP-10-12, 71 NRC 656 (2010)

Staff must evaluate alternatives to determine whether there are any obviously superior options to the proposed action; LBP-07-6, 65 NRC 429 (2007)

technologically unproven alternatives need not be considered in an environmental impact statement; LBP-09-7, 69 NRC 613 (2009)

the alternatives provision of NEPA § 102(2)(E) applies both when an agency prepares an environmental impact statement and when it prepares an environmental assessment; CLI-10-18, 72 NRC 56 (2010)

the board erred in admitting a contention concerning the economic value of wetlands without requiring petitioners to demonstrate that the proposed licensing action or no-action alternative would have any effect on wetlands; CLI-09-9, 69 NRC 331 (2009)

the Commission may find special circumstances warranting a categorical exclusion upon its own initiative, or upon the request of an interested person; CLI-10-18, 72 NRC 56 (2010)

the Commission's discussion of the Staff's underlying review adds necessary additional details and constitutes a supplement to the final environmental impact statement's alternative site review; CLI-07-27, 66 NRC 215 (2007)

the concept of alternatives must be bounded by some notion of feasibility; LBP-09-17, 70 NRC 311 (2009); LBP-10-10, 71 NRC 529 (2010)

the decision as to whether an alleged environmental impact or alternative is significant or reasonable is the merits of a NEPA contention and should not be adjudicated at the contention admissibility stage under the guise of materiality or scope; LBP-09-10, 70 NRC 51 (2009)

SUBJECT INDEX

- the discussion in the environmental report or environmental impact statement need not include every possible alternative, only reasonable alternatives; LBP-09-16, 70 NRC 227 (2009); LBP-09-17, 70 NRC 311 (2009); LBP-09-21, 70 NRC 581 (2009)
- the discussion of alternatives in the final environmental impact statement shall identify reasonable alternatives, present the environmental impacts of the proposal and the alternatives in comparative form, and include a final recommendation on the action to be taken; LBP-06-19, 64 NRC 53 (2006)
- the Generic Environmental Impact Statement addresses the need to consider energy conservation for the no-action alternative; LBP-08-13, 68 NRC 43 (2008)
- the hard look required by NEPA is subject to a rule of reason, such that it is not necessary to look at every conceivable alternative to the proposed licensing action, but only those that are feasible, and reasonably related to the scope and goals of the proposed action; LBP-10-10, 71 NRC 529 (2010)
- the National Environmental Policy Act's rule of reason excludes consideration of demand-side management if the proposed new plant is intended to be a merchant plant, selling power on the open market, because it is not feasible for licensee to engage in demand-side management; CLI-10-21, 72 NRC 197 (2010)
- the NEPA alternatives analysis is the heart of the environmental impact statement; LBP-09-16, 70 NRC 227 (2009); LBP-09-17, 70 NRC 311 (2009)
- the NEPA hard-look doctrine is subject to a rule of reason that the Commission has interpreted as obligating the agency to consider all reasonable alternatives to the proposed action; LBP-10-14, 72 NRC 101 (2010)
- the NEPA rule of reason does not require applicant to consider energy efficiency in its NEPA analysis, because energy efficiency is not a reasonable alternative for a merchant power producer; CLI-10-1, 71 NRC 1 (2010)
- the obligation of agencies to consider alternatives is a lesser one under an environmental assessment than under an environmental impact statement; CLI-10-18, 72 NRC 56 (2010)
- the only alternatives that are relevant to NRC's decision are those that are environmentally preferable; LBP-10-6, 71 NRC 350 (2010)
- the range of alternatives that must be considered need not extend beyond those reasonably related to the purposes of the project, and a rule of reason necessarily informs that choice; CLI-10-18, 72 NRC 56 (2010)
- the reasonableness of energy conservation as an alternative in light of the need for a large amount of baseload electric power is questioned; LBP-09-10, 70 NRC 51 (2009)
- the requirement to discuss alternatives in the environmental report parallels NEPA's requirement that an environmental impact statement provide a detailed statement of reasonable alternatives to a proposed action; LBP-09-16, 70 NRC 227 (2009)
- there is no requirement for an applicant to analyze in detail options that are not discrete, feasible sources of baseload energy; LBP-08-13, 68 NRC 43 (2008)
- to meet its burden to justify certification of its request to waive 10 C.F.R. 51.53(b), 51.95(b), and 51.106(c), petitioner must make a prima facie showing that the proposed facility would not be needed to meet increased energy needs or to replace older, less economical operating capacity, and that there are viable alternatives likely to exist that could tip the NEPA cost-benefit balance against issuance of the operating license; LBP-10-12, 71 NRC 656 (2010)
- under the National Environmental Policy Act, Staff is obliged to perform a severe accident mitigation alternatives analysis; LBP-07-13, 66 NRC 131 (2007)
- waivers are limited to very unusual cases, such as where it appears that an alternative exists that is clearly and substantially environmentally superior; LBP-10-12, 71 NRC 656 (2010)
- when NRC reviews an application filed by a private entity, as opposed to a project initiated by the federal government, it may accord substantial weight to the applicant's preferences with regard to consideration of alternatives, including choices regarding site selection and project design; CLI-06-10, 63 NRC 451 (2006); CLI-10-18, 72 NRC 56 (2010); LBP-06-8, 63 NRC 241 (2006); LBP-10-6, 71 NRC 350 (2010)
- when the purpose of a proposed action is to accomplish one thing, it makes no sense to consider the alternative ways by which another thing might be achieved; LBP-06-19, 64 NRC 53 (2006)
- where the final environmental impact statement discussion of alternative sites was insufficient, the board independently reviewed the record on greenfield, competitors' brownfield, noncompetitors' brownfield,

SUBJECT INDEX

and applicant's other nuclear sites to conclude that the Staff's underlying alternative site review was adequate; LBP-09-19, 70 NRC 433 (2009)

wind or solar power are not considered as stand-alone alternatives because neither source is deemed capable of serving the purpose and need of the project, generating 1600 MW(e) of baseload power; LBP-10-24, 72 NRC 720 (2010)

with regard to alternative sites for an early site permit, NRC Staff must evaluate both the process (i.e., methodology) used by the applicant and the reasonableness of the product (e.g., potential sites) identified by that process; LBP-09-19, 70 NRC 433 (2009)

See also No-Action Alternative

CONSTRUCTION

a claim of deficiency in construction of the concrete containment is insufficient because it was not linked to the application at issue in the proceeding; CLI-10-9, 71 NRC 245 (2010)

activities requiring a limited work authorization are the driving of piles, subsurface preparation, placement of backfill, concrete, or permanent retaining walls within an excavation, installation of foundations, or in-place assembly, erection, fabrication, or testing that are for safety-related structures, systems, or component; LBP-09-16, 70 NRC 227 (2009); LBP-09-19, 70 NRC 433 (2009)

activities that are not considered "construction" are site exploration, clearing, grading, or installation of environmental mitigation measures, erection of fences and other access control measures, excavation, erection of support buildings for use in connection with construction, building of service facilities, and procurement or offsite fabrication of facility components; LBP-09-19, 70 NRC 433 (2009)

an NRC license is unnecessary for construction activity on an independent spent fuel storage installation; CLI-06-23, 64 NRC 107 (2006)

applicant is authorized to perform certain site preparation activities that would otherwise only be permitted following the issuance of a Part 50 construction permit or a Part 52 combined license; LBP-09-19, 70 NRC 433 (2009)

boards are to determine whether the site redress plan will adequately redress the activities performed under a limited work authorization should the activities be terminated by either the holder of the LWA or by Commission denial of any corresponding early site permit or combined license; LBP-09-19, 70 NRC 433 (2009)

if limited work authorization activities are approved by NRC in conjunction with an early site permit, the ESP as issued shall specify those authorized activities; LBP-09-19, 70 NRC 433 (2009)

no later than 1 year after issuance of the combined license or at the start of construction, whichever is later, the COL licensee must submit its schedule for completing the inspections, tests, or analyses and provide schedule updates; LBP-09-19, 70 NRC 433 (2009)

preconstruction monitoring and testing to establish background information is exempted from the prohibition on commencement of construction; LBP-10-16, 72 NRC 361 (2010)

the Commission may authorize construction of the proposed repository if the application provides a reasonable assurance of preclosure safety and a reasonable expectation of postclosure safety; LBP-09-6, 69 NRC 367 (2009)

CONSTRUCTION AUTHORIZATION APPLICATION

applicant would be permitted to incorporate information from its original construction permit application in a new application; CLI-10-6, 71 NRC 113 (2010)

should the Director of the Office of Nuclear Material Safety and Safeguards reject a construction authorization application, applicant will be informed of this determination and of the respects in which the application is deficient; CLI-08-20, 68 NRC 272 (2008)

the Director of the Office of Nuclear Material Safety and Safeguards must determine whether the tendered application is complete and acceptable for docketing; CLI-08-20, 68 NRC 272 (2008)

the Secretary of the Department of Energy does not have the discretion to substitute his policy for the one established by Congress that mandates progress toward a merits decision by NRC on a construction permit for the high-level waste repository; LBP-10-11, 71 NRC 609 (2010)

CONSTRUCTION COMPLETION

with respect to combined licenses, interested persons may request a hearing as to the adequacy of construction after issuance of a combined license; CLI-09-2, 69 NRC 55 (2009)

SUBJECT INDEX

CONSTRUCTION OF MEANING

an ambiguous provision is construed most strongly against the person who selected the language; LBP-08-16, 68 NRC 361 (2008)

any ambiguity relative to the filing date for hearing requests arising from the language of the agency's hearing opportunity notice should be construed in favor of a participant who was seeking to comply with the notice; LBP-08-16, 68 NRC 361 (2008)

boards are to construe intervention petitions in a light most favorable to petitioners; LBP-08-16, 68 NRC 361 (2008); LBP-08-21, 68 NRC 554 (2008); LBP-10-1, 71 NRC 165 (2010)

concerning criminal guilt, the words "knowledge" and "knowingly" are normally associated with awareness, understanding, or consciousness; CLI-10-23, 72 NRC 210 (2010)

in determining whether petitioner has established standing, boards may construe the petition in favor of the petitioner; LBP-10-15, 72 NRC 257 (2010); LBP-10-21, 72 NRC 616 (2010)

in statutory construction, the specific prevails over the general; CLI-08-26, 68 NRC 509 (2008)

in the absence of a statutory definition, courts normally define a term by its ordinary meaning; LBP-10-24, 72 NRC 720 (2010)

knowledge of a fact requires not only an awareness of that fact but also an understanding or recognition of its significance; CLI-10-23, 72 NRC 210 (2010)

one who does something "frequently" does so at frequent or short intervals, "frequent" being defined as often or habitually; LBP-10-1, 71 NRC 165 (2010)

one who performs an act "regularly" does so in a regular, orderly, or methodical way; LBP-10-1, 71 NRC 165 (2010)

"otherwise admissible" has been interpreted to mean a contention that meets the admissibility requirements of 10 C.F.R. 2.309(f)(1) but for the fact that it challenges a yet-to-be-certified reactor design; LBP-10-9, 71 NRC 493 (2010)

pursuant to the rule of the last antecedent, qualifying words, phrases, and clauses must be applied to the words or phrases immediately preceding them and are not to be construed as extending to and including others more remote; LBP-06-1, 63 NRC 41 (2006)

the civil law concept of "assumption of risk" requires not merely general knowledge of a risk but also that the risk assumed be specifically known, understood, and appreciated; CLI-10-23, 72 NRC 210 (2010)

the distinction between "frequently" and "regularly" highlights the importance of making a more detailed factual showing, rather than relying on conclusory adjectives and adverbs, when a standing claim rests on the nature of petitioner's activities purportedly near to, or bearing some connection with, the reactor facility at issue; LBP-10-1, 71 NRC 165 (2010)

willfulness means nothing more in the context of a false statement than that the defendant knew that his statement was false when he made it or consciously disregarded or averted his eyes from its likely falsity; CLI-10-23, 72 NRC 210 (2010)

See also Definitions; Regulations, Interpretation; Statutory Construction

CONSTRUCTION OF TERMS

a term that lacks a statutory or regulatory definition should be construed in accord with its ordinary or natural meaning; LBP-06-1, 63 NRC 41 (2006)

reasonable assurance is not quantified as equivalent to a 95% (or any other percent) confidence level, but is based on sound technical judgment of the particulars of a case and on compliance with the Commission's regulations; CLI-09-7, 69 NRC 235 (2009)

technical terms of art should be interpreted by reference to the trade or industry to which they apply; CLI-06-14, 63 NRC 510 (2006)

use of the disjunctive phrase "data *or* conclusions" means that it is sufficient that either data or conclusions in the draft environmental impact statement differ significantly from those in the environmental report; LBP-10-24, 72 NRC 720 (2010)

See also Definitions

CONSTRUCTION PERMIT EXTENSION

a construction permit holder must provide good cause for the extension; LBP-10-7, 71 NRC 391 (2010)

earliest and latest dates for completion of construction or modification shall be stated, and unless the construction or modification of the facility is completed by the completion date, the permit shall expire

SUBJECT INDEX

- and all rights thereunder be forfeited, unless upon good cause shown the Commission extends the completion date; LBP-10-7, 71 NRC 391 (2010)
- if a construction permit holder is unable to finish construction by the date specified in the permit, the CP holder can apply for and obtain an extension; LBP-10-7, 71 NRC 391 (2010)
- CONSTRUCTION PERMIT EXTENSION PROCEEDINGS**
- as was the case with an initial CP application, an extension request could be the subject of an adjudicatory hearing challenge by a petitioner; LBP-10-7, 71 NRC 391 (2010)
- CONSTRUCTION PERMIT PROCEEDING**
- an admissible contention under the good cause standard must allege that a permit holder's reasons for past delay failed to constitute good cause for a CP extension and be supported by a showing that construction delay is traceable to permit holder action that was intentional and without a valid business purpose; LBP-10-7, 71 NRC 391 (2010)
- any power level selected at the COL stage other than the target value used in the environmental impact statement's alternative energy analysis for the early site permit would constitute new information that, if found to be significant, would have to be evaluated at the construction permit or combined license application stage; CLI-07-14, 65 NRC 216 (2007)
- boards should restrict their inquiry in a reinstatement proceeding, including their consideration of contention admissibility matters, in line with the good cause standard of the Atomic Energy Act; LBP-10-7, 71 NRC 391 (2010)
- compliance with applicable radiation standards is deferred at the early site permit stage, and can only be determined in a COL or CP proceeding; CLI-07-27, 66 NRC 215 (2007)
- it is appropriate to defer issues concerning the effects of short-term damage to the environment and the irretrievable commitment of resources to the construction permit or combined license stage; CLI-07-14, 65 NRC 216 (2007)
- whether or not any petitioner challenges the construction permit, the NRC Staff will address each COL action item at the construction permit stage; CLI-07-12, 65 NRC 203 (2007)
- CONSTRUCTION PERMITS**
- a combined license is essentially a construction permit that also requires consideration and resolution of many of the issues currently considered at the operating license stage; LBP-10-7, 71 NRC 391 (2010)
- a construction permit will not expire and no rights under the permit will be forfeited unless the facility is not completed and the latest date for completion has passed; CLI-10-6, 71 NRC 113 (2010)
- a facility can be reactivated from deferred status so that construction can begin again, which includes providing 120 days' notice to the Staff before restarting construction activities; LBP-10-7, 71 NRC 391 (2010)
- a future applicant for a construction permit, an operating license, or a combined license may seek early NRC review and approval of some siting and environmental issues, and therefore, "bank" a site for up to 20 years in anticipation of its future reference in an application for a CP or COL; LBP-06-28, 64 NRC 460 (2006)
- a generalized assertion, without specific ties to NRC regulatory requirements or to safety in general, does not provide adequate support demonstrating the existence of a genuine dispute of fact or law with respect to the construction authorization application; LBP-09-27, 70 NRC 992 (2009)
- a mandatory hearing for the reinstatement of previously issued construction permits is not required because a hearing already occurred when the permits were initially issued; CLI-10-6, 71 NRC 113 (2010)
- administrative regularity in the regulatory process is assumed, and review of the operating license application takes place independently of that associated with plant construction; CLI-10-29, 72 NRC 556 (2010)
- although analysis of aircraft impact is required, reactors whose construction permits were issued prior to July 13, 2009, are excluded, and the rule is not NEPA-based; LBP-09-26, 70 NRC 939 (2009)
- an applicant who may apply for a construction permit under Part 50, or a combined license under Part 52, may apply for an early site permit; LBP-09-19, 70 NRC 433 (2009)
- an early site permit applicant may make a number of choices regarding the scope, and therefore the content, of its ESP application; LBP-06-28, 64 NRC 460 (2006)

SUBJECT INDEX

an early site permit applicant may submit a plan for redress of the site, which if accepted as part of an approved ESP would allow an applicant to perform certain preconstruction activities without additional authorization; LBP-06-28, 64 NRC 460 (2006)

an early site permit is considered a partial construction permit, and thus requires action by the Commission even in the absence of any appeal from the board's initial decision; CLI-07-12, 65 NRC 203 (2007)

applicant does not need an NRC license for construction of an independent spent fuel storage installation, but proceeds with construction at its own risk; LBP-06-27, 64 NRC 399 (2006)

applications must consider the consequences of design basis events; CLI-10-1, 71 NRC 1 (2010)

because an early site permit is a type of construction permit, a mandatory hearing is required by the Atomic Energy Act and thus the case will continue as an uncontested proceeding; LBP-06-24, 64 NRC 360 (2006)

before authorizing construction of the proposed repository, the Commission must determine that there is reasonable expectation that the materials can be disposed of without unreasonable risk to the health and safety of the public; LBP-10-22, 72 NRC 661 (2010)

earliest and latest dates for completion of construction or modification shall be stated in the permit, and unless the construction or modification of the facility is completed by the completion date, the permit shall expire and all rights thereunder be forfeited, unless upon good cause shown the Commission extends the completion date; LBP-10-7, 71 NRC 391 (2010)

early site permits are partial construction permits and, as such, are subject to the mandatory hearing requirements under AEA § 189a; LBP-07-1, 65 NRC 27 (2007)

further review of need for power and alternative energy sources are precluded once a construction permit has been issued; CLI-10-29, 72 NRC 556 (2010)

General Design Criteria are not applicable to nuclear power plants with construction permits issued prior to May 21, 1971; LBP-08-13, 68 NRC 43 (2008)

if a construction permit holder wishes to discontinue construction activities at a facility but continue to have its 10 C.F.R. Part 50 construction authorization remain effective, it can do so under the terms of the 1987 Commission Policy Statement on Deferred Plants; LBP-10-7, 71 NRC 391 (2010)

NRC may use its broad discretion of authority under the Atomic Energy Act to reinstate expired construction permits that licensee inadvertently failed to renew; CLI-10-6, 71 NRC 113 (2010)

reinstatement of construction permits did not authorize construction of reactors, but rather was to place the facility in a terminated plant status; CLI-10-26, 72 NRC 474 (2010)

rights under a permit are forfeited only when a construction permit has expired and has not been extended; CLI-10-6, 71 NRC 113 (2010)

the 10 C.F.R. Part 50 licensing process that was formerly applied to commercial nuclear power plants required that an applicant first obtain a construction permit for the facility, followed by an operating license; LBP-10-7, 71 NRC 391 (2010)

the 1987 Commission Policy Statement on Deferred Plants sets forth the process under which a plant could be placed in a terminated status pending withdrawal of the CP, as well as procedures and requirements for reactivating the facility from terminated status; LBP-10-7, 71 NRC 391 (2010)

the Commission acts as adjudicator and in that light considers the reinstatement of a construction permit afresh, without regard for its earlier views; CLI-10-6, 71 NRC 113 (2010)

the Commission must hold a hearing on each application for a construction permit for a facility; LBP-07-1, 65 NRC 27 (2007)

the date by which construction of the unit is to be completed is specified; LBP-10-7, 71 NRC 391 (2010)

the term "reinstatement" is not directly or indirectly mentioned in section 185 of the Atomic Energy Act; CLI-10-6, 71 NRC 113 (2010)

the voluntary surrender of a construction permit that has not expired, i.e., where the construction completion date had not yet arrived, does not constitute a situation to which the "forfeiture" provision of the Atomic Energy Act applies; CLI-10-6, 71 NRC 113 (2010)

voluntary surrender of a valid permit does not amount to wrongful activity that would warrant revocation; CLI-10-6, 71 NRC 113 (2010)

when an applicant receives a construction permit, it proceeds at its own risk, regardless of the amount of money that it may have expended during construction; LBP-10-7, 71 NRC 391 (2010)

SUBJECT INDEX

CONSULTATION DUTY

- a consulting tribe is entitled to a reasonable opportunity to identify its concerns about historic properties, to advise on the identification and evaluation of them (including those of traditional religious and cultural importance), to articulate its views on the undertaking's effects on such properties, and to participate in the resolution of adverse effects; LBP-08-6, 67 NRC 241 (2008); LBP-10-16, 72 NRC 361 (2010)
- a federal agency must consult with a tribe concerning a federal action that might affect sites of cultural interest to the tribe; CLI-09-9, 69 NRC 331 (2009)
- a form letter is not sufficient to constitute the reasonable effort that section 106 of the National Historic Preservation Act requires; LBP-08-6, 67 NRC 241 (2008)
- a mere request for information is not necessarily sufficient to constitute the reasonable effort that section 106 of the National Historic Preservation Act requires; LBP-08-6, 67 NRC 241 (2008)
- a party in the high-level waste proceeding who files a motion must certify that he or she has made a reasonable effort to consult with counsel for the other parties in an effort to resolve the matter in advance of filing the motion; CLI-08-25, 68 NRC 497 (2008)
- a summary disposition movant must make a sincere effort to contact other parties in the proceeding and to resolve the issues raised in the motion; LBP-06-5, 63 NRC 116 (2006)
- a tribe may become a consulting party if its property, potentially affected by a federal undertaking, has religious or cultural significance; LBP-08-24, 68 NRC 691 (2008); LBP-10-16, 72 NRC 361 (2010)
- dispositive motions may be filed 20 days after the occurrence or circumstance from which the motion arises, rather than the 10-day time frame, provided that the moving party commences sincere efforts to contact and consult all other parties within 10 days of the occurrence or circumstance, and the accompanying certification so states; LBP-09-22, 70 NRC 640 (2009)
- ensuring that NRC Staff meets its consultation obligations under section 106 of the National Historic Preservation Act is an issue material to the findings the NRC must make in support of the action involved in a materials license renewal proceeding; LBP-08-24, 68 NRC 691 (2008)
- federal agencies are to consult with a tribe if that tribe ascribes cultural or religious significance to properties not on tribal lands; LBP-08-24, 68 NRC 691 (2008)
- federal agencies must follow notification and consultation procedures prior to a federal undertaking to consider the undertaking's effect on historic properties; LBP-10-16, 72 NRC 361 (2010)
- federal agencies must notify all consulting parties, including Indian tribes, when a finding of no effect has been made, and to provide those consulting parties with an invitation to inspect the documentation prior to approving the undertaking; LBP-08-6, 67 NRC 241 (2008)
- federal agencies should be sensitive to the special concerns of Indian tribes in historic preservation issues, which often extend beyond Indian lands to other historic properties, and should invite the governing body of the responsible tribe to be a consulting party and to concur in any agreement; LBP-08-24, 68 NRC 691 (2008); LBP-10-16, 72 NRC 361 (2010)
- if the attorney or representative of a party is contacted pursuant to the consultation requirement, then that person (or his or her alternate) must make a sincere effort to make himself or herself available to listen and to respond to the moving party's explanation, and to resolve the factual and legal issues raised in the motion; LBP-09-22, 70 NRC 640 (2009)
- it is inconsistent with the dispute avoidance/resolution purposes of a section, and thus insufficient, for the contacted attorney or representative to fail or refuse to consider the substance of the consultation attempt, or for the party to respond that it takes no position on the motion (or issues) and that it reserves the right to file a response to the motion when it is filed; LBP-09-22, 70 NRC 640 (2009)
- it is not the duty of applicant to consult with a tribe regarding cultural resources at a proposed site, but instead is the duty of the agency to initiate and follow through with the consultation process; LBP-10-16, 72 NRC 361 (2010)
- motions will be rejected if they do not include certification by the attorney or representative of the moving party that they have made a sincere effort to contact the other parties in this proceeding, to explain to them the factual and legal issues raised in the motion, and to resolve those issues; CLI-08-22, 68 NRC 355 (2008); LBP-09-22, 70 NRC 640 (2009)
- NRC Staff must consult with interested Indian tribes as part of its review of the application; CLI-09-12, 69 NRC 535 (2009)

SUBJECT INDEX

- only Indian Tribes that appear on the Department of the Interior's list of recognized tribes have consultation rights under the National Historic Preservation Act; LBP-09-13, 70 NRC 168 (2009)
- parties must make good-faith efforts to resolve with the other parties the subject matter of their motion; CLI-10-10, 71 NRC 281 (2010)
- petitioners' contention that NRC Staff has not consulted with an affected Indian tribe is premature if it is filed prior to the time for the Staff to act; CLI-09-9, 69 NRC 331 (2009)
- the fact that NRC Staff consultation with interested Indian tribes had not yet taken place at the time a materials license amendment application was filed did not reflect a deficiency in the application and thus a contention alleging a deficiency in the application was inadmissible; CLI-09-12, 69 NRC 535 (2009)
- to be sincere, movant should contact other parties sufficiently in advance to provide enough time for the possible resolution of the matter or issues in question; LBP-09-22, 70 NRC 640 (2009)
- whether the consultation process conducted by applicant with a Native American tribe complies with relevant requirements of law is an admissible issue; LBP-08-6, 67 NRC 241 (2008)
- without consultation with a tribe, culturally significant resources will go unidentified and unprotected, resulting in development or use of the land that might cause damage to these cultural resources, thereby injuring the protected interests of the tribe; LBP-08-24, 68 NRC 691 (2008)
- CONTAINMENT**
- a claim of deficiency in construction of the concrete containment is insufficient because it was not linked to the application at issue in the proceeding; CLI-10-9, 71 NRC 245 (2010)
- burden is on applicant to show that concrete in containment structures will maintain its integrity during the extended period of operations or to develop an aging management plan that ensures that any indication of degradation is detected and remediated; LBP-08-13, 68 NRC 43 (2008)
- motion to reopen the record to admit new contention regarding adequacy of applicant's containment/coating inspection program for two new proposed units is denied; LBP-10-21, 72 NRC 616 (2010)
- the Commission asks the parties to address whether the structural analysis that applicant has committed to perform on its primary containment drywell shell matches or bounds the sensitivity analyses that one of the ALSBP judges would impose; CLI-08-10, 67 NRC 357 (2008)
- the containment vessel is identified as an ASME Code Class MC component in both the inservice inspection subsection of section 50.55a as well as the inspection requirements subsection of the AP1000 DCD; LBP-10-21, 72 NRC 616 (2010)
- CONTAINMENT DESIGN**
- early site permit applicants must submit a safety assessment that includes an analysis of a fission product release from an accident, using the expected demonstrable containment leak rate and any fission product cleanup systems intended to mitigate the consequences of the accidents; LBP-09-19, 70 NRC 433 (2009)
- CONTAMINATION, RADIOLOGICAL**
- See Radiological Contamination
- CONTEMPT**
- boards may reprimand, censure, or suspend intervenors for contemptuous conduct; CLI-07-28, 66 NRC 275 (2007)
- courts have been careful to strictly limit the exercise of summary contempt power to cases in which it was clear that all of the elements of misconduct were personally observed by the judge; LBP-09-24, 70 NRC 676 (2009)
- CONTENTIONS**
- a brief explanation of the basis is an explanation of the rationale or theory of the contention; LBP-09-10, 70 NRC 51 (2009)
- a challenge to applicant's environmental report can be superseded by the subsequent issuance of licensing-related documents, whether a draft environmental impact statement or an applicant's response to a request for additional information; LBP-10-14, 72 NRC 101 (2010)
- a classic "contention of omission" occurs when petitioners allege that certain necessary safety-related steps or analyses have not been taken; LBP-07-14, 66 NRC 169 (2007)

SUBJECT INDEX

- a contention may challenge a draft environmental impact statement even though its ultimate conclusion on a particular issue is the same as that in the environmental report, as long as the DEIS relies on significantly different data than the ER to support the determination; LBP-10-24, 72 NRC 720 (2010)
- a contention of inadequacy asserts that the pertinent portion of the application contains a discussion or analysis of a relevant subject that is inadequate in some material respect; LBP-08-2, 67 NRC 54 (2008)
- a contention of omission challenges a portion of the application because it fails in toto to address a required subject matter; LBP-08-2, 67 NRC 54 (2008); LBP-08-3, 67 NRC 85 (2008)
- a “contention of omission” is one that claims the application fails to contain information on a relevant matter as required by law and the supporting reasons for the petitioner’s belief; LBP-08-15, 68 NRC 294 (2008); LBP-09-16, 70 NRC 227 (2009); LBP-09-27, 70 NRC 992 (2009); LBP-10-16, 72 NRC 361 (2010)
- a contention that impacts from a severe radiological accident at any one unit on operation of other units at the site had not been, and should be, considered in the application’s environmental report is found to be moot; LBP-10-10, 71 NRC 529 (2010)
- a licensing board erred in referring a contention to the NRC Staff without making an appropriate contention admissibility determination; CLI-10-9, 71 NRC 245 (2010)
- a motion and proposed new contention shall be deemed timely if it is filed within 30 days of the date when the new and material information on which it is based first becomes available; LBP-09-22, 70 NRC 640 (2009)
- a petitioner seeking discretionary intervention must propose at least one admissible contention; CLI-06-16, 63 NRC 708 (2006)
- a recitation of facts or expert opinion supporting the issue raised is inapplicable to a contention of omission beyond identifying the regulatorily required missing information; LBP-06-12, 63 NRC 403 (2006)
- all material facts set forth in the statement required to be served by the moving party will be considered to be admitted unless controverted by the statement required to be served by the opposing party; LBP-08-2, 67 NRC 54 (2008); LBP-08-3, 67 NRC 85 (2008)
- although all environmental contentions may, in a general sense, ultimately be challenges to the NRC’s compliance with NEPA, factual disputes of particular issues can be raised before the draft environmental impact statement is prepared; CLI-10-2, 71 NRC 27 (2010)
- although exhibits are not themselves either “petitions” or “contentions,” the board considers the timeliness of their filing; LBP-08-6, 67 NRC 241 (2008)
- although latitude is to be afforded a pro se intervenor in the mechanics of contention pleading and citation, an organization that has appeared several times previously is expected to have a heightened awareness of the agency’s pleading rules; LBP-08-16, 68 NRC 361 (2008)
- although NRC recognizes a difference between contentions of omission and contentions of inadequacy, the board did not err in reading the contention as one of inadequacy despite the contentions’ occasional use of terms such as “failed to address”; CLI-10-2, 71 NRC 27 (2010)
- although the February 2004 revision of the NRC procedural rules no longer permits the amendment and supplementation of petitions and filing of contentions after the original filing of petitions, the substantive admissibility standards are essentially the same; LBP-07-11, 66 NRC 41 (2007)
- although the obligations under NEPA fall to the agency and therefore the NRC Staff, petitioners are required to raise environmental objections based on the applicant’s environmental report; LBP-10-15, 72 NRC 257 (2010)
- although the ultimate burden with respect to NEPA lies with the NRC Staff, NRC policy with respect to the identification of issues for hearing has long been that such issues must be raised as early as possible; CLI-10-2, 71 NRC 27 (2010)
- answers in the high-level waste repository proceeding shall be limited to addressing specific alleged deficiencies in particular contentions; LBP-08-10, 67 NRC 450 (2008)
- appeals of partial initial decisions are not the proper procedural context in which to revise contentions; CLI-10-17, 72 NRC 1 (2010)
- applicant’s reliance on a facility for low-level radioactive waste disposal that will no longer permit out-of-compact entities to import LLRW for disposal at its site could provide the basis for a new contention; LBP-10-8, 71 NRC 433 (2010)

SUBJECT INDEX

boards commonly reformulate, or expressly limit contentions to focus them to the precise matters that are supported; LBP-08-9, 67 NRC 421 (2008)

boards have discretion to reframe a contention for purposes of clarity, succinctness, and a more efficient proceeding; CLI-06-16, 63 NRC 708 (2006); LBP-06-22, 64 NRC 229 (2006); LBP-08-12, 68 NRC 5 (2008)

boards have legal authority to reformulate contentions; LBP-10-16, 72 NRC 361 (2010)

boards must not redraft inadmissible contentions to cure deficiencies and thereby render them admissible; CLI-06-16, 63 NRC 708 (2006)

challenges to a combined license application must focus on the application as it exists when the contention is filed and must point out an omission or deficiency with regard to the application as of that moment in time; LBP-09-10, 70 NRC 51 (2009)

common sense is a relevant consideration in determining whether to reformulate contentions; LBP-10-10, 71 NRC 529 (2010)

contentions are comparable to neither “forms of relief” nor Article III “claims,” but are instead comparable to various “grounds” that may be asserted in opposition to a proposed agency action at issue; LBP-09-1, 69 NRC 11 (2009)

contentions must be based on documents or information available when the hearing petition is to be filed; LBP-08-2, 67 NRC 54 (2008); LBP-08-3, 67 NRC 85 (2008)

contentions must be filed with the original petition within 60 days of notice of the proceeding in the *Federal Register*, unless a longer period is therein specified, an extension is granted, or the contentions meet certain criteria for late-filed or new contentions based on information that is available only at a later time; LBP-07-4, 65 NRC 281 (2007); LBP-09-17, 70 NRC 311 (2009)

detailed pleadings put other parties in the proceeding on notice of the petitioners’ specific grievances, thereby giving them a good idea of the claims they will be either supporting or opposing; LBP-07-11, 66 NRC 41 (2007)

even if the term “contention,” as used in 10 C.F.R. 2.336(a)(1) must be read as pertaining only to formal contentions admitted under section 2.309(f)(1), the term “claim,” is not so constrained, and can only be read in its normal sense; LBP-09-30, 70 NRC 1039 (2009)

for a contention of omission, if the information is later supplied by applicant or considered by Staff in a draft environmental impact statement, the contention is moot and intervenors must timely file a new or amended contention in order to raise specific challenges regarding the new information; LBP-10-14, 72 NRC 101 (2010)

for a petitioner to be admitted as a party in a materials license amendment proceeding, it must propose at least one admissible contention that meets the requirements of 10 C.F.R. 2.309(f)(1); LBP-06-6, 63 NRC 167 (2006)

format of pleadings for high-level waste repository proceeding are specified; LBP-08-10, 67 NRC 450 (2008)

if a contention alleges the omission of particular information or an issue from an application, and the information is later supplied by the applicant, the contention is moot; CLI-06-9, 63 NRC 433 (2006); LBP-06-16, 63 NRC 737 (2006)

if a notice of adoption of a contention is filed within a reasonable time (such as 20 days) after the contention has been filed and admitted, then it is deemed timely; LBP-06-20, 64 NRC 131 (2006)

if the board concludes that it has no questions for any witness concerning a particular contention, it will so advise the parties and will resolve that contention; LBP-09-22, 70 NRC 640 (2009)

in a future proceeding, petitioner could proffer an application-specific contention suitable for litigation on the subject of onsite storage of low-level radioactive waste; CLI-09-3, 69 NRC 68 (2009)

in passing upon the question as to whether an intervention petition should be granted, it is not the function of a licensing board to reach the merits of any contention contained therein; LBP-06-6, 63 NRC 167 (2006)

in the high-level waste repository proceeding, except for readily available legal authorities, materials that cannot be attached because of copyright restrictions, and documents available on the LSN, all documents that are referenced in support of one or more contentions shall be electronically attached to the petition; LBP-08-10, 67 NRC 450 (2008)

intervenor’s representational status is one factor in determining whether reformulation is appropriate, and pro se status may provide additional cause for reformulation; LBP-10-10, 71 NRC 529 (2010)

SUBJECT INDEX

intervenors are required to file environmental contentions in the first instance based on the applicant's environmental report; LBP-09-7, 69 NRC 613 (2009)

intervenors have an ironclad obligation to regularly and diligently search publicly available NRC or applicant documents for information relevant to their contentions; CLI-09-2, 69 NRC 55 (2009)

"issues" in license transfer proceedings constitute "contentions" under 10 C.F.R. 2.309(f) and must therefore meet the standards for admissibility set forth in that regulation; CLI-07-18, 65 NRC 399 (2007)

issues that raise legal or factual challenges related to an application are appropriately considered as proposed contentions in the context of a merits hearing on the application; CLI-08-20, 68 NRC 272 (2008)

it may be necessary to examine the language of the bases to determine a contention's scope; LBP-06-16, 63 NRC 737 (2006)

licensing boards may reformulate contentions to eliminate extraneous issues or to consolidate issues for a more efficient proceeding; CLI-09-12, 69 NRC 535 (2009); LBP-08-11, 67 NRC 460 (2008); LBP-10-14, 72 NRC 101 (2010)

motion for summary disposition of contention questioning applicant's handling of its severe accident mitigation alternatives analysis concerning evacuation times, economic consequences, and meteorological patterns is granted; LBP-07-13, 66 NRC 131 (2007)

NRC rules permit contentions that raise issues of law as well as contentions that raise issues of fact; LBP-09-10, 70 NRC 51 (2009)

NRC Staff's issuance of its draft and final environmental impact statements may lead to the filing of additional contentions if the data or conclusions contained in them are significantly different from the data or conclusions found in the applicant's documents; LBP-10-10, 71 NRC 529 (2010)

on issues arising under the National Environmental Policy Act, petitioner shall file contentions based on the applicant's environmental report; LBP-10-10, 71 NRC 529 (2010); LBP-10-24, 72 NRC 720 (2010)

on issues of whether a contention has been rendered moot by provision of information by an applicant, the applicant bears the burden of persuasion; LBP-10-10, 71 NRC 529 (2010)

once standing to intervene in the licensing process is established, petitioners will then be free to assert any contention, which, if proved, will afford them the relief they seek; LBP-09-21, 70 NRC 581 (2009); LBP-10-15, 72 NRC 257 (2010)

only one admissible contention is required for each petitioner to intervene; LBP-10-11, 71 NRC 609 (2010)

petitioner may amend contentions based on the applicant's environmental report or file new contentions if there are data or conclusions in the NRC draft or final environmental impact statement, environmental assessment, or any supplements relating thereto, that differ significantly from the data or conclusions in the applicant's documents; LBP-10-24, 72 NRC 720 (2010)

petitioner may in instances of exigent or unavoidable circumstances file a request for an extension of time to file an original hearing petition and contentions; LBP-09-17, 70 NRC 311 (2009)

petitioner must read pertinent portions of the license application, including the safety analysis report and the environmental report, state applicant's position and petitioner's opposing view, and explain why petitioner disagrees with applicant; LBP-07-11, 66 NRC 41 (2007)

petitioner must set forth with particularity the contentions sought to be raised; CLI-06-21, 64 NRC 30 (2006)

petitioners are not required to show standing for each contention separately; LBP-09-1, 69 NRC 11 (2009)

petitioners must raise NEPA contentions in response to the environmental report, rather than await the agency's draft environmental impact statement; LBP-09-4, 69 NRC 170 (2009)

proof of independent ability to litigate a contention by an adopting party is not required; LBP-06-20, 64 NRC 131 (2006)

recommendations are made for the adoption of contentions by other parties in the high-level waste repository proceeding; LBP-08-10, 67 NRC 450 (2008)

resolution of factual disputes is not the appropriate subject of inquiry at the contention admissibility stage of the proceeding; LBP-06-4, 63 NRC 99 (2006)

SUBJECT INDEX

strict pleading requirements help to ensure that full adjudicatory hearings are triggered only by those able to proffer at least some minimal factual and legal foundation in support of their contentions; LBP-07-11, 66 NRC 41 (2007)

the 30-day hearing petition and contention-filing deadlines set forth in this section have been modified for the high-level waste proceeding; CLI-08-25, 68 NRC 497 (2008)

the bar against corrective redrafting of contentions is particularly compelling in the context of a request for discretionary intervention because rewriting undermines the very basis for granting discretionary intervention, i.e., the petitioner's demonstrated ability to contribute to the record; CLI-06-16, 63 NRC 708 (2006)

the Commission distinguishes between contentions that merely allege an omission of information and those that challenge substantively and specifically how particular information has been discussed in a license application; LBP-10-14, 72 NRC 101 (2010)

the Commission shall permit intervention by the state and local governmental body in which the geologic repository operations area is located, and by any affected federally recognized Indian tribe if the contention requirements in 10 C.F.R. 2.309(f) are satisfied with respect to at least one contention; CLI-08-25, 68 NRC 497 (2008)

the distinction between contentions of omission and contentions of inadequacy does not appear in NRC contention pleading regulations, but rather is a useful concept from agency case law; CLI-10-2, 71 NRC 27 (2010)

the February 2004 revision of NRC procedural rules no longer permits the amendment and supplementation of petitions and the filing of contentions after the original filing of petitions; LBP-06-10, 63 NRC 314 (2006)

the plain language of a contention will reveal whether it is a claim of omission, a specific substantive challenge to an application, or a combination of both; LBP-06-16, 63 NRC 737 (2006)

the purpose of NRC adjudicatory hearings is to consider claims of deficiencies in a license application; CLI-08-20, 68 NRC 272 (2008)

the reach of a contention necessarily hinges upon its terms coupled with its stated bases; LBP-08-9, 67 NRC 421 (2008)

the strict contention rule focuses the hearing process on real disputes susceptible of resolution in an adjudication; LBP-07-11, 66 NRC 41 (2007)

the term "contention" in 10 C.F.R. 2.336(a)(1) means simply a point or argument asserted or advanced by any party; LBP-09-30, 70 NRC 1039 (2009)

there is a difference between contentions that merely allege an omission of information and those that challenge substantively and specifically how particular information has been discussed in a license application; CLI-10-9, 71 NRC 245 (2010); LBP-06-16, 63 NRC 737 (2006); LBP-08-11, 67 NRC 460 (2008)

there is no requirement for any nexus between an asserted injury and a contention; LBP-09-1, 69 NRC 11 (2009)

to ensure a more efficient proceeding, the board merges two contentions; LBP-10-16, 72 NRC 361 (2010)

to intervene in a proceeding a petitioner must, in addition to demonstrating standing, submit at least one contention meeting the requirements of 10 C.F.R. 2.309(f)(1); LBP-06-23, 64 NRC 257 (2006); LBP-07-11, 66 NRC 41 (2007); LBP-08-6, 67 NRC 241 (2008)

under the 2004 Part 2 revisions, contentions are now required to be included with, rather than being submitted sometime subsequent to the filing of, the intervention petition; LBP-10-1, 71 NRC 165 (2010)

use of the disjunctive phrase "data or conclusions" means that it is sufficient that either data or conclusions in the draft environmental impact statement differ significantly from those in the environmental report; LBP-10-24, 72 NRC 720 (2010)

when a contention of omission encompasses issues that are addressed completely in materials the applicant subsequently files, the contention is rendered moot; LBP-09-21, 70 NRC 581 (2009)

when a Notice of Hearing is issued before construction is commenced, additional petitions to intervene or statements of contentions may be filed as construction unfolds and reveals potential shortcomings; LBP-07-14, 66 NRC 169 (2007)

when Staff has prepared a draft environmental impact statement or final EIS by the time environmental contentions come before a licensing board on the merits, such contentions are appropriately treated as challenges to the EIS; LBP-09-7, 69 NRC 613 (2009)

SUBJECT INDEX

where a contention is superseded by the subsequent issuance of licensing-related documents, the contention must be disposed of or modified; LBP-10-17, 72 NRC 501 (2010)

where petitioner has established standing to intervene, but has not submitted an admissible contention, its request for an evidentiary hearing is denied; LBP-08-17, 68 NRC 431 (2008)

where the Commission found that the board did not provide clarity on the scope of admitted contentions, it exercised its authority to reformulate the contentions; CLI-10-18, 72 NRC 56 (2010)

whether and how the Staff fulfills its National Historic Preservation Act and NEPA obligations are issues that could form the basis of a new contention; LBP-10-16, 72 NRC 361 (2010)

See also Abeyance of Contention; Adoption of Contentions; Amendment of Contentions

CONTENTIONS, ADMISSIBILITY

a board abused its discretion in reformulating and admitting contentions; LBP-10-16, 72 NRC 361 (2010)

a board appropriately rejected the contention of a petitioner who failed to support his premise that a river water intake valve is a safety-related system with information or expert opinion; CLI-07-25, 66 NRC 101 (2007)

a board appropriately reviews the materials cited in support of a contention, while making no pronouncements on whether the information contained in the application or the claims made in the petition are valid; CLI-10-9, 71 NRC 245 (2010)

a board could refer a contention relating to a certified design to the Staff for consideration in the design certification rulemaking and hold that contention in abeyance if the contention is otherwise admissible; LBP-10-21, 72 NRC 616 (2010)

a board did not err in reformulating a contention to state that the application failed to comply with 10 C.F.R. Part 51, rather than with the National Environmental Policy Act; CLI-10-2, 71 NRC 27 (2010)

a board erred in admitting a contention on adverse health effects of exposure to arsenic, where petitioners had not laid a foundation and their arguments were speculative; CLI-09-9, 69 NRC 331 (2009)

a board erred in referring a contention to the Staff for consideration in conjunction with the design certification rulemaking without first assessing its admissibility; CLI-10-1, 71 NRC 1 (2010)

a board erred when it disregarded the rule that a reply cannot expand the scope of the arguments set forth in the original hearing request; CLI-09-12, 69 NRC 535 (2009)

a board is free to decide an issue on a theory different from those argued by the litigants, but only if it explains the specific basis of its ruling and gives the litigants a chance to present arguments and, where appropriate, evidence regarding the board's new theory; CLI-09-3, 69 NRC 68 (2009)

a board is not to permit incorporation by reference where the effect would be to circumvent NRC-prescribed specificity requirements; LBP-08-24, 68 NRC 691 (2008)

a board may appropriately view petitioners' support for its contention in a light that is favorable to the petitioner; LBP-08-26, 68 NRC 905 (2008)

a board may consider environmental contentions contesting applicant's environmental report as challenges to NRC's subsequent draft environmental impact statement as long as the DEIS analysis or discussion at issue is essentially *in para materia* with the ER analysis or discussion that is the focus of the contention; LBP-08-2, 67 NRC 54 (2008); LBP-08-3, 67 NRC 85 (2008)

a board may not simply infer the bases for a contention; CLI-09-7, 69 NRC 235 (2009)

a board ruling on a contention may be referred to the Commission if it raises significant and novel legal or policy issues or the referral would materially advance the orderly disposition of the proceeding; LBP-09-26, 70 NRC 939 (2009)

a board's authority to recast contentions is circumscribed in that it may not, on its own initiative, provide basic, threshold information required for contention admissibility; LBP-08-11, 67 NRC 460 (2008)

a brief explanation of the basis for the contention is a necessary prerequisite; LBP-07-16, 66 NRC 277 (2007)

a challenge to the agency's overall enforcement policy is outside the scope of the enforcement proceeding and therefore is inadmissible; CLI-06-16, 63 NRC 708 (2006); LBP-06-12, 63 NRC 403 (2006)

a challenge to applicant's site-specific measurements of adsorption and retention coefficients relative to hydrological radionuclide transport is an admissible contention; LBP-09-16, 70 NRC 227 (2009)

a challenge to the pending EPA proposed rule setting standards for offsite releases from radioactive materials that would be stored in the proposed Yucca Mountain high-level waste geologic repository is inadmissible; LBP-08-16, 68 NRC 361 (2008)

SUBJECT INDEX

- a challenge to the Waste Confidence Rule, which is the subject of a rulemaking, is inadmissible; CLI-10-9, 71 NRC 245 (2010); LBP-08-16, 68 NRC 361 (2008); LBP-08-17, 68 NRC 431 (2008); LBP-08-23, 68 NRC 679 (2008); LBP-09-17, 70 NRC 311 (2009)
- a change in the controlling law in a different Circuit does not constitute previously unavailable information to excuse late filing; CLI-07-10, 65 NRC 144 (2007)
- a claim of deficiency in construction of the concrete containment is insufficient because it was not linked to the application at issue in the proceeding; CLI-10-9, 71 NRC 245 (2010)
- a clear statement of the basis for contentions and the submission of supporting information and references to specific documents and sources that establish the validity of the contention are required; CLI-06-24, 64 NRC 111 (2006)
- a combined license application's lack of consideration of any alternative to offsite disposal of low-level radioactive waste is a material issue for litigation; LBP-09-18, 70 NRC 385 (2009)
- a contention alleging that a breakdown of applicant's quality assurance program must provide evidence that there is legitimate doubt as to whether the plant can be operated safely; LBP-10-9, 71 NRC 493 (2010)
- a contention alleging that a license application omits material information becomes moot when the applicant cures the omission; LBP-09-15, 70 NRC 198 (2009)
- a contention alleging that the applicant's plan to manage metal fatigue is too vague and is really only a "plan to develop a plan" raises an admissible and material issue as to whether the applicant has met its requirement to demonstrate that the effects of aging will be adequately managed; LBP-06-20, 64 NRC 131 (2006)
- a contention alleging that the applicant's proposed monitoring techniques are not adequate because they are based on computer models that were not benchmarked is admissible; LBP-06-20, 64 NRC 131 (2006)
- a contention arguing that the proposed reactor does not fit into the site parameters of the ESP, or that the terms and conditions of the ESP are not met, is potentially admissible at the COL stage; CLI-07-12, 65 NRC 203 (2007)
- a contention arising from a matter resolved in an early site permit proceeding is within the scope of a combined license proceeding that references the ESP if it concerns whether emergency planning matters resolved in the ESP should be revisited; LBP-08-15, 68 NRC 294 (2008)
- a contention asserting that a license application for an irradiator sited at an airport fails to analyze aircraft crash probabilities and consequences presents a genuine dispute on a material issue; LBP-06-12, 63 NRC 403 (2006)
- a contention asserting that an application is incomplete because it incorporates by reference a standard design certification and a pending application for a revision to that certified design is inadmissible; LBP-09-10, 70 NRC 51 (2009)
- a contention based on another agency's draft environmental assessment that does not apply to the time period in which proposed reactor units would be operational is not material to the findings the licensing board must make in the proceeding; LBP-10-1, 71 NRC 165 (2010)
- a contention based on new information will be considered timely if it is filed within 30 days of the availability of the new information; LBP-10-14, 72 NRC 101 (2010); LBP-10-16, 72 NRC 361 (2010)
- a contention calling for a siting safety analysis for an irradiator is not barred by the Part 36 regulatory scheme, but must be sufficiently supported, in light of the Statement of Considerations' conclusions; CLI-08-3, 67 NRC 151 (2008)
- a contention can be one of omission as well as one of inadequacy when it alleges that the environmental report is insufficient because it fails to discuss all aspects of a topic adequately; LBP-09-10, 70 NRC 51 (2009)
- a contention challenging the absence in the environmental report of consideration of impacts from a severe radiological accident at one unit on other collocated units is admitted; LBP-09-17, 70 NRC 311 (2009)
- a contention challenging the failure to include in the environmental impact statement for license renewal any consideration of the effects of an aircraft attack is inadmissible; LBP-10-10, 71 NRC 529 (2010)
- a contention concerning environmental impacts of offsite mining is rejected because petitioner failed to support the allegations with information indicating that such impacts are even plausibly significant; LBP-09-10, 70 NRC 51 (2009)

SUBJECT INDEX

- a contention filed within 30 days of the issuance of a document that legitimately undergirds the contention would be timely and presumptively meet the good cause requirement; CLI-10-18, 72 NRC 56 (2010)
- a contention is admissible if it raises a genuine dispute that is material to the findings the NRC must make to support the action involved; LBP-09-25, 70 NRC 867 (2009)
- a contention is inadmissible where intervenors did not show that a model was defective or used incorrectly but simply that a different result would be achieved using their own model; LBP-09-6, 69 NRC 367 (2009)
- a contention is material if it shows that some significant link exists between the claimed deficiency and either the health and safety of the public, or the environment; LBP-09-26, 70 NRC 939 (2009)
- a contention is not admissible if it is not plausibly explained or supported by alleged facts; LBP-09-21, 70 NRC 581 (2009)
- a contention is not an impermissible challenge to agency regulations merely because the applicant and the Staff believe the regulations have been satisfied; LBP-06-12, 63 NRC 403 (2006)
- a contention is not cognizable unless it is material to matters that fall within the scope of the proceeding for which the licensing board has been delegated jurisdiction; LBP-07-4, 65 NRC 281 (2007)
- a contention is timely to the extent it challenges the adequacy of the new low-level radioactive waste storage plan, but untimely as to those aspects of the contention that merely reargue issues already decided by the board, without identifying any new information relevant to those issues; LBP-09-27, 70 NRC 992 (2009)
- a contention may be held in abeyance by a licensing board pending completion of a rulemaking, but the contention must be otherwise admissible; LBP-10-9, 71 NRC 493 (2010)
- a contention must allege facts sufficient to establish that it falls directly within the scope of a proceeding; LBP-07-11, 66 NRC 41 (2007)
- a contention must explain why the application is deficient through reference to specific portions of the application, and it must directly controvert a position taken by the applicant in the application; LBP-09-17, 70 NRC 311 (2009)
- a contention must explain, with specificity, particular safety or legal reasons requiring rejection of the contested application, and demonstrate that there has been sufficient foundation assigned for it to warrant further exploration; LBP-06-10, 63 NRC 314 (2006)
- a contention must meet certain specificity and basis requirements and must fall within the scope of the proceeding; CLI-06-16, 63 NRC 708 (2006)
- a contention must meet five pleading requirements; LBP-07-3, 65 NRC 237 (2007)
- a contention must provide sufficient information to show that a genuine dispute exists on a material issue of law or fact; LBP-06-22, 64 NRC 229 (2006)
- a contention must show that a genuine dispute exists on a material issue of law or fact with regard to the license application, challenge and identify either specific portions of, or alleged omissions from, the application, and provide the supporting reasons for each dispute; LBP-09-26, 70 NRC 939 (2009)
- a contention of omission claims that the application fails to contain information on a relevant matter as required by law and provides the supporting reasons for the petitioner's belief; LBP-09-16, 70 NRC 227 (2009)
- a contention of omission is subject to dismissal in connection with those aspects for which it is appropriately established that the Staff DEIS provides any purported missing analysis or discussion; LBP-08-2, 67 NRC 54 (2008); LBP-08-3, 67 NRC 85 (2008)
- a contention of "omission" that has been cured can be dismissed as moot; CLI-07-8, 65 NRC 124 (2007); CLI-09-8, 69 NRC 317 (2009); LBP-09-16, 70 NRC 227 (2009)
- a contention on spent fuel pool fires is rejected as an impermissible challenge to NRC regulations and the license renewal generic environmental impact statement; CLI-10-11, 71 NRC 287 (2010)
- a contention questioning whether particular bits of information taken from an emergency plan are sufficiently accurate for use in computing the health and safety consequences of a severe accident, as an environmental issue, is admissible; LBP-06-23, 64 NRC 257 (2006)
- a contention raised in a combined license hearing challenging information in a design certification rulemaking, if otherwise admissible, should be referred to the Staff for consideration in the rulemaking, and held in abeyance by licensing board pending outcome of rulemaking; CLI-09-4, 69 NRC 80 (2009); LBP-09-3, 69 NRC 139 (2009)

SUBJECT INDEX

- a contention revolving around the possibility of future design changes to a facility is speculative and thus inadmissible; LBP-08-11, 67 NRC 460 (2008)
- a contention shall not be admitted if the admissibility requirements are not satisfied or if the contention, even if proven, would not entitle the petitioner to relief; CLI-08-1, 67 NRC 1 (2008)
- a contention should be dismissed if it does not directly controvert a position taken by the applicant in the license application; LBP-09-27, 70 NRC 992 (2009)
- a contention stating that monitoring activities may not be sufficient to identify and control the effects of aging that will occur during the 20-year renewal period falls within the scope of a license renewal proceeding; LBP-06-7, 63 NRC 188 (2006)
- a contention that applicant has failed to identify non-safety-related systems, structures, and components in the security area whose failure could prevent satisfactory accomplishment of the functions of safety-related systems, structures, and components is not admissible because security-related issues are not within the scope of a license renewal proceeding; LBP-06-20, 64 NRC 131 (2006)
- a contention that applicant's aging management program fails to adequately assure the continued integrity of the drywell liner for the requested license extension is denied; LBP-06-23, 64 NRC 257 (2006)
- a contention that applicant's aging management program is inadequate with regard to aging management of buried pipes and tanks that contain radioactively contaminated water because it does not provide for monitoring wells that would detect leakage is admitted; LBP-06-23, 64 NRC 257 (2006)
- a contention that applicant's severe accident mitigation alternatives analysis is deficient regarding input data on evacuation times, economic consequences, and meteorological patterns, resulting in incorrect conclusions about the costs versus benefits of possible mitigation alternatives, is admitted; LBP-06-23, 64 NRC 257 (2006)
- a contention that attacks a Commission rule, or which seeks to litigate a matter that is, or clearly is about to become, the subject of a rulemaking, is inadmissible; CLI-10-9, 71 NRC 245 (2010); LBP-07-3, 65 NRC 237 (2007); LBP-09-2, 69 NRC 87 (2009); LBP-09-3, 69 NRC 139 (2009); LBP-09-8, 69 NRC 736 (2009); LBP-10-7, 71 NRC 391 (2010)
- a contention that attacks applicable statutory requirements, challenges the basic structure of the NRC's regulatory process, or merely expresses generalized policy grievances is not appropriate for a board hearing; LBP-09-3, 69 NRC 139 (2009); LBP-09-6, 69 NRC 367 (2009)
- a contention that challenges any Commission rule is outside the scope of the proceeding because, absent a waiver, no rule or regulation of the Commission is subject to attack in any adjudicatory proceeding; CLI-07-16, 65 NRC 371 (2007); LBP-07-4, 65 NRC 281 (2007)
- a contention that challenges compliance with fire protection regulations at an existing unit is outside the scope of a combined license proceeding; CLI-10-9, 71 NRC 245 (2010)
- a contention that fails to address the information in the application and show a genuine dispute thereon is inadmissible; CLI-09-5, 69 NRC 115 (2009)
- a contention that fails to comply with any of the pleading requirements will not be admitted for litigation; LBP-06-22, 64 NRC 229 (2006)
- a contention that fails to provide even a ballpark figure for the cost of implementing any proposed severe accident mitigation alternatives is inadmissible because it is difficult to assess whether a SAMA may be cost-beneficial and thus warrant serious consideration; LBP-09-26, 70 NRC 939 (2009)
- a contention that involves an issue of state law is outside the scope of a materials license renewal proceeding; LBP-08-24, 68 NRC 691 (2008)
- a contention that merely seeks to advance generalizations regarding a petitioner's particular view of what applicable policies ought to be is not admissible; CLI-07-25, 66 NRC 101 (2007)
- a contention that new and significant information about cancer rates in communities around a plant shows that another 20 years of operations may result in greater offsite radiological impacts on human health than was previously known is denied; LBP-06-23, 64 NRC 257 (2006)
- a contention that raises the question as to whether requirements of 10 C.F.R. 51.53(c)(3)(ii)(B) supplement the more general requirements of 10 C.F.R. 51.45(c) and 51.53(c), or instead displace and supplant the latter requirements, raises an admissible and material issue of interpretation and construction of the regulations; LBP-06-20, 64 NRC 131 (2006)
- a contention that seeks to impose new requirements on applicants and licensees is an impermissible challenge to the agency's regulations; LBP-09-26, 70 NRC 939 (2009)

SUBJECT INDEX

- a contention that simply states the petitioner's views about what regulatory policy should be does not present a litigable issue; LBP-07-3, 65 NRC 237 (2007); LBP-09-3, 69 NRC 139 (2009)
- a contention was found to be inadmissible because the combined license application contained petitioner's asserted omissions; CLI-10-1, 71 NRC 1 (2010)
- a contention will be ruled inadmissible if the petitioner has offered no tangible information, no experts, no substantive affidavits, but instead only are assertions and speculation; LBP-06-7, 63 NRC 188 (2006); LBP-10-6, 71 NRC 350 (2010)
- a contention's proponent, not the licensing board, is responsible for formulating the contention and providing the necessary information to satisfy the basis requirement; CLI-06-10, 63 NRC 451 (2006)
- a design-based challenge involving a postulated cask drop on a sealed source is within the scope of, and material to, an irradiator licensing proceeding; LBP-06-12, 63 NRC 403 (2006)
- a detailed summary of relevant case law on contention admissibility is presented; LBP-07-4, 65 NRC 281 (2007)
- a dispute is material if its resolution would make a difference in the outcome of the licensing proceeding; LBP-10-6, 71 NRC 350 (2010)
- a dispute is not material unless it involves a significant inaccuracy or omission and resolution of the dispute could affect the outcome of the licensing proceeding; LBP-10-14, 72 NRC 101 (2010)
- a document put forth by an intervenor as supporting the basis for a contention is subject to scrutiny, for both what it does and does not show; LBP-09-27, 70 NRC 992 (2009)
- a factual dispute cannot be resolved against petitioners at the contention admissibility stage, especially when petitioners' version of the facts is supported by sworn affidavits and applicant's version is not; LBP-09-6, 69 NRC 367 (2009)
- a finding that applicant has cured an omission does not preclude litigation concerning the adequacy of the information the applicant has supplied and intervenors must timely file a new or amended contention that addresses the factors in 10 C.F.R. 2.309(f)(1); LBP-09-15, 70 NRC 198 (2009)
- a general assessment of radioactivity within waters of the Great Lakes Basin does not address specific issues with regard to the proposed reactor, and it does not provide any support for petitioners' assertions; LBP-09-16, 70 NRC 227 (2009)
- a generalized assertion, without specific ties to NRC regulatory requirements or to safety in general, do not provide adequate support demonstrating the existence of a genuine dispute of fact or law with respect to the construction authorization application; LBP-09-27, 70 NRC 992 (2009)
- a genuine dispute exists despite the fact that character or integrity is not required by regulation to be addressed in the license application; LBP-09-6, 69 NRC 367 (2009)
- a genuine material dispute is one that could lead to a different conclusion on potential cost-beneficial severe accident mitigation alternatives; LBP-09-26, 70 NRC 939 (2009)
- a justiciable controversy must involve adverse parties representing a true clash of interests and the questions raised must be presented in an adversary context and in a form historically viewed as capable of resolution through the judicial process; LBP-09-25, 70 NRC 867 (2009)
- a late-filed contention can be admitted only when the information on which the amended or new contention is based was previously unavailable; CLI-07-10, 65 NRC 144 (2007)
- a late-filed contention will be rejected as untimely unless the petitioner demonstrates that the eight-factor balancing test in 10 C.F.R. 2.309(c) militates in favor of considering the contention's admissibility; LBP-06-22, 64 NRC 229 (2006)
- a late-filed environmental contention may be admitted only where petitioner relies upon newly available, significant information, meets the nontimely filing requirements, or successfully argues for supplementing the EIS; LBP-08-11, 67 NRC 460 (2008)
- a legal issue contention need not satisfy all the contention admissibility criteria; LBP-09-29, 70 NRC 1028 (2009)
- a legal issue contention raises a genuine dispute with the application, because it challenges DOE's performance assessment for the post-10,000-year period; LBP-09-29, 70 NRC 1028 (2009)
- a license renewal proceeding is an appropriate occasion for appraising the entire past performance of the licensee; LBP-08-24, 68 NRC 691 (2008)
- a licensing board is not permitted to draw any inferences on behalf of a petitioner; LBP-06-23, 64 NRC 257 (2006)

SUBJECT INDEX

- a licensing board order canceling oral argument on the admissibility of petitioner's proposed contention did not cause serious and irreparable harm to petitioner; CLI-08-7, 67 NRC 187 (2008)
- a licensing board will grant a request for a hearing if it determines that the requestor has standing has proposed at least one admissible contention; LBP-10-4, 71 NRC 216 (2010)
- a litany of "facts" and "figures" on various items without citation to a specific document, expert opinion, or other supporting source reduces them to bare assertions and speculation that will not support the contention admission; LBP-08-16, 68 NRC 361 (2008)
- a litigable NEPA issue is one that concerns whether the NRC Staff has taken the requisite hard look at mitigation in sufficient detail to ensure that environmental consequences of the proposed project have been fairly evaluated; LBP-10-13, 71 NRC 673 (2010)
- a materials license amendment proceeding is not an appropriate forum to throw open an opportunity to engage in a free-ranging inquiry into the character of the licensee; LBP-09-1, 69 NRC 11 (2009)
- a matter need not be actually litigated in order to be "resolved" in an early site permit proceeding; LBP-08-15, 68 NRC 294 (2008)
- a matter raised for the first time in a prehearing conference would only be admissible if the petitioner could satisfy the test for admitting late-filed contentions; CLI-07-25, 66 NRC 101 (2007)
- a new contention will necessarily fail if it attacks the quality of the Staff's review rather than identifying a deficiency in the application; CLI-09-5, 69 NRC 115 (2009)
- a new issue is raised only when the argument itself (as distinct from its chances of success) was not apparent at the time of the application; CLI-09-7, 69 NRC 235 (2009)
- a new non-NEPA contention is admissible if it is based on information that was not previously available, if the new information is materially different from previously available information, and if the contention is submitted in a timely manner once the new information becomes available; LBP-07-15, 66 NRC 261 (2007)
- a new or amended contention that is found to be timely in accord with 10 C.F.R. 2.309(f)(2) need not be assessed under the section 2.309(c) factors, which are considered to apply only to otherwise nontimely submissions; LBP-10-1, 71 NRC 165 (2010)
- a new safety contention can be filed, with leave of the board, on a showing that the new contention is based on information that was not previously available and is materially different from previously available information, and the new contention has been submitted in a timely fashion based on the availability of the subsequent information; LBP-09-9, 70 NRC 41 (2009)
- a nexus between the injury and the relief is required rather than a nexus between the claimed injury and the contention; LBP-09-16, 70 NRC 227 (2009)
- a party cannot satisfy the "not previously available" standard of 10 C.F.R. 2.309(f)(2)(i) by showing that, as a subjective matter, he or she only recently became aware of, or realized the significance of, public information that was previously available to all; LBP-09-10, 70 NRC 51 (2009)
- a party may not present a new contention, or a new basis for a proposed contention, in its reply; LBP-10-9, 71 NRC 493 (2010)
- a petitioner is not required to prove its case at the contention admission stage; LBP-06-10, 63 NRC 314 (2006)
- a petitioner may not demand an adjudicatory hearing to attack generic NRC requirements or regulations, or to express generalized grievances about NRC policies; LBP-06-23, 64 NRC 257 (2006)
- a petitioner may, within the adjudicatory context, submit a request for waiver of a rule; LBP-07-4, 65 NRC 281 (2007)
- a petitioner seeking to reopen the record does not show the existence of a significant safety issue by showing merely that a plant component performs safety functions and thus has safety significance; LBP-08-12, 68 NRC 5 (2008)
- a petitioner who believes that a license application fails to contain information on a relevant matter as required by law must identify each failure and the supporting reasons for the petitioner's belief; LBP-06-10, 63 NRC 314 (2006)
- a petitioner who fails to develop an argument in its petition is foreclosed from doing so in the first instance in its reply brief; CLI-06-17, 63 NRC 727 (2006); LBP-06-7, 63 NRC 188 (2006)
- a petitioner who fails to satisfy the contention pleading requirements in its initial contention submission may not use its reply to rectify those inadequacies or to raise new arguments, but may use the reply to flesh out contentions that have already met the pleading requirements; LBP-06-20, 64 NRC 131 (2006)

SUBJECT INDEX

- a petitioner who without reason fails to argue that a nontimely contention satisfies the eight-factor balancing test in 10 C.F.R. 2.309(c) may be deemed as having waived that argument; LBP-06-22, 64 NRC 229 (2006)
- a possible 1-year slip in the construction schedule is clearly within the margin of uncertainty and therefore, in the context of relitigating an issue, is unlikely to affect the need for power; LBP-10-6, 71 NRC 350 (2010)
- a possible future action must at least constitute a proposal pending before the agency to be ripe for adjudication; LBP-08-11, 67 NRC 460 (2008)
- a presiding officer considering environmental contentions in the high-level waste proceeding should apply NRC reopening procedures and standards in 10 C.F.R. 2.326 to the extent possible; CLI-08-25, 68 NRC 497 (2008)
- a properly pleaded contention of omission must challenge a specific portion of the application and provide a basis for demonstrating the alleged deficiency; LBP-09-26, 70 NRC 939 (2009)
- a proposed contention that fails to directly controvert the application or that mistakenly asserts the application does not address a relevant issue is subject to dismissal; LBP-09-27, 70 NRC 992 (2009)
- a proposed new contention challenging the adequacy of applicant's recently issued metal fatigue calculations meets both the three-factor and six-factor tests for admissibility; LBP-07-15, 66 NRC 261 (2007)
- a proposed new or amended contention shall be deemed timely if it is filed within 30 days of the date when the new and material information on which it is based first becomes available; LBP-10-9, 71 NRC 493 (2010)
- a purely legal-issue contention need not allege facts or present arguments by affidavit; LBP-09-6, 69 NRC 367 (2009)
- a recent e-mail from an expert that provided no indication of when petitioners contacted the expert and that primarily referenced articles published years earlier is untimely support and does not constitute legitimate amplification of originally filed contentions; LBP-08-6, 67 NRC 241 (2008)
- a reply cannot be used to substantively supplement or amend a contention; LBP-08-18, 68 NRC 533 (2008)
- a reply may not be used as a vehicle to introduce new arguments or support, may not expand the scope of arguments set forth in the original petition, and may not attempt to cure an otherwise deficient contention; LBP-09-16, 70 NRC 227 (2009); LBP-09-17, 70 NRC 311 (2009)
- a request for an exemption from a particular regulatory provision does not render a license application deficient; CLI-06-10, 63 NRC 451 (2006)
- a ruling granting summary disposition on a single contention, where other contentions are still pending in an adjudication, is not a final decision, and is not susceptible to Commission review; CLI-08-2, 67 NRC 31 (2008)
- a safety contention arising from a matter resolved in an early site permit proceeding is within the scope of a combined license proceeding that references the ESP if it concerns whether the site characteristics and design parameters or a term or condition specified in the ESP have been met or whether a variance from the ESP requested by the COL applicant is unwarranted or should be modified; LBP-08-15, 68 NRC 294 (2008)
- a SAMA analysis contention was found to be inadmissible because it lacked supporting information regarding the relative costs and benefits of that proposed alternative; LBP-10-15, 72 NRC 257 (2010)
- a single past violation of licensee's state permit could not demonstrate an ongoing pattern of violations or disregard for regulations that might be expected to recur in the future; CLI-09-9, 69 NRC 331 (2009)
- a single sentence labeled a contention, with no reference to the six elements of 10 C.F.R. 2.309(f)(1), is not admissible; LBP-10-16, 72 NRC 361 (2010)
- a specific statement of the issue of law or fact to be raised or controverted must be provided; CLI-10-2, 71 NRC 27 (2010)
- a Staff request for additional information ordinarily may not be used to support admission of a new contention because such a request, standing alone, generally does not give rise to a genuine dispute on material issues; LBP-06-11, 63 NRC 391 (2006)
- a Staff request to an applicant for more information does not make an application incomplete; CLI-08-15, 68 NRC 1 (2008)

SUBJECT INDEX

- a statement of petitioner's views about what regulatory policy should be does not present a litigable issue; CLI-08-17, 68 NRC 231 (2008); LBP-08-16, 68 NRC 361 (2008); LBP-08-17, 68 NRC 431 (2008)
- a successful challenge to a contention admissibility ruling must demonstrate that the ruling either constitutes clear error or reflects an abuse of discretion; CLI-10-17, 72 NRC 1 (2010)
- a timely motion to reopen may be denied if it raises issues that are not of major significance to plant safety whereas a nontimely motion may be granted if it raises an issue of sufficient gravity; LBP-10-21, 72 NRC 616 (2010)
- a waiver of 10 C.F.R. 2.335 is necessary to litigate an applicant's failure to include new and significant information concerning a Category 1 issue in its environmental report; LBP-06-20, 64 NRC 131 (2006)
- a well-pleaded environmental contention concerning the effects of long-term onsite management of low-level radioactive waste is admissible; CLI-10-2, 71 NRC 27 (2010)
- absence of perfect compliance by licensee does not rebut the presumption of compliance or support admission of a contention that the application does not satisfy 10 C.F.R. 54.29(a), but a consistent, longstanding, and continuing pattern of problems in a specific area that is relevant to managing aging equipment will; LBP-10-15, 72 NRC 257 (2010)
- absent a waiver pursuant to 10 C.F.R. 2.335, a contention that attacks a Commission rule or that seeks to litigate a matter that is, or clearly is about to become, the subject of a rulemaking, is inadmissible; CLI-08-15, 68 NRC 1 (2008); CLI-08-17, 68 NRC 231 (2008); LBP-08-13, 68 NRC 43 (2008); LBP-08-16, 68 NRC 361 (2008); LBP-08-17, 68 NRC 431 (2008); LBP-08-21, 68 NRC 554 (2008)
- absent a waiver pursuant to 10 C.F.R. 2.335, Category 1 issues cannot be addressed in a license renewal proceeding; LBP-08-13, 68 NRC 43 (2008)
- absent a waiver, contentions challenging applicable statutory requirements or Commission regulations are not admissible in agency adjudications; CLI-09-3, 69 NRC 68 (2009); CLI-09-20, 70 NRC 911 (2009); LBP-09-6, 69 NRC 367 (2009); LBP-09-10, 70 NRC 51 (2009); LBP-10-15, 72 NRC 257 (2010); LBP-10-16, 72 NRC 361 (2010)
- absent evidence to the contrary, a licensing board will not assume that a licensee will act in derogation of its formal commitments to the NRC Staff; LBP-06-7, 63 NRC 188 (2006)
- absent extreme circumstances, the Commission will not consider on appeal either new arguments or new evidence supporting a contention that the licensing board never had the opportunity to consider; CLI-06-10, 63 NRC 451 (2006); CLI-10-21, 72 NRC 197 (2010)
- accuracy and reliability of the agency's need-for-power determination, as reflected in the draft EIS, is material to the licensing decision; LBP-10-24, 72 NRC 720 (2010)
- adequacy of emergency planning is outside the scope of license renewal proceedings; LBP-10-13, 71 NRC 673 (2010)
- adequacy of the draft environmental impact statement's evaluation of alternatives is a material issue in the licensing proceeding; LBP-10-24, 72 NRC 720 (2010)
- adequacy of the seismic analysis for the site found in the Final Safety Analysis Report is not a litigable issue; LBP-08-16, 68 NRC 361 (2008)
- adequacy or inadequacy of applicant's severe accident mitigation alternatives analysis is certainly within the scope of a license renewal proceeding; LBP-10-15, 72 NRC 257 (2010)
- adjudicating Category 1 issues site by site based merely on a claim of new and significant information would defeat the purpose of resolving generic issues in a generic environmental impact statement; CLI-07-3, 65 NRC 13 (2007)
- adjudication is not the proper forum for challenging applicable statutory requirements or the basic structure of the agency's regulatory process; LBP-08-16, 68 NRC 361 (2008); LBP-10-7, 71 NRC 391 (2010)
- adjudicatory boards should not be expected, unaided by the parties, to sift through the parties' pleadings to uncover and resolve arguments not advanced by litigants themselves; LBP-10-10, 71 NRC 529 (2010)
- administrative proceedings should not be a game or a forum to engage in unjustified obstructionism by making cryptic and obscure references to matters that "ought to be" considered; LBP-10-10, 71 NRC 529 (2010)
- admissible contentions must satisfy the six pleading requirements of 10 C.F.R. 2.309(f)(1); LBP-09-6, 69 NRC 367 (2009); LBP-09-8, 69 NRC 736 (2009)

SUBJECT INDEX

admission of a grand contention of omission based on failure to meet the requirements of 10 C.F.R. 70.23(a)(8) regarding facility completion could be justified; LBP-08-11, 67 NRC 460 (2008)

affidavits supporting environmental contentions must set forth factual and/or technical bases for the claim that it is not practicable to adopt the DOE environmental impact statement; LBP-09-6, 69 NRC 367 (2009)

all nuclear safety and environmental issues concerning severe accident mitigation design alternatives associated with NRC's environmental assessment for the AP1000 design and Appendix 1B of the generic Design Control Document are considered resolved by the Commission; LBP-09-2, 69 NRC 87 (2009)

all proffered contentions must be within the scope of the proceeding as defined by the Commission in its initial hearing notice and order referring the proceeding to the licensing board; LBP-07-10, 66 NRC 1 (2007); LBP-09-3, 69 NRC 139 (2009); LBP-09-6, 69 NRC 367 (2009)

all properly formulated contentions must focus on the license application in question, challenging either specific portions of or alleged omissions from the application (including the Safety Analysis Report and the Environmental Report) so as to establish that a genuine dispute exists with the applicant on a material issue of law or fact; LBP-07-3, 65 NRC 237 (2007)

allegation of facts, with supporting documentation, of a longstanding and continuing pattern of noncompliance or management difficulties that are reasonably linked to whether licensee will actually be able to adequately manage aging in accordance with the current licensing basis during the period of extended operation can be an admissible contention; LBP-10-15, 72 NRC 257 (2010)

allegation of failure to include in the combined license application any information regarding the project's greenhouse gas emissions or carbon footprint is inadmissible; LBP-08-16, 68 NRC 361 (2008)

allegation that NRC has inadequately characterized human health impacts of radiation exposure from the high-level waste repository is inadmissible in a combined license proceeding; LBP-08-16, 68 NRC 361 (2008)

allegation that some aspect of a license application is "inadequate" or "unacceptable" does not give rise to a genuine dispute unless it is supported by facts and a reasoned statement of why the application is unacceptable in some material respect; LBP-06-10, 63 NRC 314 (2006); LBP-07-11, 66 NRC 41 (2007); LBP-08-17, 68 NRC 431 (2008)

allegation that the environmental report is based on incomplete information because a new earthquake fault has been discovered within 600 meters of nuclear reactors and the results of studies concerning the new fault will be available in the near term is admissible; LBP-10-15, 72 NRC 257 (2010)

allegation that the environmental report's analysis of cancer deaths and illnesses relative to natural radiation source exposures is inadequate is inadmissible; LBP-08-16, 68 NRC 361 (2008)

allegation that the Final Safety Analysis Report must address the impact of global warming on the transmission grid and the increased probability of loss of offsite power events is inadmissible; LBP-08-16, 68 NRC 361 (2008)

allegations of deficiencies or errors in an application also must indicate some significant link between the claimed deficiency and either the health and safety of the public or the environment; LBP-07-10, 66 NRC 1 (2007)

allegations of management improprieties must be of more than historical interest; CLI-09-9, 69 NRC 331 (2009)

allegations of radiological and nonradiological contamination of drinking water are outside the scope of a license renewal proceeding because they involve no aging-related issues and are Category 1, or generic, issues; LBP-06-10, 63 NRC 314 (2006)

allegations of several serious safety problems that had persisted with respect to the reactor over a period of years are a legitimate attack on management quality and integrity; CLI-09-9, 69 NRC 331 (2009)

allowing new claims in a reply would unfairly deprive other participants of an opportunity to rebut the new claims; LBP-09-6, 69 NRC 367 (2009)

although a board is free to view intervenors' support for its contention in the light most favorable to intervenors, the board may not ignore the contention admissibility requirements of 10 C.F.R. 2.309(f)(1); CLI-09-3, 69 NRC 68 (2009); CLI-09-7, 69 NRC 235 (2009)

although a board may appropriately view a petitioner's supporting information in a light favorable to the petitioner, failure to provide such information regarding a proffered contention requires that the contention be rejected; LBP-07-3, 65 NRC 237 (2007); LBP-09-3, 69 NRC 139 (2009)

SUBJECT INDEX

- although a board may appropriately view petitioners' support for its contention in a light that is favorable to the petitioner, the petitioner must provide some support for his or her contention, in the form of either facts or expert testimony; LBP-07-16, 66 NRC 277 (2007); LBP-09-26, 70 NRC 939 (2009); LBP-10-6, 71 NRC 350 (2010)
- although a board may deny certain portions of a multipart contention as outside the scope or too attenuated, applying all six criteria of 10 C.F.R. 2.309(f)(1) to each subpart of the contention is inappropriate; LBP-09-10, 70 NRC 51 (2009)
- although a board may view petitioner's supporting information in a light favorable to the petitioner, petitioner (not the board) is required to supply all of the required elements for a valid intervention petition; CLI-10-20, 72 NRC 185 (2010); LBP-10-15, 72 NRC 257 (2010); LBP-10-16, 72 NRC 361 (2010)
- although a contention regarding the risks of terrorism related to the high-density racking of spent fuel in pools is new and significant information concerning a Category 1 matter, the contention is inadmissible; LBP-06-20, 64 NRC 131 (2006)
- although a licensing board will take into account any information from reply briefs that legitimately amplifies issues presented in the original petitions, it will not consider instances of what essentially constitute untimely attempts to amend the original petitions; LBP-09-17, 70 NRC 311 (2009)
- although a motion to reopen must be timely, an exceptionally grave issue may be considered even if the motion is not timely; LBP-10-19, 72 NRC 529 (2010)
- although a petitioner does not have to prove its contention at the admissibility stage, mere notice pleading is insufficient; LBP-08-17, 68 NRC 431 (2008); LBP-09-6, 69 NRC 367 (2009); LBP-09-17, 70 NRC 311 (2009); LBP-09-18, 70 NRC 385 (2009)
- although admitting the new contention would broaden the issues in dispute, in the early stage of the proceeding this does not weigh heavily against a petitioner; LBP-10-1, 71 NRC 165 (2010)
- although an expert may be misinterpreting data submitted by applicant, this is not considered at the contention admissibility stage; LBP-09-27, 70 NRC 992 (2009)
- although boards are not required to narrow contentions to make them acceptable, they may do so; LBP-09-25, 70 NRC 867 (2009)
- although boards are to provide latitude to pro se participants, petitioner's decision to provide an expert affidavit, available when it filed its hearing petition, at the time it submitted its reply runs afoul of the Commission's directive that reply pleadings cannot be used to introduce additional supporting information relative to a contention; LBP-08-16, 68 NRC 361 (2008)
- although boards generally are to litigate a contention rather than the basis that provides the issue statement's foundational support, the reach of a contention necessarily hinges upon its terms coupled with its stated basis; LBP-07-3, 65 NRC 237 (2007); LBP-08-16, 68 NRC 361 (2008)
- although boards may appropriately view a petitioner's supporting information in a light favorable to the petitioner, failure to provide such information regarding a proffered contention requires the contention be rejected; LBP-08-16, 68 NRC 361 (2008)
- although boards should not "flyspeck" environmental documents, petitioners may raise contentions seeking correction of significant inaccuracies and omissions in the environmental report; LBP-10-24, 72 NRC 720 (2010)
- although licensing boards frequently hold oral argument on contention admissibility, a board may instead elect to dispense with oral argument; LBP-08-23, 68 NRC 679 (2008)
- although NRC may reasonably accommodate pro se petitioners who are not technically perfect in their pleading, such parties must still meet the basic requirements of the contention admissibility rules, and if these are not met, boards may not "fill in" any missing support, but, rather, are legally required to deny the contention; LBP-07-4, 65 NRC 281 (2007); LBP-07-5, 65 NRC 341 (2007)
- although petitioner could participate in another federal agency's comment process relating to a proposed environmental assessment that is the focus of a new contention and thus does have some alternative means for protecting its interests, for the purpose of 10 C.F.R. 2.309(c)(1)(v), that process is not analogous to participation in an NRC adjudicatory proceeding and therefore does not weigh heavily against the petitioner's intervention in the NRC proceeding; LBP-10-1, 71 NRC 165 (2010)
- although petitioner has established the requisite standing, the hearing request must be denied because of a failure to proffer one admissible contention; CLI-10-7, 71 NRC 133 (2010); LBP-10-1, 71 NRC 165 (2010)

SUBJECT INDEX

although the Commission is disinclined to step into the middle of a labor dispute or involve itself in the personnel decisions of licensees, it has recognized that there may be cases where employment-related contentions are closely tied to specific health-and-safety concerns or to potential violations of NRC rules that can be admitted for a hearing; CLI-06-21, 64 NRC 30 (2006)

although the contention admissibility rule imposes on a petitioner the burden of going forward with a sufficient factual basis, it does not shift the ultimate burden of proof from applicant to petitioner; LBP-09-27, 70 NRC 992 (2009); LBP-10-24, 72 NRC 720 (2010)

an adjudication is not the proper forum for challenging applicable statutory requirements or the basic structure of the agency's regulatory process; LBP-07-3, 65 NRC 237 (2007)

an admissible contention under the good cause standard must allege that a construction permit holder's reasons for past delay failed to constitute good cause for a CP extension and be supported by a showing that construction delay is traceable to permit holder action that was intentional and without a valid business purpose; LBP-10-7, 71 NRC 391 (2010)

an alleged failure to address "new and significant information" does not give rise to an admissible contention, absent a waiver of the rule in 10 C.F.R. 51.53(c)(3)(i) that Category 1 issues need not be addressed in a license renewal; LBP-06-23, 64 NRC 257 (2006)

an amended contention challenging applicant's final safety analysis report on its low-level radioactive waste storage plan was admitted based on intervenor's adequately supported challenge to the plan's provisions regarding waste volume reduction; LBP-10-8, 71 NRC 433 (2010)

an application-specific contention concerning the environmental consequences of the need for extended onsite storage of low-level radioactive waste is admissible if it satisfies the requirements of 10 C.F.R. 2.309(f)(1); LBP-09-4, 69 NRC 170 (2009)

an assertion that some analysis, calculation, or survey must be included in an environmental report or impact statement is not necessarily sufficient, in and of itself, to require consideration of whether that additional information gathering and disclosure mechanism should be included; LBP-08-16, 68 NRC 361 (2008)

an attack on applicable statutory requirements or a challenge to the basic structure of the Commission's regulatory process does not form an admissible contention; LBP-07-16, 66 NRC 277 (2007)

an emergency evacuation issue was admitted in a license renewal proceeding because it was in the context of three of the specific input data for the severe accident mitigation alternatives analysis that license renewal applicants are required to perform; LBP-07-4, 65 NRC 281 (2007)

an enforcement contention might appropriately address the factual underpinnings of the NRC Staff's finding of violation or the mitigating factors to be considered in determining the penalty; CLI-06-16, 63 NRC 708 (2006)

an environmental contention is not litigable in a combined license proceeding if it has already been resolved in an early site permit proceeding; CLI-09-3, 69 NRC 68 (2009)

an environmental contention may be admitted during a COL proceeding if it concerns a significant issue that was not resolved in the early site permit proceeding or if it involves the impacts of construction and operation of the facility and significant new information has been identified; LBP-08-15, 68 NRC 294 (2008)

an exception to the general policy limiting interlocutory review permits an appeal of a board's ruling on contention admissibility when a board grants a petition to intervene following consideration of the full petition; CLI-09-18, 70 NRC 859 (2009)

an expert opinion that merely states a conclusion (e.g., the application is deficient, inadequate, or wrong) without providing a reasoned basis or explanation for that conclusion is inadequate because it deprives the board of the ability to make the necessary, reflective assessment of the opinion; CLI-06-10, 63 NRC 451 (2006); LBP-09-16, 70 NRC 227 (2009)

an intervenor may not attempt to use a license application proceeding to rewrite NRC regulations; LBP-06-1, 63 NRC 41 (2006)

an investigation into applicant's character should also include a review of the applicant's good character; LBP-09-6, 69 NRC 367 (2009)

an issue can be related to plant aging and still not warrant review at the time of a license renewal application, if the aging-related issue is adequately dealt with by regulatory processes on an ongoing basis; LBP-06-10, 63 NRC 314 (2006); LBP-07-4, 65 NRC 281 (2007); LBP-07-11, 66 NRC 41 (2007)

SUBJECT INDEX

an otherwise admissible contention that raises challenges to information in a design certification rulemaking should be referred to the Staff for resolution in the rulemaking; CLI-09-8, 69 NRC 317 (2009)

analysis of entrainment and impingement of fish, and heat shock, is required only for plants with once-through cooling or cooling ponds, because it has been determined generically that such impacts are small for plants that use cooling towers; LBP-07-4, 65 NRC 281 (2007)

any challenge to an NRC Staff decision to grant an exemption from a 1-hour barrier to a 24/30-minute barrier is a direct challenge to the current licensing basis and unrelated to the effects of plant aging and the license renewal application; LBP-08-13, 68 NRC 43 (2008)

any challenge to the established terms and conditions of an early site permit can only be raised as a petition to modify a license under section 2.206; CLI-07-12, 65 NRC 203 (2007)

any contention alleging deficiencies or errors in an application must also indicate some significant link between the claimed deficiency and either the health and safety of the public or the environment; LBP-07-3, 65 NRC 237 (2007)

any contention directed at a design undergoing rulemaking review fails on its face to satisfy the admission requirements because all matters that are the subject of a rulemaking are outside the scope of licensing proceedings; LBP-09-8, 69 NRC 736 (2009)

any contention that fails directly to controvert the application or that mistakenly asserts the application does not address a relevant issue will be dismissed; LBP-07-3, 65 NRC 237 (2007); LBP-08-17, 68 NRC 431 (2008); LBP-09-3, 69 NRC 139 (2009); LBP-09-18, 70 NRC 385 (2009); LBP-09-26, 70 NRC 939 (2009); LBP-10-6, 71 NRC 350 (2010); LBP-10-7, 71 NRC 391 (2010)

any contention that falls outside the specified scope of the proceeding is inadmissible; LBP-07-3, 65 NRC 237 (2007); LBP-07-10, 66 NRC 1 (2007); LBP-08-9, 67 NRC 421 (2008); LBP-09-3, 69 NRC 139 (2009); LBP-10-17, 72 NRC 501 (2010)

any new contentions filed by petitioners, whose original petition was timely and who have demonstrated their standing, that are attributable to the applicant's construction activity or change of plans or design, are governed by the basic provisions of 10 C.F.R. 2.309(f)(2) rather than by the more restrictive elements applicable to nontimely filings; LBP-07-14, 66 NRC 169 (2007)

any purported adverse effects caused by a confirmatory order's failure to include revised or additional provisions sought by petitioner shall be deemed irrelevant; LBP-08-14, 68 NRC 279 (2008)

any supporting material offered by intervenors is subject to board scrutiny both for what it does and does not show; LBP-10-7, 71 NRC 391 (2010); LBP-10-10, 71 NRC 529 (2010)

any supporting material provided by a petitioner, including those portions of the material that are not relied upon, is subject to board scrutiny; LBP-07-10, 66 NRC 1 (2007); LBP-07-16, 66 NRC 277 (2007); LBP-08-16, 68 NRC 361 (2008); LBP-08-26, 68 NRC 905 (2008); LBP-09-3, 69 NRC 139 (2009); LBP-09-17, 70 NRC 311 (2009); LBP-09-26, 70 NRC 939 (2009)

applicant has the right to file an interlocutory appeal of board orders admitting contentions, but only if the appeal challenges the admissibility of all admitted contentions; CLI-06-13, 63 NRC 508 (2006)

applicant's change of reactor design constitutes new and materially different information for the purposes of filing a new contention; LBP-10-17, 72 NRC 501 (2010)

applicant's failure to consider deliberate and malicious aircraft crashes in its environmental report is inadmissible in a combined license proceeding; LBP-08-21, 68 NRC 554 (2008)

applicant's failure to disclose ownership by a foreign corporation in its license renewal application constitutes a contention of omission; LBP-08-24, 68 NRC 691 (2008)

applicant's plan for storage of low-level radioactive waste is a litigable issue because it is material to the findings NRC must make to support the action that is involved in a combined license proceeding; LBP-08-15, 68 NRC 294 (2008)

applicants are not required to address or demonstrate whether the issuance of a combined license will improve the general welfare, increase the standard of living, or strengthen free competition in private enterprise; LBP-08-16, 68 NRC 361 (2008); LBP-08-17, 68 NRC 431 (2008)

applying the standards for late-filed contentions, a board concluded that an e-mail citing only sources that had been published, in some cases years earlier, contained no new information; CLI-09-12, 69 NRC 535 (2009)

arguments premised on the prediction that someday a nuclear plant site will become a permanent storage or disposal facility for low-level radioactive waste are too speculative and therefore not material to the

SUBJECT INDEX

findings the NRC must make to support the action that is involved in a combined license proceeding; LBP-09-16, 70 NRC 227 (2009)

as long as either denial of a license or issuance of a decision mandating compliance with legal requirements would alleviate a petitioner's potential injury, then under longstanding NRC jurisprudence the petitioner may prosecute any admissible contention that could result in the denial or in the compliance decision; CLI-09-20, 70 NRC 911 (2009)

as long as petitioner alleges, with sufficient support, that applicant's bad character or lack of integrity has direct and obvious relevance to the licensing action at issue in the proceeding, a character-based contention is admissible; LBP-09-6, 69 NRC 367 (2009)

as with a summary disposition motion, a board may appropriately view petitioners' support for its contention in a light that is favorable to the petitioner; LBP-08-9, 67 NRC 421 (2008)

asserted deficiencies in the environmental report intake/discharge impact discussion as it is associated with the baseline discussion of aquatic resources, if properly supported, can be admitted for further litigation; LBP-08-16, 68 NRC 361 (2008)

assertions regarding purported water fouling incidents by members of applicant's corporate family who are not NRC licensees fall far short of what is required to establish circumstances that would create a genuine material dispute; LBP-07-10, 66 NRC 1 (2007)

assertions that building two new nuclear reactors in a troubled economy is fiscally irresponsible is outside the scope of a combined license proceeding; LBP-09-10, 70 NRC 51 (2009)

at the admission stage, a board simply has to find that each of the elements of contention admissibility is satisfied, and need not weigh the merits of the petitioner's arguments; CLI-09-9, 69 NRC 331 (2009)

at the admission stage, all that is required is that the petitioner provide an expert opinion or some alleged fact, or facts, in support of its position; LBP-09-26, 70 NRC 939 (2009)

at the admission stage, arguments that petitioners' claims are unfounded go to the merits of the contention and do not show that there is no genuine dispute over the substance of the contention; CLI-09-9, 69 NRC 331 (2009)

at the admission stage, boards admit contentions, not bases; LBP-09-26, 70 NRC 939 (2009)

at the admission stage, intervenors are not required, under the rubric of materiality, to run a sensitivity analysis and/or to prove that alleged defects would change the result; LBP-10-14, 72 NRC 101 (2010)

at the admission stage, it is not necessary to establish a general probability threshold for irradiators to assess in qualitative terms the significance and plausibility of particular asserted siting-related threats; CLI-08-3, 67 NRC 151 (2008)

at the admission stage, petitioner does not have to prove its contentions and boards do not adjudicate disputed facts; LBP-09-6, 69 NRC 367 (2009)

at the admission stage, petitioner is not required to prove its contention or to provide all the evidence for its contention that may be required later in the proceeding; LBP-06-20, 64 NRC 131 (2006)

at the admission stage, petitioner must simply proffer some minimal factual foundation sufficient to raise a genuine dispute regarding the existence of a corrosive environment; LBP-06-22, 64 NRC 229 (2006)

at the contention admission stage, the board's purpose in applying 10 C.F.R. 2.309(f)(1) is only to ensure that the adjudicatory process is used to address real, concrete, specific issues that are appropriate for litigation; LBP-06-20, 64 NRC 131 (2006)

at the contention filing stage, a licensing board will not adjudicate merits-related issues; LBP-06-7, 63 NRC 188 (2006)

at the contention filing stage, the factual support necessary to show that a genuine dispute exists need not be in formal evidentiary form or be as strong as that necessary to withstand a summary disposition motion; LBP-06-7, 63 NRC 188 (2006); LBP-06-10, 63 NRC 314 (2006)

at the operating license stage, licensing boards will not admit contentions concerning the need for power or alternative energy sources; LBP-10-12, 71 NRC 656 (2010)

attacks on applicable statutory requirements, challenges to the basic structure of the NRC's regulatory process, or mere expression of generalized policy grievances are not appropriate for a licensing board hearing; LBP-09-18, 70 NRC 385 (2009)

availability of Staff review outside the hearing process generally does not constitute adequate protection of a private party's rights when considering 10 C.F.R. 2.309(c)(1)(ii); LBP-08-12, 68 NRC 5 (2008)

because a contention focuses on safety-related aspects of a COL application, it is not apparent that the issue resolved in the board's admissibility ruling has any particular implications for a contention

SUBJECT INDEX

challenging the environmental impacts of long-term onsite low-level radioactive waste storage admitted and pending in another proceeding; LBP-10-8, 71 NRC 433 (2010)

because a generic environmental analysis was incorporated into a regulation, the conclusions of that analysis are not subject to attack in an individual adjudication unless the rule is waived or suspended; CLI-07-3, 65 NRC 13 (2007)

because applicant did not apply for an early site permit, petitioners thus are not precluded from raising an environmental issue relative to failure of applicant's environmental report to assess the onsite impacts of potential long-term storage of low-level waste; LBP-08-16, 68 NRC 361 (2008)

because deferral of the consideration of the balance of petitioner's contentions might prejudice parties' legitimate interests, they will be subject to the filing of a timely motion for reconsideration; LBP-07-5, 65 NRC 341 (2007)

because disposal of Greater-Than-Class-C waste is the responsibility of the federal government, the disposal of GTCC radioactive waste is not directly affected by the partial closure of the Barnwell disposal facility and so is not an admissible aspect of a contention; LBP-08-16, 68 NRC 361 (2008)

because intervenors cannot reasonably be expected to discover the QA issues that gave rise to a notice of violation without the NOV itself as notice, they have plausibly argued that their new contention is based on new and materially different information; LBP-10-9, 71 NRC 493 (2010)

because intervenors' inability to satisfy the contention admissibility rules is due to factors beyond their control, the Commission declines to require them to meet both the strict late-filing requirements and the even stricter reopening standards if they identify safety issues during the upcoming years of ongoing construction of a fuel fabrication facility; CLI-09-2, 69 NRC 55 (2009)

because NEPA is a procedural statute, petitioners need not show that favorable rulings on their NEPA contentions will require denial of the license, but rather that procedures intended for protection of their members' concrete interests will be observed; LBP-09-16, 70 NRC 227 (2009)

because petitioners fail to create a genuine issue, the board need not resolve whether applicant's purpose is unreasonably narrow or whether a proposed alternative is so far beyond the realm of reason that it must be rejected out of hand; LBP-09-21, 70 NRC 581 (2009)

because the environmental report is the only environmental document available when NRC issues its notice of opportunity to request a hearing, initial contentions necessarily focus on the adequacy of the applicant's ER under Part 51; LBP-09-10, 70 NRC 51 (2009); LBP-09-25, 70 NRC 867 (2009)

because the reach of a contention necessarily hinges upon its terms and its stated bases, the brief explanation helps define the scope of the contention; LBP-09-26, 70 NRC 939 (2009)

because the significance of the current capacity limitation for the deep waste repository is unclear, a contention is admitted as a legal issue; LBP-09-6, 69 NRC 367 (2009)

before a board may refer a design certification-related contention to the Staff and hold it in abeyance, the contention must first be found to be admissible; CLI-10-1, 71 NRC 1 (2010)

before the board can consider a new contention, petitioner must show that it is based on information that was not previously available, is based on information that is materially different than information previously available, and has been submitted in a timely fashion; LBP-09-29, 70 NRC 1028 (2009)

boards are authorized to hold prehearing conferences to simplify or clarify the issues for hearing, after which they may admit a revised contention, as long as the revised contention does not add material not raised by the intervenor to make it admissible; LBP-10-14, 72 NRC 101 (2010)

boards are obliged to evaluate the timeliness of a proposed contention even if no party raises the issue; LBP-10-17, 72 NRC 501 (2010)

boards cannot be expected to sift through reams of data to determine whether a contention is admissible; LBP-07-3, 65 NRC 237 (2007)

boards have authority to narrow low-level radioactive waste contentions; LBP-09-16, 70 NRC 227 (2009)

boards have confined their inquiry to whether, with or without references to particular sources or documents, the supporting expert opinion has offered enough to justify a conclusion that the contention is worthy of further consideration on its merits; LBP-09-6, 69 NRC 367 (2009)

boards have discretion to reformulate contentions so as to clarify the issues for litigation; CLI-10-14, 71 NRC 449 (2010); LBP-10-9, 71 NRC 493 (2010)

boards look to both the contention and its stated bases; LBP-08-9, 67 NRC 421 (2008)

SUBJECT INDEX

boards may appropriately view petitioner's supporting information in a light favorable to the petitioner, but failure to provide such information regarding a proffered contention requires that the contention be rejected; LBP-10-7, 71 NRC 391 (2010)

boards may appropriately view petitioners' support for their contentions in a light favorable to petitioners, but it is petitioners' burden to establish the admissibility of contentions; LBP-09-17, 70 NRC 311 (2009)

boards may examine both the statements in the document that support the petitioner's assertions and those that do not; LBP-10-24, 72 NRC 720 (2010)

boards may not supply information that is missing or make assumptions of fact not provided by the petitioner; CLI-10-14, 71 NRC 449 (2010); LBP-10-6, 71 NRC 350 (2010)

boards may reformulate contentions to eliminate extraneous issues or to consolidate issues for a more efficient proceeding; LBP-09-16, 70 NRC 227 (2009)

boards should treat as a cognizable new consideration an attack on the Yucca Mountain environmental impact statements based on significant and substantial information that, if true, would render the statements inadequate; LBP-09-6, 69 NRC 367 (2009)

broad-based issues akin to safety culture, such as operational history, quality assurance, quality control, management competence, and human factors, are beyond the bounds of a license renewal proceeding; CLI-10-27, 72 NRC 481 (2010)

by complying with the six contention requirements in 10 C.F.R. 2.309(f)(1)(i)-(vi), petitioner must demonstrate that a contention raises an issue that is appropriate for a licensing board hearing and that such a hearing would not likely be a waste of time and resources; LBP-08-17, 68 NRC 431 (2008)

by complying with the six contention requirements, an admissible contention must raise an issue that is both within the scope of the proceeding (normally defined by the hearing notice) and material to the findings the NRC must make to support the action involved; LBP-09-17, 70 NRC 311 (2009); LBP-09-18, 70 NRC 385 (2009)

by defining significantly different information in the draft EIS as a permissible basis for filing a new contention, the Commission has in effect concluded that such new information is good cause for filing a new contention; LBP-10-24, 72 NRC 720 (2010)

by definition, contentions admitted under 10 C.F.R. 2.309(f)(2)(i)-(iii) are timely because they are founded on material new information that was not available at the time when the petition was initially due; LBP-09-10, 70 NRC 51 (2009)

Category 1 issues, which are those generically addressed by the NRC's Generic Environmental Impact Statement for License Renewal, are inadmissible in a license renewal proceeding; LBP-10-13, 71 NRC 673 (2010)

Category 1, or generic, issues in Appendix B to Subpart A of Part 51 are not within the scope of a license renewal proceeding; LBP-06-10, 63 NRC 314 (2006)

Category 2 issues are not essentially similar for all plants because they must be reviewed on a site-specific basis and thus challenges relating to these issues are properly part of a license renewal proceeding; LBP-08-13, 68 NRC 43 (2008)

Category 2 issues, for which an applicant must make a plant-specific analysis of environmental impacts in its environmental report and the NRC Staff must prepare a supplemental environmental impact statement, ordinarily are deemed to be within the scope of license renewal proceedings; LBP-06-7, 63 NRC 188 (2006); LBP-06-10, 63 NRC 314 (2006)

challenge to adequacy of a plant's evacuation plan must be denied because emergency planning is not within the scope of license renewal as a safety issue; LBP-07-11, 66 NRC 41 (2007)

challenge to specific input data to the severe accident mitigation alternatives analysis could bring a contention on adequacy of an evacuation plan within the scope of license renewal; LBP-07-11, 66 NRC 41 (2007)

challenge to the severe accident mitigation design alternatives analysis performed for the AP1000 certified design constitutes an impermissible challenge to NRC regulations; CLI-10-1, 71 NRC 1 (2010)

challenge to the technical adequacy of baseline water quality data and adequate confinement of the host aquifer in applicant's environmental report is admissible; LBP-10-16, 72 NRC 361 (2010)

challenges to a Commission rule or that seek to litigate a matter that is, or clearly is about to become, the subject of a rulemaking, are inadmissible; LBP-09-17, 70 NRC 311 (2009); LBP-09-18, 70 NRC 385 (2009); LBP-09-21, 70 NRC 581 (2009); LBP-09-26, 70 NRC 939 (2009)

SUBJECT INDEX

challenges to a severe accident mitigation design alternatives analysis are within the scope of a combined license proceeding; LBP-10-14, 72 NRC 101 (2010)

challenges to an issue already addressed in the Final Safety Evaluation Report for the ABWR Design Control Document are closed to licensing boards as an impermissible attack on the ABWR certified design; LBP-10-14, 72 NRC 101 (2010)

challenges to applicable statutory requirements or Commission regulations are not admissible in agency adjudications; LBP-08-26, 68 NRC 905 (2008); LBP-09-16, 70 NRC 227 (2009)

challenges to applicant's reliance on a pending reactor design certification fundamentally on procedural grounds constitutes an impermissible challenge to NRC regulations that allow the procedure applicant has chosen; LBP-08-17, 68 NRC 431 (2008)

challenges to Commission rules or regulations are inadmissible, unless a waiver is requested under 10 C.F.R. 2.335(b); LBP-09-17, 70 NRC 311 (2009); LBP-09-21, 70 NRC 581 (2009)

challenges to dose limits in NRC regulations are not appropriate for admission; LBP-08-6, 67 NRC 241 (2008)

challenges to how the Staff performs its reviews are outside the scope of licensing proceedings; LBP-08-9, 67 NRC 421 (2008)

challenges to license applications must be in the form of an asserted omission from the application of required information or an asserted error in a specific analysis or other technical matter set out in the application; LBP-08-9, 67 NRC 421 (2008)

challenges to NRC's authority to engage in administrative dispute resolution is beyond the scope of enforcement order proceedings; LBP-08-14, 68 NRC 279 (2008)

challenges to the adequacy of Table S-3, which was initially prepared more than 25 years ago, may be made through a petition for rulemaking; LBP-08-17, 68 NRC 431 (2008)

challenges to the adequacy of the NRC's groundwater restoration standards are impermissible; LBP-08-6, 67 NRC 241 (2008)

challenges to the Commission regulations regarding the design certification process are inadmissible; LBP-09-18, 70 NRC 385 (2009)

challenges to the current licensing basis are outside the scope of a license renewal proceeding; LBP-10-15, 72 NRC 257 (2010)

challenges to the current operating license are outside the scope of matters challengeable in a power uprate application; LBP-08-9, 67 NRC 421 (2008)

challenges to the implementing procedures for a reactor emergency plan are not material in a materials license proceeding; LBP-06-12, 63 NRC 403 (2006)

challenges to the merits of contentions must await either motions for summary disposition or an evidentiary hearing; LBP-07-5, 65 NRC 341 (2007)

challenges to the position of an applicant that is based on a condition in its current license are permissible; LBP-08-6, 67 NRC 241 (2008)

challenges to the Waste Confidence Rule must be made in the context of a rulemaking, not in an adjudicatory proceeding; CLI-10-19, 72 NRC 98 (2010)

citation to specific and potentially inconsistent portions of applicant's documents together with the declaration of petitioner's unchallenged expert provide alleged facts or expert opinion that are sufficient to meet the contention pleading requirements; LBP-06-20, 64 NRC 131 (2006)

claims about the adequacy of the Staff's safety review are not litigable in licensing proceedings; CLI-08-23, 68 NRC 461 (2008)

claims by a nonlicensee to the effect that the root causes or facts underpinning a confirmatory order are inaccurate are not valid claims in an enforcement proceeding concerning that order; LBP-08-14, 68 NRC 279 (2008)

claims related to the decommissioning of the facility are not currently ripe for review and are outside the scope of a combined license proceeding; LBP-09-16, 70 NRC 227 (2009)

claims that are not a challenge to the adequacy of the application are insufficient to establish an admissible contention; LBP-08-6, 67 NRC 241 (2008)

Commission pleading rules permit contentions that raise issues of law as well as contentions that raise issues of fact; CLI-09-14, 69 NRC 580 (2009)

Commission regulations do not contemplate filing a vague, unsupported pleading as a placeholder for a more detailed pleading to follow; CLI-09-5, 69 NRC 115 (2009)

SUBJECT INDEX

Commission regulations may not be directly attacked in adjudicatory proceedings, but a party may petition for a waiver of the application of a regulation; LBP-10-12, 71 NRC 656 (2010)

Commission rules and longstanding precedent bar discovery in connection with the preparation of proposed contentions; CLI-08-28, 68 NRC 658 (2008)

Commission rules bar contentions where petitioners have only what amounts to generalized suspicions that they hope to substantiate later; LBP-08-17, 68 NRC 431 (2008)

compared to notice pleading in the federal courts, NRC's contention requirements have correctly been called "strict by design," but they are not intended to require the impossible; LBP-09-6, 69 NRC 367 (2009)

compliance with regulations of other federal agencies, such as Environmental Protection Agency drinking water contamination limits, is beyond a board's jurisdiction and outside the scope of a materials license proceeding; LBP-06-8, 63 NRC 241 (2006)

concerns raised by petitioners related to the applicant's foreign ownership are potentially material to the safety and environmental requirements; LBP-08-6, 67 NRC 241 (2008)

contention admissibility requirements are deliberately strict and any contention that does not satisfy the requirements of 10 C.F.R. 2.309(f)(1) will be rejected; CLI-09-14, 69 NRC 580 (2009); CLI-09-20, 70 NRC 911 (2009); CLI-10-9, 71 NRC 245 (2010); LBP-09-26, 70 NRC 939 (2009); LBP-10-6, 71 NRC 350 (2010)

contention admissibility requirements are rigorous and demand a level of discipline and preparedness on the part of petitioners, who must examine the publicly available material and set forth their claims and the support for their claims at the outset; LBP-06-12, 63 NRC 403 (2006)

contention alleging a failure to evaluate the impact of a severe accident at one unit on other units when the initiating event is an external event such as an earthquake is inadmissible; LBP-10-10, 71 NRC 529 (2010)

contention alleging foreign ownership of applicant, failure to disclose, and various ramifications of such ownership is admissible; LBP-09-1, 69 NRC 11 (2009)

contention alleging that depleted uranium-contaminated bombing plume dust causes health issues in the community is inadmissible because it lacks a supporting statement of the alleged facts or expert opinions; LBP-10-4, 71 NRC 216 (2010)

contention alleging that the Army employs truckers to remove depleted uranium-contaminated soil from its site and dump it in the community is inadmissible; LBP-10-4, 71 NRC 216 (2010)

contention alleging that the environmental report failed to address the alleged greenhouse gas and global climate disruption impacts resulting from prematurely killing trees is inadmissible; LBP-09-10, 70 NRC 51 (2009)

contention alleging that the threatened eastern fox snake inhabits the nuclear plant site and that construction activities for the new reactor will kill snakes, destroy their habitat, and might eliminate them from the area is within the scope of a combined license proceeding; LBP-09-16, 70 NRC 227 (2009)

contention alleging that worldwide uranium supplies will be inadequate is dismissed for failure to provide expert opinion, documents, or other sources to support its allegation; LBP-08-15, 68 NRC 294 (2008)

contention asserting that DOE's description of its expert elicitation relating to a probabilistic volcanic hazard analysis update fails to comply with this section or the NRC guidance document that DOE formally committed to follow, is admissible; LBP-09-29, 70 NRC 1028 (2009)

contention based on a recent study suggesting a link between low levels of arsenic in drinking water and diabetes is rejected; CLI-09-12, 69 NRC 535 (2009)

contention challenging a particular use of a straight-line Gaussian air dispersion model in the applicant's severe accident mitigation alternatives analysis is admissible in a license renewal proceeding; CLI-09-11, 69 NRC 529 (2009)

contention disputing the cost estimate for decommissioning is an indirect challenge to 10 C.F.R. 50.75(c) and therefore inadmissible; LBP-09-16, 70 NRC 227 (2009)

contention in combined license proceeding focusing exclusively on regulations governing waste disposal is inadmissible; CLI-09-16, 70 NRC 33 (2009)

contention is rejected as lacking support for the premise that ongoing mining operations will drain or contaminate wetlands, such that their economic benefits will be decreased; LBP-10-16, 72 NRC 361 (2010)

SUBJECT INDEX

contention pleading requirements serve to focus litigation on concrete issues and result in a clearer and more focused record for decision; LBP-08-9, 67 NRC 421 (2008)

contention raising question of whether a quantitative as opposed to qualitative analysis of terrorist attacks and the alternatives for mitigation and prevention is necessary is referred to the Commission as a novel issue; LBP-10-15, 72 NRC 257 (2010)

contention requirements were never intended to be turned into a fortress to deny intervention; LBP-09-6, 69 NRC 367 (2009)

contention standards require pleading specific grievances, not simply providing general notice pleadings; CLI-10-11, 71 NRC 287 (2010)

contention that a license renewal application fails to satisfy NEPA because it does not address environmental impacts of an attack by deliberate and malicious crash of aircraft into the plant is denied; LBP-07-11, 66 NRC 41 (2007)

contention that applicant failed to address the impact of a chain reaction that leads to more than one unit experiencing a severe accident is inadmissible; LBP-10-10, 71 NRC 529 (2010)

contention that applicant failed to consider and evaluate the impacts of severe accident scenarios, regardless of probability, with release times shorter than the duration needed to achieve cold shutdown, is inadmissible; LBP-10-10, 71 NRC 529 (2010)

contention that applicant's failure to address externally initiated accident scenarios is a material omission from the environmental report is inadmissible; LBP-10-10, 71 NRC 529 (2010)

contention that asks the licensing board to determine whether applicant would be able to obtain permits from and comply with regulatory requirements imposed by other agencies is outside NRC's jurisdiction; LBP-08-15, 68 NRC 294 (2008)

contention that concerns onsite and offsite impacts of active and passive dewatering associated with the proposed project satisfies the admissibility criteria; LBP-09-10, 70 NRC 51 (2009)

contention that suggests that financial qualifications information should be provided in the application submitted by a regulated electric utility represents an impermissible challenge to Commission regulations; LBP-08-17, 68 NRC 431 (2008)

contention that the high-level waste application inadequately addresses generalized corrosion because it relies on flawed experimental data raises a genuine, material dispute with the application by pointing to specific sections that allegedly fail to comply with the NRC's requirements for conducting a post-closure performance assessment; LBP-09-29, 70 NRC 1028 (2009)

contention that the mere existence of numerous requests for additional information constituted *prima facie* evidence that the application is incomplete is rejected; CLI-09-12, 69 NRC 535 (2009)

contention that worldwide uranium supplies will be inadequate to permit the anticipated power production benefits during the license term is potentially material to the licensing proceeding; LBP-08-15, 68 NRC 294 (2008)

contentions alleging deficiencies or errors in an application must indicate some significant link between the claimed deficiency and either the health and safety of the public or the environment; LBP-08-16, 68 NRC 361 (2008)

contentions are inadmissible where intervenors did not perform the bare minimum preparations and there was no attempt to perform any independent analysis; LBP-09-6, 69 NRC 367 (2009)

contentions are inadmissible where petitioner offers only bald assertions and provides little support for them; LBP-09-6, 69 NRC 367 (2009)

contentions challenging low-level radioactive waste storage may not rely on 10 C.F.R. Part 61, which pertains to land disposal facilities; CLI-10-2, 71 NRC 27 (2010)

contentions challenging Staff's significant hazards consideration determination are not appropriate for review in a license amendment proceeding; LBP-08-18, 68 NRC 533 (2008); LBP-08-19, 68 NRC 545 (2008); LBP-08-20, 68 NRC 549 (2008)

contentions concerning an applicant's plan for disposal of Greater-Than-Class-C radioactive waste cannot be admitted because disposal of that type of waste is the responsibility of the federal government; LBP-09-4, 69 NRC 170 (2009)

contentions for which petitioners have only what amounts to generalized suspicions, hoping to substantiate them later, are barred; LBP-08-6, 67 NRC 241 (2008); LBP-09-6, 69 NRC 367 (2009)

contentions may be amended or new contentions filed, with permission from the presiding officer, if petitioner shows that information on which the contention is based was not previously available and is

SUBJECT INDEX

materially different than information previously available and the contention has been submitted in a timely fashion based on the availability of the subsequent information; CLI-10-18, 72 NRC 56 (2010)

contentions must assert an issue of law or fact that is material to the outcome of a licensing proceeding, meaning that the subject matter of the contention must impact the grant or denial of a pending license application; LBP-08-16, 68 NRC 361 (2008)

contentions must be accompanied by a concise statement of the alleged facts or expert opinions that support the requestor's/petitioner's position on the issue together with references to the specific sources and documents on which it intends to rely to support its position; LBP-09-10, 70 NRC 51 (2009); LBP-09-26, 70 NRC 939 (2009); LBP-10-6, 71 NRC 350 (2010)

contentions must be based on a genuine material dispute, not the possibility that petitioners, if they perform their own additional analyses, may ultimately disagree with the application; CLI-06-10, 63 NRC 451 (2006)

contentions must be based on documents available at the time the petition is to be filed, such as the environmental report filed by an applicant; LBP-07-14, 66 NRC 169 (2007); LBP-08-6, 67 NRC 241 (2008)

contentions must be filed with the original intervention petition within 60 days of notice of the proceeding in the *Federal Register*, unless a longer period is therein specified, an extension is granted, or the contentions meet certain criteria for late-filed or new contentions based on information that is available only at a later time; LBP-08-6, 67 NRC 241 (2008)

contentions must be within the scope of the proceeding as defined by the Commission in its initial hearing notice and order referring the proceeding to the licensing board; LBP-08-16, 68 NRC 361 (2008); LBP-10-7, 71 NRC 391 (2010)

contentions must directly controvert a position taken by the applicant in the application and explain why the application is deficient; LBP-08-6, 67 NRC 241 (2008)

contentions must fall within the scope of the proceeding in which intervention is sought; CLI-06-24, 64 NRC 111 (2006)

contentions must focus on the license application in question, challenging either specific portions of or alleged omissions from the application; LBP-08-16, 68 NRC 361 (2008)

contentions must include a specific statement of the issue of law or fact to be raised or controverted as well as a brief explanation of the basis for the contention; LBP-08-26, 68 NRC 905 (2008)

contentions must meet the six requirements of 10 C.F.R. 2.309(f)(1); LBP-06-4, 63 NRC 99 (2006); LBP-08-13, 68 NRC 43 (2008); LBP-10-4, 71 NRC 216 (2010); LBP-10-14, 72 NRC 101 (2010)

contentions must specifically challenge the license application to be admissible; LBP-08-9, 67 NRC 421 (2008)

contentions of omission must describe the information that should have been included in the environmental report and provide the legal basis that requires the omitted information to be included; LBP-09-16, 70 NRC 227 (2009)

contentions on information a COL applicant should supply in order to satisfy NRC regulations regarding the safety of long-term storage of low-level radioactive waste are application-specific and thus would benefit from further development by the board and the parties; CLI-09-16, 70 NRC 33 (2009)

contentions raising legal issues, like fact-based contentions, must fall within the allowable scope of the proceeding to be admissible; LBP-10-17, 72 NRC 501 (2010)

contentions relating to the conclusions that the NRC Staff reaches in its NEPA analysis with regard to the environmental impacts from radiological releases to groundwater must await future publication of its supplemental environmental impact statement; LBP-08-13, 68 NRC 43 (2008)

contentions that advocate stricter requirements than agency rules impose or that otherwise seek to litigate a generic determination established by a Commission rulemaking are inadmissible; LBP-07-3, 65 NRC 237 (2007); LBP-07-10, 66 NRC 1 (2007); LBP-08-16, 68 NRC 361 (2008); LBP-08-17, 68 NRC 431 (2008); LBP-09-3, 69 NRC 139 (2009); LBP-09-6, 69 NRC 367 (2009); LBP-10-7, 71 NRC 391 (2010); LBP-10-21, 72 NRC 616 (2010)

contentions that applicant's environmental report fails to satisfy NEPA because it does not address the environmental impacts of severe spent fuel pool accidents, and fails to address severe accident mitigation alternatives that would reduce the potential for spent fuel pool water loss and fires, are inadmissible; LBP-06-23, 64 NRC 257 (2006)

contentions that are not well supported by an expert are not admissible; LBP-09-6, 69 NRC 367 (2009)

SUBJECT INDEX

contentions that attack a Commission rule, or that seek to litigate a matter that is, or clearly is about to become, the subject of a rulemaking, are inadmissible; LBP-07-10, 66 NRC 1 (2007); LBP-10-21, 72 NRC 616 (2010)

contentions that call for requirements in excess of those imposed by the Commission must be rejected as a collateral attack on the regulations; LBP-08-9, 67 NRC 421 (2008)

contentions that challenge applicable statutory requirements or the basic structure of the agency's regulatory process are inadmissible; LBP-10-21, 72 NRC 616 (2010)

contentions that concern greater-than-Class-C waste, seek to require a change to the decommissioning cost estimate, or constitute a challenge to Table S-3 of 10 C.F.R. 51.51 are inadmissible; LBP-09-4, 69 NRC 170 (2009); LBP-09-16, 70 NRC 227 (2009)

contentions that do not satisfy the requirements of 10 C.F.R. 2.309(f)(1) must be rejected; CLI-09-8, 69 NRC 317 (2009)

contentions that fail to directly controvert the application or that mistakenly assert the application does not address a relevant issue can be dismissed; LBP-08-16, 68 NRC 361 (2008)

contentions that fail to provide supporting facts or expert opinion are inadmissible; LBP-08-19, 68 NRC 545 (2008)

contentions that fail to raise a genuine dispute of material fact or law with the applicant are inadmissible; LBP-08-19, 68 NRC 545 (2008)

contentions that fail to satisfy the pleading requirements of 10 C.F.R. 2.309(f)(1) are inadmissible; LBP-08-18, 68 NRC 533 (2008); LBP-08-19, 68 NRC 545 (2008); LBP-08-20, 68 NRC 549 (2008); LBP-08-24, 68 NRC 691 (2008); LBP-08-26, 68 NRC 905 (2008)

contentions that fall outside the scope of the proceeding must be rejected; LBP-08-16, 68 NRC 361 (2008); LBP-08-26, 68 NRC 905 (2008); LBP-09-26, 70 NRC 939 (2009)

contentions that inappropriately focus on Staff's review of the application rather than on the errors and omissions in the application itself are inadmissible; CLI-10-27, 72 NRC 481 (2010)

contentions that question the Staff's review are improper; CLI-09-14, 69 NRC 580 (2009)

contentions that raise issues of law as well as contentions that raise issues of fact are permitted; LBP-10-17, 72 NRC 501 (2010)

contentions that seek compliance with the National Environmental Policy Act must be based on applicant's environmental report; CLI-10-2, 71 NRC 27 (2010)

contentions that simply state petitioner's views about what regulatory policy should be do not present a litigable issue; LBP-10-7, 71 NRC 391 (2010); LBP-10-21, 72 NRC 616 (2010)

contentions will be ruled inadmissible if petitioner has offered no tangible information, no experts, no substantive affidavits, but instead only bare assertions and speculation; LBP-08-17, 68 NRC 431 (2008); LBP-08-26, 68 NRC 905 (2008)

contentions will be screened out when petitioners have no particular expertise or expert assistance and no particularized grievance; LBP-06-10, 63 NRC 314 (2006)

contested issues must be within the scope of the proceeding; CLI-10-2, 71 NRC 27 (2010)

controls other countries may impose on mining and milling, and the impacts of such activities, are outside the scope of a combined license proceeding; LBP-09-17, 70 NRC 311 (2009)

cost-risk calculations that intervenors propose in in their contention as they relate to the existing reactors are not material to the findings that the NRC must make to license the proposed reactors; LBP-10-14, 72 NRC 101 (2010)

defect in an application can give rise to a valid contention of omission and cannot therefore be rejected as unripe; LBP-08-24, 68 NRC 691 (2008)

detailed pleadings help to ensure that full adjudicatory hearings are triggered only by those able to proffer at least some minimal factual and legal foundation in support of their contentions; LBP-06-23, 64 NRC 257 (2006)

detailed pleadings put other parties in the proceeding on notice of the petitioner's specific grievances and thereby give them a good idea of the claims they will be either supporting or opposing; LBP-06-23, 64 NRC 257 (2006)

determination of admissibility of "areas of concern" based upon a standard of "germaneness" is no longer applicable in NRC proceedings; LBP-06-12, 63 NRC 403 (2006)

SUBJECT INDEX

determining whether a contention is adequately supported by a concise allegation of the facts or expert opinion is not a hearing on the merits; LBP-07-16, 66 NRC 277 (2007); LBP-08-26, 68 NRC 905 (2008); LBP-09-26, 70 NRC 939 (2009)

discharge of chlorine or other biocides is a Category 1, out-of-scope issue in a license renewal proceeding; LBP-07-4, 65 NRC 281 (2007)

dismissal of one contention on mootness grounds would not terminate a case where the board had expressly retained jurisdiction to decide whether to admit another contention; LBP-09-27, 70 NRC 992 (2009)

docketing decisions are not challengeable in an adjudicatory proceeding; CLI-08-15, 68 NRC 1 (2008)

DOE's management integrity to operate a high-level waste geologic repository is an impermissible challenge to the Nuclear Waste Policy Act and is therefore beyond the scope of the proceeding; CLI-09-14, 69 NRC 580 (2009)

drought and climate change issues are within the scope of a materials license amendment proceeding; LBP-08-6, 67 NRC 241 (2008)

each contention must assert an issue of law or fact that is within the scope of the proceeding and is material to the outcome of the licensing proceeding; CLI-09-15, 70 NRC 1 (2009)

each factual environmental contention must be accompanied by one or more affidavits, but a purely legal-issue contention cannot logically require affidavit support, as by definition such a contention alleges no facts that require support; LBP-09-6, 69 NRC 367 (2009)

economic impact of a proposed action on ratepayers is outside the scope of a NEPA analysis; LBP-10-14, 72 NRC 101 (2010)

embrittlement of the reactor pressure vessel is within the scope of a license renewal proceeding; LBP-06-10, 63 NRC 314 (2006)

emergency planning concerns are not within the scope of a license renewal proceeding; LBP-06-20, 64 NRC 131 (2006); LBP-06-23, 64 NRC 257 (2006)

emergency planning is excluded from license renewal proceedings because the issue is not germane to age-related degradation or unique to the period of time covered by the license renewal; LBP-07-4, 65 NRC 281 (2007)

enforcement orders limit adjudication to whether the facts as stated in the order are true and whether the proposed sanction is supported by those facts; CLI-06-16, 63 NRC 708 (2006)

environmental impacts of spent fuel storage are inadmissible in a combined license proceeding; LBP-09-18, 70 NRC 385 (2009)

environmental issues identified as "Category 1," or "generic," issues in 10 C.F.R. Part 51, Subpart A, Appendix B, are not within the scope of a license renewal proceeding; LBP-07-11, 66 NRC 41 (2007)

environmental issues that might otherwise be relevant to license renewal shall be resolved generically for all plants and thus are beyond the scope of a license renewal hearing; LBP-06-7, 63 NRC 188 (2006)

environmental justice contentions must be based on the specific characteristics of a particular minority community; LBP-07-3, 65 NRC 237 (2007)

environmental justice issues are inadmissible when no sufficiently specific disproportionate effects with a nexus to the physical environment are alleged or shown to fall on low-income and minority communities; LBP-06-10, 63 NRC 314 (2006)

error-related challenges to license applications must be supported by reasons why the analysis is deficient; LBP-08-9, 67 NRC 421 (2008)

even if a petitioner is unable to show that the NRC Staff's NEPA document differs significantly from the environmental report, it may still be able to meet the late-filed contention requirements; LBP-10-24, 72 NRC 720 (2010)

even if late-filed contention criteria are satisfied, proposed contentions still must meet the threshold admissibility standards contained in 10 C.F.R. 2.309(f)(1); CLI-08-1, 67 NRC 1 (2008); CLI-09-7, 69 NRC 235 (2009)

expert opinion that merely states a conclusion that the application is deficient, inadequate, or wrong without providing a reasoned basis or explanation for that conclusion is inadequate because it deprives the board of the ability to make the necessary, reflective assessment of the opinion; CLI-10-2, 71 NRC 27 (2010); LBP-10-6, 71 NRC 350 (2010); LBP-10-10, 71 NRC 529 (2010)

expert support is not required at the admission stage; LBP-08-6, 67 NRC 241 (2008)

SUBJECT INDEX

expert support is not required for admission of a contention because a fact-based argument may be sufficient on its own; LBP-08-27, 68 NRC 951 (2008)

factors (v) and (vi) of 10 C.F.R. 2.309(c) generally are given less weight than factors (vii) and (viii); LBP-10-1, 71 NRC 165 (2010)

facts relied on in support of a contention of omission need not show that applicant's facility cannot be safely operated, but rather that the application is incomplete under the governing regulations; LBP-08-15, 68 NRC 294 (2008)

failure of a contention to meet any of the requirements of 10 C.F.R. 2.309(f)(1) is grounds for its dismissal; CLI-09-5, 69 NRC 115 (2009); CLI-09-7, 69 NRC 235 (2009); CLI-09-15, 70 NRC 1 (2009); LBP-06-10, 63 NRC 314 (2006); LBP-06-23, 64 NRC 257 (2006); LBP-07-3, 65 NRC 237 (2007); LBP-07-4, 65 NRC 281 (2007); LBP-07-7, 65 NRC 507 (2007); LBP-07-10, 66 NRC 1 (2007); LBP-07-11, 66 NRC 41 (2007); LBP-07-16, 66 NRC 277 (2007); LBP-08-6, 67 NRC 241 (2008); LBP-08-16, 68 NRC 361 (2008); LBP-09-3, 69 NRC 139 (2009); LBP-09-10, 70 NRC 51 (2009); LBP-09-17, 70 NRC 311 (2009); LBP-09-21, 70 NRC 581 (2009); LBP-09-26, 70 NRC 939 (2009); LBP-10-4, 71 NRC 216 (2010); LBP-10-7, 71 NRC 391 (2010); LBP-10-15, 72 NRC 257 (2010); LBP-10-16, 72 NRC 361 (2010); LBP-10-21, 72 NRC 616 (2010)

failure of an applicant to include new and significant information concerning a Category 1 issue relating to the dangers of high-density racking of spent fuel in its environmental report does not give rise to an admissible contention; LBP-06-20, 64 NRC 131 (2006)

failure of petitioner to reference any portion of the combined license application with which it takes issue is grounds for dismissal of its contention; CLI-10-9, 71 NRC 245 (2010)

failure to directly controvert the application or mistakenly asserting that the application does not address a relevant issue will result in dismissal; LBP-07-10, 66 NRC 1 (2007)

failure to frame a safety concern arising from the interaction of the proposed design certification document amendment with the existing certified standard design and/or a facility-specific provision of the COLA leaves the contention as an inadmissible challenge to the Part 52 regulatory framework; LBP-09-3, 69 NRC 139 (2009)

failure to point to a regulation that requires the inclusion of omitted information in an application is fatal and thus precludes the admission of the contention; LBP-10-16, 72 NRC 361 (2010)

failure to present the factual information or expert opinions necessary to support a contention adequately requires that the contention be rejected; LBP-06-27, 64 NRC 438 (2006); LBP-08-26, 68 NRC 905 (2008)

failure to provide facts or expert opinion sufficient to show that the environmental report disregarded a feasible alternative based on either wind power, solar power, or some combination of the two renders the contention inadmissible; LBP-09-16, 70 NRC 227 (2009)

failure to provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact is grounds for dismissal of a contention; CLI-10-9, 71 NRC 245 (2010); LBP-10-6, 71 NRC 350 (2010)

failure to set forth the significance of an online article makes it inadequate to support the admission of the contention; LBP-08-24, 68 NRC 691 (2008)

failure to specify the language of a contention and distinguish it from the discussion that might otherwise be considered the basis for the issue statement might be grounds for dismissing the contention; LBP-08-16, 68 NRC 361 (2008); LBP-10-7, 71 NRC 391 (2010)

filing of a new contention on the basis of the draft or final environmental impact statement where that document contains information that differs significantly from the information that was previously available is allowed; CLI-09-12, 69 NRC 535 (2009)

fire safety issues do not come within the NRC's safety review of a license renewal application because they are already the focus of ongoing regulatory processes; LBP-07-11, 66 NRC 41 (2007)

five factors must be balanced under pre-2004 rules before a petition to admit a late-filed contention can be granted; CLI-08-8, 67 NRC 193 (2008)

fluctuations in demand that may occur over a period of several years, such as changes brought about by an economic recession, are not a legally sufficient ground for challenging the need-for-power analysis; LBP-10-24, 72 NRC 720 (2010)

for a contention of omission, petitioner may satisfy the requirement to provide a specific statement of the legal or factual issue sought to be raised by providing an adequate description of the information it

SUBJECT INDEX

contends should have been included in the application; LBP-08-15, 68 NRC 294 (2008); LBP-09-3, 69 NRC 139 (2009); LBP-09-16, 70 NRC 227 (2009)

for a contention regarding environmental impacts of spent fuel storage to be within the scope of an operating license renewal proceeding, petitioner must obtain a waiver under 10 C.F.R. 2.335(d); LBP-10-15, 72 NRC 257 (2010)

for a contention to be admissible, it must satisfy eight pleading requirements; LBP-10-13, 71 NRC 673 (2010)

for a contention to be held in abeyance, it must otherwise be admissible; LBP-09-18, 70 NRC 385 (2009)

for a contention to pass the materiality test, there must be some significant link between a claimed deficiency and either the health and safety of the public, or the environment; LBP-07-16, 66 NRC 277 (2007)

for a request for hearing and petition to intervene to be granted, petitioner must establish that it has standing and propose at least one admissible contention; LBP-10-15, 72 NRC 257 (2010)

for an intervention petition to be granted, it also must proffer a contention that meets the general admissibility requirements; LBP-10-1, 71 NRC 165 (2010)

for contentions to be admissible, the subject matter of the contention must impact the grant or denial of a pending license application; LBP-09-3, 69 NRC 139 (2009)

for each contention, a petitioner must provide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact; CLI-10-20, 72 NRC 185 (2010); LBP-06-10, 63 NRC 314 (2006)

for factual disputes, petitioner need not proffer facts in formal affidavit or evidentiary form, sufficient to withstand a summary disposition motion, but must present sufficient information to show a genuine dispute and reasonably indicating that a further inquiry is appropriate; LBP-09-16, 70 NRC 227 (2009); LBP-09-17, 70 NRC 311 (2009); LBP-09-27, 70 NRC 992 (2009); LBP-10-24, 72 NRC 720 (2010)

for systems, structures, and components subject to aging management review, discussion of proposed inspection and monitoring details will come before a board only as they are needed to demonstrate that the intended function of relevant SSCs will be maintained for the license renewal period; LBP-08-13, 68 NRC 43 (2008)

for timely new or amended contentions, the pleading shall include a motion for leave to file the contention showing that it satisfies 10 C.F.R. 2.309(f)(1); LBP-09-22, 70 NRC 640 (2009)

further inquiry is warranted into the safety-related matter of whether the Final Safety Analysis Report has failed to include necessary information concerning applicant's plans for onsite management of Class B and C waste; LBP-08-16, 68 NRC 361 (2008)

general allegations covering the overall adequacy of structures, systems, and components, with no mention of potential errors or deficiencies in an applicant's license renewal application, do not support the admission of a contention; LBP-08-13, 68 NRC 43 (2008)

general assertions, unsupported by specific facts or expert opinion, that personnel reductions may adversely affect health and safety are inadmissible in a license transfer proceeding; CLI-06-21, 64 NRC 30 (2006)

general assertions, without some effort to show why the assertions undercut findings or analyses in the environmental report, fail to satisfy the requirements of 10 C.F.R. 2.309(f)(1)(vi); LBP-10-6, 71 NRC 350 (2010)

generalized challenge to the impartiality of the NRC regulatory process associated with hearings is inadmissible; LBP-08-16, 68 NRC 361 (2008)

generalized claims that are vague and insufficiently supported and do not tend to establish any connection with the proposed license or potential harm to petitioner are insufficient to support a contention; CLI-10-20, 72 NRC 185 (2010)

generic NRC policies and standards and the nature of the NRC Staff's licensing review are not subject to challenge in an adjudicatory proceeding; CLI-08-17, 68 NRC 231 (2008)

given that consideration of terrorist attacks is part of the NRC's NEPA obligations in the Ninth Circuit, the issue of whether terrorist attacks have been fully considered in the NEPA analysis for a power plant in that jurisdiction is plainly material to the decision the NRC must make; LBP-10-15, 72 NRC 257 (2010)

SUBJECT INDEX

- given that the *Federal Register* notice defines the scope of the issues that may properly be raised in a request for a hearing, it also defines the scope of the issues that could reasonably be deemed resolved during an ESP proceeding; LBP-08-15, 68 NRC 294 (2008)
- given the significant effort involved in identifying new information, assembling the required expertise, and then drafting a contention that satisfies section 2.309(f)(1), it would be inappropriate to impose the very short 10-day rule on the filing of new contentions; LBP-06-14, 63 NRC 568 (2006)
- good cause is the most significant of the late-filing factors set out in 10 C.F.R. 2.309(c); CLI-10-17, 72 NRC 1 (2010); LBP-10-24, 72 NRC 720 (2010)
- health effects of arsenic contamination of drinking water from mining operations are litigable in a materials license amendment proceeding; LBP-09-1, 69 NRC 11 (2009)
- historical actions by an applicant are not relevant to its current fitness unless there is some direct and obvious relationship between the asserted character issues and the licensing action in dispute; CLI-09-14, 69 NRC 580 (2009); CLI-10-20, 72 NRC 185 (2010)
- how applicant intends to handle low-level radioactive waste in the absence of an offsite disposal facility is material to the findings the agency must make on a combined license; LBP-09-3, 69 NRC 139 (2009)
- if a board misapprehends the intended meaning of a contention, the petitioner bears the responsibility for that misunderstanding; LBP-06-12, 63 NRC 403 (2006)
- if a board on remand were to rule in petitioners' favor regarding the admissibility of one contention, then the board should also reconsider its prior ruling that related contentions were admissible; CLI-10-21, 72 NRC 197 (2010)
- if a combined license application references a design certification, then the presiding officer shall not admit contentions concerning severe accident design mitigation alternatives unless the contention demonstrates that the site characteristics fall outside of the site parameters in the standard design certification; LBP-09-10, 70 NRC 51 (2009)
- if a contention challenges the legal sufficiency of the application that is the subject of the Notice of Hearing and Opportunity to Petition for Leave to Intervene, the contention is within the scope of the proceeding; LBP-08-15, 68 NRC 294 (2008)
- if a contention concerning a certification application that has been docketed but not granted is otherwise admissible under 10 C.F.R. 2.309(f)(1), it might be held in abeyance and referred to the Staff; LBP-09-17, 70 NRC 311 (2009)
- if a contention header uses a particular phrase, but the statement of the contention does not refer to the phrase or regulation, then the board may interpret the contention in accordance with the express statement of the contention; LBP-10-15, 72 NRC 257 (2010)
- if a contention makes a prima facie allegation that the application omits information required by law, it necessarily presents a genuine dispute with applicant on a material issue; LBP-09-16, 70 NRC 227 (2009)
- if a contention meets the 10 C.F.R. 2.309(f)(2) criteria, it is timely and the intervenor proffering the contention need not also make a showing under 10 C.F.R. 2.309(c); LBP-10-14, 72 NRC 101 (2010)
- if a contention satisfies the timeliness requirement of 10 C.F.R. 2.309(f)(2)(iii), then, by definition, it is not subject to section 2.309(c) which specifically applies to nontimely filings; LBP-09-27, 70 NRC 992 (2009); LBP-10-9, 71 NRC 493 (2010)
- if a matter as presented is devoid of safety significance, there is no likelihood whatsoever that a materially different result would have been likely had the newly proffered evidence been considered initially; LBP-08-12, 68 NRC 5 (2008)
- if a NEPA contention alleges that impacts or alternatives that are patently outside the realm of reason must be considered, then the contention should be denied for failure to demonstrate that the issue raised is within the legitimate scope of NEPA; LBP-09-10, 70 NRC 51 (2009)
- if a new contention is not timely, then its admissibility is evaluated under the eight-factor balancing test of 10 C.F.R. 2.309(c)(i)-(viii); LBP-09-10, 70 NRC 51 (2009)
- if a party files a new contention within 30 days of the availability of the new information, the contention will generally be considered timely; LBP-09-17, 70 NRC 311 (2009)
- if a petitioner neglects to provide the requisite support for its contentions, it is not within the Board's power to make assumptions of fact that favor the petitioner, nor may the Board supply information that is lacking; LBP-07-3, 65 NRC 237 (2007)

SUBJECT INDEX

- if a question arises over the scope of an admitted contention, the board or Commission will refer back to the bases set forth in support of the contention; CLI-10-15, 71 NRC 479 (2010)
- if a structure or component is already required to be replaced at mandated, specified time periods, it would fall outside the scope of license renewal review; LBP-07-4, 65 NRC 281 (2007)
- if admitted contentions are resolved before the FEIS is issued so as to conclude the contested portion of a proceeding, an intervenor could timely seek to litigate contentions regarding FEIS data or conclusions that differ significantly from the ER or the DEIS; LBP-07-3, 65 NRC 237 (2007)
- if applicant cures the omission, the contention of omission will become moot, and then intervenor must timely file a new or amended contention if it intends to challenge the sufficiency of the new information supplied by applicant; LBP-08-12, 68 NRC 5 (2008); LBP-08-15, 68 NRC 294 (2008); LBP-10-16, 72 NRC 361 (2010)
- if applicant proceeds with a site-specific reactor design instead of a certified design, any admissible issues would have to be addressed in the licensing adjudication; CLI-08-15, 68 NRC 1 (2008)
- if good cause for a late filing is not shown, the board may still permit the late filing, but petitioner must make a strong showing on the other factors; CLI-08-8, 67 NRC 193 (2008); LBP-10-24, 72 NRC 720 (2010)
- if intervenors provide no facts or expert opinion explaining why a conclusion in applicant's environmental report is incorrect, or fail to identify any SAMDAs that should be adopted if some unspecified new analysis were performed or any cost-beneficial SAMAs, their contention should be dismissed; LBP-10-10, 71 NRC 529 (2010)
- if new and materially different information becomes available during the processing of the application, and a petitioner promptly files a new contention based on this new information, the contention is admissible if it also satisfies the general contention pleading standards; LBP-06-14, 63 NRC 568 (2006)
- if no expert opinion or supporting relevant documents are submitted with a contention, any fact-based argument that is provided must be reasonably specific, coherent, and logical, sufficient to show such a dispute and indicate the appropriateness of further inquiry; LBP-09-17, 70 NRC 311 (2009)
- if petitioner believes that current NRC regulations are inadequate, the venue for raising such a concern is a section 2.802 petition to institute a rulemaking action; LBP-08-13, 68 NRC 43 (2008)
- if petitioner fails to offer alleged facts or expert opinion and a reasoned statement explaining any alleged inadequacy in the application, then petitioner has not demonstrated a genuine dispute; LBP-10-6, 71 NRC 350 (2010)
- if petitioner fails to provide the requisite support for its contentions, the board may not make assumptions of fact that favor the petitioner or supply information that is lacking; LBP-07-10, 66 NRC 1 (2007); LBP-08-9, 67 NRC 421 (2008); LBP-08-16, 68 NRC 361 (2008); LBP-08-17, 68 NRC 431 (2008); LBP-08-26, 68 NRC 905 (2008); LBP-09-3, 69 NRC 139 (2009); LBP-09-18, 70 NRC 385 (2009); LBP-09-26, 70 NRC 939 (2009); LBP-10-6, 71 NRC 350 (2010); LBP-10-7, 71 NRC 391 (2010)
- if petitioner files a new contention within the 20-day time limit set by the board, and if it satisfies the remaining factors in section 2.309(f)(2), petitioner need not address the requirements under section 2.309(c), which apply to nontimely filings; LBP-06-16, 63 NRC 737 (2006)
- if petitioner has proffered an admissible contention asserting an environmentally preferable alternative to the proposed reactors, this also would trigger the requirement that the environmental report contain cost estimates; CLI-10-9, 71 NRC 245 (2010)
- if petitioner identifies specific omissions in the combined license application, those omissions should be addressed in a contention to the board which, in turn, should refer such a contention to Staff for consideration in the design certification rulemaking, and hold that contention in abeyance, if it is otherwise admissible; LBP-08-21, 68 NRC 554 (2008)
- if petitioner makes a prima facie allegation that the application omits information required by law, it necessarily presents a genuine dispute with applicant on a material issue and raises an issue plainly material to an essential finding of regulatory compliance needed for license issuance; LBP-10-16, 72 NRC 361 (2010)
- if petitioner requests additional time to file before the 30-day period expires, new or amended contentions in the high-level waste repository proceeding may be considered timely upon a board finding that there has been an adequate showing of need for the additional time requested; LBP-08-10, 67 NRC 450 (2008)

SUBJECT INDEX

- if petitioners are dissatisfied with the Commission's generic approach to problems, their remedy lies in the rulemaking process, not in adjudication; LBP-09-16, 70 NRC 227 (2009)
- if petitioners cannot show that their new or revised contentions could not have been submitted without the requested access to the redacted information in the license transfer application, then they will have to meet not only the contention pleading requirements, but also the late-filing requirements; CLI-07-18, 65 NRC 399 (2007)
- if safety contentions filed before construction begins would be considered premature and/or speculative, NRC hearing opportunities could soon come to be viewed as chimerical; LBP-07-14, 66 NRC 169 (2007)
- if the Commission were to permit fundamentally routine inspection findings and regulatory determinations to form the basis for safety culture contentions, this could lead to a never-ending stream of minitrials on operational issues, in which the applicant would be required to demonstrate how each issue was satisfactorily resolved; CLI-10-27, 72 NRC 481 (2010)
- if the environmental impact of mining activities is potentially significant, then the failure of the environmental report for a combined license application to disclose the location of the offsite mine does not immunize it from being the subject of a legitimate contention; LBP-09-10, 70 NRC 51 (2009)
- if the presiding officer determines that any of the admitted contentions constitute pure issues of law, those contentions must be decided on the basis of briefs or oral argument according to a schedule determined by the presiding officer; LBP-09-6, 69 NRC 367 (2009)
- if the problem raised in a late-filed contention presents a sufficiently grave threat to public safety, a board should reopen the record to consider it even if it is not newly discovered and could have been raised in timely fashion; LBP-08-12, 68 NRC 5 (2008)
- if there is reason to believe that a departure from the NRC's license renewal generic environmental impact statement and related regulations is warranted, then the remedy is a petition for rulemaking to modify the rules or a petition for a waiver of the rules based on special circumstances, not an adjudicatory contention; CLI-07-8, 65 NRC 124 (2007)
- if, within 60 days after pertinent information that would support the framing of a contention first becomes available, intervenors submit a particularized and otherwise admissible contention regarding the construction of the facility, then the contention will be deemed timely without the need to satisfy the balancing test for late-filing requirements; CLI-09-2, 69 NRC 55 (2009)
- in a contention of omission, intervenors must show that what is allegedly omitted is required by law; LBP-10-10, 71 NRC 529 (2010)
- in a license renewal proceeding, safety contentions must focus on topics related to the detrimental effects of aging and related time-limited issues; LBP-07-15, 66 NRC 261 (2007)
- in a summary disposition context, the question about the need to amend or file a new contention becomes relevant when there is a dispute about whether an admitted issue statement is a contention of omission or a contention of inadequacy; LBP-08-2, 67 NRC 54 (2008); LBP-08-3, 67 NRC 85 (2008)
- in addition to general contention admissibility requirements, amended or new contentions filed after an intervenor's initial filing will be admitted only upon leave of the presiding officer and a demonstration that information upon which the contention is based was not previously available and is materially different than information previously available and has been submitted in a timely fashion based on the availability of the subsequent information; LBP-10-13, 71 NRC 673 (2010)
- in addition to meeting NRC's regular contention admissibility requirements in 10 C.F.R. 2.309(f), environmental contentions addressing any DOE environmental impact statement or supplement in the high-level waste proceeding must also conform to the requirements and address the applicable factors outlined in 10 C.F.R. 51.109; CLI-08-25, 68 NRC 497 (2008)
- in addressing the section 2.309(e)(1) factors, failure to provide any specific discussion of most of these items or the weight they should be given in the balance is a potentially fatal omission; LBP-10-21, 72 NRC 616 (2010)
- in adjudicatory proceedings it is the license application, not the NRC Staff review, that is at issue; CLI-08-15, 68 NRC 1 (2008)
- in an abundance of caution and in order to give petitioners every benefit of the doubt, the board considers whether any of the material at issue in a reply brief that would not constitute legitimate amplification might be admissible under the criteria of 10 C.F.R. 2.309(e) or (f)(2); LBP-09-17, 70 NRC 311 (2009)

SUBJECT INDEX

- in ASLBP proceedings, collateral estoppel may bar a party from relitigating the admissibility of a contention when an earlier board refused to admit the same contention in an earlier proceeding involving the same facility; LBP-08-23, 68 NRC 679 (2008)
- in deciding the ripeness question, it is important to look to whether delayed resolution of issues would foreclose any relief from the present injury suffered by appellees; LBP-09-1, 69 NRC 11 (2009)
- in determining ripeness, boards are to consider both the fitness of the issue for judicial decision and the hardship to the parties of withholding court consideration; LBP-08-24, 68 NRC 691 (2008)
- in determining whether a petitioner has established standing, the board must construe the petition in favor of the petitioner; LBP-09-6, 69 NRC 367 (2009)
- in evaluating petitions to intervene, licensing boards are not free to ignore the contention admissibility requirements of 10 C.F.R. 2.309(f)(1); CLI-09-8, 69 NRC 317 (2009)
- in five-factor analysis for admission of a late-filed contention, factors three and five are to be given more weight than factors two and four; CLI-08-8, 67 NRC 193 (2008)
- in making the findings required for issuance of a combined license, the Commission shall treat as resolved those matters resolved in connection with the issuance or renewal of a design certification rule; LBP-10-21, 72 NRC 616 (2010)
- in order to raise a timely contention, a party must piece together disparate shreds of information that, standing alone, have little apparent significance; CLI-10-27, 72 NRC 481 (2010)
- in passing upon whether an intervention petition should be granted, it is not the function of a licensing board to reach the merits of any contention contained therein; LBP-06-22, 64 NRC 229 (2006)
- in proffering contentions for admission, petitioner need not make the full investigation and present both sides of the case; LBP-09-6, 69 NRC 367 (2009)
- in proffering contentions that challenge an application, petitioner or intervenor must provide support, including references to sources and documents on which it intends to rely, and a guidance document could be one of those sources; CLI-10-24, 72 NRC 451 (2010)
- in revising its contention admissibility requirements, the Commission sought to preclude a contention from being admitted where an intervenor has no facts to support its positions, but rather hopes to use discovery or cross-examination as a fishing expedition; LBP-09-6, 69 NRC 367 (2009)
- in ruling on contention admissibility a board is not to look to the merits of the contention; LBP-09-17, 70 NRC 311 (2009)
- in the absence of a 10 C.F.R. 2.335 waiver petition, any challenge brought to aspects of a referenced certified reactor design is outside the scope of a combined license proceeding; CLI-08-15, 68 NRC 1 (2008); LBP-08-16, 68 NRC 361 (2008)
- in the absence of documentary or expert support, reliance on a guidance document to form the basis of a proposed contention does not, by itself, demonstrate a dispute with applicant; LBP-10-5, 71 NRC 329 (2010)
- in the interest of economical use of NRC resources, a board postpones examination of the balance of petitioner's claims to determine whether they are in conformity with the requirements of the Rules of Practice; LBP-06-6, 63 NRC 167 (2006)
- in the overall COLA/DCD process, petitioners will have an opportunity to file new contentions related to material new information regarding site-specific plant design issues; LBP-09-8, 69 NRC 736 (2009)
- inadequacy of environmental report's reliance on Table S-3 regarding radioactive effluents from the uranium fuel cycle is not litigable in a combined license proceeding; LBP-08-16, 68 NRC 361 (2008)
- incorporation by reference is contrary to Commission case law and will result in denial of contentions on the basis on the dearth of information; LBP-10-16, 72 NRC 361 (2010)
- information, alleged facts, and expert opinions provided by a petitioner will be examined by the board to confirm that the petitioner does indeed supply adequate support for its contention; LBP-09-26, 70 NRC 939 (2009); LBP-10-6, 71 NRC 350 (2010)
- information must include references to specific portions of the application, including the applicant's environmental report and safety report, that the petitioner disputes and the supporting reasons for each dispute; LBP-06-10, 63 NRC 314 (2006)
- insofar as a contention concerns the feasibility of developing wind and compressed air energy storage together, land use relating to compressed air energy storage, and multiple, overlapping uses of land, it is admissible; LBP-10-10, 71 NRC 529 (2010)

SUBJECT INDEX

integration, consolidation, restatement, or collection of previously available information into a new document does not convert it into information that was not previously available within the meaning of 10 C.F.R. 2.309(f)(2)(i); LBP-09-10, 70 NRC 51 (2009)

interest in the promotion of economic use of energy falls outside the zone of interests protected by either the Atomic Energy Act or the National Environmental Policy Act; CLI-07-18, 65 NRC 399 (2007)

intervenor is not required to make its case at the contention stage of the proceeding, but rather to indicate what facts or expert opinions of which it is aware at that point in time that provide the basis for its contention; LBP-06-10, 63 NRC 314 (2006); LBP-09-1, 69 NRC 11 (2009)

intervenor may not attack regulatory limits for effluent releases; LBP-10-9, 71 NRC 493 (2010)

intervenor may petition the Commission for permission to challenge a rule, but must make a showing of special circumstances; LBP-10-9, 71 NRC 493 (2010)

intervenor must comply with procedural requirements for the filing of new or amended contentions, including the requirement that the contentions be submitted in a timely fashion based on the availability of the subsequent information; LBP-10-17, 72 NRC 501 (2010)

intervenor need not provide all supporting facts for a contention in the original submission or prove its case to have the contention admitted; LBP-10-9, 71 NRC 493 (2010)

intervenor should not be held to a prima facie burden at the contention admissibility stage of a proceeding, but its showing should be sufficient to require reasonable minds to inquire further; LBP-10-10, 71 NRC 529 (2010)

intervenor and their experts need to provide at the contention admission stage only a reasoned presentation sufficient to warrant further inquiry; LBP-10-10, 71 NRC 529 (2010)

intervenor are not entitled to litigate common defense and security considerations under 10 C.F.R. 40.32(d) unless the specific common defense and security risk asserted is reasonably related to, and would arise as a direct result of, the specific license amendments that the Commission is asked to approve; LBP-09-1, 69 NRC 11 (2009)

intervenor are precluded from challenging ASME inspection requirements in a combined license proceeding because NRC regulations directly incorporate ASME inspection requirements by reference; LBP-10-21, 72 NRC 616 (2010)

intervenor have a regulatory burden to present facts or expert opinion to support their contention; CLI-09-2, 69 NRC 55 (2009)

intervenor may not act as private attorneys-general and raise issues that are of concern to them but do not affect them directly; CLI-07-18, 65 NRC 399 (2007)

intervenor may not challenge a licensee's current licensing basis; LBP-07-17, 66 NRC 327 (2007)

intervenor must provide sufficient information to show that a genuine dispute exists in regard to a material issue of law or fact, including references to specific portions of the application that intervenors dispute, or, in the case when the application is alleged to be deficient, the identification of such deficiencies and supporting reasons for this belief; LBP-10-9, 71 NRC 493 (2010)

intervenor must timely file a new or amended contention that addresses the factors in section 2.714(b) in order to raise specific challenges regarding new information; LBP-10-10, 71 NRC 529 (2010)

intervenor with contentions rooted in new material information need not make the same showing as intervenors who have simply delayed filing their contentions until after expiration of the regulatory deadline; LBP-10-9, 71 NRC 493 (2010)

intervenor's comments must be significant enough to step over a threshold requirement of materiality, not merely state that a particular mistake was made, but show why the mistake was of possible significance; LBP-10-10, 71 NRC 529 (2010)

intervenor's concise statement of alleged facts that support the contention and reliance on various parts of the application itself satisfy the requirement that mandates references to specific portions of the application; LBP-09-1, 69 NRC 11 (2009)

intervenor's nuclear proliferation concern is premised upon future third-party activities that are unrelated to the specific activities authorized by license amendments and is not litigable because it is not a direct consequence of the proposed license amendments or the Commission's approval thereof; LBP-09-1, 69 NRC 11 (2009)

intervention petitioners must provide a concise statement of the alleged facts or expert opinions that support their position together with references to the specific sources and documents on which they intend to rely; LBP-06-22, 64 NRC 229 (2006)

SUBJECT INDEX

intervention petitioners must show deficiencies or errors in the license renewal application and must establish a significant link between such claimed deficiencies and either the health and safety of the public or the environment; LBP-08-24, 68 NRC 691 (2008)

introduction of issues that are not unique to any given reactor are inappropriate in an individual reactor licensing proceeding absent evidence that the generic issue applies to that particular proceeding; LBP-06-11, 63 NRC 391 (2006)

ISL mining does not involve fuel rod waste and to the extent such waste is indirectly relevant, the Waste Confidence rule would prohibit its consideration in a license amendment proceeding; LBP-08-6, 67 NRC 241 (2008)

issuance of a proposed rulemaking and request for comments does not, in itself, constitute information not previously available that entitles a party to file a new contention; LBP-09-10, 70 NRC 51 (2009)

issuance of requests for additional information does not alone establish deficiencies in the application; LBP-09-16, 70 NRC 227 (2009)

issues concerning a reactor design certification application should be resolved in the design certification rulemaking; CLI-08-15, 68 NRC 1 (2008)

issues concerning alleged violations of state law or regulations are outside the scope of, and not material to, an NRC power uprate proceeding; CLI-07-25, 66 NRC 101 (2007)

issues dealing with the current operating license, including the updated Final Safety Analysis Report, are not within the scope of license renewal review; LBP-08-13, 68 NRC 43 (2008)

“issues” in license transfer proceedings constitute “contentions” under 10 C.F.R. 2.309(f) and must therefore meet the standards for admissibility set forth in that regulation; CLI-07-18, 65 NRC 399 (2007)

issues must be germane to the application pending before the board, and are not cognizable unless they are material to matters that fall within the scope of the proceeding as set forth in the Commission’s notice of opportunity for hearing; LBP-06-10, 63 NRC 314 (2006)

issues raised by a contention must be material to the licensing decision; LBP-10-9, 71 NRC 493 (2010)

issues raised in contentions must be both within the scope of the proceeding and material to the findings the NRC must make to support the action that is involved in the proceeding; LBP-07-3, 65 NRC 237 (2007)

issues related to a plant’s current licensing basis are ordinarily beyond the scope of a license renewal review because those issues already are monitored, reviewed, and commonly resolved as needed by ongoing regulatory oversight; LBP-06-7, 63 NRC 188 (2006); LBP-06-22, 64 NRC 229 (2006)

issues related to costs only become relevant if an intervenor identifies an environmentally preferable, reasonable alternative; LBP-10-10, 71 NRC 529 (2010)

issues related to the environmental impact of onsite spent fuel storage after the license renewal term are covered by NRC’s Waste Confidence Rule and are outside the scope of a license renewal proceeding because contentions may not challenge a regulation; LBP-06-20, 64 NRC 131 (2006)

issues relating to threats to public health and safety and potential impacts on the environment arising out of water quality issues are within the scope of a license amendment proceeding; LBP-08-6, 67 NRC 241 (2008)

issues resolved in the ESP proceeding are treated as resolved in a subsequent construction permit or COL proceeding that references the ESP, unless a contention is admitted under narrowly specified conditions; CLI-07-12, 65 NRC 203 (2007)

it is a contention’s proponent, not the licensing board, that is responsible for formulating the contention and providing the necessary information to satisfy the basis requirement for the admission of contentions; LBP-10-24, 72 NRC 720 (2010)

it is a settled rule of practice that contentions ought to be interpreted in light of the required specificity, so that adjudicators and parties need not search out broader meanings than were clearly intended; LBP-10-16, 72 NRC 361 (2010)

it is appropriate to assess both the fitness of the issue for judicial decision and the hardship to the parties of withholding court consideration; LBP-09-1, 69 NRC 11 (2009)

it is insufficient for petitioner to point to an Internet Web site or article and expect the board on its own to discern what particular issue a petitioner is raising and why; CLI-10-15, 71 NRC 479 (2010); LBP-08-21, 68 NRC 554 (2008)

SUBJECT INDEX

it is not necessary for petitioners to allege facts under section 2.309(f)(1)(v) or to provide an affidavit that sets out the factual and/or technical bases under section 51.109(a)(2) to support a purely legal contention; CLI-09-14, 69 NRC 580 (2009)

it is not the board's duty to forage through a petition in order to find statements or other support that may be located in various portions of the petition but not referenced in the contention; LBP-10-16, 72 NRC 361 (2010)

it is not the responsibility of the licensing board to supply the basis information necessary to sustain a contention; LBP-08-24, 68 NRC 691 (2008)

it is petitioner's responsibility to provide the necessary information to satisfy the basis requirement for the admission of its contentions and demonstrate that a genuine dispute exists within the scope of the proceeding; LBP-10-6, 71 NRC 350 (2010)

it is the admissibility of the contention, not the basis, that must be determined; LBP-08-17, 68 NRC 431 (2008)

it is the petitioner's obligation to present factual information and/or expert opinion necessary to support its contention; LBP-07-3, 65 NRC 237 (2007)

late-filed environmental contentions must meet not only the usual contention pleading requirements applicable to all proceedings, but also the additional requirements for new contentions; LBP-08-11, 67 NRC 460 (2008)

legal issue contentions do not require any supporting facts; LBP-10-11, 71 NRC 609 (2010)

license amendment proceedings are not a forum to address past violations or accidents that have no direct bearing on the proposed amendment; CLI-09-12, 69 NRC 535 (2009)

license renewal is an appropriate occasion for appraising the entire past performance of the licensee; CLI-09-9, 69 NRC 331 (2009)

license renewal should not include a new, broad-scoped inquiry into compliance that is separate from and parallel to NRC ongoing compliance oversight activity; CLI-10-27, 72 NRC 481 (2010)

licensing boards and the Commission have considered the late-filing criteria even in cases where the factors were not fully addressed by petitioners and/or the NRC Staff or were not addressed at all; LBP-10-24, 72 NRC 720 (2010)

licensing boards are expected to examine cited materials to verify that they support a contention, but are not expected to search through pleadings or other materials to uncover arguments and support never advanced by the petitioners themselves; CLI-06-10, 63 NRC 451 (2006)

licensing boards are not authorized to admit conditionally, for any reason, contentions that fall short of meeting the specificity requirements set forth in NRC procedural rules; CLI-09-2, 69 NRC 55 (2009)

licensing boards do not consider any information found in a reply to an answer to an intervention petition that was not in petitioner's original contentions, unless it constitutes legitimate amplification of original contentions or properly late-filed material; LBP-06-10, 63 NRC 314 (2006)

licensing boards, in determining whether proffered contentions are premature, must apply norms in a manner that fits the circumstances and must consider whether to condition rejection of such contentions so as to preserve the opportunity for them to be re-presented later; LBP-07-14, 66 NRC 169 (2007)

licensing boards may appropriately view a petitioner's supporting information in a light favorable to the petitioner, but failure to provide such information regarding a proffered contention requires that the contention be rejected; LBP-07-10, 66 NRC 1 (2007)

licensing boards may not add material not raised by a petitioner in order to render a contention admissible; CLI-09-12, 69 NRC 535 (2009)

licensing boards may not admit a contention that directly or indirectly challenges Table S-3 of 10 C.F.R. 51.51; LBP-09-16, 70 NRC 227 (2009); LBP-09-18, 70 NRC 385 (2009)

licensing boards may not make factual inferences on a petitioner's behalf; LBP-06-10, 63 NRC 314 (2006)

licensing boards may reformulate contentions to eliminate extraneous issues or to consolidate issues for a more efficient proceeding; CLI-10-2, 71 NRC 27 (2010)

licensing boards should not accept in individual license proceedings contentions that are, or are about to become, the subject of general rulemaking by the Commission; LBP-06-7, 63 NRC 188 (2006)

licensing boards should refer contention challenging a reactor design certification to the Staff for consideration in the design certification rulemaking, and hold that contention in abeyance, if it is otherwise admissible; CLI-08-15, 68 NRC 1 (2008)

SUBJECT INDEX

listing of issues with which petitioners disagree with the application is a form of notice pleading that the Commission has long held is insufficient; LBP-10-16, 72 NRC 361 (2010)

litigant opposing a licensing action is entitled to challenge the sufficiency of any guidance document on which a licensee or applicant relies, but it must do so with substantive support; CLI-10-17, 72 NRC 1 (2010)

low probability is the key to applying NEPA's rule-of-reason test to contentions that allege that specified accident scenario presents a significant environmental impact that must be evaluated; LBP-10-10, 71 NRC 529 (2010)

low-level radioactive waste contentions were not admissible because of technical defects in the pleadings such as failure to satisfy 10 C.F.R. 2.309(f)(1)(vi), (i), or (ii); LBP-10-20, 72 NRC 571 (2010)

low-level radioactive waste disposal contentions have been admitted when that issue was not sufficiently discussed in the applications and there was no mention of the closure of the Barnwell facility; LBP-09-18, 70 NRC 385 (2009)

low-level radioactive waste disposal contentions may not challenge Table S-3, consistent with NRC policy that regulations may not be the subject of collateral attack in an adjudication; CLI-10-2, 71 NRC 27 (2010)

material provided in support of a contention will be carefully examined by the board to confirm that on its face it does supply an adequate basis for the contention; LBP-07-10, 66 NRC 1 (2007); LBP-08-16, 68 NRC 361 (2008); LBP-08-17, 68 NRC 431 (2008); LBP-09-3, 69 NRC 139 (2009)

materiality requires a showing that the alleged error or omission is of possible significance to the result of the proceeding; LBP-08-9, 67 NRC 421 (2008); LBP-09-26, 70 NRC 939 (2009); LBP-09-27, 70 NRC 992 (2009); LBP-10-6, 71 NRC 350 (2010); LBP-10-7, 71 NRC 391 (2010)

materiality to the proceeding is required; CLI-10-2, 71 NRC 27 (2010)

materials cited as the basis for a contention are subject to scrutiny by the board to determine whether they actually support the facts alleged; LBP-10-24, 72 NRC 720 (2010)

matters resolved in an early site permit proceeding are considered resolved in a subsequent combined license proceeding when the COL application references the ESP, subject to certain exceptions; LBP-08-15, 68 NRC 294 (2008)

mere issuance of Staff requests for additional information does not mean an application is incomplete for docketing; CLI-08-17, 68 NRC 231 (2008)

mere mention of a document without providing its contents or an explanation of its significance cannot support admissibility of a contention; LBP-09-21, 70 NRC 581 (2009)

mere notice pleading is insufficient for contention admission; LBP-08-9, 67 NRC 421 (2008); LBP-08-26, 68 NRC 905 (2008); LBP-10-6, 71 NRC 350 (2010)

mere recitation of unrelated adverse findings in reports of inspections and audits performed by the Staff and applicant does not supply information on what specifically would be litigated; LBP-10-9, 71 NRC 493 (2010)

mere statements of government officials are insufficient to overturn 10 C.F.R. 51.23; LBP-09-21, 70 NRC 581 (2009)

merely quoting or citing documents as the basis for a contention is not enough to demonstrate a genuine dispute with the application on a material issue of law or fact; LBP-10-9, 71 NRC 493 (2010)

mootness occurs when a justiciable controversy no longer exists; LBP-10-10, 71 NRC 529 (2010)

motion to reopen the record to admit new contention regarding adequacy of applicant's containment/coating inspection program for two new proposed units is denied; LBP-10-21, 72 NRC 616 (2010)

motion to reopen to introduce a new contention asserting issues related to aging management of effects of moist or wet environments on buried, below-grade, underground, or hard-to-access safety-related electrical cables is denied; LBP-10-19, 72 NRC 529 (2010)

motions to reopen a proceeding to introduce an entirely new contention must successfully navigate at least nineteen different regulatory factors under 10 C.F.R. 2.326, 2.309(c), and 2.309(f)(1); LBP-10-19, 72 NRC 529 (2010)

movant must show that a balancing of eight factors of 10 C.F.R. 2.309(c)(1), to the extent they are relevant to the particular filing, weighs in favor of reopening; LBP-08-12, 68 NRC 5 (2008)

SUBJECT INDEX

movant's assertion that a new contention presents a significant safety issue must be supported by affidavits that set forth the factual and/or technical bases for the allegation; LBP-08-12, 68 NRC 5 (2008)

need-for-power contention that calls for a more detailed analysis than NRC requires is inadmissible; LBP-10-24, 72 NRC 720 (2010)

need-for-power contentions are barred in operating license proceedings partly because at the time the OL application is submitted, most of the environmental disruption would have already occurred and an electric utility would use the new nuclear plant to meet increased energy demand or replace older, less economical generation capacity; LBP-10-12, 71 NRC 656 (2010)

neither mere speculation nor bare or conclusory assertions, even by an expert, alleging that a matter should be considered will suffice to allow the admission of a proffered contention; LBP-07-3, 65 NRC 237 (2007); LBP-07-10, 66 NRC 1 (2007); LBP-08-16, 68 NRC 361 (2008); LBP-09-3, 69 NRC 139 (2009); LBP-10-7, 71 NRC 391 (2010)

neither NRC regulations nor agency policy mandates that the oral argument be conducted in person near the site; LBP-08-23, 68 NRC 679 (2008)

neither the Rules of Practice nor Commission precedent mandates the consideration at the threshold of every basis assigned for every contention advanced by the hearing requestor; LBP-06-27, 64 NRC 438 (2006)

NEPA imposes no legal duty on NRC to consider intentional malevolent acts on a case-by-case basis in conjunction with commercial power reactor license renewal applications; LBP-08-13, 68 NRC 43 (2008)

NEPA is the only legal grounds for an admissible contention relating to environmental justice issues; LBP-08-13, 68 NRC 43 (2008); LBP-09-18, 70 NRC 385 (2009)

new and significant information about a Category 1 issue is not a proper subject for a contention, absent a waiver of section 51.53(c)(3)(i); LBP-07-4, 65 NRC 281 (2007)

new and significant information that would normally fall within a Category 1 issue is not a proper subject for a contention, absent a waiver of the rule that Category 1 issues need not be addressed in a license renewal proceeding; LBP-07-11, 66 NRC 41 (2007)

new bases for a contention cannot be introduced in a reply brief or at any other time after the date the original contentions are due, unless the petitioner meets the late-filing criteria set forth in 10 C.F.R. 2.309(c), (f)(2); CLI-09-7, 69 NRC 235 (2009); CLI-06-17, 63 NRC 727 (2006); CLI-09-12, 69 NRC 535 (2009)

new contention on the adequacy of consideration of the dissolved oxygen factor in the cumulative usage factor environmental analysis and use of inappropriate heat transfer equations was previously litigated and resolved and thus is not admissible; LBP-09-9, 70 NRC 41 (2009)

new contentions based on assumptions that cannot be considered information that was not previously available or materially different than information previously available do not meet admissibility requirements; CLI-10-17, 72 NRC 1 (2010)

new contentions filed by an intervenor must comply with timeliness standards; LBP-10-2, 71 NRC 190 (2010)

new information concerning safety may be new evidence, but not necessarily raise a new issue; CLI-09-7, 69 NRC 235 (2009)

new information not part of the original contention may not be introduced for the first time on appeal; CLI-07-8, 65 NRC 124 (2007)

new information proffered by petitioners must show a distinct new harm or threat apart from the activities already licensed; LBP-08-6, 67 NRC 241 (2008)

new or amended contentions filed after the initial deadline may be admitted with leave of the presiding officer upon a showing that information on which the contention is based was not previously available and is materially different than information previously available and the contention has been submitted in a timely fashion; LBP-10-14, 72 NRC 101 (2010)

new or amended contentions in the high-level waste repository proceeding should be presumed timely if they are filed within 30 days after the availability of new or materially different information; LBP-08-10, 67 NRC 450 (2008)

new or amended environmental contentions can be freely filed if new data or conclusions appear in new documents; LBP-07-14, 66 NRC 169 (2007)

SUBJECT INDEX

no contention will be admitted for litigation in any NRC adjudicatory proceeding unless the pleading requirements are met; CLI-06-10, 63 NRC 451 (2006)

no petition on, or other request for review of, the Staff's significant hazards consideration determination will be entertained by the Commission; LBP-07-10, 66 NRC 1 (2007)

no rule or regulation of the Commission concerning the licensing of production and utilization facilities is subject to attack by way of discovery, proof, argument, or other means in any adjudicatory proceeding; LBP-10-14, 72 NRC 101 (2010)

no specific number of days whereby a board can measure or determine whether a contention is "timely" is specified by RC regulations; LBP-06-14, 63 NRC 568 (2006)

nontimely new contentions are subject to the more stringent eight-factor balancing test; LBP-07-15, 66 NRC 261 (2007)

nontimely petitions to intervene and contentions, amended petitions, and supplemental petitions will not be entertained absent a determination by the Commission, the licensing board, or a presiding officer that the petition should be granted and/or the contentions should be admitted based upon a balancing of eight factors; CLI-09-15, 70 NRC 1 (2009)

not all of the contention admissibility requirements of 10 C.F.R. 2.309(f)(1) necessarily apply to legal-issue contentions; LBP-09-6, 69 NRC 367 (2009)

nothing in the NRC case law or regulations requires, at the contention admissibility stage, that a contention be supported by an expert opinion, substantive affidavits, or evidence; LBP-09-10, 70 NRC 51 (2009)

notice pleading is expressly prohibited by the rules of practice; CLI-09-5, 69 NRC 115 (2009)

novel issues that the Commission may wish to address generically at the earliest opportunity are appropriately referred to the Commission; LBP-08-16, 68 NRC 361 (2008); LBP-08-17, 68 NRC 431 (2008)

NRC has no legal duty to consider the environmental impacts of terrorism at NRC-licensed facilities; LBP-08-6, 67 NRC 241 (2008)

NRC may exclude a later intervenor if another party has fully presented a material issue identical to the one the excluded party seeks to raise or if the later intervenor's proposed new contention is based on a later filed safety evaluation report or environmental impact statement where the issues were apparent at the time of the application; LBP-06-14, 63 NRC 568 (2006)

NRC pleading requirements are deliberately strict, and any contention that does not satisfy them will be rejected; CLI-10-21, 72 NRC 197 (2010); LBP-10-15, 72 NRC 257 (2010); LBP-10-16, 72 NRC 361 (2010)

NRC proceedings are to be based on the application as it exists at a given time and not on any potential future amendments; LBP-08-11, 67 NRC 460 (2008)

NRC regulations are not subject to attack in adjudications; CLI-10-1, 71 NRC 1 (2010); LBP-10-9, 71 NRC 493 (2010)

NRC regulations establish what the agency has found to be adequately protective radiological dose limits, and petitioners may not use an adjudicatory proceeding to challenge this generic regulatory framework; CLI-08-17, 68 NRC 231 (2008)

NRC regulations may not be attacked in individual NRC adjudicatory proceedings, unless the Commission waives the rule at issue for a particular proceeding, or the rule is changed or suspended due to a rulemaking review; CLI-09-10, 69 NRC 521 (2009)

NRC regulations require petitioner to raise contentions related to NEPA as challenges to the applicant's environmental report, which acts as a surrogate for the environmental impact statement during the early stages of a relicensing proceeding; LBP-08-26, 68 NRC 905 (2008)

NRC rules call for a clear statement of the basis for the contentions and the submission of supporting information and references to specific documents and sources that establish the validity of the contention; CLI-06-9, 63 NRC 433 (2006)

NRC rules do not call for a dispositive standard of proof for a contention or its bases; CLI-10-1, 71 NRC 1 (2010)

NRC Staff issuance of a request for additional information does not alone establish deficiencies in an application, and intervention petitioner must do more than merely quote an RAI to justify admission of a contention; CLI-09-16, 70 NRC 33 (2009); LBP-09-10, 70 NRC 51 (2009)

SUBJECT INDEX

NRC Staff issuance of a request for additional information does not immunize the combined license application from challenge; LBP-09-10, 70 NRC 51 (2009)

NRC Staff's mere interest in an issue, its solicitation of public input on an issue, or its proposed revision to a generic guidance document will not, standing alone and lacking an articulated plant-specific safety concern, suffice as a contention's cornerstone; LBP-06-11, 63 NRC 391 (2006)

NRC Staff's revision of the Final Safety Evaluation Report to account for applicant's confirmatory analysis would not, standing alone, be a materially different result that justifies reopening the record, because it would neither change the outcome of the renewal proceeding nor impose a different licensing condition on an applicant; LBP-08-12, 68 NRC 5 (2008)

NRC standards require petitioners to plead specific grievances, not simply to provide general notice pleadings; CLI-10-15, 71 NRC 479 (2010)

NRC would not accept incorporation by reference of another petitioner's issues in an instance where the petitioner has not submitted at least one admissible issue of its own; LBP-10-11, 71 NRC 609 (2010)

NRC's adjudicatory process is not a forum for litigating matters that are primarily the responsibility of other federal or state/local regulatory agencies; LBP-07-10, 66 NRC 1 (2007)

NRC's adjudicatory process is not the proper venue for the evaluation of a petitioner's own view regarding the direction that regulatory policy should take; LBP-09-26, 70 NRC 939 (2009)

NRC's contention pleading standards, while strict, are not so strict as to require a board to abandon a commonsense approach to consideration of contentions; LBP-10-10, 71 NRC 529 (2010)

offsite health and safety impacts caused by onsite activities can support the admissibility of a contention; LBP-09-6, 69 NRC 367 (2009)

omission-related challenges to license applications must be supported by specific reasons why alleged omissions are relevant and material; LBP-08-9, 67 NRC 421 (2008)

on appeal, the Commission found fault with the board's failure to identify clearly which of the diffuse and, in some cases, unsupported claims were admitted for hearing; CLI-10-2, 71 NRC 27 (2010)

once a party demonstrates that it has standing to intervene, that party may raise any contention that, if proved, will afford the party relief from the injury it relies upon for standing; CLI-09-9, 69 NRC 331 (2009)

once the deadline for filing an initial intervention petition has passed, a party wishing to submit new or amended contentions on matters not associated with issuance of the Staff's draft or final environmental impact statement must satisfy the requirements of 10 C.F.R. 2.309(f)(2); LBP-10-21, 72 NRC 616 (2010)

one way to challenge a generic finding, or Category 1 issue, in a license renewal proceeding is to apply for a waiver where special circumstances are such that the application of the rule or regulation would not serve the purposes for which the rule or regulation was adopted; CLI-07-3, 65 NRC 13 (2007)

only the management of Class B and Class C wastes is properly the subject of a contention in a combined license proceeding; LBP-09-16, 70 NRC 227 (2009)

oral argument is not a right; CLI-08-7, 67 NRC 187 (2008)

organizations seeking to challenge regulations of a government agency failed to demonstrate standing where they did not demonstrate a concrete application of the regulations that threatened imminent harm to their interests; CLI-09-20, 70 NRC 911 (2009)

"otherwise admissible" has been interpreted to mean a contention that meets the contention admissibility requirements of 10 C.F.R. 2.309(f)(1) but for the fact that it challenges a yet-to-be-certified reactor design; LBP-10-9, 71 NRC 493 (2010)

parties and licensing boards must be on notice of the issues being litigated, so that parties and boards may prepare for summary disposition or for hearing; CLI-10-15, 71 NRC 479 (2010)

petitioner cannot base standing or a contention on the possibility that the licensee will violate the terms of its license; CLI-10-20, 72 NRC 185 (2010)

petitioner cannot include a reference as support without showing why the reference provides a basis to support its contention; LBP-10-10, 71 NRC 529 (2010)

petitioner demonstrates a genuine dispute with the applicant on the adequacy of the water quality analysis; LBP-09-16, 70 NRC 227 (2009)

petitioner did not properly challenge applicant's conclusion that no environmentally preferable alternative existed where the only alternative that petitioner mentions on appeal is the no-reactor option, and

SUBJECT INDEX

petitioner neither raised that option before the board nor supported its argument that it would always be environmentally preferable; LBP-10-6, 71 NRC 350 (2010)

petitioner does not become entitled to an evidentiary hearing merely on request, or on a bald or conclusory allegation that a dispute exists, but must make a minimal showing that material facts are in dispute, thereby demonstrating that an inquiry in depth is appropriate; LBP-09-17, 70 NRC 311 (2009)

petitioner does not have to prove its contention at the admissibility stage; LBP-07-16, 66 NRC 277 (2007); LBP-08-26, 68 NRC 905 (2008); LBP-09-6, 69 NRC 367 (2009); LBP-09-26, 70 NRC 939 (2009); LBP-10-6, 71 NRC 350 (2010)

petitioner does not need to provide expert opinion or a substantive affidavit in order to satisfy 10 C.F.R. 2.309(f)(1)(v); LBP-10-15, 72 NRC 257 (2010)

petitioner, especially one represented by counsel, bears the burden of going forward and specifically addressing each of the six elements in 10 C.F.R. 2.309(f)(1); LBP-10-16, 72 NRC 361 (2010)

petitioner failed to establish materiality of its contention related to management of low-level radioactive waste by referring to 10 C.F.R. Part 61 because applicant was not seeking a license under Part 61, and it was speculative whether such a license would ever be necessary; LBP-08-15, 68 NRC 294 (2008)

petitioner failed to identify any statute or NRC regulation to support its theory that applicant may not revise its application to include a different reactor design; LBP-10-17, 72 NRC 501 (2010)

petitioner failed to provide any evidence to challenge NRC's conclusion that the environmental effects of a hypothetical terrorist attack on a nuclear plant would be no worse than those caused by a severe accident; LBP-10-10, 71 NRC 529 (2010)

petitioner has an obligation to explain why cited testimony provides a basis for its contention; LBP-10-17, 72 NRC 501 (2010)

petitioner has not met the pleading requirements because it has not demonstrated any link between the purported violations at an existing unit and any future noncompliance or resulting safety risk affecting proposed units; CLI-10-9, 71 NRC 245 (2010)

petitioner has presented a prima facie showing for waiver of the NRC regulation covering the environmental impacts of spent fuel pool accidents generically, and has shown that its contention concerning earthquake-induced spent fuel pool accidents is otherwise admissible; LBP-10-15, 72 NRC 257 (2010)

petitioner is limited to the contention as initially filed and may not rectify its deficiencies through a reply brief or on appeal; CLI-09-14, 69 NRC 580 (2009)

petitioner is not required to prove its case at the contention stage and need not proffer facts in formal affidavit or evidentiary form sufficient to withstand a summary disposition motion; LBP-08-6, 67 NRC 241 (2008); LBP-08-9, 67 NRC 421 (2008); LBP-10-24, 72 NRC 720 (2010)

petitioner is not required to provide an exhaustive discussion in its proffered contention, as long as it meets the Commission's admissibility requirements; LBP-06-4, 63 NRC 99 (2006)

petitioner is not required to provide expert testimony in support of his plausible scenario for injury; CLI-09-12, 69 NRC 535 (2009)

petitioner is not required to redo SAMA analyses in order to raise a material issue; LBP-08-13, 68 NRC 43 (2008)

petitioner is obligated to read the pertinent portions of the license application, state the applicant's position and the petitioner's opposing view, and explain why it disagrees with the applicant; LBP-09-17, 70 NRC 311 (2009); LBP-09-25, 70 NRC 867 (2009)

petitioner is obliged to present the factual information and expert opinions necessary to support its contention adequately; CLI-08-7, 67 NRC 187 (2008); LBP-07-10, 66 NRC 1 (2007); LBP-07-16, 66 NRC 277 (2007); LBP-08-6, 67 NRC 241 (2008); LBP-08-9, 67 NRC 421 (2008); LBP-09-3, 69 NRC 139 (2009); LBP-10-6, 71 NRC 350 (2010); LBP-10-7, 71 NRC 391 (2010)

petitioner is required merely to provide a simple nexus between the contention and the referenced factual or legal support; LBP-09-21, 70 NRC 581 (2009); LBP-09-25, 70 NRC 867 (2009)

petitioner may amend contentions or file new contentions on issues arising under NEPA if there are data or conclusions in the NRC draft or final environmental impact statement, environmental assessment, or any supplements relating thereto, that differ significantly from the data or conclusions in the applicant's documents; LBP-10-1, 71 NRC 165 (2010)

petitioner may not challenge applicable statutory requirements as part of an administrative adjudication; CLI-09-14, 69 NRC 580 (2009); LBP-08-17, 68 NRC 431 (2008)

SUBJECT INDEX

- petitioner may not demand an adjudicatory hearing to attack generic NRC requirements or regulations or to express generalized grievances about NRC policies; LBP-07-11, 66 NRC 41 (2007)
- petitioner may not simply incorporate massive documents by reference as the basis for a statement of his contentions; LBP-08-21, 68 NRC 554 (2008)
- petitioner may not simply wait for the Staff to identify missing information and then ground a new contention on a request for additional information; CLI-09-12, 69 NRC 535 (2009)
- petitioner must demonstrate that the issue raised in the contention is within the scope of the proceeding and material to the findings the NRC must make to support the action that is involved; CLI-08-23, 68 NRC 461 (2008); LBP-06-10, 63 NRC 314 (2006); LBP-07-10, 66 NRC 1 (2007); LBP-08-16, 68 NRC 361 (2008); LBP-08-17, 68 NRC 431 (2008); LBP-08-21, 68 NRC 554 (2008); LBP-08-26, 68 NRC 905 (2008); LBP-09-16, 70 NRC 227 (2009); LBP-09-17, 70 NRC 311 (2009); LBP-09-21, 70 NRC 581 (2009); LBP-10-16, 72 NRC 361 (2010)
- petitioner must establish standing and proffer at least one admissible contention that meets the requirements of 10 C.F.R. 2.309(f)(1); LBP-10-16, 72 NRC 361 (2010)
- petitioner must file contentions based on the applicant's environmental report, but may amend those contentions or file new contentions if the NRC draft or final environmental impact statement, environmental assessment, or any supplements relating thereto differs significantly from the data or conclusions in the applicant's documents; CLI-06-9, 63 NRC 433 (2006)
- petitioner must include references to specific portions of the application (including the applicant's environmental report and safety report) that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief; LBP-09-21, 70 NRC 581 (2009)
- petitioner must include sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of fact; LBP-09-10, 70 NRC 51 (2009); LBP-09-21, 70 NRC 581 (2009); LBP-09-27, 70 NRC 992 (2009)
- petitioner must present a clear statement of the basis for the contention and submit supporting information and references to specific documents and sources that establish the validity of the contention; CLI-10-1, 71 NRC 1 (2010)
- petitioner must present sufficient information to show a genuine dispute reasonably indicating that a further inquiry is appropriate; LBP-08-6, 67 NRC 241 (2008); LBP-10-24, 72 NRC 720 (2010)
- petitioner must provide a brief explanation of the basis for the contention; LBP-09-21, 70 NRC 581 (2009); LBP-10-13, 71 NRC 673 (2010)
- petitioner must provide a concise statement of the alleged facts or expert opinions that support its position on the issue and on which petitioner intends to rely at hearing, together with references to the specific sources and documents on which petitioner intends to rely to support its position on the issue; LBP-08-16, 68 NRC 361 (2008); LBP-08-26, 68 NRC 905 (2008); LBP-09-10, 70 NRC 51 (2009); LBP-09-16, 70 NRC 227 (2009); LBP-09-21, 70 NRC 581 (2009); LBP-09-27, 70 NRC 992 (2009); LBP-10-16, 72 NRC 361 (2010)
- petitioner must provide a specific statement of the issue of law or fact to be raised or controverted, and a brief explanation of the basis for the contention; LBP-06-10, 63 NRC 314 (2006); LBP-09-21, 70 NRC 581 (2009)
- petitioner must provide documents or other factual information or expert opinion that set forth the necessary technical analysis to show why the proffered bases support its contention; LBP-06-10, 63 NRC 314 (2006)
- petitioner must read the pertinent portions of a license application, including the safety analysis report and the environmental report, state the applicant's position and the petitioner's opposing view, and explain why it disagrees with the applicant; LBP-06-10, 63 NRC 314 (2006); LBP-07-4, 65 NRC 281 (2007); LBP-08-6, 67 NRC 241 (2008)
- petitioner must show that a genuine dispute exists on a material issue of law or fact with regard to the license application in question, challenge and identify either specific portions of, or alleged omissions from, the application, and provide the supporting reasons for each dispute; LBP-10-6, 71 NRC 350 (2010)
- petitioner must show that he, she, or it would be adversely affected by the enforcement order as it exists, not that they are harmed by the failure of the Commission to impose a hypothetical order the petitioner

SUBJECT INDEX

asserts would be an improvement; LBP-07-11, 66 NRC 41 (2007); LBP-07-16, 66 NRC 277 (2007)

petitioner must show that information missing from a license application is required by the Commission's regulations; LBP-09-18, 70 NRC 385 (2009)

petitioner must show that the information on which its new contention is based was not reasonably available to the public previously and that it filed its intervention petition promptly after learning of such new information; LBP-10-11, 71 NRC 609 (2010)

petitioner must show that the subject matter of a contention would impact the grant or denial of a pending license application; LBP-09-26, 70 NRC 939 (2009); LBP-10-6, 71 NRC 350 (2010)

petitioner must show why an alleged error or omission is of significance to the result of the proceeding; LBP-08-26, 68 NRC 905 (2008)

petitioner need not submit a sensitivity analysis in order to establish that a SAMA-related contention is material; LBP-10-15, 72 NRC 257 (2010)

petitioner raises a genuine dispute with the application with respect to the adequacy of information needed to characterize the site and offsite hydrogeology to ensure confinement of the extraction fluids; LBP-10-16, 72 NRC 361 (2010)

petitioner requesting a hearing on a confirmatory order must show that the request is within the scope of the proceeding by demonstrating that the petitioner will be adversely affected by the existing terms of the enforcement order; LBP-08-14, 68 NRC 279 (2008)

petitioner's argument regarding rejection of its contention satisfies the prejudicial procedural error standard for review; CLI-10-17, 72 NRC 1 (2010)

petitioner's argument that high-explosive munitions could fall onto depleted uranium, pulverizing and igniting the DU and generating aerosols that might travel through the air, providing an inhalation pathway for offsite exposure was contradicted by the Army's statement that it does not use high-impact explosives in the area where DU is present; CLI-10-20, 72 NRC 185 (2010)

petitioner's assertion that terrorist-act-originated SAMA analysis is required by Ninth Circuit law satisfies the requirements of 10 C.F.R. 2.309(f)(1)(iii) that the issue be within the scope of a license renewal proceeding; LBP-10-15, 72 NRC 257 (2010)

petitioner's assertions regarding the historical fire protection situation at the existing unit outside the scope of the combined license proceeding; LBP-08-21, 68 NRC 554 (2008)

petitioner's assumption that, because it cannot check all SAMA analysis details, the analysis is incomplete or incorrect is mere speculation and is insufficient to support the admissibility of its contention; LBP-08-13, 68 NRC 43 (2008)

petitioner's challenge to the one-fire assumption in the AP1000 design constitutes an impermissible challenge to Commission regulations; CLI-10-9, 71 NRC 245 (2010)

petitioner's dispute with the combined license application concerning completeness of the AP1000 Design Certification Document is referred to Staff for resolution during the rulemaking on the certification of the AP1000 design and any hearing on the merits is held in abeyance pending the outcome of the rulemaking; LBP-08-21, 68 NRC 554 (2008)

petitioner's failure to cite any document that, read as a whole, supports its theory that uranium supplies will be insufficient to support operation of a reactor unit during its licensed period renders it inadmissible; LBP-08-16, 68 NRC 361 (2008)

petitioner's inaccurate reading and presentation of applicant's spent fuel storage plan cannot serve as a litigable basis for a contention; LBP-09-27, 70 NRC 992 (2009)

petitioner's issue will be ruled inadmissible if petitioner has offered no tangible information, no experts, no substantive affidavits, but instead only 'bare assertions and speculation; LBP-09-15, 70 NRC 198 (2009); LBP-09-16, 70 NRC 227 (2009); LBP-09-17, 70 NRC 311 (2009); LBP-09-18, 70 NRC 385 (2009); LBP-09-26, 70 NRC 939 (2009); LBP-10-15, 72 NRC 257 (2010)

petitioners are obliged to set forth their claims at the earliest possible moment; CLI-07-18, 65 NRC 399 (2007)

petitioners cannot raise new contentions for the first time on appeal to the Commission; CLI-06-24, 64 NRC 111 (2006)

petitioners cannot submit only generalized suspicions in hopes of substantiating them later; LBP-06-10, 63 NRC 314 (2006)

petitioners fail to explain how alleged impacts would arise from the proposed activities as opposed to past activities not in issue; LBP-10-11, 71 NRC 609 (2010)

SUBJECT INDEX

petitioners have an ironclad obligation to search the public record for information supporting their contentions; CLI-09-7, 69 NRC 235 (2009); LBP-08-6, 67 NRC 241 (2008)

petitioners may not seek to enhance the measures outlined in an enforcement order; LBP-08-14, 68 NRC 279 (2008)

petitioners may not seek to skirt contention rules by initially filing unsupported contentions, and later recasting or modifying their contentions on appeal with new arguments never raised before the board; CLI-08-17, 68 NRC 231 (2008); CLI-09-5, 69 NRC 115 (2009)

petitioners must do more than rest on the mere existence of Staff requests for additional information as a basis for their contention; LBP-08-6, 67 NRC 241 (2008)

petitioners must offer specific contentions on material issues, supported by alleged facts or expert opinion; CLI-09-8, 69 NRC 317 (2009)

petitioners must provide a clear statement as to the basis for the contentions and the submission of supporting information and references to specific documents and sources that establish the validity of the contention; CLI-09-8, 69 NRC 317 (2009)

petitioners must provide factual support for their claim that an enforcement-related injury could be redressed by a favorable board ruling; CLI-10-3, 71 NRC 49 (2010)

petitioners must set forth their contentions with particularity; CLI-10-15, 71 NRC 479 (2010)

petitioners question the underlying analysis of fish kills in the environmental report as being outdated, but they fail to provide any information to show that the results of the study are no longer representative; LBP-09-16, 70 NRC 227 (2009)

petitioners seeking to introduce new contentions after the board has denied their initial petition to intervene need to address the reopening standards; LBP-10-21, 72 NRC 616 (2010)

petitioners waived their right to pursue the NEPA-terrorism issue in this adjudication by not filing the contention on the basis of the environmental report; CLI-07-10, 65 NRC 144 (2007)

petitioners who base their contentions on requests for additional information must provide analysis, discussion, or information of their own on the issues raised; LBP-09-16, 70 NRC 227 (2009)

petitioners who seek to introduce a new or amended contention based on allegedly new information that was previously unavailable must show that such information was not previously available and is materially different than information previously available and the amended or new contention has been submitted in a timely fashion based on the availability of the subsequent information; LBP-06-22, 64 NRC 229 (2006)

petitioners' allegation that applicant's environmental report fails to provide reasonably current and accurate information regarding the costs of nuclear power, costs of alternative energy sources, and financial risks posed by using nuclear power as an energy source is admissible; LBP-08-16, 68 NRC 361 (2008)

petitioners' allegation that NRC regulations are insufficient to protect the constitutional right of due process under the law by allowing citizens to be exposed to impermissible levels of radiation is inadmissible; LBP-08-16, 68 NRC 361 (2008)

petitioners' assertion that applicant's environmental report fails to include an analysis of the impacts of a governmental entity managing long-term storage of high-level waste onsite and cost quantifications of such management fails to create a genuine dispute; LBP-09-21, 70 NRC 581 (2009)

petitioners' assertion that no exposure levels are safe is an impermissible challenge to the exposure limits set forth in the NRC's regulations; LBP-09-16, 70 NRC 227 (2009)

petitioners' claim that a foreign-owned company would be more likely than a U.S.-owned company to export its product overseas falls outside the scope of a materials license amendment proceeding, where the applicant had not applied for a license to export recovered uranium; CLI-09-12, 69 NRC 535 (2009)

petitioners' claim that applicant must pursue the prepayment method for decommissioning conflicts with NRC guidance and rules and so is outside the permissible scope of the COL proceeding; LBP-09-21, 70 NRC 581 (2009)

petitioners' concerns regarding the applicant's commitments to relax conservatisms in its laboratory testing and groundwater release analysis are in regard to the revised analysis to be submitted in response to the Staff request for additional information and therefore are dismissed as outside the scope of the proceeding; LBP-09-16, 70 NRC 227 (2009)

petitioners' contention that NRC Staff has not consulted with an affected Indian tribe is premature if it is filed prior to the time for the Staff to act; CLI-09-9, 69 NRC 331 (2009)

SUBJECT INDEX

petitioners' pleadings must contain more systematic support for contention admissibility than a passing reference to new information; LBP-07-14, 66 NRC 169 (2007)

pleading requirements are deliberately strict, and any contention that does not satisfy the requirements will be rejected; CLI-06-9, 63 NRC 433 (2006); CLI-06-24, 64 NRC 111 (2006); CLI-10-1, 71 NRC 1 (2010); LBP-06-22, 64 NRC 229 (2006)

pleading requirements calling for a recitation of facts or expert opinion supporting the issue raised are inapplicable to a contention of omission beyond identifying the legally required missing information; LBP-09-16, 70 NRC 227 (2009); LBP-10-16, 72 NRC 361 (2010)

pleading requirements for a hearing on a confirmatory order are addressed; LBP-08-14, 68 NRC 279 (2008)

pleading requirements for admissible contentions are described; LBP-07-10, 66 NRC 1 (2007); LBP-08-16, 68 NRC 361 (2008)

pleading requirements for contentions are strict by design; CLI-08-17, 68 NRC 231 (2008); LBP-08-14, 68 NRC 279 (2008)

portions of a contention that allege that the environmental report failed to adequately address the zone of environmental impact, impact on listed species, and appropriate mitigation are admissible; LBP-09-10, 70 NRC 51 (2009)

possibility of undetected existence of caves and sinkholes on the proposed reactor site is not a litigable issue in a COL proceeding; LBP-08-16, 68 NRC 361 (2008)

post-contention admission events, such as issuance of a Staff draft environmental impact statement, can render a previously admitted contention of omission subject to dismissal as moot; LBP-08-2, 67 NRC 54 (2008); LBP-08-3, 67 NRC 85 (2008)

potential for a terrorist attack upon a proposed nuclear facility is not a litigable issue; LBP-08-16, 68 NRC 361 (2008)

presentation of an alternative analysis is, without more, insufficient to support a contention alleging that the original analysis failed to meet applicable requirements; LBP-08-13, 68 NRC 43 (2008)

presentation of excerpts from combined license application without further explanation does not provide sufficient support for a contention; LBP-09-16, 70 NRC 227 (2009)

prior to 2004, in addition to meeting the substantive admissibility criteria found in 10 C.F.R. 2.714(b)(2), the issue statement was based on environmental impact statement or environmental assessment information that differed significantly from the data or conclusions in the applicant's environmental report; LBP-10-1, 71 NRC 165 (2010)

pro se petitioners are not held to those standards of clarity and precision to which a lawyer might reasonably be expected to adhere; LBP-08-11, 67 NRC 460 (2008)

properly formulated contentions must focus on the license application in question, challenging either specific portions of or alleged omissions from the application, including the safety analysis report and the environmental report, so as to establish that a genuine dispute exists with the applicant on a material issue of law or fact; LBP-07-10, 66 NRC 1 (2007); LBP-09-3, 69 NRC 139 (2009); LBP-09-8, 69 NRC 736 (2009); LBP-10-7, 71 NRC 391 (2010)

proponent of a motion to reopen must do more than simply raise a safety issue, but rather must show that the safety issue it raises is significant; LBP-10-19, 72 NRC 529 (2010)

providing any material or document as a basis for a contention, without setting forth an explanation of its significance, is inadequate to support the admission of the contention; LBP-06-27, 64 NRC 438 (2006); LBP-07-3, 65 NRC 237 (2007); LBP-09-26, 70 NRC 939 (2009); LBP-10-6, 71 NRC 350 (2010)

questions on the safety and environmental impacts of onsite low-level waste storage are largely site- and design-specific and appropriately decided in an individual licensing proceeding, provided that litigants proffer properly framed and supported contentions; LBP-09-10, 70 NRC 51 (2009); LBP-09-16, 70 NRC 227 (2009)

radiological monitoring is an operational program that is beyond the scope of license renewal; LBP-07-4, 65 NRC 281 (2007)

ratepayer impacts are outside the scope of a combined license proceeding because the state, not NRC, is charged with protecting ratepayers' interests; LBP-09-10, 70 NRC 51 (2009)

reasonably specific factual and legal allegations are required at the outset to ensure that matters admitted for hearing have at least some minimal foundation, are material to the proceeding, and provide notice to opposing parties of the issues they will need to defend against; CLI-10-11, 71 NRC 287 (2010)

SUBJECT INDEX

regarding consideration of specific combination alternatives, the burden rests on petitioner to propose a particular alternative, and bare generalizations will not support an admissible contention; LBP-10-6, 71 NRC 350 (2010)

rejection or admission of a contention, where petitioner has been admitted as a party and has other contentions pending, neither constitutes serious and irreparable impact, nor affects the basic structure of the proceeding in a pervasive and unusual manner; CLI-10-16, 71 NRC 486 (2010)

releases from the nuclear fuel cycle in general, incidences of childhood cancers near nuclear power plants, and a request for the NRC to address radioactive releases from the burning of coal at fossil fuel plants are outside the scope of a combined license proceeding; LBP-09-16, 70 NRC 227 (2009)

replies may provide only legitimate amplifications of the original contentions or a logical/legal response to the answers of the Staff and applicant; LBP-09-17, 70 NRC 311 (2009)

reply pleadings are an improper place to attempt to introduce a new argument to establish a contention's admissibility; LBP-07-10, 66 NRC 1 (2007)

reports before a board are subject to scrutiny both as to those portions that support an intervenor's assertion and those that do not; LBP-09-21, 70 NRC 581 (2009)

request for waiver is required for contentions that challenge the Commission's regulations; LBP-08-21, 68 NRC 554 (2008)

requests for hearing or petitions for leave to intervene must set forth with particularity the contentions sought to be raised, addressing six pleading requirements; CLI-10-1, 71 NRC 1 (2010)

requirements are strict by design to ensure that hearings cover only genuine and pertinent issues of concern and that the issues are framed and supported concisely enough at the outset to ensure that the proceedings are effective and focused on real, concrete issues; LBP-08-24, 68 NRC 691 (2008)

requirements for filing both new and nontimely contentions are stringent; LBP-09-27, 70 NRC 992 (2009)

requiring a petitioner to allege facts under section 2.309(f)(1)(v) or to provide an affidavit that sets out the factual and/or technical bases under section 51.109(a)(2) in support of a legal contention as opposed to a factual contention is not necessary; LBP-10-17, 72 NRC 501 (2010)

revenue decoupling is a state regulatory matter that is outside the scope of, and not material to, the NRC licensing process; LBP-09-10, 70 NRC 51 (2009)

routine rulings are usually not occasions for the Commission to exercise its authority to step into ongoing licensing board proceedings and undertake interlocutory review; CLI-09-3, 69 NRC 68 (2009)

rules of practice require a concise statement of the alleged facts or expert opinions that support petitioner's position, but does not require the submission of an expert opinion or require that an expert opinion be submitted in the form of admissible evidence; LBP-06-7, 63 NRC 188 (2006)

rules on contention admissibility are strict by design; LBP-08-9, 67 NRC 421 (2008)

rulings may be deferred in the interest of the most economical use of board resources; LBP-07-8, 65 NRC 531 (2007)

safety issues that were reviewed for the initial license and that have been closely monitored by NRC inspection during the license term need not be reviewed again in the context of a license renewal application; LBP-08-13, 68 NRC 43 (2008)

SAMA contentions will be admitted in license renewal proceedings only if it looks genuinely plausible that inclusion of an additional factor or use of other assumptions or models may change the cost-benefit conclusions for the SAMA candidates evaluated; LBP-10-13, 71 NRC 673 (2010)

scope of a license renewal proceeding is limited to review of plant structures and components requiring an aging management review for the period of extended operation and to the plant's systems, structures, and components that are subject to an evaluation of time-limited aging analyses; LBP-10-21, 72 NRC 616 (2010)

scope of an adjudicatory proceeding is specified by the notice of hearing, and contentions that raise matters outside that defined scope must be rejected; LBP-09-18, 70 NRC 385 (2009)

scope of the proceeding is defined by the Commission in its initial hearing notice and order referring the proceeding to the licensing board; LBP-10-17, 72 NRC 501 (2010)

section 2.309(f)(1)(vi) is not a second hurdle of materiality that an intervenor must meet, but rather requires that intervenor identify the specific parts of the combined license application that it disputes and show that resolution of those disputes is material to the licensing decision; LBP-09-27, 70 NRC 992 (2009)

SUBJECT INDEX

severe accident mitigation alternatives are a Category 2 issue that demands a site-specific analysis for license renewal; LBP-10-13, 71 NRC 673 (2010)

significant inaccuracies and omissions from the environmental report are proper subjects of contentions but details or nuances are not, nor are boards to flyspeck environmental documents; LBP-10-10, 71 NRC 529 (2010)

simply attaching material or documents as a basis for a contention, without setting forth an explanation of that information's significance, is inadequate to support the admission of the contention; LBP-07-10, 66 NRC 1 (2007); LBP-08-16, 68 NRC 361 (2008); LBP-08-17, 68 NRC 431 (2008); LBP-08-26, 68 NRC 905 (2008); LBP-09-3, 69 NRC 139 (2009); LBP-09-18, 70 NRC 385 (2009); LBP-10-7, 71 NRC 391 (2010)

since a license amendment involves a facility with ongoing operations, a petitioner's challenge must show that the amendment will cause a distinct new harm or threat apart from the activities already licensed; LBP-06-22, 64 NRC 229 (2006)

site characterization and environmental impact statement approval process are discussed in the context of the scope of admissible issues in the high-level waste repository proceeding; LBP-09-6, 69 NRC 367 (2009)

site-specific claims relating to the safe ongoing operations of a nuclear reactor are not matters peculiar to plant aging or to the license extension period; CLI-07-8, 65 NRC 124 (2007)

six basic pleading standards must be satisfied whether contentions are filed at the outset of the proceeding, are filed in a timely fashion when material new information arises, or are untimely filings; LBP-06-14, 63 NRC 568 (2006)

six basic requirements for an admissible contention can be summarized as specificity, brief explanation, within scope, materiality, concise statement of alleged facts or expert opinion, and genuine dispute; LBP-10-15, 72 NRC 257 (2010)

someone living adjacent to the site for proposed construction of a federally licensed facility has standing to challenge the licensing agency's failure to prepare an environmental impact statement, even though he cannot establish with any certainty that the statement will cause the license to be withheld or altered, and even though the facility will not be completed for many years; LBP-10-24, 72 NRC 720 (2010)

speculation or bare assertions that a matter should be considered are not sufficient to allow admission of a contention; LBP-08-6, 67 NRC 241 (2008)

spent fuel pool fires are Category 1 issues and therefore are addressed generically in the generic environmental impact statement for license renewals; LBP-08-13, 68 NRC 43 (2008)

spent fuel storage issues are outside the scope of a license renewal proceeding; LBP-06-10, 63 NRC 314 (2006)

Staff's propositions at the contention admission stage regarding what would effectively cure an omission from a license renewal application are matters for a merits decision, not for a determination of whether a contention of omission is admissible; LBP-10-15, 72 NRC 257 (2010)

Staff's significant hazards consideration determination is final, subject only to the Commission's discretion, on its own initiative, to review the determination; LBP-08-18, 68 NRC 533 (2008)

standards do not require dispositive proof of the contention or its bases, but they do require a clear statement as to the bases for the contention and supporting information and references to documents and sources that establish the validity of the contention; LBP-10-6, 71 NRC 350 (2010)

standards for the admissibility of contentions originally came into being in 1989, when the Commission amended its rules to raise the threshold for the admission of contentions; LBP-09-17, 70 NRC 311 (2009)

statements of petitioner's views about what regulatory policy should be do not present litigable issues; LBP-07-10, 66 NRC 1 (2007)

stating that an allegation that some aspect of a license application is inadequate or unacceptable does not give rise to a genuine dispute unless it is supported by facts and a reasoned statement of why the application is unacceptable in some material respect; LBP-09-18, 70 NRC 385 (2009)

strict contention standards ensure that those admitted to NRC hearings bring actual knowledge of safety and environmental issues that bear on the licensing decision, and therefore can litigate issues meaningfully; CLI-08-17, 68 NRC 231 (2008)

SUBJECT INDEX

strict pleading requirements under 10 C.F.R. 2.309(f)(1) must be satisfied; LBP-08-21, 68 NRC 554 (2008)

subject matter of a contention must impact the grant or denial of the pending license application; LBP-10-17, 72 NRC 501 (2010)

submission of a new contention within 30 days of the event giving rise to that contention is timely; LBP-10-17, 72 NRC 501 (2010)

submittal of the information by applicant is the basis for the finding of mootness of a contention, but the adequacy of the information submitted may be the subject of a new or amended contention; LBP-09-21, 70 NRC 581 (2009)

substantive admissibility standards for contentions and the case law interpreting the requirements are discussed; LBP-06-23, 64 NRC 257 (2006)

sufficiency of an application is not a matter committed solely to the NRC Staff's discretion and thus is within the scope of an adjudicatory proceeding; LBP-10-17, 72 NRC 501 (2010)

support for a contention as reflected in its stated bases and any accompanying affidavits or documentary information should be set forth with reasonable specificity; LBP-08-2, 67 NRC 54 (2008)

support for a contention generally is fulfilled when the sponsor of an otherwise acceptable contention provides a brief recitation of the factors underlying the contention or references to documents and texts that provide such reasons; LBP-09-6, 69 NRC 367 (2009)

support for a contention that consisted of brief quotes from the petitioners' correspondence with a physicist were found to be bare conclusory remarks with respect to which the petitioner offered no explanation or analysis; CLI-10-2, 71 NRC 27 (2010)

supporting information is to be provided at the time the contention is filed, not at a later date or on appeal; CLI-07-20, 65 NRC 499 (2007)

Table S-3 does not include health effects from the effluents described in the table, and that issue may be the subject of litigation in the individual licensing proceedings; LBP-09-16, 70 NRC 227 (2009)

technical perfection is not an essential element of contention pleading; LBP-06-10, 63 NRC 314 (2006); LBP-08-6, 67 NRC 241 (2008)

technical perfection is not an essential element of contention pleading, but the rules have nonetheless been held to bar contentions where petitioners have only what amounts to generalized suspicions, hoping to substantiate them later; LBP-09-17, 70 NRC 311 (2009)

terrorism contentions are directly related to security and are therefore, under NRC license renewal rules, unrelated to the detrimental effects of aging, and consequently are beyond the scope of, not material to, and inadmissible in, a license renewal proceeding; CLI-07-8, 65 NRC 124 (2007); CLI-07-9, 65 NRC 139 (2007)

terrorism issues are outside the scope of agency NEPA review and are inadmissible; LBP-06-4, 63 NRC 99 (2006)

terrorism-related issues are outside the scope of NRC adjudications; LBP-09-17, 70 NRC 311 (2009)

the adequacy of the applicant's license application, not the NRC Staff's safety evaluation, is the safety issue in any licensing proceeding, and contentions on the adequacy of the [content of the Safety Evaluation Report are not cognizable in a proceeding; LBP-06-27, 64 NRC 438 (2006)

the adjudicatory process is not the proper venue to hear any contention that merely addresses petitioner's own views on regulatory policy; LBP-08-9, 67 NRC 421 (2008); LBP-08-26, 68 NRC 905 (2008)

the admissibility decision sometimes turns on a determination about when, as a cumulative matter, separate pieces of the information puzzle were sufficiently in place to make the particular concerns reasonably apparent; LBP-09-10, 70 NRC 51 (2009)

the admissibility of proposed contentions may be determined after the Staff has issued the materials license amendment; CLI-07-20, 65 NRC 499 (2007)

the affidavit supporting a motion to reopen a license renewal proceeding must provide sufficient information to support a prima facie showing that a deficiency exists in the application and the deficiency presents a significant safety issue; LBP-08-12, 68 NRC 5 (2008)

the amended late-filed contentions rule, 10 C.F.R. 2.309(f)(2), is not intended to alter the standards in section 2.714(a) of its rules of practice as interpreted by NRC case law; LBP-10-17, 72 NRC 501 (2010)

SUBJECT INDEX

- the appropriate path for any petitioner's challenges to proposed reactor design revisions is through participation in those rulemaking proceedings, not through a combined license proceeding; LBP-09-2, 69 NRC 87 (2009)
- the assertion that applicant might need to obtain a Part 72 license is irrelevant because a grant of the combined license could be accompanied by grant of a Part 72 general license if applicant complies with certain conditions; LBP-09-21, 70 NRC 581 (2009)
- the basis of the contention must relate directly to the proposed licensing action and not be based on allegations of improprieties of only historical interest; LBP-08-24, 68 NRC 691 (2008)
- the board erred in admitting a contention concerning the economic value of wetlands without requiring petitioners to demonstrate that the proposed licensing action or no-action alternative would have any effect on wetlands; CLI-09-9, 69 NRC 331 (2009)
- the brief explanation of the basis that is required by section 2.309(f)(1)(ii) helps define the scope of a contention, but it is the contention, not bases, whose admissibility must be determined; LBP-08-6, 67 NRC 241 (2008)
- the brief explanation of the logical underpinnings of a contention does not require a petitioner to provide an exhaustive list of possible bases, but simply to provide sufficient alleged factual or legal bases to support the contention; LBP-08-26, 68 NRC 905 (2008)
- the burden that the contention admissibility rules impose on petitioners to put forth a sufficient factual basis does not shift the ultimate burden of proof from the applicant to the petitioner; LBP-06-10, 63 NRC 314 (2006)
- the character or integrity of an applicant is a proper consideration in a licensing proceeding; LBP-09-6, 69 NRC 367 (2009)
- the Commission addresses a certified question by a licensing board on the admissibility of proposed contentions involving the Waste Confidence Rule; CLI-10-19, 72 NRC 98 (2010)
- the Commission declined to review licensing board referred rulings because the contentions were rejected by the board due to legal insufficiency; CLI-09-21, 70 NRC 927 (2009)
- the Commission defers to a board's rulings on standing and contention admissibility in the absence of clear error or abuse of discretion; CLI-06-24, 64 NRC 111 (2006); CLI-07-20, 65 NRC 499 (2007); CLI-09-7, 69 NRC 235 (2009); CLI-09-8, 69 NRC 317 (2009); CLI-09-9, 69 NRC 331 (2009); CLI-09-12, 69 NRC 535 (2009); CLI-09-14, 69 NRC 580 (2009); CLI-09-16, 70 NRC 33 (2009); CLI-09-20, 70 NRC 911 (2009); CLI-10-1, 71 NRC 1 (2010); CLI-10-2, 71 NRC 27 (2010); CLI-10-7, 71 NRC 133 (2010); CLI-10-21, 72 NRC 197 (2010)
- the Commission dispensed with all but the good cause factor for late-filed contentions; LBP-09-29, 70 NRC 1028 (2009)
- the Commission does not endorse deferring the consideration of proposed contentions because prompt consideration of contentions promotes the efficient and complete development of the record while conserving resources; CLI-07-20, 65 NRC 499 (2007)
- the Commission does not entertain on appeal arguments not raised before a licensing board; CLI-09-12, 69 NRC 535 (2009)
- the Commission does not grant waivers where the circumstances on which the waiver's proponent relies are common to a large class of applicants or facilities; CLI-09-3, 69 NRC 68 (2009)
- the Commission expects parties to bear their burden and to clearly identify the matters on which they intend to rely with reference to a specific point; LBP-08-24, 68 NRC 691 (2008)
- the Commission generally refuses to modify, rescind, or impose new requirements on reactor design certification information, except through rulemaking; LBP-10-21, 72 NRC 616 (2010)
- the Commission has previously rejected claims that NRC regulations require discharge permits of their licensees; LBP-09-25, 70 NRC 867 (2009)
- the Commission rather than petitioner holds the authority to define the scope of a proceeding; LBP-09-20, 70 NRC 565 (2009)
- the Commission reverses the board's admission of two contentions; CLI-09-3, 69 NRC 68 (2009)
- the Commission will not accept the filing of a vague, unparticularized contention, unsupported by alleged fact or expert opinion and documentary support; CLI-07-18, 65 NRC 399 (2007); LBP-07-5, 65 NRC 341 (2007)
- the Commission will not consider information that is introduced for the first time on appeal in an attempt to cure deficient contentions; CLI-10-1, 71 NRC 1 (2010)

SUBJECT INDEX

the Commission will review referred rulings only if the referral raises significant and novel legal or policy issues, and resolution of the issues would materially advance the orderly disposition of the proceeding; CLI-09-3, 69 NRC 68 (2009)

the Commission's decision not to entertain a state's integrity and competence contentions in the high-level waste repository proceeding is consistent with its practice of extending comity to other governmental entities; CLI-09-14, 69 NRC 580 (2009)

the contention admissibility rule does not require a petitioner to prove its case at the contention stage; LBP-09-27, 70 NRC 992 (2009)

the contention admissibility threshold is less than is required at the summary disposition stage; LBP-07-16, 66 NRC 277 (2007); LBP-09-26, 70 NRC 939 (2009)

the contention requirements were never intended to be turned into a fortress to deny intervention; LBP-09-21, 70 NRC 581 (2009)

the contention rule is strict by design, having been toughened in 1989 because in prior years licensing boards had admitted and litigated numerous contentions that appeared to be based on little more than speculation; LBP-08-6, 67 NRC 241 (2008); LBP-09-10, 70 NRC 51 (2009); LBP-09-16, 70 NRC 227 (2009); LBP-09-17, 70 NRC 311 (2009)

the contention that applicant cannot pass a financial test because the parent company is already committed to providing funding for the decommissioning of another site is an impermissible challenge to NRC regulations; LBP-09-18, 70 NRC 385 (2009)

the current version of contention admissibility rules no longer incorporates provisions that permitted the supplementation of petitions and the filing of contentions after the original filing of petitions; LBP-07-4, 65 NRC 281 (2007)

the decision as to whether an alleged environmental impact or alternative is significant or reasonable is the merits of a NEPA contention and should not be adjudicated at the contention admissibility stage under the guise of materiality or scope; LBP-09-10, 70 NRC 51 (2009)

the degree of support necessary for an irradiator siting contention will depend on how obvious a threat the asserted risk is, given the irradiator facility's design and protective features; CLI-08-3, 67 NRC 151 (2008)

the design certification rulemaking and individual COL adjudicatory proceedings may proceed simultaneously, and issues raised in an adjudicatory proceeding that are appropriately addressed in the generic design certification rulemaking are to be referred to the rulemaking for resolution; LBP-10-17, 72 NRC 501 (2010)

the environmental baseline reflects the effects of all currently existing pollution sources in the relevant watershed, including contributions of all nuclear power plants, and petitioners failed to provide information indicating that this aggregate analysis was insufficient under NEPA; LBP-09-16, 70 NRC 227 (2009)

the environmental impacts related to storage of spent fuel under Part 72 have been generically evaluated under two previous rulemakings and the Commission's waste confidence proceedings, and thus need not be reassessed; LBP-09-21, 70 NRC 581 (2009)

the fact that a combined license application is subject to, or even expected to, change does not make it legally deficient, because NRC follows a dynamic licensing process; LBP-09-10, 70 NRC 51 (2009)

the fact that a given guidance document upon which an applicant relied was withdrawn does not suffice to support a contention; LBP-07-14, 66 NRC 169 (2007)

the fact that an issue was mentioned in agency documents is insufficient to show that it was resolved; LBP-08-15, 68 NRC 294 (2008)

the fact that disposal of dredged or fill material in wetlands is regulated by the Environmental Protection Agency and the U.S. Army Corps of Engineers does not render a contention inadmissible; LBP-09-10, 70 NRC 51 (2009)

the fact that NRC Staff consultation with interested Indian tribes had not yet taken place at the time a materials license amendment application was filed did not reflect a deficiency in the application and thus a contention alleging such a deficiency is inadmissible; CLI-09-12, 69 NRC 535 (2009)

the fact that there are a number of requests for additional information outstanding does not give rise to an evidentiary hearing; LBP-08-9, 67 NRC 421 (2008)

SUBJECT INDEX

the February 2004 revision of the rules no longer incorporates provisions that permitted the amendment and supplementation of petitions and filing of contentions after the original filing of petitions; LBP-08-6, 67 NRC 241 (2008)

the filing in a reply brief of new arguments or new legal theories that opposing parties have not had the opportunity to address is not permitted; CLI-06-9, 63 NRC 433 (2006)

the financial test for a parent company guarantee is a material issue because the Staff must decide whether the test is satisfied in order to grant the combined license; LBP-09-15, 70 NRC 198 (2009)

the first step in assessing the admissibility of a new contention is to determine if it is timely under 10 C.F.R. 2.309(f)(2)(iii) or nontimely under section 2.309(c); LBP-09-10, 70 NRC 51 (2009)

the good cause factor favors petitioners who have filed their petition within 30 days of the availability of the document they contend contains new and significant information so as to form the basis for their contention; LBP-10-1, 71 NRC 165 (2010)

the issue that generally arises under 10 C.F.R. 2.309(f)(1)(i) is whether a contention is stated with sufficient specificity; LBP-09-17, 70 NRC 311 (2009)

the lateness of petitioner's filing is justifiable because a relevant document was not revealed in a search of NRC's public database because of deficiencies in tagging; LBP-08-6, 67 NRC 241 (2008)

the licensing board did not commit reversible error by admitting a contention based on low-level radioactive waste storage duration because the NRC Staff itself had issued a request for additional information on this very issue and thus this conflicted with Staff's argument that the issue is immaterial to the findings that must be made on the application; LBP-09-27, 70 NRC 992 (2009)

the mandatory disclosure requirements are not an opportunity to relitigate the admissibility of a contention; LBP-09-30, 70 NRC 1039 (2009)

the manner in which the Staff conducts its review is outside the scope of a proceeding; LBP-10-17, 72 NRC 501 (2010)

the materiality requirement for contention admission often dictates that any contention alleging deficiencies or errors in an application also indicate some significant link between the claimed deficiency and either the health and safety of the public or the environment; LBP-10-7, 71 NRC 391 (2010)

the mere posing of questions does not provide sufficient support to admit a contention; LBP-07-4, 65 NRC 281 (2007)

the mere potential for legal error in a contention admissibility decision is not a ground for interlocutory review; CLI-10-30, 72 NRC 564 (2010)

the National Environmental Policy Act is not an appropriate vehicle for exploring questions about the potential for a terrorist attack on a proposed nuclear facility; LBP-09-2, 69 NRC 87 (2009)

the need for design features to guard against design basis threats is outside the scope of a combined license proceeding because it is the subject of an ongoing rulemaking; LBP-09-2, 69 NRC 87 (2009)

the only relevant test for a claim that it is not practicable to adopt the DOE environmental impact statement is whether the supporting affidavit presents significant and substantial new information or new considerations sufficient to render such EIS inadequate; LBP-09-6, 69 NRC 367 (2009)

the organization or format of an application is not germane to license issuance because the objection to the application's organization is not an objection to the licensing action at issue in the proceeding; LBP-10-16, 72 NRC 361 (2010)

the plausible-chain-of-causation standard requires not that the potential harm to petitioner flow directly from the proposed action, but that the petitioner show that the chain of causation is plausible; CLI-09-12, 69 NRC 535 (2009)

the presiding officer in the high-level waste proceeding shall resolve disputes concerning adoption of the DOE environmental impact statement by using, to the extent possible, the criteria and procedures that are followed in ruling on motions to reopen; LBP-09-6, 69 NRC 367 (2009)

the presiding officer should treat as a cognizable "new consideration" an attack on the Yucca Mountain environmental impact statements based on significant and substantial information that, if true, would render the statements inadequate; CLI-08-25, 68 NRC 497 (2008)

the proper purpose of a reply is to discuss alleged deficiencies in a petition, not to try to fix them; LBP-08-17, 68 NRC 431 (2008)

the proper scope of an irradiation licensing proceeding and whether it requires or otherwise encompasses analyses of endemic site-related risks are questioned; CLI-07-26, 66 NRC 109 (2007)

SUBJECT INDEX

the public will have a new opportunity to file environmental contentions when the NRC Staff issues the environmental impact statement or environmental analysis; LBP-09-10, 70 NRC 51 (2009); LBP-09-25, 70 NRC 867 (2009)

the purpose of an appeal is to point out errors made in the board's decision, not to attempt to cure deficient contentions by presenting arguments and evidence never provided to the board; CLI-07-20, 65 NRC 499 (2007)

the purpose of contention pleading requirements is to focus litigation on concrete issues and result in a clearer and more focused record for decision; LBP-08-14, 68 NRC 279 (2008); LBP-09-26, 70 NRC 939 (2009); LBP-10-15, 72 NRC 257 (2010); LBP-10-16, 72 NRC 361 (2010)

the quality of the evidentiary support at the contention filing stage need not be of the quality necessary to withstand a summary disposition motion; CLI-08-3, 67 NRC 151 (2008)

the question as to whether an NPDES permit that will expire before the proposed 20-year NRC license renewal would even take effect raises an admissible and material issue of law and fact; LBP-06-20, 64 NRC 131 (2006)

the questions of the safety and environmental impacts of onsite low-level waste storage are, in the Commission's view, largely site- and design-specific, and appropriately decided in an individual licensing proceeding, provided that litigants proffer properly framed and supported contentions; CLI-09-3, 69 NRC 68 (2009)

the reach of a contention necessarily hinges upon its terms coupled with its stated bases; CLI-10-11, 71 NRC 287 (2010)

the requirement of 10 C.F.R. 2.309(f)(1)(ii) that the petition include a brief explanation of the basis for the contention requires an explanation of the rationale or theory of the contention; LBP-09-10, 70 NRC 51 (2009)

the requirement of factual support is not intended to prevent intervention when material and concrete issues exist; LBP-08-27, 68 NRC 951 (2008)

the requirement of materiality often dictates that any contention alleging deficiencies or errors in an application also indicate some significant link between the claimed deficiency and either the health and safety of the public or the environment; LBP-09-3, 69 NRC 139 (2009)

the requirement that contentions be supported by alleged facts or expert opinion generally is fulfilled when the sponsor of an otherwise acceptable contention provides a brief recitation of the factors underlying the contention or references to documents and text that provide such reasons; LBP-10-14, 72 NRC 101 (2010)

the requirement that the issue raised in a contention must be within the scope of the proceeding is of particular relevance given the two-stage jurisdictional procedure established prior to the first mixed oxide fuel fabrication facility proceeding; LBP-07-14, 66 NRC 169 (2007)

the SAMDA analysis is part of the design certification application and thus intervenor's contention constitutes an impermissible challenge to a future rulemaking; LBP-10-10, 71 NRC 529 (2010)

the scope of a contention is limited to issues of law or fact pleaded with particularity in the intervention petition, including its stated bases, unless the contention is satisfactorily amended in accordance with NRC rules; CLI-10-5, 71 NRC 90 (2010); CLI-10-15, 71 NRC 479 (2010)

the scope of a license renewal proceeding is addressed, with regard to safety-related issues, in 10 C.F.R. Part 54, and, with regard to environmental issues, in 10 C.F.R. Part 51; LBP-07-11, 66 NRC 41 (2007)

the scope of a license renewal proceeding is limited to a review of the plant structures and components that will require an aging management review for the period of extended operation and the plant's systems, structures, and components that are subject to an evaluation of time-limited aging analyses; LBP-06-22, 64 NRC 229 (2006)

the scope of a proceeding is defined by the Commission in its initial hearing notice and order referring the proceeding to the licensing board; LBP-06-12, 63 NRC 403 (2006); LBP-07-16, 66 NRC 277 (2007); LBP-08-9, 67 NRC 421 (2008); LBP-08-26, 68 NRC 905 (2008); LBP-09-25, 70 NRC 867 (2009); LBP-09-26, 70 NRC 939 (2009); LBP-10-9, 71 NRC 493 (2010)

the scope of an enforcement adjudication is limited to the question of whether the order should be sustained; CLI-10-3, 71 NRC 49 (2010); LBP-07-16, 66 NRC 277 (2007)

the scope of license renewal proceedings is limited to the potential detrimental effects of aging that are not routinely addressed by ongoing regulatory oversight programs; LBP-07-17, 66 NRC 327 (2007)

the six criteria that govern the admissibility of contentions are discussed; LBP-09-21, 70 NRC 581 (2009)

SUBJECT INDEX

the six-factor test in 10 C.F.R. 2.309(f)(1) applies regardless of whether a contention is submitted at the beginning of a proceeding, as a timely new contention under section 2.309(f)(2), or as a nontimely new contention under section 2.309(c); LBP-07-15, 66 NRC 261 (2007)

the specificity requirement for contentions puts the other parties on notice as to what issues they will have to defend against or oppose; LBP-08-2, 67 NRC 54 (2008)

the standing requirement for showing injury in fact has always been significantly less than for demonstrating an acceptable contention; LBP-08-6, 67 NRC 241 (2008)

the strict contention rule serves multiple interests; LBP-08-6, 67 NRC 241 (2008); LBP-09-17, 70 NRC 311 (2009)

the strict contention rule serves to focus the hearing process on real disputes susceptible of resolution in an adjudication, to put other parties on notice of petitioners' specific grievances, to ensure that full adjudicatory hearings are triggered only by those able to proffer at least some minimal factual and legal foundation in support of their contentions; LBP-06-10, 63 NRC 314 (2006); LBP-06-23, 64 NRC 257 (2006)

the subject matter of a contention must impact the grant or denial of a pending license application; CLI-09-15, 70 NRC 1 (2009); LBP-07-3, 65 NRC 237 (2007); LBP-07-10, 66 NRC 1 (2007); LBP-08-26, 68 NRC 905 (2008); LBP-09-27, 70 NRC 992 (2009)

the underlying purpose of NEPA as an information-gathering and disclosure mechanism requires a different view of the concept of "materiality" under 10 C.F.R. 2.309(f)(1)(iv) than might be applied to a contention seeking to establish a health and safety issue; LBP-08-16, 68 NRC 361 (2008)

the universe of potential contentions in a combined license proceeding includes site-specific contentions that do not implicate issues appropriately considered in a design certification rulemaking; CLI-09-8, 69 NRC 317 (2009)

the Waste Confidence Rule is applicable to all new reactor proceedings; LBP-08-16, 68 NRC 361 (2008)

the Waste Confidence Rule is applicable to all new reactor proceedings and contentions challenging the rule or seeking its reconsideration are inadmissible; LBP-09-18, 70 NRC 385 (2009)

there is a difference between contentions that allege that a license application suffers from an improper omission and contentions that raise a specific substantive challenge to how particular information or issues have been discussed in a license application; LBP-08-12, 68 NRC 5 (2008)

there is a difference between what NRC must look at in order to evaluate cumulative impacts under the National Environmental Policy Act and the scope of a particular cumulative impacts contention, which may be a subset of the total array of cumulative impacts required to be examined; CLI-10-5, 71 NRC 90 (2010)

there is no need for a review of emergency planning issues in the context of license renewal; LBP-08-13, 68 NRC 43 (2008)

there is no NEPA requirement that NRC consider the environmental consequences of hypothetical terrorist attacks on NRC-licensed facilities; CLI-07-8, 65 NRC 124 (2007); CLI-07-10, 65 NRC 144 (2007)

there may be mistakes in the draft environmental impact statement, but in an NRC adjudication, it is intervenors' burden to show their significance and materiality; LBP-07-3, 65 NRC 237 (2007)

there must be some link between the deficiency claimed in a contention and the agency's ultimate determination regarding whether the license applicant will adequately protect the health and safety of the public and the environment; LBP-08-26, 68 NRC 905 (2008); LBP-09-27, 70 NRC 992 (2009)

threat of terrorist attack at spent fuel pools has been evaluated generically by NRC and special circumstances for rule waiver have not been shown; LBP-10-15, 72 NRC 257 (2010)

three regulations govern the admissibility of contentions added after an adjudicatory hearing has commenced; LBP-06-14, 63 NRC 568 (2006)

threshold admissibility requirements for contentions should not be turned into a fortress to deny intervention; CLI-07-18, 65 NRC 399 (2007)

threshold contention standards are imposed to avoid admission of contentions based on little more than speculation and intervenors who have negligible knowledge of nuclear power issues; CLI-08-17, 68 NRC 231 (2008)

threshold pleading standards require petitioners to review application materials and set forth their contentions with particularity; CLI-10-11, 71 NRC 287 (2010)

SUBJECT INDEX

timeliness of a motion to reopen in which a new contention is proffered depends primarily on an assessment as to when the proponent of the motion first knew, or should have known, enough information to raise the issues presented in the new contention; LBP-10-19, 72 NRC 529 (2010)

timeliness of a new or amended contention based on material new information is based on the timing of the availability of the information on which the contention is based, not the timing of the NRC Staff NEPA document; LBP-10-24, 72 NRC 720 (2010)

timely new non-NEPA contentions are subject to a three-factor test; LBP-07-15, 66 NRC 261 (2007)

to be admissible, a contention must assert an issue of law or fact that is material to the findings NRC must make to support the action that is involved in the proceeding; LBP-09-26, 70 NRC 939 (2009); LBP-10-6, 71 NRC 350 (2010); LBP-10-9, 71 NRC 493 (2010)

to be admissible, a contention must satisfy, without exception, each of the criteria set out in 10 C.F.R. 2.309(f)(1)(i)-(vi); LBP-10-2, 71 NRC 190 (2010); LBP-10-6, 71 NRC 350 (2010)

to be admissible, a contention must show that some significant link exists between the claimed deficiency and either the health and safety of the public or the environment; LBP-10-6, 71 NRC 350 (2010)

to be admitted in a proceeding, a new contention must meet the new or amended contention requirements as well as the general contention admissibility requirements; LBP-09-9, 70 NRC 41 (2009)

to challenge a regulation, petitioner must submit a supporting affidavit setting forth with particularity the special circumstances that justify the waiver or exception requested; LBP-09-18, 70 NRC 385 (2009)

to challenge a rule or regulation in the adjudicatory context, petitioner must submit a request for waiver of the rule under 10 C.F.R. 2.335; LBP-07-11, 66 NRC 41 (2007)

to force intervenors to file contentions before the results of an ongoing NRC investigation are announced to the public would effectively force intervenors to speculate about the results of such investigations and the conclusions the Staff might reach; LBP-10-9, 71 NRC 493 (2010)

to implicate environmental justice scrutiny, support must be presented regarding the alleged existence of adverse impacts or harm on the physical or human environment, and a supported case must be made that these purported adverse impacts could disproportionately affect poor or minority communities in the vicinity of the facility at issue; LBP-07-3, 65 NRC 237 (2007)

to intervene in an NRC proceeding, a petitioner must, in addition to demonstrating standing, submit at least one contention meeting specific pleading requirements; LBP-07-4, 65 NRC 281 (2007)

to justify reopening the record to admit a new contention, the moving papers must be strong enough, in the light of any opposing filings, to avoid summary disposition, and the new information must be significant and plausible enough to require reasonable minds to inquire further; LBP-10-21, 72 NRC 616 (2010)

to qualify as an environmental justice contention, the contention must show that the affected local population qualifies as a minority or low-income population; LBP-09-18, 70 NRC 385 (2009)

to raise a timely contention, a party is not expected to piece together disparate shreds of information that, standing alone, have little apparent significance; LBP-10-9, 71 NRC 493 (2010)

to raise an admissible contention with respect to a Staff finding of no significant impact, petitioner need not demonstrate that there will be a significant environmental impact as a consequence of the proposed action, but it must allege facts that, if true, show that the proposed project may significantly degrade some human environmental factor; LBP-06-27, 64 NRC 438 (2006)

to reopen a closed record to introduce a new issue, movant has the burden of showing that the new information will likely trigger a different result; LBP-08-12, 68 NRC 5 (2008)

to require petitioners to rerun a model themselves, in order to demonstrate the individual or collective effects of the defects they allege, would improperly require boards to adjudicate the merits of contentions before admitting them; LBP-09-6, 69 NRC 367 (2009)

to satisfy the basis requirement for a contention of omission, petitioner must briefly and adequately explain why it believes that the application omits information necessary to satisfy the governing NRC regulations; LBP-08-15, 68 NRC 294 (2008)

to support a contention challenging a Commission rule, petitioner must request, and demonstrate any supporting reasons for, a waiver of the rule; CLI-10-9, 71 NRC 245 (2010)

to the degree that the general precept that a rule, including a design certification, cannot be challenged in an adjudication might be seen as placing such matters outside the scope of the proceeding; LBP-10-21, 72 NRC 616 (2010)

SUBJECT INDEX

to the extent a new contention will cause delay, it is the price for affording the public the opportunity to litigate questions arising from an applicant's failure to comply with quality assurance requirements; LBP-10-9, 71 NRC 493 (2010)

to the extent petitioner challenges the SAMDA analysis, it is an impermissible challenge to the AP1000 certified design in 10 C.F.R. Part 52, Appendix D; CLI-10-9, 71 NRC 245 (2010)

to the extent that licensee's response focuses on the merits of petitioner's contention at the admissibility stage, and not on whether it is admissible, the response is beyond consideration; LBP-06-6, 63 NRC 167 (2006)

to the extent that petitioner's request for release of information seeks to enhance the enforcement measures already outlined by the Staff in the confirmatory order, this is also outside the scope of an enforcement proceeding; LBP-07-16, 66 NRC 277 (2007)

to the extent that petitioners argue that the provisions of 10 C.F.R. 50.54(hh) should be applied to dry cask storage, they may file a rulemaking petition with the Commission; LBP-09-17, 70 NRC 311 (2009)

under Commission precedent on contentions of omission, once information asserted to have been omitted is supplied, the original contention is moot, and intervenors must timely file a new or amended contention in order to raise specific challenges regarding the new information; LBP-10-5, 71 NRC 329 (2010)

under longstanding NRC policy, licensing boards should not accept in individual license proceedings contentions that are or are about to become the subject of general rulemaking by the Commission; CLI-10-19, 72 NRC 98 (2010)

under pre-2004 rules, the fact that a petition or new/amended contention was filed after the hearing opportunity notice deadline because the document or other item relied upon as the submission trigger was not available was considered good cause for the late filing; LBP-10-1, 71 NRC 165 (2010)

unless a deadline has been specified in the scheduling order for the proceeding, the determination of timeliness is subject to a reasonableness standard that depends on the facts and circumstances of each situation; LBP-10-24, 72 NRC 720 (2010)

unlike federal court practice, the Commission does not accept mere notice pleading in support of an admissible contention; LBP-08-24, 68 NRC 691 (2008)

waiver of a rule can be granted only in unusual and compelling circumstances; LBP-08-17, 68 NRC 431 (2008)

water use issues that are under the jurisdiction of another agency, and which are not affected by any NRC regulation, are outside the scope of an NRC proceeding; CLI-07-25, 66 NRC 101 (2007)

were the Commission to permit litigants to successfully invoke interlocutory review based merely on an assertion that the licensing board erred in admitting or excluding a contention, then the Commission would be opening the floodgates to a potential deluge of interlocutory appeals from any number of participants who lose admissibility rulings; CLI-09-6, 69 NRC 128 (2009)

when a Commission regulation permits the use of a particular analysis, a contention asserting that a different analysis or technique should be utilized is inadmissible because it indirectly attacks the Commission's regulations; LBP-09-16, 70 NRC 227 (2009)

when a contention alleges the omission of particular information or an issue from an application, and the information is later supplied by the applicant or considered by the NRC Staff in an environmental impact statement, the contention is moot; LBP-07-2, 65 NRC 153 (2007); LBP-08-6, 67 NRC 241 (2008)

when a contention is based on a factual underpinning in a document that has been essentially repudiated by the source of that document, the contention may be dismissed unless the intervenor offers another independent source; LBP-10-9, 71 NRC 493 (2010)

when a contention of omission has been rendered moot, and the intervenor wishes to raise specific challenges regarding the new information, it may timely file a new contention that addresses the admissibility factors of 10 C.F.R. 2.309(f)(1); LBP-06-16, 63 NRC 737 (2006)

when a new contention is filed challenging new data or conclusions in NRC's environmental documents, the timeliness of the new contention is based on whether it was filed promptly after the NRC's NEPA document became publicly available, not whether it was filed promptly after the information on which the intervenor bases its challenge became publicly available; LBP-10-24, 72 NRC 720 (2010)

SUBJECT INDEX

- when an issue is no longer live, such that a party no longer has a legal interest in the issue, then it is moot; LBP-10-10, 71 NRC 529 (2010)
- when character or integrity issues are raised, they are expected to be directly germane to the challenged licensing action; CLI-10-9, 71 NRC 245 (2010)
- when critical information has been submitted to the NRC under a claim of confidentiality and was not available to petitioners when framing their issues, it is appropriate to defer ruling on the admissibility of an issue until the petitioner has had an opportunity to review this information and submit a properly documented issue; CLI-07-18, 65 NRC 399 (2007)
- when denial of a license would alleviate a petitioner's asserted potential injury, any admissible contention with such a result can be prosecuted by a petitioner, regardless of whether that contention is directly related to that petitioner's articulated injury; LBP-09-16, 70 NRC 227 (2009)
- when DOE is before the Commission, a heightened standard applies for the admissibility of integrity contentions beyond what is imposed by 10 C.F.R. 2.309(f)(1); LBP-09-6, 69 NRC 367 (2009)
- when environmental issues are dealt with in a separate proceeding, environmental contentions are beyond the scope of the safety proceeding unless they meet requirements beyond the ordinary contention admissibility tests; LBP-07-14, 66 NRC 169 (2007)
- when information becomes available piecemeal over time, and the foundation for a new contention does not become reasonably apparent until the last piece of information becomes available and falls into place, the test for good cause for late filing may be met; LBP-09-10, 70 NRC 51 (2009)
- when new contentions are based on breaking developments or information, they are to be treated as new or amended, not as nontimely; LBP-07-14, 66 NRC 169 (2007)
- when petitioner has filed an expert declaration with its petition, indicating that it can assist, through expert opinion, in the development of a sound record, this weighs in favor of admission; LBP-10-1, 71 NRC 165 (2010)
- when the draft or final environmental impact statement for a combined license application has not been issued so as to provide petitioner with a basis for framing its contention, the licensing board must look to the three other factors specified in 10 C.F.R. 2.309(f)(2) in assessing the admissibility of a new NEPA-related issue statement; LBP-10-1, 71 NRC 165 (2010)
- where a contention alleges the omission of particular information or an issue from an application, and the information is later supplied by the applicant or considered by the Staff in a draft EIS, the contention is moot; LBP-09-27, 70 NRC 992 (2009); LBP-10-10, 71 NRC 529 (2010)
- where a contention challenges applicant's compliance with the Commission's rules implementing the National Environmental Policy Act, materiality relates not only to the Commission's determination regarding denial, issuance, or conditioning of the requested combined license, but also to the Commission's fulfillment of its obligations under NEPA; LBP-10-6, 71 NRC 350 (2010)
- where a document relevant to the licensing proceeding was available on the agency public document management system, but not indexed by license number, the board did not act unreasonably in finding that late-filing factors weighed in favor of the party seeking to introduce the document as late support for an otherwise timely contention; CLI-09-12, 69 NRC 535 (2009)
- where a motion to reopen a proceeding to introduce a new contention founders on several of the initial criteria, the board found it unnecessary to prolong the ruling by analyzing all of the other factors; LBP-10-19, 72 NRC 529 (2010)
- where any issue arises over the proper scope of a contention, NRC opinions have long referred back to the bases set forth in support of the contention; CLI-10-11, 71 NRC 287 (2010)
- where new and material information is revealed in a piecemeal fashion, and where the foundation for a contention is not reasonably available until the later pieces fall into place, the admissibility decision turns on a determination about when, as a cumulative matter, the separate pieces of the information puzzle were sufficiently in place to make the particular concerns reasonably apparent; LBP-06-14, 63 NRC 568 (2006)
- where petitioner has not shown a reasonably close causal relationship between an aircraft attack and the relicensing proceeding at issue, such an attack does not warrant NEPA evaluation; CLI-10-9, 71 NRC 245 (2010)
- where petitioner was admitted to the case as a party at the time it filed an amended contention, consideration of the contention's admissibility is governed by the provisions of this section as well as the general contention admissibility requirements of section 2.309(f)(1); CLI-10-18, 72 NRC 56 (2010)

SUBJECT INDEX

- whether applicant has a valid NPDES permit is outside the scope of a power uprate proceeding; LBP-08-9, 67 NRC 421 (2008)
- whether applicant might someday require a permit under 10 C.F.R. Part 61 for a disposal facility is too speculative and therefore not material to the findings the NRC must make to support the action that is involved; LBP-08-16, 68 NRC 361 (2008)
- whether applicant will improve the general welfare, increase the standard of living, or strengthen free competition in private enterprise is not a litigable issue in a COL proceeding; LBP-08-16, 68 NRC 361 (2008)
- whether excessive safety design could lead to licensing uncertainty, unnecessary costs, or delays are not issues material to the high-level waste repository construction authorization proceeding; CLI-09-14, 69 NRC 580 (2009)
- whether good cause exists to excuse the late-filing of a contention is the most important factor; CLI-08-8, 67 NRC 193 (2008); LBP-06-14, 63 NRC 568 (2006)
- whether other permits may be required from other agencies is outside the scope of NRC proceedings, and those concerns are properly raised before those respective permitting authorities; LBP-09-21, 70 NRC 581 (2009)
- whether the consultation process conducted by applicant with a Native American tribe complies with relevant requirements of law is an admissible issue; LBP-08-6, 67 NRC 241 (2008)
- with limited exceptions, no rule or regulation of the Commission is subject to attack in any adjudicatory proceeding; LBP-07-16, 66 NRC 277 (2007); LBP-09-26, 70 NRC 939 (2009)
- with respect to 10 C.F.R. 2.309(c)(1)(vi), the presence of another party admitted to the proceeding, particularly when that party previously raised the issue that is the subject of the new contention, weighs against a petitioner; LBP-10-1, 71 NRC 165 (2010)
- with respect to orders modifying a license, petitioner must always request a remedy that falls within the scope of the proceeding, as articulated in the notice of hearing; LBP-09-20, 70 NRC 565 (2009)
- would-be intervenors must file contentions at the outset of the proceeding, on the basis of the applicant's environmental report; CLI-07-9, 65 NRC 139 (2007)
- CONTENTIONS, LATE-FILED**
- a change in the controlling law in a different Circuit does not constitute previously unavailable information to excuse late filing; CLI-07-9, 65 NRC 139 (2007); CLI-07-10, 65 NRC 144 (2007)
- a claim not raised in the hearing petition, but added as a new claim in petitioners' reply brief is considered impermissibly late; CLI-08-17, 68 NRC 231 (2008)
- a contention is timely to the extent it challenges the adequacy of the new low-level radioactive waste storage plan, but untimely as to those aspects of the contention that merely reargue issues already decided by the board, without identifying any new information relevant to those issues; LBP-09-27, 70 NRC 992 (2009)
- a late-filed contention can be admitted only when the information on which the amended or new contention is based was previously unavailable; CLI-07-10, 65 NRC 144 (2007)
- a late-filed document that supports or provides a basis for a proposed contention should be considered using the late-filing factors of 10 C.F.R. 2.309(c) and 2.309(f)(2); CLI-09-12, 69 NRC 535 (2009)
- a late-filed environmental contention may be admitted only where petitioner relies upon newly available, significant information, meets the nontimely filing requirements, or successfully argues for supplementing the EIS; LBP-08-11, 67 NRC 460 (2008)
- a matter raised for the first time in a prehearing conference would only be admissible if the petitioner could satisfy the test for admitting late-filed contentions; CLI-07-25, 66 NRC 101 (2007)
- a motion and proposed contention filed later than 30 days after the date when the new and material information on which it is based first becomes available shall be deemed untimely; LBP-09-22, 70 NRC 640 (2009)
- a motion and proposed new contention may address the selection of the appropriate hearing procedure for the proposed new contention; LBP-09-22, 70 NRC 640 (2009)
- a motion for leave to file a new contention, accompanied by the proposed contention, shall be deemed timely if filed within 30 days of the date when the new and material information on which it is based first became available; LBP-09-29, 70 NRC 1028 (2009)

SUBJECT INDEX

- a new contention filed after the 60-day notice period has expired and based on information well known to petitioner for approximately 5 months prior to its filing is not timely; LBP-06-14, 63 NRC 568 (2006)
- a new contention is usually considered timely if filed within 30 days of publication of the draft environmental impact statement; CLI-09-9, 69 NRC 331 (2009); LBP-10-16, 72 NRC 361 (2010)
- a new contention may be filed after the initial docketing with leave of the presiding officer upon a showing that the information upon which it is based was not previously available, is materially different than information previously available, and has been submitted in a timely fashion based on the availability of the subsequent information; LBP-09-26, 70 NRC 939 (2009); LBP-09-27, 70 NRC 992 (2009); LBP-09-29, 70 NRC 1028 (2009); LBP-10-9, 71 NRC 493 (2010); LBP-10-17, 72 NRC 501 (2010)
- a new issue is raised only when the argument itself (as distinct from its chances of success) was not apparent at the time of the application; CLI-09-7, 69 NRC 235 (2009)
- a newly proffered contention submitted after the close of the record must meet timeliness standards as well as the requirements of 10 C.F.R. 2.309(c); LBP-08-12, 68 NRC 5 (2008)
- a nonparty seeking late intervention after the record has closed must address both the standard for late intervention and the standard for reopening a closed record; CLI-09-5, 69 NRC 115 (2009)
- a nontimely petition or contention will not be entertained in the high-level waste proceeding unless the Commission, an Atomic Safety and Licensing Board, or a presiding officer designated to rule on the petition determines that the late petition or contention meets the late-filing requirements; CLI-08-25, 68 NRC 497 (2008)
- a party cannot satisfy the "not previously available" standard of 10 C.F.R. 2.309(f)(2)(i) by showing that, as a subjective matter, he or she only recently became aware of, or realized the significance of, public information that was previously available to all; LBP-09-10, 70 NRC 51 (2009)
- a petitioner who without reason fails to argue that a nontimely contention satisfies the eight-factor balancing test in 10 C.F.R. 2.309(c) may be deemed as having waived that argument; LBP-06-22, 64 NRC 229 (2006)
- a reply cannot expand the scope of the arguments set forth in the original pleading; CLI-06-17, 63 NRC 727 (2006)
- a tribe is free to file a contention later on in the proceeding if, after Staff releases its environmental documents, the tribe believes that the Staff has failed to satisfy its obligations under NEPA and the National Historic Preservation Act; LBP-10-16, 72 NRC 361 (2010)
- absent good cause, a compelling showing must be made on the other section 2.309(c) factors if a nontimely petition is to be granted or a nontimely contention is to be admitted; LBP-09-26, 70 NRC 939 (2009); LBP-10-1, 71 NRC 165 (2010)
- after the initial filing, permission of the board must be sought to file new or amended contentions; LBP-07-14, 66 NRC 169 (2007)
- although a motion to reopen must be timely, an exceptionally grave issue may be considered even if the motion is not timely; CLI-09-5, 69 NRC 115 (2009); LBP-10-19, 72 NRC 529 (2010); LBP-10-21, 72 NRC 616 (2010)
- although admitting the new contention would broaden the issues in dispute, in the early stage of the proceeding this does not weigh heavily against a petitioner; LBP-10-1, 71 NRC 165 (2010)
- although an intervenor may have fewer resources and less ability than other participants, all share the same burden of uncovering relevant information that is publicly available; LBP-08-12, 68 NRC 5 (2008)
- although petitioner could participate in another federal agency's comment process relating to a proposed environmental assessment that is the focus of a new contention and thus does have some alternative means for protecting its interests, for the purpose of 10 C.F.R. 2.309(c)(1)(v), that process is not analogous to participation in an NRC adjudicatory proceeding and therefore does not weigh heavily against petitioner's intervention in the NRC proceeding; LBP-10-1, 71 NRC 165 (2010)
- amendment of a combined license application to comply with an amended aircraft impacts rule during the pendency of the COL application could form the basis for a late-filed contention; CLI-10-1, 71 NRC 1 (2010)
- an amended or new contention must be submitted in a timely fashion based on the availability of the subsequent information; LBP-09-27, 70 NRC 992 (2009)

SUBJECT INDEX

an environmental contention that is not based on new information can only be admitted upon a favorable balancing of the factors in 10 C.F.R. 2.309(c); LBP-06-20, 64 NRC 131 (2006)

any new contentions filed by petitioners, whose original petition was timely and who have demonstrated their standing, that are attributable to the applicant's construction activity or change of plans or design, are governed by the basic provisions of 10 C.F.R. 2.309(f)(2) rather than by the more restrictive elements applicable to nontimely filings; LBP-07-14, 66 NRC 169 (2007)

applicant is not required to "request" a completion finding, or call for a single action, such as an inspection, on the part of the Staff that would serve as a discrete starting point for revising a contention; CLI-09-2, 69 NRC 55 (2009)

applying the standards for late-filed contentions, a board concluded that an e-mail citing only sources that had been published, in some cases years earlier, contained no new information; CLI-09-12, 69 NRC 535 (2009)

before a petition to admit a late-filed contention can be granted, five factors must be balanced; CLI-08-1, 67 NRC 1 (2008)

boards are obliged to evaluate the timeliness of a proposed contention even if no party raises the issue; LBP-10-17, 72 NRC 501 (2010)

boards must balance eight factors in evaluating nontimely intervention petitions, hearing requests, and contentions; LBP-10-24, 72 NRC 720 (2010)

by defining significantly different information in the draft EIS as a permissible basis for filing a new contention, the Commission has in effect concluded that such new information is good cause for filing a new contention; LBP-10-24, 72 NRC 720 (2010)

challenges to board rulings on late-filed contentions normally fall under the rules for interlocutory review; CLI-09-18, 70 NRC 859 (2009)

contentions based on the safety evaluation report and any necessary National Environmental Policy Act document should be filed within 30 days of the issuance of those documents; LBP-09-27, 70 NRC 992 (2009)

contentions may be amended or new contentions filed, with permission from the presiding officer, if petitioner shows that information on which the contention is based was not previously available and is materially different than information previously available and the contention has been submitted in a timely fashion based on the availability of the subsequent information; CLI-10-18, 72 NRC 56 (2010)

contentions must be based on documents or other information available at the time the petition is to be filed; LBP-08-27, 68 NRC 951 (2008)

contentions will not be entertained absent a determination by the Commission, the licensing board, or a presiding officer that a balancing of the factors specified in 10 C.F.R. 2.309(c)(1)(i)-(viii) favors admission; CLI-10-4, 71 NRC 56 (2010); LBP-10-9, 71 NRC 493 (2010)

decisions on nontimely filings require a balancing of the eight factors set forth in 10 C.F.R. 2.309(c)(1), the first of which, good cause for failure to file on time, is the most important; CLI-09-7, 69 NRC 235 (2009)

each proposed new contention must satisfy the requirements of 10 C.F.R. 2.309(f)(1)(i)-(vi); CLI-09-5, 69 NRC 115 (2009)

environmental contentions must meet not only the usual contention pleading requirements applicable to all proceedings, but also the additional requirements for new contentions; LBP-08-11, 67 NRC 460 (2008)

even if late-filing criteria are satisfied, proposed contentions still must meet the threshold admissibility standards of 10 C.F.R. 2.309(f)(1); CLI-08-1, 67 NRC 1 (2008); CLI-09-7, 69 NRC 235 (2009)

even if petitioner is unable to show that NRC Staff's NEPA document differs significantly from the environmental report, it may still be able to meet the late-filed contention requirements; LBP-10-24, 72 NRC 720 (2010)

factors that must be addressed for nontimely intervention petitions, hearing requests, and contentions are set forth; LBP-09-20, 70 NRC 565 (2009)

factors (v) and (vi) of 10 C.F.R. 2.309(c) generally are given less weight than factors (vii) and (viii); LBP-10-1, 71 NRC 165 (2010)

factors (vii) and (viii) of 10 C.F.R. 2.309(c)(1) are generally considered to have the most significance in the balancing process in instances in which there are no other parties or ongoing related proceedings; LBP-10-21, 72 NRC 616 (2010)

SUBJECT INDEX

- failure to comply with any of the requirements of 10 C.F.R. 2.309(f)(1)(i)-(vi) is grounds for dismissing a contention; LBP-10-21, 72 NRC 616 (2010)
- failure to comply with pleading requirements for late filings constitutes sufficient grounds for rejecting intervention and hearing requests; CLI-09-7, 69 NRC 235 (2009)
- filing of a new contention on the basis of the draft or final environmental impact statement where that document contains information that differs significantly from the information that was previously available is allowed; CLI-09-12, 69 NRC 535 (2009)
- filings that are nearly 3 months late must satisfy not only the requirements to demonstrate standing and submit at least one admissible contention, but also must satisfy the stringent requirements for untimely filings and late-filed contentions; CLI-06-21, 64 NRC 30 (2006)
- five factors must be balanced under pre-2004 rules before a petition to admit a late-filed contention can be granted; CLI-08-8, 67 NRC 193 (2008)
- for filing new contentions, boards have generally established a deadline of 30 days to be timely after the receipt of new information; LBP-08-12, 68 NRC 5 (2008)
- for untimely new or amended contentions, the pleading shall include a motion for leave to file the contention and the support for the proposed new or amended contention showing that it satisfies 10 C.F.R. 2.309(f)(1); LBP-09-22, 70 NRC 640 (2009)
- good cause has long been interpreted to mean that the information on which the proposed new contention is based was not previously available; CLI-09-5, 69 NRC 115 (2009)
- good cause is the factor given the greatest weight when ruling on motions for leave to submit late-filed contentions; CLI-09-5, 69 NRC 115 (2009); CLI-09-12, 69 NRC 535 (2009); CLI-10-17, 72 NRC 1 (2010); LBP-09-6, 69 NRC 367 (2009); LBP-09-26, 70 NRC 939 (2009); LBP-10-1, 71 NRC 165 (2010); LBP-10-9, 71 NRC 493 (2010); LBP-10-24, 72 NRC 720 (2010)
- if a combined license application is amended or material new information subsequently becomes available, petitioners must be given a fair opportunity to file new or amended contentions challenging these changes; LBP-09-10, 70 NRC 51 (2009)
- if a contention based on new information fails to satisfy the three-part test of 10 C.F.R. 2.309(f)(2)(i)-(iii), it may be evaluated under section 2.309(c); LBP-10-24, 72 NRC 720 (2010)
- if a contention satisfies the timeliness requirement of 10 C.F.R. 2.309(f)(2)(iii), then, by definition, it is not subject to 10 C.F.R. 2.309(c) which specifically applies to nontimely filings; LBP-09-27, 70 NRC 992 (2009); LBP-10-9, 71 NRC 493 (2010)
- if a motion to reopen and the proposed new contention are based on material information that was not previously available, then it qualifies as timely; LBP-10-19, 72 NRC 529 (2010)
- if a motion to reopen relates to a contention not previously in controversy among the parties, movant must meet the late-filing requirements of section 2.309(c); LBP-10-21, 72 NRC 616 (2010)
- if a new contention is not timely, then its admissibility is evaluated under the eight-factor balancing test of 10 C.F.R. 2.309(c)(i)-(viii); LBP-09-10, 70 NRC 51 (2009); LBP-09-26, 70 NRC 939 (2009)
- if a new contention is timely, then its admissibility is evaluated under the three-factor test of 10 C.F.R. 2.309(f)(2)(i)-(iii); LBP-09-10, 70 NRC 51 (2009)
- if a party seeks to reopen a closed record and, in the process, raises an issue that was not an admitted contention in the initial proceeding, it must also satisfy the section 2.326(d) requirements; CLI-06-4, 63 NRC 32 (2006)
- if good cause is not shown for the late filing of a contention, petitioner must make a compelling showing on the four remaining factors; CLI-08-1, 67 NRC 1 (2008); CLI-08-8, 67 NRC 193 (2008); LBP-10-24, 72 NRC 720 (2010)
- if new information becomes available in the course of Waste Confidence Rulemaking proceedings that contravenes a combined license application, petitioner may file a motion to admit a new or amended contention; LBP-09-18, 70 NRC 385 (2009)
- if petitioner files a new contention within the 20-day time limit set by the board, and if it satisfies the remaining factors in section 2.309(f)(2), petitioner need not address the requirements under section 2.309(c), which apply to nontimely filings; LBP-06-16, 63 NRC 737 (2006)
- if petitioners cannot show that their new or revised contentions could not have been submitted without the requested access to redacted information in the license transfer application, then they will have to meet not only the contention pleading requirements, but also the late-filing requirements; CLI-07-18, 65 NRC 399 (2007)

SUBJECT INDEX

if the problem raised in a late-filed contention presents a sufficiently grave threat to public safety, a board should reopen the record to consider it even if it is not newly discovered and could have been raised in timely fashion; LBP-08-12, 68 NRC 5 (2008)

if, within 60 days after pertinent information that would support the framing of a contention first becomes available, intervenors submit a particularized and otherwise admissible contention regarding the construction of the facility, then the contention will be deemed timely without the need to satisfy the balancing test for late-filing requirements; CLI-09-2, 69 NRC 55 (2009)

in addition to demonstrating compliance with other applicable requirements set forth in 10 C.F.R. 2.309, nontimely contentions in the high-level waste repository proceeding shall follow the prescribed format for initial petitions and contentions; LBP-08-10, 67 NRC 450 (2008)

in addressing the section 2.309(c)(1) factors, failure to provide any specific discussion of most of these items or the weight they should be given in the balance is a potentially fatal omission; LBP-10-21, 72 NRC 616 (2010)

in light of the requirements that any new contention be based on material information that was not previously available, the timeliness determination required under 10 C.F.R. 2.309(f)(2) and the section 2.326(a) reopening standard can be closely equated; LBP-10-21, 72 NRC 616 (2010)

in the case of the yet-to-issue NRC rules for the high-level waste proceeding, the Commission is dispensing in advance with all late-filing factors except the "good cause" factor; CLI-08-25, 68 NRC 497 (2008)

in the five-factor analysis for admission of late-filed contentions, the extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record and the extent to which this participation will broaden the issues or delay the proceeding are to be given more weight than the availability of other means for protecting the petitioner's interest and the extent to which this interest will be represented by existing parties; CLI-08-1, 67 NRC 1 (2008); CLI-08-8, 67 NRC 193 (2008)

information in the public domain for 6 months does not establish good cause for late filing; CLI-09-5, 69 NRC 115 (2009)

intervenor cannot establish good cause for filing a late contention when the information on which the contention is based was publicly available for some time prior to the filing of the contention; CLI-10-27, 72 NRC 481 (2010)

intervenor is entitled to submit a new safety contention, with leave of the board, upon three showings; CLI-10-17, 72 NRC 1 (2010)

intervenor that has sufficient information to file a NEPA contention but delays that filing until publication of the environmental impact statement does so at its peril; LBP-10-24, 72 NRC 720 (2010)

intervenors must move for leave to file a timely new or amended contention under 10 C.F.R. 2.309(c), (f)(2); LBP-10-14, 72 NRC 101 (2010)

intervenors with contentions rooted in new material information need not make the same showing as intervenors who have simply delayed filing their contentions until after expiration of the regulatory deadline; LBP-10-9, 71 NRC 493 (2010)

issuance of a proposed rulemaking and request for comments do not constitute information not previously available that entitles a party to file a new contention; LBP-09-10, 70 NRC 51 (2009)

licensing boards and the Commission have considered the late-filing criteria even in cases where the factors were not fully addressed by petitioners and/or the NRC Staff or were not addressed at all; LBP-10-24, 72 NRC 720 (2010)

movant must show that it is more probable than not that it would have prevailed on the merits of the proposed new contention; LBP-10-19, 72 NRC 529 (2010)

movant's assertion that a new contention presents a significant safety issue must be supported by affidavits that set forth the factual and/or technical bases for the allegation; LBP-08-12, 68 NRC 5 (2008)

new bases for a contention cannot be introduced in a reply brief or at any other time after the date the original contentions are due, unless the petitioner meets the late-filing criteria set forth in 10 C.F.R. 2.309(c), (f)(2); CLI-06-17, 63 NRC 727 (2006); CLI-09-7, 69 NRC 235 (2009)

new contention is untimely if information on which it is based has been available since submission of applicant's environmental report; LBP-10-13, 71 NRC 673 (2010)

new information concerning safety may be new evidence, but not necessarily raise a new issue; CLI-09-7, 69 NRC 235 (2009)

SUBJECT INDEX

new or amended contentions can be filed with leave of the board if the information upon which the amended or new contention is based was not previously available, the information is materially different from information previously available, and the contention has been submitted in a timely fashion based on the availability of the subsequent information; LBP-08-27, 68 NRC 951 (2008)

new or amended contentions in the high-level waste repository proceeding should be presumed timely if they are filed within 30 days after the availability of new or materially different information; LBP-08-10, 67 NRC 450 (2008)

new or amended contentions may be filed only with leave of the presiding officer upon a showing that satisfies the three criteria set out in 10 C.F.R. 2.309(f)(2); CLI-09-7, 69 NRC 235 (2009)

newly filed contentions must meet the requirements of 10 C.F.R. 2.309(f)(2) as well as the six basic contention admissibility standards set forth in section 2.309(f)(1)(i)-(vi); LBP-08-27, 68 NRC 951 (2008)

non-NEPA-related contentions may be amended or new contentions filed after the initial filing only with leave of the presiding officer; LBP-10-1, 71 NRC 165 (2010)

nontimely contentions may be accepted only upon a showing of good cause for failure to file in a timely manner and a weighing of a number of factors; LBP-08-27, 68 NRC 951 (2008)

nontimely hearing requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the licensing board that the petition and/or request should be granted and/or the contentions should be admitted based on a balancing of the factors specified in 10 C.F.R. 2.309(c)(1)(i)-(viii); LBP-10-4, 71 NRC 216 (2010)

nontimely new contentions are subject to the more stringent eight-factor balancing test; LBP-07-15, 66 NRC 261 (2007)

nontimely petitions to intervene and contentions, amended petitions, and supplemental petitions will not be entertained absent a determination by the Commission, the licensing board, or a presiding officer that the petition should be granted and/or the contentions should be admitted based upon a balancing of eight factors; CLI-09-15, 70 NRC 1 (2009)

NRC regulations do not provide a specific deadline for determining whether a new contention is timely; LBP-07-15, 66 NRC 261 (2007)

NRC regulations preserve the right to a hearing when an application is amended by allowing new or amended contentions to be filed in response to material new information; LBP-10-17, 72 NRC 501 (2010)

once a petition to intervene and request for hearing have been granted and contentions are admitted for hearing, appeals of board rulings on new or amended contentions are treated under section 2.341(f)(2), regardless of the subject matter of those contentions; CLI-10-16, 71 NRC 486 (2010)

once the deadline for filing an initial intervention petition has passed, a party wishing to submit new or amended contentions on matters not associated with issuance of the Staff's draft or final environmental impact statement must satisfy the requirements of 10 C.F.R. 2.309(f)(2); LBP-10-21, 72 NRC 616 (2010)

opportunities are provided to file new or amended contentions to address new developments when they arise; CLI-09-4, 69 NRC 80 (2009)

pendency of a petition for Commission review does not absolve petitioner of its duty to file a motion to reopen in a timely fashion; LBP-10-19, 72 NRC 529 (2010)

petitioner has an iron-clad obligation to examine the publicly available documentary material with sufficient care to enable it to uncover any information that could serve as the foundation for a specific contention; CLI-10-27, 72 NRC 481 (2010)

petitioner may amend contentions or file new contentions on issues arising under NEPA if there are data or conclusions in the NRC environmental documents that differ significantly from the data or conclusions in the applicant's documents; LBP-10-1, 71 NRC 165 (2010)

petitioner may not simply wait for the Staff to identify missing information and then ground a new contention on a request for additional information; CLI-09-12, 69 NRC 535 (2009)

petitioner must satisfy the eight-factor balancing test in 10 C.F.R. 2.309(c); LBP-06-22, 64 NRC 229 (2006)

petitioner must show that the information upon which the contention is based was not previously available or is materially different than information previously available, and the amended or new contention has been submitted in a timely fashion based on the availability of the subsequent information; LBP-06-11, 63 NRC 391 (2006); LBP-06-22, 64 NRC 229 (2006)

SUBJECT INDEX

petitioners are to file their NEPA contentions based on the applicant's environmental report, and, later, if the NRC Staff's draft or final EIS contains data or conclusions that differ significantly from the data or conclusions in the applicant's documents, then petitioners may file new or amended contentions; CLI-06-15, 63 NRC 687 (2006)

petitioners must examine the publicly available material and set forth their claims and the support for their claims at the outset; CLI-09-7, 69 NRC 235 (2009)

petitioners seeking admission of new or amended contentions under 10 C.F.R. 2.309(f)(2) must also satisfy the standard admissibility requirements in 10 C.F.R. 2.309(f)(1); LBP-06-11, 63 NRC 391 (2006)

pleadings submitted by a petitioner acting pro se are not always expected to meet the same standards as pleadings drafted by lawyers, but late filing of documents is not condoned; LBP-06-14, 63 NRC 568 (2006)

reply briefs that raise new issues must address the late filing and new-contention factors in 10 C.F.R. 2.309(c) or (f)(2); LBP-09-17, 70 NRC 311 (2009)

requirements for filing both new and nontimely contentions are stringent; LBP-09-27, 70 NRC 992 (2009)

the admissibility decision sometimes turns on a determination about when, as a cumulative matter, separate pieces of the information puzzle were sufficiently in place to make the particular concerns reasonably apparent; LBP-09-10, 70 NRC 51 (2009)

the amended late-filed contentions rule, 10 C.F.R. 2.309(f)(2), is not intended to alter the standards in section 2.714(a) of its rules of practice as interpreted by NRC case law; LBP-10-17, 72 NRC 501 (2010)

the Commission dispensed with all but the good cause factor for late-filed contentions; LBP-09-29, 70 NRC 1028 (2009)

the filing of new or amended contentions based on new information is permitted if sufficient justification is provided; LBP-09-15, 70 NRC 198 (2009)

the good cause factor favors petitioners who have filed their petition within 30 days of the availability of the document they contend contains new and significant information so as to form the basis for their contention; LBP-10-1, 71 NRC 165 (2010)

the Secretary's referral of petitioner's motion to admit a late-filed contention effectively returns jurisdiction to the licensing board to rule on the motion; CLI-09-5, 69 NRC 115 (2009)

the significance of the issue being raised by a new contention would be a relevant "good cause" consideration; LBP-10-21, 72 NRC 616 (2010)

the standard for admitting a new contention after the record is closed is higher than for an ordinary late-filed contention; CLI-08-28, 68 NRC 658 (2008)

the test for good cause for late filing is when the information became available, when petitioners reasonably should have become aware of that information, and whether petitioners acted promptly after learning of the new information; LBP-08-6, 67 NRC 241 (2008)

the timeliness of a motion to reopen depends on what/when was the trigger that provided the footing for the new contention and was the motion seeking record reopening/contention admission filed timely after that trigger event; LBP-10-21, 72 NRC 616 (2010)

the unavailability of documents does not constitute a showing of good cause for admitting a late-filed contention when the factual predicate for that contention is available from other sources in a timely manner; CLI-10-27, 72 NRC 481 (2010)

there simply would be no end to NRC licensing proceedings if petitioners could disregard timeliness requirements and add new contentions at their convenience during the course of a proceeding based on information that could have formed the basis for a timely contention at the outset of the proceeding; CLI-09-7, 69 NRC 235 (2009); CLI-10-27, 72 NRC 481 (2010)

thirty days is a reasonable limit for fulfilling the timing requirement of 10 C.F.R. 2.309(f)(2)(iii) because of the significant effort involved in identifying new information, assembling the required expertise, and then drafting a contention that satisfies 10 C.F.R. 2.309(f)(1); LBP-09-27, 70 NRC 992 (2009)

three regulations govern the admissibility of contentions added after an adjudicatory hearing has commenced; LBP-06-14, 63 NRC 568 (2006)

timeliness as measured under NRC regulations is from the point at which new information is discovered relevant to the question; LBP-08-12, 68 NRC 5 (2008)

SUBJECT INDEX

timeliness of a motion to reopen in which a new contention is proffered depends primarily on an assessment as to when the proponent of the motion first knew, or should have known, enough information to raise the issues presented in the new contention; LBP-10-19, 72 NRC 529 (2010)

timeliness of a new or amended contention based on material new information is based on the timing of the availability of the information on which the contention is based, not the timing of the NRC Staff NEPA document; LBP-10-24, 72 NRC 720 (2010)

to be admitted, a new contention must meet the new or amended contention requirements as well as the general contention admissibility requirements; LBP-09-9, 70 NRC 41 (2009)

to force intervenors to file contentions before the results of an ongoing NRC investigation are announced to the public would effectively force intervenors to speculate about the results of such investigations and the conclusions the Staff might reach; LBP-10-9, 71 NRC 493 (2010)

to show good cause for the late filing of a contention, petitioner must show that the information on which the new contention is based was not reasonably available to the public, not merely that the petitioner recently found out about it; CLI-10-27, 72 NRC 481 (2010)

to the extent that the draft or final supplemental environmental impact statement contains data or conclusions that differ significantly from the data or conclusions in the applicant's environmental report or in the generic environmental impact statement, a petitioner is entitled to use 10 C.F.R. 2.309(f)(2) as the grounds to file a new or amended contention; LBP-06-20, 64 NRC 131 (2006)

under appropriate circumstances, petitions to intervene, requests for hearing, and new and amended contentions may be filed after the initial 30-day deadline; LBP-08-1, 67 NRC 37 (2008)

unless a deadline has been specified in the scheduling order for the proceeding, the determination of timeliness is subject to a reasonableness standard that depends on the facts and circumstances of each situation; LBP-10-24, 72 NRC 720 (2010)

when a contention of omission has been rendered moot, and the intervenor wishes to raise specific challenges regarding the new information, it may timely file a new contention that addresses the admissibility factors of 10 C.F.R. 2.309(f)(1); LBP-06-16, 63 NRC 737 (2006)

when a new contention is filed challenging new data or conclusions in NRC's environmental documents, the timeliness of the new contention is based on whether it was filed promptly after NRC's NEPA document became publicly available, not whether it was filed promptly after the information on which the intervenor bases its challenge became publicly available; LBP-10-24, 72 NRC 720 (2010)

when a reopening motion is untimely, the section 3.326(a)(1) "exceptionally grave circumstances" test supplants the "significant issue" standard under section 2.326(a)(2); LBP-10-21, 72 NRC 616 (2010)

when information becomes available piecemeal over time, and the foundation for a new contention does not become reasonably apparent until the last piece of information becomes available and falls into place, the test for good cause for late filing may be met; LBP-09-10, 70 NRC 51 (2009)

when new contentions are based on breaking developments of information, they are to be treated as new or amended, not as nontimely; LBP-07-14, 66 NRC 169 (2007); LBP-08-27, 68 NRC 951 (2008)

when petitioner has filed an expert declaration with its petition, indicating that it can assist, through expert opinion, in the development of a sound record, this weighs in favor of admission; LBP-10-1, 71 NRC 165 (2010)

when the draft or final environmental impact statement for a combined license application has not been issued so as to provide petitioner with a basis for framing its contention, the licensing board must look to the three other factors specified in 10 C.F.R. 2.309(f)(2) in assessing the admissibility of a new NEPA-related issue statement; LBP-10-1, 71 NRC 165 (2010)

where a document relevant to the licensing proceeding was available on the agency public document management system, but not indexed by license number, the board did not act unreasonably in finding that late-filing factors weighed in favor of the party seeking to introduce the document as late support for an otherwise timely contention; CLI-09-12, 69 NRC 535 (2009)

where a motion to reopen the record seeks to admit a new contention that has not previously been in controversy among the parties, movant must show that a balancing of the factors of 10 C.F.R. 2.309(c)(1) weighs in favor of reopening; CLI-08-28, 68 NRC 658 (2008); LBP-08-12, 68 NRC 5 (2008)

where new and material information is revealed in a piecemeal fashion, and where the foundation for a contention is not reasonably available until the later pieces fall into place, the admissibility decision turns on a determination about when, as a cumulative matter, the separate pieces of the information

SUBJECT INDEX

- puzzle were sufficiently in place to make the particular concerns reasonably apparent; LBP-06-14, 63 NRC 568 (2006)
- where petitioners failed to file on time or seek an extension because they had not yet decided whether to seek to intervene, such indecision does not constitute good cause; LBP-09-26, 70 NRC 939 (2009)
- whether good cause exists to excuse the late-filing of the contention is the most important of the five factors; CLI-08-1, 67 NRC 1 (2008); CLI-08-8, 67 NRC 193 (2008); LBP-06-14, 63 NRC 568 (2006)
- with respect to 10 C.F.R. 2.309(c)(1)(vi), the presence of another party admitted to the proceeding, particularly when that party previously raised the issue that is the subject of the new contention, weighs against a petitioner; LBP-10-1, 71 NRC 165 (2010)
- CONTESTED LICENSE APPLICATIONS**
- a decision dismissing the contested adjudication relating to a combined license has no impact on the subsequent need to conduct a mandatory hearing relating to combined license application, over which the Commission would preside; LBP-09-23, 70 NRC 659 (2009)
- for a uranium enrichment facility, the licensing board shall make findings of fact and conclusions of law on admitted contentions; CLI-09-15, 70 NRC 1 (2009); CLI-10-4, 71 NRC 56 (2010)
- in uranium enrichment facility proceedings, a licensing board must determine in its initial decision whether the requirements of section 102(2)(A), (C), and (E) of the National Environmental Policy Act have been complied with in the proceeding; CLI-09-15, 70 NRC 1 (2009)
- NRC Staff, as a matter of policy, seeks Commission approval to issue the license, even though issuance of the license is not stayed by the petition for review; CLI-09-7, 69 NRC 235 (2009)
- CONTINUANCE**
- if it appears from the affidavits of a party opposing a motion for summary disposition or other dispositive motion that the opposing party cannot, for reasons stated, present by affidavit facts essential to justify the party's opposition, the board may refuse the application for summary disposition or may order a continuance as may be necessary or just; LBP-09-22, 70 NRC 640 (2009)
- CONTRA PROFERENTEM**
- any ambiguity relative to the filing date for hearing requests arising from the language of the agency's hearing opportunity notice should be construed in favor of a participant who was seeking to comply with the notice; LBP-08-16, 68 NRC 361 (2008)
- CONTRACTORS**
- a senior plant supervisor's deliberate failure to contact the appropriate site security manager in order to initiate an assessment of the trustworthiness and reliability of the two contract technicians who falsified a maintenance report is a violation; LBP-08-14, 68 NRC 279 (2008)
- if a document or study is prepared by a nonfederal party, the agency official is responsible for ensuring that its content meets applicable standards and guidelines; LBP-08-24, 68 NRC 691 (2008)
- Staff is ultimately responsible for the work undertaken, or not undertaken, by its contractors; LBP-06-8, 63 NRC 241 (2006)
- CONTROL ROOM**
- adequacy of applicant's design for radiological protections, in light of the fact that the reactor is proposed to be located within the EPZ of an existing reactor, is an issue that is appropriate in a combined license or standard design certification proceeding; LBP-09-10, 70 NRC 51 (2009)
- CONTROLLED ACCESS**
- petitioner alleges failure to conduct safety review of the modification of the controlled access area by the addition of an undocumented roof access for a siphon breaker experiment; DD-10-3, 72 NRC 171 (2010)
- petitioner alleges that routine unprotected handling of an unshielded neutron source by licensed operators and uncontrolled access by untrained and unlicensed facility visitors to this neutron source violated ALARA requirements; DD-10-3, 72 NRC 171 (2010)
- See also Access Authorization
- COOLING SYSTEMS**
- adequacy of the final environmental impact statement discussion and analysis of direct, indirect, and cumulative impingement/entrainment and thermal effluent discharge impacts of the proposed cooling system intake and discharge structures on aquatic resources is decided; LBP-09-7, 69 NRC 613 (2009)
- adequacy of the final environmental impact statement discussion and analysis of the alternative of implementing a dry cooling system for the proposed units is decided; LBP-09-7, 69 NRC 613 (2009)

SUBJECT INDEX

- after applicant's amendment to its ER, whereby it changed its cooling method for the proposed reactor to a no-discharge cooling system that uses a combination of wet and dry cooling towers, there remains no genuine dispute about discharge of heated water; LBP-06-24, 64 NRC 360 (2006)
- analysis of entrainment and impingement of fish, and heat shock, is required only for plants with once-through cooling or cooling ponds, because it has been determined generically that such impacts are small for plants that use cooling towers; LBP-07-4, 65 NRC 281 (2007)
- applicant is required to provide in its environmental report a site-specific analysis of entrainment, impingement, and heat shock/thermal discharge impacts from its once-through cooling systems; LBP-08-13, 68 NRC 43 (2008)
- as Class I components, the feedwater, reactor recirculation, and core spray outlet nozzles on a boiling water reactor must be designed, fabricated, erected, and tested to the highest quality standards practical as specified in Part 50, Appendix A, GDC 30; LBP-08-25, 68 NRC 763 (2008)
- components that are part of the reactor coolant pressure boundary must meet the requirements of Class 1 components in Section III of the ASME Boiler and Pressure Vessel Code; LBP-08-25, 68 NRC 763 (2008)
- EPA's alternative thermal effluent limitations do not apply to a plant that employs closed-cycle cooling; CLI-07-25, 66 NRC 101 (2007)
- if applicant's plant utilizes a once-through cooling system, applicant shall provide a copy of a Clean Water Act § 316a variance or equivalent state permit and supporting documentation; CLI-07-16, 65 NRC 371 (2007)
- the permitting agency determines what cooling system a nuclear power facility may use, and NRC factors the impacts resulting from use of that system into the NEPA cost-benefit analysis; CLI-07-16, 65 NRC 371 (2007)
- See also Reactor Cooling Systems
- COOLING TOWERS**
- request for an enforcement-type action where the underlying concern is the partial collapse of a cooling tower is credible and sufficient to warrant further inquiry; DD-08-1, 67 NRC 347 (2008)
- CORRECTIVE ACTION PROGRAM**
- operating reactor licensees are not required to implement an employee concerns program, but are required to establish and implement an effective corrective action program; DD-10-1, 72 NRC 149 (2010)
- CORROSION**
- contention that the high-level waste application inadequately addresses generalized corrosion because it relies on flawed experimental data raises a genuine, material dispute with the application by pointing to specific sections that allegedly fail to comply with the NRC's requirements for conducting a post-closure performance assessment; LBP-09-29, 70 NRC 1028 (2009)
- COST-BENEFIT ANALYSES**
- See Benefit-Cost Analyses
- COSTS**
- accuracy of an applicant's estimate is not material to the findings the NRC must make under the National Environmental Policy Act; LBP-09-16, 70 NRC 227 (2009)
- accuracy of project cost estimates only becomes relevant if an environmentally preferable alternative has been identified; LBP-09-2, 69 NRC 87 (2009)
- disclosure is not required if the burden or expense of the proposed discovery outweighs its likely benefit; LBP-10-23, 72 NRC 692 (2010)
- if petitioner has proffered an admissible contention asserting an environmentally preferable alternative to the proposed reactors, this also would trigger the requirement that the environmental report contain cost estimates; CLI-10-9, 71 NRC 245 (2010)
- it is inappropriate for the agency to consider economic costs when no environmentally preferable alternative has been identified; CLI-10-1, 71 NRC 1 (2010); CLI-10-9, 71 NRC 245 (2010)
- parties need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost; LBP-09-22, 70 NRC 640 (2009)
- recoverability of spent nuclear fuel storage expenses is equally applicable to greater-than-Class-C waste, which is stored onsite in the same manner as spent nuclear fuel; CLI-10-2, 71 NRC 27 (2010)

SUBJECT INDEX

whether excessive safety design could lead to licensing uncertainty, unnecessary costs, or delays are not issues material to the high-level waste repository construction authorization proceeding; CLI-09-14, 69 NRC 580 (2009)

See also Decommissioning Costs

COUNCIL ON ENVIRONMENTAL QUALITY

a conclusion that something is a “connected action” under CEQ regulation 40 C.F.R. 1508.25 does not necessarily inform the type of impact analysis that is performed, whether direct, indirect, or cumulative; LBP-09-7, 69 NRC 613 (2009)

although NRC does not consider CEQ pronouncements to be binding, they are entitled to substantial deference; LBP-06-8, 63 NRC 241 (2006); LBP-06-19, 64 NRC 53 (2006); LBP-09-10, 70 NRC 51 (2009); LBP-09-16, 70 NRC 227 (2009); LBP-09-17, 70 NRC 311 (2009)

an environmental impact statement must address both direct and indirect effects of an action; LBP-09-7, 69 NRC 613 (2009)

CEQ regulations are not binding on NRC when the agency has not expressly adopted them, but are entitled to considerable deference; LBP-09-7, 69 NRC 613 (2009)

CEQ regulations define “direct and indirect” impacts and “cumulative” impacts and require that they be considered in the environmental impact statement; LBP-09-10, 70 NRC 51 (2009)

CEQ regulations receive substantial deference from federal courts in interpreting the requirements of NEPA; LBP-10-16, 72 NRC 361 (2010); LBP-10-24, 72 NRC 720 (2010)

even when an early site permit does not authorize any construction activity, the NRC Staff is required by CEQ regulations to consider actions that are related to other actions that could lead to a significant impact on the environment; LBP-07-1, 65 NRC 27 (2007)

in implementing NEPA, the NRC uses certain of the definitions provided in CEQ regulations; LBP-09-7, 69 NRC 613 (2009); LBP-09-19, 70 NRC 433 (2009)

it is NRC’s stated policy to take into account CEQ regulations voluntarily, subject to some conditions; CLI-10-2, 71 NRC 27 (2010); CLI-10-18, 72 NRC 56 (2010); LBP-10-15, 72 NRC 257 (2010); LBP-10-24, 72 NRC 720 (2010)

regulations require that an agency environmental impact statement address both direct and indirect, or secondary, effects of an action; LBP-06-8, 63 NRC 241 (2006)

COUNCIL ON ENVIRONMENTAL QUALITY GUIDELINES

although CEQ guidance is not binding on NRC, it is given substantial deference; CLI-07-27, 66 NRC 215 (2007)

in its conclusions regarding the environmental impacts of a proposed action or alternative actions, the Staff uses as guidance a standard scheme to categorize or quantify the impacts; LBP-09-7, 69 NRC 613 (2009)

COUNSEL

general counsel for an Indian tribe is not required to submit a declaration stating the basis of his or her authority to represent the tribe; LBP-08-26, 68 NRC 905 (2008)

officers of the court have an ethical duty to alert NRC adjudicatory bodies to information relevant to the matters being adjudicated; LBP-08-6, 67 NRC 241 (2008)

petitioners represented by counsel are held to higher standard of specificity in pleading; CLI-10-20, 72 NRC 185 (2010)

See also Attorney

CRACKING

damage to a nonsafety-related steam dryer could cause a release of loose parts that could have an adverse impact on safety-related equipment and thus it is within the scope of aging management review in a license renewal proceeding; LBP-08-25, 68 NRC 763 (2008)

in evaluating metal fatigue, a component’s cumulative usage factor is the fundamental parameter used to determine whether it will likely develop cracks during the license renewal period and thus is subject to an aging management plan; LBP-08-13, 68 NRC 43 (2008)

CREDIBILITY

a board’s findings regarding a particular witness’s knowledge or state of mind depend, as a general rule, largely on that witness’s credibility; CLI-10-23, 72 NRC 210 (2010)

credibility of a witness testifying based on technical expertise is not the same as the credibility of an eyewitness to a past event; CLI-09-7, 69 NRC 235 (2009)

SUBJECT INDEX

licensing board findings of fact that turn on witness credibility receive the Commission's highest deference on appeal; CLI-10-23, 72 NRC 210 (2010)

Subpart G procedures focus on issues where the credibility of an eyewitness may reasonably be expected to be at issue, and/or issues of motive or intent of the party or eyewitness; LBP-09-22, 70 NRC 640 (2009)

CRIMINAL GUILT

a defendant can be convicted if he was aware that a high probability existed of the fact or circumstances that would make his conduct criminal, but ignored that probability so he could disclaim knowledge later; CLI-10-23, 72 NRC 210 (2010)

knowledge may suffice for criminal culpability if extensive enough to attribute to the knower a guilty mind, or knowledge that he or she is performing a wrongful act; CLI-10-23, 72 NRC 210 (2010)

the words "knowledge" and "knowingly" are normally associated with awareness, understanding, or consciousness; CLI-10-23, 72 NRC 210 (2010)

CRIMINAL PROCEEDING

although the civil discovery process could lead to the tainting of evidence in a criminal case and to the defendant's obtaining access to evidence that would provide him an unfair advantage over the government, the moving party must provide some practical applicability to the particular circumstances of the case in order for it to obtain the delay sought; LBP-06-13, 63 NRC 523 (2006)

although the subject of an NRC enforcement proceeding may attempt to take advantage of his discovery rights in the civil proceeding to obtain information also useful in his criminal proceeding, that is no reason to deny him that discovery because he asserted his Fifth Amendment right not to respond to discovery requests directed to him, even if other procedural consequences might flow from that action; LBP-06-25, 64 NRC 367 (2006)

conviction of a crime that is identical to a charge in an enforcement order provides substantial assurance that the enforcement order was not baseless or unwarranted; LBP-09-24, 70 NRC 676 (2009)

"deliberate ignorance" or "willful blindness" instruction has its place and sees frequent usage in drug possession cases where the defendant purports not to know, for example, what is in the package someone asked him to deliver in secretive fashion; LBP-09-24, 70 NRC 676 (2009)

juries may be asked to provide a special verdict indicating in some fashion the legal theory it applied to reach any findings of guilt; LBP-09-24, 70 NRC 676 (2009)

NRC is loath to permit a criminal defendant to use its procedures to do an end run around rules prescribed by the Supreme Court and implicitly approved by Congress; CLI-07-6, 65 NRC 112 (2007)
the Commission does not lightly second-guess DOJ's views on whether, and how, premature disclosure might affect its criminal prosecutions; CLI-06-19, 64 NRC 9 (2006)

the Commission is generally inclined to accommodate an abeyance request from DOJ as long as it provides at least some showing of potential detrimental effect on its parallel criminal case; CLI-07-6, 65 NRC 112 (2007)

the conclusion that a finding of deliberate ignorance is a proxy for a finding of knowledge is supported by the definition of knowledge in the Model Penal Code, which has guided the Supreme Court in determining the intended scope of the word "knowing" in the criminal context; LBP-09-24, 70 NRC 676 (2009)

the party supporting abeyance of an enforcement proceeding based on the pendency of a criminal case involving the same facts carries the burden of proof and must make at least some showing of potential detrimental effect on the criminal case; CLI-06-12, 63 NRC 495 (2006)

the question whether to hold an NRC enforcement proceeding in abeyance pending a related criminal prosecution is generally suitable for interlocutory Commission review because the abeyance issue cannot await the end of the proceeding; CLI-07-6, 65 NRC 112 (2007)

the warning to jurors that the added instruction on deliberate ignorance or willful blindness is not intended to allow them to base guilt on negligence or carelessness is sufficient to legitimize the instruction; LBP-09-24, 70 NRC 676 (2009)

whether continuation of an NRC enforcement adjudication could at least arguably jeopardize a related criminal proceeding is a key factor in any abeyance ruling in an NRC enforcement proceeding; CLI-06-19, 64 NRC 9 (2006)

SUBJECT INDEX

CRIMINAL PROSECUTION

an accused person is to be informed of the nature and cause of the accusation; LBP-09-24, 70 NRC 676 (2009)

with respect to a prosecutor's role, government lawyers should understand and follow the venerable maxim that the government wins when justice is done; LBP-09-24, 70 NRC 676 (2009)

CRITICALITY

in theory, a facility operator could have an inadvertent criticality, but still be in compliance with the dose limits; LBP-06-17, 63 NRC 747 (2006)

CRITICALITY CONTROL

although not legally binding, Staff guidance documents provide further information about the content of the integrated safety analysis summary and how an applicant can comply with criticality safety regulations; LBP-06-17, 63 NRC 747 (2006)

applicant must limit, through application of engineered and/or administrative controls, the risk of credible high-consequence and intermediate-consequence events so as to make them highly unlikely, or to make their consequences less severe than certain established dose and exposure limits; LBP-06-17, 63 NRC 747 (2006)

applicant must provide documentation of its compliance with the performance requirements of section 70.61 in its integrated safety analysis summary; LBP-06-17, 63 NRC 747 (2006)

design of new facilities must adhere to the double contingency principle; LBP-06-17, 63 NRC 747 (2006)
each engineered or administrative criticality control/control system must be designated an item relied on for safety; LBP-06-17, 63 NRC 747 (2006)

under the double contingency principle, process designs should incorporate sufficient factors of safety to require at least two unlikely, independent, and concurrent changes in process conditions before a criticality accident is possible; LBP-06-17, 63 NRC 747 (2006)

uranium enrichment facility applicants must identify and assess all credible accident sequences and identify appropriate mitigation measures, commonly referred to as items relied on for safety, to prevent or mitigate the consequences of such accidents; LBP-06-17, 63 NRC 747 (2006)

CROSS-EXAMINATION

a board has discretion to allow parties to cross-examine witnesses in Subpart L proceedings if the board deems this practice necessary to establish an adequate record; LBP-08-24, 68 NRC 691 (2008)

a party seeking to conduct cross-examination must file a written motion and obtain leave of the board; LBP-10-15, 72 NRC 257 (2010)

a party to NRC proceedings is entitled to conduct such cross-examination as may be required for a full and true disclosure of the facts; LBP-09-10, 70 NRC 51 (2009); LBP-09-22, 70 NRC 640 (2009)

APA § 556(d) is a liberal standard, but does not provide an absolute right to conduct cross-examination; LBP-10-15, 72 NRC 257 (2010)

boards may allow parties to conduct cross-examination in Subpart L proceedings; LBP-09-22, 70 NRC 640 (2009)

cross-examination occurs virtually automatically in Subpart G hearings, subject to normal judicial management and the requirement to file a cross-examination plan; LBP-09-10, 70 NRC 51 (2009); LBP-10-15, 72 NRC 257 (2010)

no later than 30 days after service of materials, all parties shall file any motions or requests to permit that party to conduct cross-examination of a specified witness or witnesses, together with the associated cross-examination plans; LBP-09-22, 70 NRC 640 (2009)

the Atomic Energy Act does not give a state an absolute right of cross-examination, but requires only that the Commission shall afford reasonable opportunity for state representatives to interrogate witnesses; LBP-06-20, 64 NRC 131 (2006)

the opportunity for cross-examination under Subpart L is equivalent to the opportunity for cross-examination under the Administrative Procedure Act; LBP-07-4, 65 NRC 281 (2007); LBP-08-6, 67 NRC 241 (2008)

the substantive standard for allowing parties to conduct cross-examination is the same under 10 C.F.R. Part 2, Subparts G and L; LBP-09-10, 70 NRC 51 (2009); LBP-10-15, 72 NRC 257 (2010)

this procedure is allowed in Subpart L proceedings only when the presiding officer decides that it is necessary to ensure an adequate record for decision; CLI-09-7, 69 NRC 235 (2009)

SUBJECT INDEX

under Subpart L, a party seeking to conduct cross-examination must file a written motion and obtain leave from the board; LBP-09-10, 70 NRC 51 (2009)

CULTURAL RESOURCES

a federal agency, prior to the issuance of any license, is required to take into account the effect of the federal action on any area eligible for inclusion in the National Register of Historic Places; LBP-08-6, 67 NRC 241 (2008); LBP-08-24, 68 NRC 691 (2008)

a license renewal applicant must assess whether any historic or archaeological properties will be affected by the proposed project; LBP-08-26, 68 NRC 905 (2008)

a party claiming violations of their procedural right to protect their interests in cultural resources is to be accorded a special status when it comes to standing without meeting all the normal standards for redressability and immediacy; LBP-10-16, 72 NRC 361 (2010)

a tribe may become a consulting party where its property, potentially affected by a federal undertaking, has religious or cultural significance; LBP-08-24, 68 NRC 691 (2008)

an Indian Tribe claims a procedural interest in identifying, evaluating, and establishing protections for historic and cultural resources; LBP-10-16, 72 NRC 361 (2010)

criteria and procedures pursuant to which a federal land manager may issue excavation permits for federal lands are provided as well as notification to Indian tribes if permits may result in harm to cultural or religious sites; LBP-10-16, 72 NRC 361 (2010)

cultural and historical resources are to be considered as part of the environmental impact assessment that must be completed; LBP-10-16, 72 NRC 361 (2010)

federal agencies are to consult with a tribe if that tribe ascribes cultural or religious significance to properties not on tribal lands; LBP-08-24, 68 NRC 691 (2008)

it is not the duty of applicant to consult with a tribe regarding cultural resources at a proposed site, but instead is the duty of the agency to initiate and follow through with the consultation process; LBP-10-16, 72 NRC 361 (2010)

notification and inventory procedures are provided so that Indian cultural objects and burial remains found on federal lands will be repatriated to the appropriate tribe; LBP-08-24, 68 NRC 691 (2008); LBP-10-16, 72 NRC 361 (2010)

NRC must make a reasonable and good-faith effort to identify any Indian tribes that might attach religious and cultural significance to historic properties in the area of potential effects and invite them to be consulting parties; CLI-09-12, 69 NRC 535 (2009)

only Indian tribes that appear on the Department of the Interior's list of recognized tribes have consultation rights under the National Historic Preservation Act; LBP-09-13, 70 NRC 168 (2009)

preservation of cultural traditions is a protected interest under federal law, and its endangerment or harm qualifies as an injury for the purposes of establishing standing; LBP-08-24, 68 NRC 691 (2008); LBP-10-16, 72 NRC 361 (2010)

standing is granted to an Indian tribe based on its interest in cultural artifacts onsite that could be affected by a proposed licensing action; CLI-09-9, 69 NRC 331 (2009)

to establish an injury in fact, a party merely has to show some threatened concrete interest personal to the party that the National Historic Preservation Act was designed to protect; LBP-08-24, 68 NRC 691 (2008)

without consultation with a tribe, culturally significant resources will go unidentified and unprotected, resulting in development or use of the land that might cause damage to these cultural resources, thereby injuring the protected interests of the tribe; LBP-08-24, 68 NRC 691 (2008)

CULTURAL SENSITIVITY

federal agencies should be sensitive to the special concerns of Indian tribes in historic preservation issues, which often extend beyond Indian lands to other historic properties, and should invite the governing body of the responsible tribe to be a consulting party and to concur in any agreement; LBP-08-6, 67 NRC 241 (2008); LBP-08-24, 68 NRC 691 (2008); LBP-10-16, 72 NRC 361 (2010)

CUMULATIVE IMPACTS ANALYSIS

agencies must consider cumulative impacts of a proposed action as defined in Council on Environmental Quality regulations; LBP-09-7, 69 NRC 613 (2009)

although applicant's description of existing water quality conditions did not separately evaluate the contributions of specific sources, it nonetheless formed an environmental baseline against which to measure the cumulative impact of the proposed new reactor; LBP-09-16, 70 NRC 227 (2009)

SUBJECT INDEX

an agency environmental impact statement must consider direct, indirect, and cumulative impacts of an action; LBP-09-19, 70 NRC 433 (2009)

“cumulative impact” is defined as the impact on the environment that results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions; LBP-09-16, 70 NRC 227 (2009)

cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time; CLI-10-5, 71 NRC 90 (2010)

even when an early site permit does not authorize any construction activity, the NRC Staff is required by Council on Environmental Quality regulations to consider actions that are related to other actions that could lead to a significant impact on the environment; LBP-07-1, 65 NRC 27 (2007)

in its environmental justice analysis, NRC makes nearby nuclear facility-related harm an appropriate issue to consider cumulatively with any impacts from proposed reactors; LBP-07-3, 65 NRC 237 (2007)

it would be inconsistent with NEPA’s rule of reason to require that the cumulative impacts analysis individually analyze the effects of remote facilities absent a demonstration that such additional effort would lead to a different conclusion; LBP-09-4, 69 NRC 170 (2009)

synergistic effects of a proposed action are examined when several proposals for actions in a region are pending concurrently before an agency; LBP-06-19, 64 NRC 53 (2006)

the environmental baseline reflects the effects of all currently existing pollution sources in the relevant watershed, including contributions of all nuclear power plants, and petitioners failed to provide information indicating that this aggregate analysis was insufficient under the National Environmental Policy Act; LBP-09-16, 70 NRC 227 (2009)

there is a difference between what NRC must look at in order to evaluate cumulative impacts under the National Environmental Policy Act and the scope of a particular cumulative impacts contention, which may be a subset of the total array of cumulative impacts required to be examined; CLI-10-5, 71 NRC 90 (2010)

whether the proposed action’s impacts will be significantly enhanced by already existing environmental effects from prior actions is examined as well as whether there will be interregional synergistic effects; LBP-06-19, 64 NRC 53 (2006); LBP-09-16, 70 NRC 227 (2009)

CUMULATIVE USAGE FACTOR

a license renewal applicant who addresses the CUF issue via an aging management program may reference Chapter X of the Generic Aging Lessons Learned Report; CLI-10-17, 72 NRC 1 (2010)

an aging management program is intended to manage the effects of aging on a particular component by, e.g., ensuring that the fatigue usage factor for the component does not exceed the design code limit; CLI-10-17, 72 NRC 1 (2010)

analysis of metal fatigue that ignores the known and substantial effects of the light-water reactor environment is insufficient, both as a technical and a legal matter; LBP-08-25, 68 NRC 763 (2008)

applicant may demonstrate compliance with 10 C.F.R. 54.21(c)(1)(ii) by showing that the CUF calculations have been reevaluated based on an increased number of assumed transients to bound the period of extended operation and that the resulting CUF remains less than or equal to 1.0 for the period of extended operation; CLI-10-17, 72 NRC 1 (2010)

applicant’s commitment to repair or replace affected locations before exceeding a CUF of 1.0 does not meet the “demonstration” requirement of the regulations; LBP-08-13, 68 NRC 43 (2008)

applicant’s use of a conservative number of transients in the calculations of the environmentally adjusted CUF is adequate to provide the degree of assurance required by 10 C.F.R. 54.29(a); LBP-08-25, 68 NRC 763 (2008)

because applicant’s change in cumulative usage factor is already endorsed by 10 C.F.R. 50.55a(g), the approval requirements of subsection 50.55a(a)(3) do not apply; CLI-06-24, 64 NRC 111 (2006)

because environmentally adjusted CUFs are not contained in licensee’s current licensing basis, they cannot be time-limited aging analyses and thereby a prerequisite to license renewal; CLI-10-17, 72 NRC 1 (2010)

conservatism in use of Green’s function to determine CUF related to metal fatigue in the recirculation nozzle is discussed; LBP-08-12, 68 NRC 5 (2008)

if applicant’s metal fatigue analyses on Class I components do not comply with the ASME Code and do not provide reasonable assurance as required by 10 C.F.R. 54.21(c)(1) and 54.29(a), then a license renewal cannot be issued; LBP-08-25, 68 NRC 763 (2008)

SUBJECT INDEX

- if CUF environmental metal fatigue analysis produces a value of greater than unity, then the analysis indicates that the component would be likely to develop metal fatigue cracks that might affect their function during the 20-year license renewal period of extended operation, and thus requires an aging management program; LBP-09-9, 70 NRC 41 (2009)
- in evaluating metal fatigue, a component's CUF is the fundamental parameter used to determine whether it will likely develop cracks during the license renewal period and thus is subject to an aging management plan; LBP-08-13, 68 NRC 43 (2008)
- license renewal applicant who chooses to rely upon an existing time-limited aging analysis may demonstrate compliance with 10 C.F.R. 54.21(c)(1)(i) by showing that the existing CUF calculations remain valid because the number of assumed transients would not be exceeded during the period of extended operation; CLI-10-17, 72 NRC 1 (2010)
- metal fatigue that a particular component experiences during plant operation is quantified using this method; CLI-10-17, 72 NRC 1 (2010)
- new contention on the adequacy of consideration of the dissolved oxygen factor in the cumulative usage factor environmental analysis and use of inappropriate heat transfer equations was previously litigated and resolved and thus is not admissible; LBP-09-9, 70 NRC 41 (2009)
- the standard review plan presents one acceptable methodology for calculating the environmentally adjusted cumulative usage factor; CLI-10-17, 72 NRC 1 (2010)
- use of a simplified Green's function methodology for the environmentally adjusted CUF metal fatigue analyses for the core spray and reactor recirculation outlet nozzles is inconsistent with the ASME Code and thus cannot serve as the analysis-of-record and does not satisfy the requirements of 10 C.F.R. 54.21(c)(1) or 54.29(a); LBP-08-25, 68 NRC 763 (2008)
- CURRENT LICENSING BASIS**
- a license renewal applicant seeking to satisfy aging management requirements by reliance upon existing time-limited aging analyses in its CLB would rely on 10 C.F.R. 54.21(c)(1)(i) or (ii); CLI-10-17, 72 NRC 1 (2010)
- any challenge to an NRC Staff decision to grant an exemption from a 1-hour barrier to a 24/30-minute barrier is a direct challenge to the current licensing basis and unrelated to the effects of plant aging and the license renewal application; LBP-08-13, 68 NRC 43 (2008)
- because environmentally adjusted cumulative usage factors are not contained in licensee's CLB, they cannot be time-limited aging analyses and thereby a prerequisite to license renewal; CLI-10-17, 72 NRC 1 (2010)
- challenges to a licensee's current compliance with its CLB or other operational requirements may be raised via a section 2.206 petition; LBP-07-17, 66 NRC 327 (2007)
- challenges to the CLB are outside the scope of a license renewal proceeding; LBP-10-15, 72 NRC 257 (2010)
- CLB represents an evolving set of requirements and commitments for a specific plant that are modified as necessary over the life of a plant to ensure continuation of an adequate level of safety; LBP-08-25, 68 NRC 763 (2008)
- compliance with the CLB is mandatory unless the licensing basis is properly changed or the licensee is formally excused by the NRC from compliance; LBP-06-16, 63 NRC 737 (2006)
- contentions pertaining to issues dealing with the current operating license, including the Updated Final Safety Analysis Report, are not within the scope of license renewal review; LBP-08-13, 68 NRC 43 (2008)
- during the license renewal term, the current licensing basis incorporates the CLB for the current license, including all licensee commitments, plus any new commitments to monitor, manage, and correct age-related degradation unique to license renewal; LBP-08-25, 68 NRC 763 (2008)
- each nuclear power plant has a plant-specific licensing basis that must be maintained during the renewal term in the same manner and to the same extent as during the original licensing term; CLI-10-14, 71 NRC 449 (2010)
- intervenor may not challenge a licensee's CLB in a license renewal proceeding; LBP-07-17, 66 NRC 327 (2007)
- issues relating to a plant's CLB are ordinarily beyond the scope of a license renewal review because those issues already are monitored, reviewed, and commonly resolved as needed by ongoing regulatory oversight; CLI-06-24, 64 NRC 111 (2006); LBP-06-22, 64 NRC 229 (2006)

SUBJECT INDEX

it is unnecessary or inappropriate to throw open the full gamut of provisions in a plant's current licensing basis to re-analysis during the license renewal review; LBP-07-4, 65 NRC 281 (2007)

licensee's discretionary use of testing and assessment criteria that are more conservative than those in the CLB does not transform the former criteria into part of the CLB; LBP-07-17, 66 NRC 327 (2007)

licensee's written commitments that are docketed and in effect constitute part of the CLB, which is the set of NRC requirements applicable to a specific plant; LBP-06-16, 63 NRC 737 (2006); LBP-07-17, 66 NRC 327 (2007)

NRC has the authority and responsibility to supplement or to amend conditions to the current licensing basis of an existing operating license at the time of license renewal if deemed necessary to protect the environment; LBP-10-13, 71 NRC 673 (2010)

the Commission's ongoing regulatory process, which includes inspection and enforcement activities, seeks to ensure a licensee's current compliance with the CLB; LBP-07-17, 66 NRC 327 (2007)

the licensing basis for a nuclear power plant during the renewal term consists of the CLB together with new commitments to monitor, manage, and correct age-related degradation unique to license renewal; LBP-08-25, 68 NRC 763 (2008)

the portion of the CLB that can be affected by the detrimental effects of aging is limited to the design bases aspects of the CLB; LBP-10-15, 72 NRC 257 (2010)

this set of NRC requirements includes regulations, orders, technical specifications, and license conditions applicable to a specific plant as well as licensee's written, docketed commitments for ensuring compliance with applicable NRC requirements and the plant-specific design basis; CLI-10-14, 71 NRC 449 (2010); LBP-10-13, 71 NRC 673 (2010)

DAMAGES

See Compensatory Damages

DEADLINES

a 10-day deadline from the date of the hearing notice is reasonable for filing requests for access to safeguards information or sensitive, unclassified, nonsafeguards information; CLI-09-4, 69 NRC 80 (2009)

a contention based on new information will be considered timely if it is filed within 30 days of the availability of the new information; CLI-10-18, 72 NRC 56 (2010); LBP-09-22, 70 NRC 640 (2009); LBP-09-29, 70 NRC 1028 (2009); LBP-10-14, 72 NRC 101 (2010)

a filing that was 3 days late, which the board characterized as not excessively late, was accepted based on findings that intervenor offered a reasonable explanation for the delay and the delay did not prejudice any of the other parties; LBP-10-21, 72 NRC 616 (2010)

a party at risk of filing out of time can request an extension, doing so well before the time specified expires; LBP-10-21, 72 NRC 616 (2010)

a specific rule may be established by a licensing board in the initial scheduling order for filing new contentions; LBP-07-15, 66 NRC 261 (2007)

agency notices must provide at least 15 days before the opportunity for a hearing is forfeited unless a shorter period is reasonable; LBP-09-20, 70 NRC 565 (2009)

all parties, except NRC Staff, shall make mandatory disclosures within 45 days of the issuance of the licensing board order admitting contentions; CLI-10-4, 71 NRC 56 (2010)

although NRC's rules of practice regarding motions do not provide for reply pleadings, the board presumes that for a reply to be timely it would have to be filed within 7 days of the date of service of the response it is intended to address; LBP-09-22, 70 NRC 640 (2009)

although participants generally must comply with the schedule established by the presiding officer, they might sometimes be unable to meet established deadlines; LBP-10-21, 72 NRC 616 (2010)

amicus briefs must be filed by the same deadline as the brief of the party whose side the amicus brief supports, unless the Commission provides otherwise; CLI-08-22, 68 NRC 355 (2008)

an answer supporting or opposing a motion for summary disposition or other dispositive motion shall be filed within 20 days after service of the motion; LBP-09-22, 70 NRC 640 (2009)

arguments on a separate matter, which petitioner adopts in a motion for reconsideration but could have made earlier, do not reset the clock for purposes of calculating timeliness; CLI-09-8, 69 NRC 317 (2009)

because of apparent electronic complications and the lack of a challenge to intervenors' reply document as late, the board treats a late filing as a valid reply; LBP-10-9, 71 NRC 493 (2010)

SUBJECT INDEX

COL applicants must submit a decommissioning report containing a certification that the funding assurance will be provided no later than 30 days after the NRC publishes notice in the *Federal Register* of its scheduled date for initial fuel loading; LBP-09-21, 70 NRC 581 (2009)

Commission rules in 10 C.F.R. 2.311(d) set a 10-day limit for appealing the selection of a particular hearing procedure because an appeal cannot wait until a board issues a decision on the merits of a contention; CLI-09-7, 69 NRC 235 (2009)

contentions must be filed with the original petition within 60 days of notice of the proceeding in the *Federal Register*, unless a longer period is therein specified, an extension is granted, or the contentions meet certain criteria for late-filed or new contentions based on information that is available only at a later time; LBP-07-4, 65 NRC 281 (2007); LBP-09-17, 70 NRC 311 (2009)

counsel's alleged unfamiliarity with the agency's rules of practice or counsel's asserted busy schedule are not satisfactory explanations for late filings; LBP-10-21, 72 NRC 616 (2010)

decommissioning plans are not required until the applicant files a post-shutdown decommissioning activities report, which is not due until 2 years before permanent cessation of operation; LBP-09-21, 70 NRC 581 (2009)

decommissioning plans must be submitted to the NRC within 12 months of notifying the NRC that the license has expired, licensee has decided to permanently cease principal activities at the site, or no principal activities under the license have been conducted for 24 months at the site or in any separate building or outdoor area that contains residual radioactivity; LBP-06-6, 63 NRC 167 (2006)

difficulties in coordinating action among volunteers and large public interest organizations and the challenge of simultaneously preparing for an environmental scoping meeting while drafting contentions does not constitute good cause necessary to justify an extension of the deadline to file hearing requests or petitions to intervene; CLI-09-4, 69 NRC 80 (2009)

dispositive motions may be filed 20 days after the occurrence or circumstance from which the motion arises, rather than the 10-day time frame, provided that the moving party commences sincere efforts to contact and consult all other parties within 10 days of the occurrence or circumstance, and the accompanying certification so states; LBP-09-22, 70 NRC 640 (2009)

final decommissioning financial assurance documents must be submitted to the NRC 30 days after the notification in the *Federal Register* pursuant to section 52.103(a) that licensee has set a date to load fuel; LBP-09-15, 70 NRC 198 (2009)

for an order issued under 10 C.F.R. 2.202, the time for filing a hearing request runs from the date of the order, not the date of publication of the order in the *Federal Register*; LBP-09-20, 70 NRC 565 (2009)

for filing new contentions, boards have generally established a deadline of 30 days to be timely after the receipt of new information; LBP-08-12, 68 NRC 5 (2008); LBP-09-17, 70 NRC 311 (2009); LBP-10-17, 72 NRC 501 (2010)

given the significant effort involved in identifying new information, assembling the required expertise, and then drafting a contention that satisfies section 2.309(f)(1), it would be inappropriate to impose the very short 10-day rule on the filing of new contentions; LBP-06-14, 63 NRC 568 (2006)

if, within 60 days after pertinent information that would support the framing of a contention first becomes available, intervenors submit a particularized and otherwise admissible contention regarding the construction of the facility, then the contention will be deemed timely without the need to satisfy the balancing test for late-filing requirements; CLI-09-2, 69 NRC 55 (2009)

in the event of some 11th-hour unforeseen development, a party may tender a document belatedly, but the tender must be accompanied by a motion for leave to file out-of-time which satisfactorily explains not only the reason for the lateness, but also why a motion for an extension of time could not have been seasonably submitted; CLI-10-26, 72 NRC 474 (2010)

in the interest of efficient case management and prompt resolution of adjudications, the Commission has generally enforced the 10-day deadline for appeals strictly, excusing it only in unavoidable and extreme circumstances; CLI-10-26, 72 NRC 474 (2010)

in uncontested cases, boards are expected to issue their final initial decisions generally within 4 to 6 months of the Staff's safety evaluation report and final environmental impact statement issuances; CLI-06-20, 64 NRC 15 (2006)

initial disclosures must be made within 30 days of the order granting a request for hearing, which is typically at least 18-24 months before the evidentiary hearing begins; LBP-09-30, 70 NRC 1039 (2009)

SUBJECT INDEX

late-filed contentions based on the safety evaluation report and any necessary National Environmental Policy Act document should be filed within 30 days of the issuance of those documents; LBP-09-27, 70 NRC 992 (2009)

licensee must submit a decommissioning plan within 12 months of permanent cessation of its authorized activity; LBP-08-4, 67 NRC 105 (2008)

motions are to be filed within 10 days of the event or circumstance from which they arise; CLI-06-2, 63 NRC 9 (2006); LBP-10-23, 72 NRC 692 (2010)

motions for reconsideration must be filed within 10 days of the action for which reconsideration is requested; CLI-10-9, 71 NRC 245 (2010)

motions to compel or challenges regarding the adequacy of any mandatory disclosure or hearing file, redactions, or the validity of any claim that a document is privileged or protected shall be filed within 10 days after the occurrence or circumstance from which the motion arises; LBP-09-22, 70 NRC 640 (2009)

no later than 20 days after service of materials, the parties and the NRC Staff shall file their written responses, rebuttal testimony with supporting affidavits, and rebuttal exhibits, on a contention-by-contention basis; LBP-09-22, 70 NRC 640 (2009)

no later than 30 days after service of materials, all parties and NRC Staff shall file proposed questions for the board to consider propounding to the direct or rebuttal witnesses; LBP-09-22, 70 NRC 640 (2009)

no later than 30 days after service of materials, all parties shall file any motions or requests to permit that party to conduct cross-examination of a specified witness or witnesses, together with the associated cross-examination plans; LBP-09-22, 70 NRC 640 (2009)

no later than 30 days before the commencement of the hearing at which an issue is to be presented, all parties other than the NRC Staff shall make the required pretrial disclosures; CLI-10-4, 71 NRC 56 (2010)

participant filing out of time must offer a satisfactory explanation for its lateness, including, if necessary, an account as to why a request for extension could not have been filed beforehand; LBP-10-21, 72 NRC 616 (2010)

parties are expected to file motions for extensions of time so that they are received by NRC well before the time specified expires; CLI-10-26, 72 NRC 474 (2010)

requests for an extension of time should generally be in writing and should be received by the board well before the time specified expires; LBP-10-21, 72 NRC 616 (2010)

strict enforcement of deadlines furthers the dual interests of efficient case management and prompt resolution of adjudications; LBP-10-21, 72 NRC 616 (2010)

the 30-day hearing petition and contention-filing deadlines set forth in this section have been modified for the high-level waste proceeding; CLI-08-25, 68 NRC 497 (2008)

the Commission or presiding officer may extend a time limit upon a showing of good cause; CLI-09-4, 69 NRC 80 (2009)

the fact that a party may have other obligations does not relieve that party of its hearing obligations; CLI-10-26, 72 NRC 474 (2010)

the newness of a deadline, along with petitioners' companion requests for additional resources to support their requests for such safeguards information justify a 10-day extension to request access to the information; CLI-09-4, 69 NRC 80 (2009)

thirty days is a reasonable limit for fulfilling the timing requirement of 10 C.F.R. 2.309(f)(2)(iii) because of the significant effort involved in identifying new information, assembling the required expertise, and then drafting a contention that satisfies 10 C.F.R. 2.309(f)(1); LBP-09-27, 70 NRC 992 (2009)

to be considered timely, a document must be submitted to the E-Filing system for docketing and service by 11:59 p.m. Eastern Time; LBP-08-16, 68 NRC 361 (2008)

twenty days in which to request a hearing is the minimum required by the agency's regulations for orders issued under 10 C.F.R. 2.202(a); LBP-09-20, 70 NRC 565 (2009)

unfamiliarity with NRC's Rules of Practice is not sufficient excuse for late filings, particularly where the order that is being challenged expressly advised petitioner of his appellate rights and of the time within which those rights had to be exercised; CLI-10-26, 72 NRC 474 (2010)

SUBJECT INDEX

unless a deadline has been specified in the scheduling order for the proceeding, the determination of timeliness is subject to a reasonableness standard that depends on the facts and circumstances of each situation; LBP-10-24, 72 NRC 720 (2010)

when issuing an order modifying a license, the agency is required to inform the licensee or any other person adversely affected by the order of his or her right, within 20 days of the date of the order, or such other time as may be specified in the order, to demand a hearing; LBP-09-20, 70 NRC 565 (2009)

within 25 days after service of a motion and proposed contention, any other party may file an answer responding to all elements of the motion and contention, and within 7 days of service of the answer, the movant may file a reply; LBP-09-22, 70 NRC 640 (2009)

within 30 days of the board's ruling admitting contentions, the parties must automatically make certain mandatory disclosures; LBP-09-22, 70 NRC 640 (2009)

See also Extension of Time; Time Limits

DECISION ON THE MERITS

the board did not make an impermissible merits ruling by observing that a contention was supported by the affidavit of an expert; CLI-10-2, 71 NRC 27 (2010)

DECISIONS

although the Atomic Safety and Licensing Appeal Board was disbanded in 1991, its decisions still carry precedential value; CLI-09-2, 69 NRC 55 (2009)

an agency or commission must articulate with clarity and precision its findings and the reasons for its decisions; LBP-08-22, 68 NRC 590 (2008)

appeals of an initial decision or partial initial decision of the presiding officer are permitted in the high-level waste repository proceeding; CLI-10-10, 71 NRC 281 (2010)

See also Initial Decisions; Licensing Board Decisions; Partial Initial Decisions; Record of Decision

DECOMMISSIONING

a memorandum of understanding is adequate to demonstrate the plausibility of applicant's deconversion strategy; LBP-06-15, 63 NRC 591 (2006)

a plausible strategy for private conversion of depleted uranium tails does not mean a definite or certain strategy, to include completion of all necessary contractual arrangements, but it must represent more than mere speculation; LBP-06-15, 63 NRC 591 (2006)

a preclosure safety analysis must be performed for the high-level waste repository and it must demonstrate, among other things, that the requirements of 10 C.F.R. 63.111(a) are met; CLI-09-14, 69 NRC 580 (2009)

after completion of decommissioning, neither licensee nor the NRC retains any continuing obligation or jurisdiction, respectively, with respect to a site, unless new information shows that the Part 20 criteria were not met and the residual radioactivity remaining on the site could result in a significant threat to public health and safety; CLI-09-1, 69 NRC 1 (2009)

an operating license cannot be terminated, in effect, until all spent fuel and high-level waste has been removed from the site; LBP-09-17, 70 NRC 311 (2009)

approval of an alternate schedule for submission of a decommissioning plan hinges upon a demonstration that prosecution of the alternative schedule as proposed by the licensee is necessary to the effective conduct of decommissioning operations; LBP-08-4, 67 NRC 105 (2008)

claims related to the decommissioning of the facility are not currently ripe for review and are outside the scope of a combined license proceeding; LBP-09-16, 70 NRC 227 (2009)

"decommission" means to remove a facility or site safely from service and reduce residual radioactivity to a level that permits release of the property for unrestricted use and termination of the license or release of the property under restricted conditions and termination of the license; LBP-09-15, 70 NRC 198 (2009)

if after public notice and review the NRC approves the decommissioning plan, licensee has 60 years to complete decommissioning; LBP-09-17, 70 NRC 311 (2009)

leach rate testing protocol for slag and baghouse dust piles is discussed; CLI-09-1, 69 NRC 1 (2009)

section 40.42(d) of 10 C.F.R. is written in terms of releasing buildings or areas in accordance with NRC criteria; CLI-09-1, 69 NRC 1 (2009)

transfer of depleted uranium from enrichment operations to DOE for deconversion and disposal constitutes a plausible strategy for dispositioning; LBP-06-15, 63 NRC 591 (2006)

SUBJECT INDEX

until decommissioning is completed, licensee must limit actions to those related to decommissioning and control access to restricted areas until they are suitable for release; CLI-09-1, 69 NRC 1 (2009)

utilities must dispose of greater-than-Class-C waste before they can decommission reactor sites; CLI-10-2, 71 NRC 27 (2010)

when a nuclear power plant ceases operations, the owner must apply for a license to terminate, which cannot be granted until the NRC is satisfied that the plant has been properly dismantled and decommissioned so that residual radiation meets established rules and that no spent fuel or high-level wastes remains onsite; LBP-09-21, 70 NRC 581 (2009)

whether a site is suitable for unrestricted or restricted release, the license is terminated upon the completion of decommissioning; CLI-09-1, 69 NRC 1 (2009)

with respect to possession, a Part 40 license continues in effect after expiration until decommissioning is completed; CLI-09-1, 69 NRC 1 (2009)

DECOMMISSIONING COSTS

a finding that a particular strategy is plausible is a necessary precursor to a finding that a cost estimate is documented and reasonable; LBP-06-15, 63 NRC 591 (2006)

a provision for ALARA determinations allows the use of cost as a factor for determining what level of remediation is cost-effective below the standards, but is not allowed by the New Jersey Agreement State program; CLI-10-8, 71 NRC 142 (2010)

applicant is not required, as a basis for its initial decommissioning funding cost estimate, to make projections or otherwise speculate about what events may or may not occur in the distant future; LBP-06-15, 63 NRC 591 (2006)

applicant may provide estimates for each of the elements of its decommissioning funding plan by obtaining estimates of the actual cost of providing a service from experienced third parties; LBP-06-15, 63 NRC 591 (2006)

applicant must demonstrate a "plausible strategy" for dispositioning depleted uranium waste to provide a foundation upon which to build reasonable cost estimates for various elements related to ultimate decommissioning of the proposed facility; LBP-06-15, 63 NRC 591 (2006)

contention disputing the cost estimate for decommissioning is an indirect challenge to 10 C.F.R. 50.75(c) and therefore inadmissible; LBP-09-16, 70 NRC 227 (2009)

contentions that concern greater-than-Class-C waste, seek to require a change to the decommissioning cost estimate, or constitute a challenge to Table S-3 of 10 C.F.R. 51.51 are inadmissible; LBP-09-16, 70 NRC 227 (2009)

cost of constructing and operating a deconversion facility may be based on prior experience with a similar facility, but such estimates must include the entirety of expected costs to the applicant or a third party by, for example, providing a thorough analysis such as would typically be developed and used for any new project; LBP-06-15, 63 NRC 591 (2006)

cost of implementation of a particular strategy has no bearing upon whether any particular strategy is technically feasible; LBP-06-15, 63 NRC 591 (2006)

DOE cost estimates represent an arm's-length, third-party estimate of the cost of doing business, albeit in an instance when the party offering the estimate is statutorily bound to provide that service; LBP-06-15, 63 NRC 591 (2006)

in estimating labor costs for its financial assurance plan relative to its proposed uranium mining operation, applicant is entitled to draw upon its prior experience in that field as a basis for its cost estimates; LBP-06-15, 63 NRC 591 (2006)

neither an intervenor nor an applicant/licensee nor the NRC has the authority to challenge or direct DOE's estimates of the fees it will charge to a uranium enrichment facility that requests DOE to disposition its depleted uranium waste; LBP-06-15, 63 NRC 591 (2006)

NUREG-1757 sets forth the minimum criteria that a cost estimate must meet before the Staff can find it acceptable; LBP-06-15, 63 NRC 591 (2006)

Staff reviews the financial assurance mechanisms specified in an applicant's decommissioning funding plan to determine whether the proposed mechanisms are acceptable and to ensure that the certification specifies the correct amount of financial assurance and attests compliance with the appropriate regulatory requirements; LBP-06-15, 63 NRC 591 (2006)

to provide a reliable estimate of the costs of deconverting depleted uranium from enrichment operations, applicant can follow one of two paths; LBP-06-15, 63 NRC 591 (2006)

SUBJECT INDEX

- triennial adjustments are intended to account for changes in a licensee's cost estimates regardless of the cause, and to ensure that adequate financial assurance is provided by the licensee at any given time; LBP-06-15, 63 NRC 591 (2006)
- whether an applicant has presented a plausible strategy, although related to disposition costs, is an inquiry distinct from and precedent to the question of the adequacy of an applicant's dispositioning cost estimates; LBP-06-15, 63 NRC 591 (2006)
- DECOMMISSIONING FUNDING**
- a board can only decide whether or not a current funding proposal fulfills NRC requirements; LBP-09-18, 70 NRC 385 (2009)
 - a board's analysis of decommissioning cost estimates should be tailored to the specifics of the proceeding; CLI-06-22, 64 NRC 37 (2006)
 - a board's examination of licensee's decommissioning cost estimates for reliability is consistent with its obligation to verify whether the estimates provided reasonable assurance for decommissioning funding; CLI-06-22, 64 NRC 37 (2006)
 - a combined license applicant must obtain the financial instrument and submit a copy to the Commission as provided in 10 C.F.R. 50.75(e)(3); LBP-09-15, 70 NRC 198 (2009)
 - a combined license application must provide the information required by 10 C.F.R. 50.75(e)(1)(iii)(B) if applicant plans to use a parent company guarantee; LBP-09-15, 70 NRC 198 (2009); LBP-09-18, 70 NRC 385 (2009)
 - a decommissioning plan must address economic considerations, and a contention that seeks to raise issues in that sphere must include references to specific portions of the plan that the petitioner disputes; LBP-07-5, 65 NRC 341 (2007)
 - a parent-company guarantee of funds for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in 10 C.F.R. Part 30, Appendix A; LBP-09-15, 70 NRC 198 (2009)
 - a surety bond must be funded in an amount greater than or equal to the decommissioning cost estimate set forth in the licensee's decommissioning funding plan; LBP-06-17, 63 NRC 747 (2006)
 - acceptable methods include a sinking fund, prepayment of the entire decommissioning amount, and a surety method, insurance, or other guarantee method; LBP-09-15, 70 NRC 198 (2009)
 - applicant is permitted to choose a single method or a combination of methods to demonstrate financial assurance; LBP-09-4, 69 NRC 170 (2009)
 - applicant is required to establish a surety arrangement that ensures sufficient funds will be available for decommissioning and decontamination of an NRC-licensed source materials site; LBP-08-24, 68 NRC 691 (2008)
 - applicant may choose one or more of the funding methods provided in 10 C.F.R. 50.75(e); LBP-09-18, 70 NRC 385 (2009)
 - applicant may provide financial assurance by prepayment of funds into a segregated account prior to the start of facility operations, a surety method, insurance, or other guarantee method, or annual deposits into a segregated account coupled with a surety method or insurance, whereby the surety value decreases over time by the amount accrued in the segregated account; LBP-06-17, 63 NRC 747 (2006)
 - applicant, 2 years before and 1 year before the scheduled date for the initial fuel loading, shall submit a report to NRC containing a certification updating the financial information, including a copy of the financial instrument to be used; LBP-09-18, 70 NRC 385 (2009)
 - at the time the combined license application is submitted, it must identify the method of decommissioning funding assurance that the applicant proposes to use and to show that the method complies with any applicable financial test; LBP-09-15, 70 NRC 198 (2009); LBP-09-18, 70 NRC 385 (2009)
 - because the requirement of 10 C.F.R. 50.75(b)(3) applies to the amount of financial assurance specified in the decommissioning report, it is readily apparent that the report must explain how that requirement will be fulfilled; LBP-09-15, 70 NRC 198 (2009)
 - calculations for surety bonds are to be estimated to the extent possible, and based on the applicant's experience with generally accepted industry practices including research and development at the site or previous operating experience in the case of a license renewal; LBP-08-24, 68 NRC 691 (2008)
 - combined license applicants must submit a decommissioning report containing a certification that the funding assurance will be provided no later than 30 days after the NRC publishes notice in the *Federal*

SUBJECT INDEX

Register of its scheduled date for initial fuel loading; LBP-09-15, 70 NRC 198 (2009); LBP-09-18, 70 NRC 385 (2009); LBP-09-21, 70 NRC 581 (2009)

cost estimates provided relative to the DOE "plausible strategy" are sufficiently reliable to provide the basis for an initial estimate of the portion of decommissioning funding associated with disposition of depleted uranium waste; LBP-06-15, 63 NRC 591 (2006)

decommissioning rules are designed to minimize the administrative effort of licensees and the Commission and to provide reasonable assurance that funds will be available to carry out decommissioning in a manner that protects public health and safety; LBP-09-21, 70 NRC 581 (2009)

holder of a combined license must begin filing biannual reports on the status of decommissioning funding once the Commission has made a finding that all acceptance criteria in the license have been met; LBP-09-15, 70 NRC 198 (2009)

if licensee changes its method of decommissioning funding assurance, the new method will also have to pass any applicable financial test; LBP-09-15, 70 NRC 198 (2009)

it is beyond licensing board authority to require applicant to choose a particular method of decommissioning funding; LBP-09-4, 69 NRC 170 (2009); LBP-09-15, 70 NRC 198 (2009)

neither market capitalization nor share price are variables to be used in the financial test for decommissioning funding assurance; LBP-09-15, 70 NRC 198 (2009)

NRC will defer to state economic regulators where decommissioning funding is assured by the fact that any shortfall in decommissioning funds will be provided by ratepayers pursuant to state law; LBP-09-21, 70 NRC 581 (2009)

obtaining an estimate from an experienced third-party vendor is not the only way for an applicant to demonstrate that its cost estimate is documented and reasonable; CLI-06-22, 64 NRC 37 (2006)

petitioners' claim that applicant must pursue the prepayment method for decommissioning conflicts with the NRC guidance and rules and so is outside the permissible scope of a combined license proceeding; LBP-09-21, 70 NRC 581 (2009)

regulations and guidance documents fail to state when proof of applicant's financial assurance for decommissioning funding is required; LBP-09-4, 69 NRC 170 (2009)

surety bonds must be directly payable to an acceptable standby trust that will be used to fund decommissioning if the licensee defaults on its decommissioning obligation; LBP-06-17, 63 NRC 747 (2006)

surety bonds must either be open-ended or written for a specified term subject to automatic renewal, and must specify that the full face value will be automatically paid to the NRC prior to expiration if the licensee does not provide an acceptable mechanism within a specified period of time; LBP-06-17, 63 NRC 747 (2006)

surety bonds must remain in effect until license termination; LBP-06-17, 63 NRC 747 (2006)

the amount of financial assurance must be adjusted annually, using a rate calculated pursuant to 10 C.F.R. 50.75(c)(2); LBP-09-15, 70 NRC 198 (2009)

the contention that applicant cannot pass a financial test because the parent company is already committed to providing funding for the decommissioning of another site is an impermissible challenge to NRC regulations; LBP-09-18, 70 NRC 385 (2009)

the fact that the Commission included language deferring the obligation that would otherwise apply to combined license applicants in 10 C.F.R. 50.75(b)(4), but included no equivalent provision in section 50.75(b)(3), confirms that the Commission did not intend to defer the requirement of section 50.75(b)(3) until after the license is issued; LBP-09-15, 70 NRC 198 (2009)

the financial test for a parent company guarantee is a material issue because the Staff must decide whether the test is satisfied in order to grant the combined license; LBP-09-15, 70 NRC 198 (2009)

the requirement that the designated amount of financial assurance be covered by an acceptable method arises concurrently with the requirement that the applicant submit a decommissioning report to NRC; LBP-09-15, 70 NRC 198 (2009)

the requirements of 10 C.F.R. 50.75 are intended to ensure that entities who construct and operate a nuclear power plant will have sufficient funds at the end of the operational life of the plant to complete the decommissioning of the plant; LBP-09-15, 70 NRC 198 (2009)

the unavailability of funding for decommissioning adequate to achieve unrestricted release of a site is not one of the conditions specified in 10 C.F.R. 20.1403(a); CLI-09-1, 69 NRC 1 (2009)

SUBJECT INDEX

there is no provision that requires an applicant or licensee to choose one form of decommissioning assurance over another; LBP-09-4, 69 NRC 170 (2009)
without an exemption, a uranium enrichment facility applicant is required to fully fund all of its estimated decommissioning costs at the time of licensing; LBP-07-6, 65 NRC 429 (2007)

DECOMMISSIONING FUNDING PLANS

a DFP ensures that an applicant has considered the decommissioning activities that may be required at the proposed facility over time, has presented a credible, site-specific cost estimate for conducting those activities, and has provided the NRC with financial assurance to cover those estimated costs should a third party have to take responsibility for facility decommissioning; LBP-06-15, 63 NRC 591 (2006)
a DFP must contain a cost estimate for decommissioning and a description of the method of assuring funds for decommissioning, including means for adjusting cost estimates and associated funding levels periodically over the life of the facility, at least triennially; LBP-06-15, 63 NRC 591 (2006)
a surety arrangement is necessary as a prerequisite to operating, not as a prerequisite to licensing; LBP-10-16, 72 NRC 361 (2010)
an applicant seeking a license to construct and operate a uranium enrichment facility must submit a proposed DFP with its license application; LBP-06-15, 63 NRC 591 (2006)
applicant can rely on public statements of market participants regarding plans to close old enrichment facilities or open new ones; LBP-06-15, 63 NRC 591 (2006)
applicant for a uranium enrichment facility is required to provide NRC Staff with a site-specific estimate of the costs for decommissioning the facility, and a description and certification of the means by which funds for decommissioning will be assured; LBP-06-17, 63 NRC 747 (2006)
applicant must adjust its cost estimates and associated financial assurance levels at least once every 3 years; LBP-06-17, 63 NRC 747 (2006)
applicant must establish a surety arrangement that ensures sufficient funds will be available for decommissioning and decontamination of an NRC-licensed source materials site; LBP-10-16, 72 NRC 361 (2010)
applicant must submit a certification that financial assurance for decommissioning the facility has been provided in an amount equal to the decommissioning cost estimate, as well as a signed original or appropriate duplicate of the funding instrument whereby the applicant will provide financial assurance; LBP-06-15, 63 NRC 591 (2006)
decommissioning funding assurance is the process through which a combined license applicant assures the NRC that funds will be available to decommission a site or facility; LBP-09-15, 70 NRC 198 (2009)
financial assurance may be provided for decommissioning in the case of a private applicant by prepayment into a segregated account prior to start of facility operations, a surety or other guarantee method, or by annual deposits into an external sinking fund coupled with a surety method whereby the surety value decreases over time by the amount accrued in the sinking fund; LBP-06-15, 63 NRC 591 (2006)
funding for financial assurance for decommissioning must be covered by prepayment, an external sinking fund, or a surety method, insurance, or other guarantee including a parent company guarantee; LBP-09-18, 70 NRC 385 (2009)
initial cost estimates must encompass foreseeable activities associated with decommissioning, including radioactive waste disposal, and must present a reasonably accurate estimate of the direct and indirect costs involved in decommissioning under routine facility conditions; LBP-06-15, 63 NRC 591 (2006)
licensing boards are not to be involved simply in "formalistic" redrafting of plans; LBP-06-15, 63 NRC 591 (2006)
surety arrangements are matters appropriately addressed after issuance of the license, and even after completion of a hearing; LBP-10-16, 72 NRC 361 (2010)
the decommissioning funding required for the most costly component, disposition of depleted uranium tails, is predicated on transferring DU to DOE, which is a plausible strategy allowed by statute; LBP-07-6, 65 NRC 429 (2007)
the parent company guarantee is based on a financial test and may only be used if the guarantee and test are as contained in Appendix A to 10 C.F.R. Part 30; LBP-09-18, 70 NRC 385 (2009)
the purpose of the financial assurance requirement is to provide reasonable assurance that adequate funds will be available, through appropriate mechanisms, for facility decommissioning should a licensee be unable or unwilling to complete decommissioning; LBP-06-17, 63 NRC 747 (2006)

SUBJECT INDEX

the purpose of the triennial adjustment of cost estimates is to help ensure funding for decommissioning will not become inadequate as a result of changing disposal prices or other factors; LBP-06-17, 63 NRC 747 (2006)

DECOMMISSIONING PLANS

a DP must include an updated, detailed cost estimate for decommissioning, a comparison of that estimate with the amount of funds presently set aside for decommissioning, and a plan for assuring the availability of adequate funds to complete decommissioning activities; LBP-06-15, 63 NRC 591 (2006)

a site characterization must include sufficient information so that it can effectively track pathways for significant offsite contamination and estimate the quantity of those pathways; LBP-08-4, 67 NRC 105 (2008)

a site characterization plan should provide sufficient information to allow the NRC to determine the extent and range of expected radioactive contamination; LBP-08-4, 67 NRC 105 (2008)

an adequate site characterization must be included; LBP-08-4, 67 NRC 105 (2008)

an alternate schedule for the submittal of a decommissioning plan should be approved if it is necessary to the effective conduct of decommissioning operations, presents no undue risk from radiation, and is otherwise in the public interest; LBP-08-4, 67 NRC 105 (2008)

application for approval of an alternate schedule for the submission of a decommissioning plan for a site containing expended depleted uranium munitions is approved; LBP-08-4, 67 NRC 105 (2008)

at least one financial assurance mechanism, including supporting documentation, must be specified, and the Staff will again review it for adequacy; LBP-06-15, 63 NRC 591 (2006)

because the requirement of 10 C.F.R. 50.75(b)(3) applies to the amount of financial assurance specified in the decommissioning report, it is readily apparent that the report must explain how that requirement will be fulfilled; LBP-09-15, 70 NRC 198 (2009)

description of the conditions of the site or separate building or outdoor area must be sufficient to evaluate the acceptability of the plan; LBP-08-4, 67 NRC 105 (2008)

despite lack of compliance with various agency NUREGs, a decommissioning plan is lawful because it acknowledges the fiscal realities of the licensee's bankruptcy and is consistent with the mandate that the plan be completed as soon as practicable and adequately protect the health and safety of workers and the public; LBP-08-4, 67 NRC 105 (2008)

filing of a petition for alternative soil remediation standards is permitted as long as the resulting dose would not exceed 15 mrem per year; CLI-10-8, 71 NRC 142 (2010)

if licensee perceives a difficulty in meeting the deadline for submission of a revised decommissioning plan, it may request an extension of time from the Agreement State; CLI-10-8, 71 NRC 142 (2010)

licensee must provide written notification to NRC Staff within 60 days and either begin decommissioning of the site or submit a decommissioning plan to the Staff within 12 months of the notification; LBP-08-4, 67 NRC 105 (2008); LBP-08-8, 67 NRC 409 (2008)

licensee's plan would have to show that the maximum annual dose to any person is as low as is reasonably achievable below 15 mrem; CLI-10-8, 71 NRC 142 (2010)

licensees are required to submit plans to the NRC if required by license condition or if the procedures and activities necessary to carry out decommissioning have not been previously approved by the Commission and these procedures could increase potential health and safety impacts to workers or to the public; LBP-06-6, 63 NRC 167 (2006)

plans are not required until the applicant files a post-shutdown decommissioning activities report, which is not due until 2 years before permanent cessation of operation; LBP-09-21, 70 NRC 581 (2009)

plans must be submitted to the NRC within 12 months of notifying the NRC that the license has expired, licensee has decided to permanently cease principal activities at the site, or no principal activities under the license have been conducted for 24 months at the site or in any separate building or outdoor area that contains residual radioactivity; LBP-06-6, 63 NRC 167 (2006)

substantial delay in both the submittal and approval of a plan might involve a violation of 10 C.F.R. 40.42; LBP-08-8, 67 NRC 409 (2008)

the board finds that the biota sampling component of the field sampling plan is sufficient to meet the criteria for a 5-year alternate schedule for submission of a decommissioning plan; LBP-08-4, 67 NRC 105 (2008)

the fact that the Commission included language deferring the obligation that would otherwise apply to combined license applicants in 10 C.F.R. 50.75(b)(4), but included no equivalent provision in section

SUBJECT INDEX

- 50.75(b)(3), confirms that the Commission did not intend to defer the requirement of section 50.75(b)(3) until after the license is issued; LBP-09-15, 70 NRC 198 (2009)
- there are no requirements regarding chemical toxicity, the general harm that unexploded ordnance might pose, or even ecological contamination, except as these issues affect radioactivity levels and exposure to humans; LBP-08-4, 67 NRC 105 (2008)
- there is no requirement that the field sampling plan describe the collection of information needed for the decommissioning plan's environmental assessment or environmental impact statement; LBP-08-4, 67 NRC 105 (2008)
- to be granted, an alternate schedule for submission of a decommissioning plan must be necessary to the effective conduct of decommissioning operations; LBP-07-7, 65 NRC 507 (2007)
- under certain conditions, the Commission may approve an alternative schedule for the submittal of a plan; LBP-06-6, 63 NRC 167 (2006)
- when licensee permanently ceases site activities, it must notify NRC in writing of that development and, within 12 months thereof, submit a decommissioning plan; LBP-08-4, 67 NRC 105 (2008)
- with respect to an adequate site characterization, it is reasonable to interpret the regulations as requiring decommissioning plan submissions to contain the type of information discussed in the NUREG-1700 acceptance criteria; LBP-08-4, 67 NRC 105 (2008)
- DECOMMISSIONING PROCEEDINGS**
- standing was found for an organization representing three members living in close proximity to a decommissioning site, who expressed concern that depleted uranium materials could affect a waterway abutting the property of two members; CLI-10-20, 72 NRC 185 (2010)
- where the proximity presumption did not apply, petitioner who commuted past the entrance of a plant once or twice a week was found to have standing; CLI-10-7, 71 NRC 133 (2010)
- DEFENSE-IN-DEPTH POLICY**
- protection against a highly unlikely loss-of-coolant accident has long been an essential part of the defense-in-depth concept used by the nuclear power industry and the AEC to ensure the safety of nuclear power plants; LBP-08-12, 68 NRC 5 (2008)
- DEFERRAL OF HEARING**
- given the extended history of a proceeding and the nature of the license amendment sought, it can scarcely be thought that the deferral of a hearing to await the completion of the technical review might of itself adversely impact the public interest; LBP-06-6, 63 NRC 167 (2006)
- it is appropriate to defer issues concerning the effects of short-term damage to the environment and the irretrievable commitment of resources to the construction permit or combined license stage; CLI-07-14, 65 NRC 216 (2007)
- the fact that petitioner's motion to defer a hearing to abide the completion of the Staff's technical review is unopposed can be taken as reflecting an implicit unanimous recognition that the fruits of the technical review might have a significant impact upon what issues might require exploration at a hearing; LBP-06-6, 63 NRC 167 (2006)
- See also Abeyance of Proceeding
- DEFERRAL OF RULING**
- because deferral of the consideration of the balance of petitioner's contentions might prejudice parties' legitimate interests, they will be subject to the filing of a timely motion for reconsideration; LBP-07-5, 65 NRC 341 (2007)
- contention admissibility rulings may be deferred in the interest of the most economical use of board resources; LBP-07-8, 65 NRC 531 (2007)
- the Commission does not endorse deferring the consideration of proposed contentions because prompt consideration of contentions promotes the efficient and complete development of the record while conserving resources; CLI-07-20, 65 NRC 499 (2007)
- when critical information has been submitted to the NRC under a claim of confidentiality and was not available to petitioners when framing their issues, it is appropriate to defer ruling on the admissibility of an issue until the petitioner has had an opportunity to review this information and submit a properly documented issue; CLI-07-18, 65 NRC 399 (2007)

SUBJECT INDEX

DEFERRED STATUS

- a facility can be reactivated from deferred status so that construction can begin again, which includes providing 120 days' notice to the Staff before restarting construction activities; LBP-10-7, 71 NRC 391 (2010)
- if a construction permit holder wishes to discontinue construction activities at a facility but continue to have its 10 C.F.R. Part 50 construction authorization remain effective, it can do so under the terms of the 1987 Commission Policy Statement on Deferred Plants; LBP-10-7, 71 NRC 391 (2010)
- the 1987 Commission Policy Statement on Deferred Plants sets forth the process under which a plant could be placed in a terminated status pending withdrawal of the CP, as well as procedures and requirements for reactivating the facility from terminated status; LBP-10-7, 71 NRC 391 (2010)

DEFINITIONS

- a "claim" is an assertion, statement, or implication; LBP-09-30, 70 NRC 1039 (2009)
- a "contention" is simply a point or argument asserted or advanced by any party; LBP-09-30, 70 NRC 1039 (2009)
- a "contention of omission" is one that claims the application fails to contain information on a relevant matter as required by law and the supporting reasons for the petitioner's belief; LBP-09-16, 70 NRC 227 (2009); LBP-09-27, 70 NRC 992 (2009)
- a "deliberately ignorant defendant" is one who was aware of the high probability of a critical fact, but deliberately ignored that probability; LBP-09-24, 70 NRC 676 (2009)
- a "federally recognized Indian tribe" is one that is included on the Bureau of Indian Affairs' list of federally recognized Indian tribes published in the *Federal Register*; LBP-09-13, 70 NRC 168 (2009)
- a "negligent defendant" is one who should have had similar suspicions but, in fact, did not; LBP-09-24, 70 NRC 676 (2009)
- a "reckless defendant" is one who merely knew of a substantial and unjustifiable risk that his conduct was criminal; LBP-09-24, 70 NRC 676 (2009)
- a "land disposal facility" includes any land, building, and structures, and equipment that are intended to be used for the disposal of radioactive wastes, but does not include a geologic repository; LBP-06-8, 63 NRC 241 (2006)
- a "material issue" is one in which resolution of the dispute would make a difference in the outcome of the licensing proceeding; LBP-06-10, 63 NRC 314 (2006)
- a "near-surface disposal facility" is a land disposal facility in which radioactive waste is disposed of in or within the upper 30 meters of the earth's surface; LBP-06-8, 63 NRC 241 (2006)
- "ALARA" is defined as every reasonable effort to maintain exposures to radiation as far below the dose limits in Part 20 as is practical consistent with the purpose for which the licensed activity is undertaken; CLI-10-8, 71 NRC 142 (2010)
- "amplify" as in reply briefs means to enlarge, expand, or extend (a statement or other expression of idea in words) by addition of detail or illustration or by logical development; LBP-08-6, 67 NRC 241 (2008)
- an alternative is "reasonable" if it is both feasible (possible, viable) and nonspeculative; LBP-10-10, 71 NRC 529 (2010)
- an early site permit focuses on the suitability of a proposed site, and is defined as Commission approval for a site or sites for one or more nuclear power facilities; LBP-08-15, 68 NRC 294 (2008)
- an early site permit is a partial construction permit, whose issuance does not authorize an applicant to construct nuclear power reactors; LBP-08-15, 68 NRC 294 (2008)
- an organization, like an individual, is considered a "person"; CLI-07-18, 65 NRC 399 (2007)
- "authority" is defined as a legal writing taken as definitive or decisive, especially a judicial or administrative decision cited as a precedent, or a source, such as a statute, case, or treatise, cited in support of a legal argument; LBP-10-21, 72 NRC 616 (2010)
- "background radiation" is defined as naturally occurring radioactive material, including radon (except as a decay product of source or special nuclear material); LBP-06-1, 63 NRC 41 (2006)
- "categorical exclusion" encompasses actions that do not individually or cumulatively have a significant effect on the human environment and therefore neither an environmental assessment nor an environmental impact statement is required; CLI-10-18, 72 NRC 56 (2010)
- "collateral estoppel" is a form of issue preclusion that prevents the relitigation of issues of law or fact that have been finally adjudicated by a tribunal of competent jurisdiction in a proceeding involving the same parties or their privies; LBP-09-24, 70 NRC 676 (2009)

SUBJECT INDEX

- “construction” does not include site exploration, clearing, grading, or installation of environmental mitigation measures, erection of fences and other access control measures, excavation, erection of support buildings for use in connection with construction, building of service facilities, and procurement or offsite fabrication of facility components; LBP-09-19, 70 NRC 433 (2009)
- “constructive knowledge” is knowledge of facts sufficient to prompt an inquiry that would have uncovered misrepresentations and is not actual knowledge; LBP-09-24, 70 NRC 676 (2009)
- “coordination” refers to the electric power utilities’ practice of interchanging power and sharing responsibility for building new generating facilities to achieve economic benefits unattainable by an individual utility acting alone; CLI-06-2, 63 NRC 9 (2006)
- “coordination services markets” are for the exchange of surplus electric power between utilities on a nonfirm basis and the joint and coordinated operation by utilities of their systems of generation and distribution, all with the purpose of achieving maximum efficiency and economies in their overall power supply operations; CLI-06-2, 63 NRC 9 (2006)
- “cumulative impact” is the effect on the environment that results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions; LBP-09-7, 69 NRC 613 (2009); LBP-09-16, 70 NRC 227 (2009)
- “current licensing basis” is the set of NRC requirements that includes regulations, orders, technical specifications, and license conditions applicable to a specific plant as well as licensee’s written, docketed commitments for ensuring compliance with applicable NRC requirements and the plant-specific design basis; CLI-10-14, 71 NRC 449 (2010); LBP-08-25, 68 NRC 763 (2008)
- “decommission” means to remove a facility or site safely from service and reduce residual radioactivity to a level that permits release of the property for unrestricted use and termination of the license or release of the property under restricted conditions and termination of the license; LBP-09-15, 70 NRC 198 (2009)
- “deliberate misconduct” refers to an intentional act or omission that the person knows would cause a licensee to be in violation of any rule; LBP-09-24, 70 NRC 676 (2009)
- “design basis events” are those conditions of normal operation, including anticipated operational occurrences, design basis accidents, external events, and natural phenomena for which the plant must be designed; LBP-09-26, 70 NRC 939 (2009)
- “details” has a pejorative connotation, i.e., that intervenors or the board are asking for minutiae or matters that relate to minute points, small and subordinate parts, or minor parts; LBP-10-20, 72 NRC 571 (2010)
- “direct environmental impacts” are those caused by the federal action, and occurring at the same time and place as that action; LBP-09-7, 69 NRC 613 (2009); LBP-09-19, 70 NRC 433 (2009)
- “direct transfers” entail a change to operating and/or possession authority; CLI-08-19, 68 NRC 251 (2008)
- “distribution” refers generally to the transport of electricity by local distribution companies to the end users of the electricity (e.g., homes, shops, office buildings, factories); CLI-06-2, 63 NRC 9 (2006)
- “document” as used in 10 C.F.R. 2.336 includes computer models and associated electronic inputs, outputs, data, and software; LBP-10-23, 72 NRC 692 (2010)
- “document” as used in 10 C.F.R. 2.336 is not limited to paper documents and it refers to information stored on any medium or form, including electronically stored information; LBP-10-23, 72 NRC 692 (2010)
- “documentary material” includes any information upon which a party, potential party, or interested governmental participant intends to rely; LBP-08-1, 67 NRC 37 (2008)
- “emergency action levels” are the criteria used to determine the notifications that need to be made to federal, state, and local authorities and to determine the appropriate protective responses to a particular set of emergency conditions; LBP-09-19, 70 NRC 433 (2009)
- “exhibits” is a term that is reserved for evidentiary exhibits at later stages in an adjudication process; LBP-08-10, 67 NRC 450 (2008)
- “extended power uprate” usually requires significant modifications to major plant equipment, and may be for power level increases as high as 20%; CLI-08-17, 68 NRC 231 (2008)
- federal “undertakings” are defined as any project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a federal agency, including those requiring a federal permit, license, or approval; CLI-09-12, 69 NRC 535 (2009)

SUBJECT INDEX

for purposes of NPDES permits, effluent is defined as liquid waste that is discharged into a river, lake, or other body of water, and it includes heat; CLI-07-16, 65 NRC 371 (2007)

“forfeit” means something surrendered as punishment for a crime, offense, error, or breach of contract; CLI-10-6, 71 NRC 113 (2010)

in implementing the National Environmental Policy Act, NRC uses the definitions provided in Council on Environmental Quality regulations; LBP-09-7, 69 NRC 613 (2009)

in the absence of a statutory definition, courts normally define a term by its ordinary meaning; LBP-10-24, 72 NRC 720 (2010)

in the context of appropriately defining terms and reconciling concepts such as “reasonable,” “feasible,” and “reasonably available,” a problem for agencies is that even the term “alternatives” is not self-defining; LBP-10-10, 71 NRC 529 (2010)

in the high-level waste repository proceeding, “potential party,” means DOE, the NRC Staff, the State of Nevada, and any person or entity that meets the definition of “party,” “potential party,” or “interested governmental participant” LBP-08-10, 67 NRC 450 (2008)

“Indian tribe” is an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994; LBP-09-13, 70 NRC 168 (2009)

“indirect environmental impacts” are caused by the action at a later time or more distant place, yet are still reasonably foreseeable; LBP-09-7, 69 NRC 613 (2009); LBP-09-19, 70 NRC 433 (2009)

“indirect transfers” involve corporate restructuring or reorganizations which leave the licensee itself intact as a corporate entity and therefore involve no application for a new operating license; CLI-08-19, 68 NRC 251 (2008)

“injury in fact” is defined as an invasion of a legally protected interest that is concrete and particularized and actual or imminent rather than conjectural or hypothetical; LBP-09-13, 70 NRC 168 (2009); LBP-10-16, 72 NRC 361 (2010)

irradiator types are described; CLI-08-3, 67 NRC 151 (2008)

“justiciable controversy” is defined; LBP-08-6, 67 NRC 241 (2008)

“means” is defined; LBP-10-20, 72 NRC 571 (2010)

“measurement uncertainty recapture power uprate” typically involves a power level increase of less than 2%, achieved by enhanced techniques for calculating reactor power; CLI-08-17, 68 NRC 231 (2008)

“member of the public” is any individual except when that individual is receiving an occupational dose; LBP-10-22, 72 NRC 661 (2010)

“naturally occurring radioactive material” consists of materials that contain primordial radioisotopes (e.g., uranium and its progeny) that are present naturally in rocks, soils, water, and minerals, and which are not regulated by the Commission; LBP-06-1, 63 NRC 41 (2006)

“notice pleading” is a broad standard requiring only a short and plain statement of the claim; LBP-08-26, 68 NRC 905 (2008)

NRC was reasonable in not providing a quantifiable definition for the key regulatory phrase “conservative manner,” given that relevant judgment calls did not lend themselves to rigid statistical definitions; CLI-10-14, 71 NRC 449 (2010)

“performance assessment” is defined as a systematic analysis that quantitatively estimates radiological exposures; LBP-09-6, 69 NRC 367 (2009)

“person” is defined to include government agencies other than the Commission, as well as state and foreign governments; LBP-09-6, 69 NRC 367 (2009)

“potential party” is any person who intends, or may intend, to participate as a party in the proceeding by demonstrating standing and by filing an admissible contention; CLI-09-15, 70 NRC 1 (2009); LBP-09-5, 69 NRC 303 (2009)

“potential party” is defined as any person who has requested, or who may intend to request, a hearing or petition to intervene in a hearing under 10 C.F.R. Part 2, other than hearings conducted under Subparts J and M of 10 C.F.R. Part 2; CLI-10-24, 72 NRC 451 (2010); CLI-10-25, 72 NRC 469 (20); LBP-10-5, 71 NRC 329 (2010)

“prima facie” case is defined as establishment of a legally required rebuttable presumption or a party’s production of enough evidence to allow the fact-trier to infer the fact at issue and rule in the party’s favor; LBP-10-15, 72 NRC 257 (2010)

SUBJECT INDEX

- “prima facie showing” merely requires the presentation of enough information to allow a board to infer (absent disproof) that special circumstances exist to support a rule waiver; LBP-10-15, 72 NRC 257 (2010)
- “prima facie showing” means that the affidavits supporting a petition for rule waiver must present each element of the case for waiver in a persuasive manner with adequate supporting facts; LBP-10-12, 71 NRC 656 (2010)
- “relevant evidence” means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence; LBP-10-23, 72 NRC 692 (2010)
- “repository” is defined as any system licensed by the Commission that is intended to be used for, or may be used for the permanent deep geologic disposal of high-level radioactive waste and spent nuclear fuel; LBP-09-6, 69 NRC 367 (2009)
- “severe accident” is a reactor accident more severe than a design basis accident, and it results in substantial damage to the reactor core, whether or not there are serious offsite consequences; LBP-09-10, 70 NRC 51 (2009); LBP-09-19, 70 NRC 433 (2009)
- “significant” is ordinarily defined “having meaning,” “full of import,” “indicative,” “having or likely to have influence or effect,” “deserving to be considered; LBP-10-24, 72 NRC 720 (2010)
- “standing to sue doctrine” is defined; LBP-08-6, 67 NRC 241 (2008)
- “stretch power uprate” typically results in power level increases up to 7% and generally does not involve major plant modifications; CLI-08-17, 68 NRC 231 (2008)
- “tailings” are the remaining portion of a metal-bearing ore after some or all of such metal, such as uranium, has been extracted; LBP-06-1, 63 NRC 41 (2006)
- “technologically enhanced naturally occurring radioactive material” is any naturally occurring material not subject to regulation under the Atomic Energy Act whose radionuclide concentrations or potential for human exposure have been increased above levels encountered in the natural state by human activities; LBP-06-1, 63 NRC 41 (2006)
- “total effective dose equivalent” is defined as the sum of the deep-dose equivalent (for external exposures) and the committed effective dose equivalent (for internal exposures); LBP-08-4, 67 NRC 105 (2008)
- transients can be, and often are, anticipated operational occurrences which are conditions of normal operation; LBP-07-2, 65 NRC 153 (2007)
- “transmission services” refers to the transport of electricity on the wholesale market to local distribution companies; CLI-06-2, 63 NRC 9 (2006)
- See also Construction of Meaning; Regulations, Interpretation

DELAY

- an unexplained lapse of several years between the Staff’s completion of a thorough investigation and its initiation of an immediately effective enforcement order may jeopardize both public confidence in government decisionmaking and public protection from asserted safety threats, and may require an explanation if the immediate effectiveness of the order were to be challenged; LBP-06-26, 64 NRC 431 (2006)
- in deciding the ripeness question, it is important to look to whether delayed resolution of issues would foreclose any relief from the present injury suffered by appellees; LBP-09-1, 69 NRC 11 (2009)
- substantial delay in both the submittal and approval of a decommissioning plan might involve a violation of 10 C.F.R. 40.42; LBP-08-8, 67 NRC 409 (2008)
- whether excessive safety design could lead to licensing uncertainty, unnecessary costs, or delays are not issues material to the high-level waste repository construction authorization proceeding; CLI-09-14, 69 NRC 580 (2009)

DELAY OF PROCEEDING

- an indictment and failure to challenge the immediate effectiveness of an enforcement order count in favor of the government’s stay request because they reduce the likelihood of erroneous deprivation; LBP-06-13, 63 NRC 523 (2006)
- an unsupported and unparticularized assertion that an enforcement proceeding should be delayed to protect DOJ’s pending criminal prosecution does not justify holding NRC’s parallel administrative proceeding in abeyance; LBP-06-13, 63 NRC 523 (2006)

SUBJECT INDEX

five factors that need to be balanced when deciding whether to delay an enforcement proceeding are length of delay, reason for delay, prejudice to the recipient of the enforcement order, risk of erroneous deprivation, and recipient's assertion of a right to a hearing; CLI-06-12, 63 NRC 495 (2006)

in witness-intensive cases, a proceeding can be held in abeyance only if the Staff can demonstrate an important government interest coupled with factors minimizing the risk of an erroneous deprivation; CLI-06-12, 63 NRC 495 (2006)

indeterminate length of the requested delay weighs against granting an abeyance because of potentially adverse effect on testimony; CLI-06-12, 63 NRC 495 (2006)

it is important to consider which party initiated the civil action and which party is seeking relief from its going forward; LBP-06-13, 63 NRC 523 (2006)

proponent must provide detailed and specific reasons demonstrating some type of cognizable harm would result absent that relief; LBP-06-13, 63 NRC 523 (2006)

the Commission seeks wherever possible to avoid the delays, such as an additional round of pleadings, caused by a petitioner's attempt to backstop elemental deficiencies in its original petition to intervene; CLI-08-19, 68 NRC 251 (2008)

to the extent a new contention will cause delay, it is the price for affording the public the opportunity to litigate questions arising from an applicant's failure to comply with quality assurance requirements; LBP-10-9, 71 NRC 493 (2010)

under the erroneous deprivation factor, a defendant's rejection of a prosecution offer that would have guaranteed him no prison time if he would admit to the acts alleged demonstrates that the defendant has some belief in his innocence; LBP-06-13, 63 NRC 523 (2006)

where the impact of delay is a concern, the desirability of avoiding any further delay in reaching a final merits determination can be a key discretionary factor counseling nonreliance on the collateral estoppel principle even if that doctrine otherwise appeared applicable; LBP-09-24, 70 NRC 676 (2009)

See also Abeyance of Proceeding

DELIBERATE MISCONDUCT

a conviction based on deliberate ignorance requires a finding that a defendant's action is intentional, premeditated, and fully considered; LBP-09-24, 70 NRC 676 (2009)

a deliberately ignorant defendant is one who was aware of the high probability of a critical fact, but deliberately ignored that probability; LBP-09-24, 70 NRC 676 (2009)

an intentional act or omission that the person knows would cause a licensee to be in violation of any rule is considered deliberate misconduct; LBP-09-24, 70 NRC 676 (2009)

careless disregard in the execution of one's duties does not amount to deliberate misconduct or a violation; LBP-09-24, 70 NRC 676 (2009)

causing inaccurate and incomplete information to be provided to the NRC concerning conditions at a reactor resulted in debarment from licensed activities for 5 years; LBP-09-11, 70 NRC 151 (2009)

constructive knowledge is knowledge of facts sufficient to prompt an inquiry that would have uncovered misrepresentations and is not actual knowledge; LBP-09-24, 70 NRC 676 (2009)

courts have been careful to strictly limit the exercise of summary contempt power to cases in which it was clear that all of the elements of misconduct were personally observed by the judge; LBP-09-24, 70 NRC 676 (2009)

establishing a party's actual knowledge requires showing more than that a party had a suspicion that something was awry; LBP-09-24, 70 NRC 676 (2009)

inquiry into an individual's actual knowledge is entirely factual, requiring examination of the record; LBP-09-24, 70 NRC 676 (2009)

the conclusion that a finding of deliberate ignorance is a proxy for a finding of knowledge is supported by the definition of knowledge in the Model Penal Code, which has guided the Supreme Court in determining the intended scope of the word "knowing" in the criminal context; LBP-09-24, 70 NRC 676 (2009)

the danger of instruction to juries on deliberate ignorance or willful blindness in an inappropriate case is that juries will convict on a basis akin to a standard of negligence; LBP-09-24, 70 NRC 676 (2009)

the "deliberate ignorance" theory is not embraced within the "deliberate misconduct" standard that governs NRC proceedings; LBP-09-24, 70 NRC 676 (2009)

the element of "actual knowledge" must be present to sustain a charge of deliberate misconduct under the NRC's regulations; LBP-09-24, 70 NRC 676 (2009)

SUBJECT INDEX

the knowledge component of the deliberate ignorance theory is slightly less than knowledge to a 100% certainty where the prosecutor's case is based on circumstantial evidence that precludes establishing defendant's knowledge to a 100% certainty; LBP-09-24, 70 NRC 676 (2009)

to prevail in establishing that the accused's actions constituted a violation, Staff must demonstrate by a preponderance of the evidence that the accused had actual knowledge of the information associated with his actions and that he deliberately acted contrary to that knowledge; LBP-09-24, 70 NRC 676 (2009)

when knowledge of the existence of a particular fact is an element of an offense, such knowledge is established if a person is aware of a high probability of its existence, unless he actually believes that it does not exist; LBP-09-24, 70 NRC 676 (2009)

where the record in an enforcement proceeding may be devoid of direct evidence to establish knowledge, the Staff may have to build its case upon circumstantial evidence alone; LBP-09-24, 70 NRC 676 (2009)

with the jury in a parallel criminal case not having been asked to render a special verdict, the general verdict provides the board insufficient guidance from which to determine whether the jury conviction was premised on actual knowledge or on deliberate ignorance; LBP-09-24, 70 NRC 676 (2009)

DELIBERATIVE PROCESS PRIVILEGE

a board has discretion to compel production of a document upon a finding that the need for the evidence outweighs the interests that support the privilege; LBP-06-3, 63 NRC 85 (2006)

a showing of relevance alone is not sufficient for a party seeking a deliberative process privilege document to demonstrate that its need for the document outweighs the need to protect the document; LBP-06-3, 63 NRC 85 (2006)

a sufficiently high-ranking person must sign the affidavit asserting the privilege; LBP-06-25, 64 NRC 367 (2006)

documents that contain the analysis, opinions, and recommendations of NRC Staff members regarding an applicant's response to prior requests for additional information or the formulation of new RALs are deliberative and thus may qualify for the privilege; LBP-06-3, 63 NRC 85 (2006)

in a proceeding involving the safety of a proposed 20% increase in the power of a nuclear power reactor, the seriousness of the litigation and the issues involved weigh in favor of disclosing deliberative process documents; LBP-06-3, 63 NRC 85 (2006)

in ruling on the qualified nature of deliberative process privilege, five factors are relevant in balancing the need for the documents against the government's interest in nondisclosure; LBP-06-3, 63 NRC 85 (2006)

information must be both predecisional and deliberative; LBP-06-3, 63 NRC 85 (2006)

intra-agency memoranda developed during the decisionmaking process are protected under the Freedom of Information Act; CLI-08-23, 68 NRC 461 (2008)

NRC Staff communications are factual in nature and are not protected by the deliberative process privilege when the communications summarize the procedural aspects of Staff projects or report on the status of Staff work; LBP-06-3, 63 NRC 85 (2006)

NRC Staff communications concerning the appropriate wording and scope of a potential license condition are deliberative and thus may qualify for the privilege; LBP-06-3, 63 NRC 85 (2006)

NRC Staff communications concerning whether a potential license condition should be imposed are deliberative and thus may qualify for the privilege; LBP-06-3, 63 NRC 85 (2006)

purely factual material is not generally protected, except factual materials too intertwined with deliberative discussions and summaries of factual materials compiled to assist in agency decisionmaking; LBP-06-25, 64 NRC 367 (2006)

the affidavit asserting the privilege should provide the basis for the withholding and a statement of specific harm, applicable to the circumstances of the case, that would result from disclosure; LBP-06-25, 64 NRC 367 (2006)

the chilling effect upon frank government discussions can be just as great when the release is limited only to those involved in particular litigation as when the documents are released publicly; LBP-06-25, 64 NRC 367 (2006)

the fact that deliberative process privilege documents contain important new analyses that are relevant to admitted contentions weighs in favor of their disclosure; LBP-06-3, 63 NRC 85 (2006)

the general purpose of the privilege is to protect frank agency deliberations from public scrutiny and thus to prevent injury to the quality of agency decisions; LBP-06-25, 64 NRC 367 (2006)

SUBJECT INDEX

the imminent availability of Staff's authoritative position on a subject that is discussed in deliberative process documents constitutes "other evidence" such that the immediate need for the documents does not outweigh the privilege; LBP-06-3, 63 NRC 85 (2006)

the privilege applies to summaries of information gathered to assist the agency in reaching a "complex" and "significant" policy decision, where the summaries reflect the judgment or opinion of their compiler; CLI-08-23, 68 NRC 461 (2008)

the protected interests are so strong that federal courts and NRC adjudicators are generally unwilling to compel discovery of deliberative materials unless there is a particular and compelling reason for the privilege to be suspended; LBP-06-25, 64 NRC 367 (2006)

to overcome privilege, petitioners have to show that their need for the information outweighs potential harm to the agency from that disclosure; CLI-08-23, 68 NRC 461 (2008)

when NRC Staff is a party in a proceeding and not merely an indifferent bystander to private-party litigation, the role of the government in the litigation weighs in favor of disclosure; LBP-06-3, 63 NRC 85 (2006)

DEMAND FOR INFORMATION

a DFI is a significant action that should be used only when it is likely that an inadequate response will result in an order or other enforcement action; DD-07-1, 65 NRC 195 (2007)

NRC may issue DFIs to NRC licensees for the purpose of determining whether an order under section 2.202 should be issued, or whether other actions should be taken; DD-07-1, 65 NRC 195 (2007)

petitioner's request that NRC issue a demand for information to licensee regarding vibration levels prior to restart is denied; DD-09-2, 70 NRC 899 (2009)

DEMAND-SIDE MANAGEMENT

applicant is not required to evaluate energy conservation as an alternative because it is not an alternative to the proposal to build new baseload power generation; LBP-09-10, 70 NRC 51 (2009); LBP-09-21, 70 NRC 581 (2009)

because DSM reduces by a small portion applicant's demand for power, it should be analyzed in this instance as a surrogate for need for power; LBP-10-6, 71 NRC 350 (2010)

impact of proposed energy conservation alternatives regarding demand for energy must be susceptible to a reasonable degree of proof; LBP-10-10, 71 NRC 529 (2010)

the National Environmental Policy Act's rule of reason excludes consideration of demand-side management if the proposed new plant is intended to be a merchant plant, selling power on the open market, because it is not feasible for licensee to engage in demand-side management; CLI-10-21, 72 NRC 197 (2010)

DEPARTMENT OF ENERGY

at the time it made its initial certification, DOE was required to place on the Licensing Support Network only extant material on which it intended to rely; CLI-08-12, 67 NRC 386 (2008)

contentions that DOE lacks management integrity to operate a high-level waste geologic repository are impermissible challenges to the Nuclear Waste Policy Act and are therefore beyond the scope of the proceeding; CLI-09-14, 69 NRC 580 (2009)

DOE cost estimates represent an arm's-length, third-party estimate of the cost of doing business, albeit in an instance when the party offering the estimate is statutorily bound to provide that service; LBP-06-15, 63 NRC 591 (2006)

DOE is authorized to make, promulgate, issue, rescind, and amend such rules and regulations as may be necessary to carry out the purposes of the Atomic Energy Act; LBP-10-11, 71 NRC 609 (2010)

DOE is not a "person" for purposes of AEA § 11s; CLI-09-14, 69 NRC 580 (2009)

DOE is prohibited from characterizing a second repository site unless Congress has specifically authorized and appropriated funds for such activities; LBP-10-11, 71 NRC 609 (2010)

DOE must accept for disposition depleted uranium from a private uranium enrichment facility upon request of the facility operator or appropriate third party; LBP-06-15, 63 NRC 591 (2006)

DOE must make all of its documentary material available on the Licensing Support Network, and to so certify to the PAPO Board, at least 6 months before it files its application to construct the HLW geologic repository at Yucca Mountain; LBP-08-1, 67 NRC 37 (2008)

DOE will indemnify a uranium enrichment facility licensee against claims arising from nuclear incidents to the extent that licensee cannot obtain commercial insurance at reasonable rates; LBP-07-6, 65 NRC 429 (2007)

SUBJECT INDEX

DOE's environmental impact statement is not to consider the need for the high-level waste repository, the time of initial availability of a repository, alternative sites to the Yucca Mountain site, or nongeologic alternatives to such site; LBP-10-11, 71 NRC 609 (2010)

during site characterization, DOE may determine that the Yucca Mountain site is unsuitable for development as a repository; LBP-10-11, 71 NRC 609 (2010)

neither an intervenor nor an applicant/licensee (nor seemingly the NRC) has the authority to challenge or direct DOE's estimates of the fees it will charge to a uranium enrichment facility that requests DOE to disposition its depleted uranium waste; CLI-06-22, 64 NRC 37 (2006); LBP-06-15, 63 NRC 591 (2006)

NRC does not owe deference to DOE where DOE's interpretation of NRC's own responsibilities is reflected in nothing more formal than a motion before the board and not, for example, in a formal agency adjudication or notice-and-comment rulemaking; LBP-10-11, 71 NRC 609 (2010)

NRC proceedings are not an appropriate forum to challenge DOE's procurement process, which fall under the jurisdiction of the Government Accountability Office or Court of Federal Claims; CLI-08-11, 67 NRC 379 (2008)

that Congress may have authorized NRC to regulate DOE's disposal of radioactive waste before it enacted the Nuclear Waste Policy Act hardly negates the fact that in the NWSA, Congress specifically directed NRC to issue requirements and criteria for evaluating repository-related applications and, not insignificantly, how to do so; LBP-10-11, 71 NRC 609 (2010)

the Secretary of DOE does not have the discretion to substitute his policy for the one established by Congress that mandates progress toward a merits decision by NRC on a construction permit for the high-level waste repository; LBP-10-11, 71 NRC 609 (2010)

when DOE is before the Commission, a heightened standard applies for the admissibility of integrity contentions beyond what is imposed by 10 C.F.R. 2.309(f)(1); LBP-09-6, 69 NRC 367 (2009)

willful violations of 10 C.F.R. 63.11 and 63.73, among others, are subject to criminal penalties; CLI-08-11, 67 NRC 379 (2008)

DEPARTMENT OF JUSTICE

NRC generally defers to DOJ when it seeks a delay in NRC enforcement proceedings pending the conclusion of DOJ's own criminal investigations or proceedings; CLI-06-12, 63 NRC 495 (2006)

the Commission does not lightly second-guess DOJ's views on whether, and how, premature disclosure might affect its criminal prosecutions; CLI-06-19, 64 NRC 9 (2006)

the Commission is generally inclined to accommodate an abeyance request from DOJ as long as it provides at least some showing of potential detrimental effect on its parallel criminal case; CLI-07-6, 65 NRC 112 (2007)

DEPLETED URANIUM

a literal reading of 10 C.F.R. 61.55(a)(6) renders DU a Class A waste, but the Part 61 rulemaking did not analyze the uranium enrichment waste stream; CLI-06-15, 63 NRC 687 (2006)

a plausible strategy for private conversion of DU tails does not mean a definite or certain strategy, to include completion of all necessary contractual arrangements, but it must represent more than mere speculation; LBP-06-15, 63 NRC 591 (2006)

although the Army has the burden to protect the public from depleted uranium, that issue is not relevant to a standing inquiry; LBP-10-4, 71 NRC 216 (2010)

an approach for disposition of depleted tails that is consistent with the USEC Privatization Act, such as transfer to DOE for disposal, constitutes a plausible strategy; CLI-10-4, 71 NRC 56 (2010)

an approach that is consistent with the USEC Privatization Act, such as transfer to DOE for disposal, constitutes a plausible strategy for disposition of depleted tails; CLI-09-15, 70 NRC 1 (2009)

application for approval of an alternative schedule for the submission of a decommissioning plan for a site containing expended depleted uranium munitions is approved; LBP-08-4, 67 NRC 105 (2008)

contention alleging that depleted uranium-contaminated bombing plume dust causes health issues in the community is inadmissible because it lacks a supporting statement of the alleged facts or expert opinions; LBP-10-4, 71 NRC 216 (2010)

contention alleging that the Army employs truckers to remove depleted uranium-contaminated soil from its site and dump it in the community is inadmissible; LBP-10-4, 71 NRC 216 (2010)

DOE must accept for dispositioning, DU from a private uranium enrichment facility upon request of the facility operator or appropriate third party; LBP-06-15, 63 NRC 591 (2006)

SUBJECT INDEX

DU from an enrichment facility is appropriately classified as low-level radioactive waste; CLI-10-4, 71 NRC 56 (2010)

DU is classified as a low-level waste; LBP-07-6, 65 NRC 429 (2007)

DU is classified as Class A waste under current agency regulations; LBP-08-16, 68 NRC 361 (2008)

neither an intervenor nor an applicant/licensee nor the NRC has the authority to challenge or direct

DOE's estimates of the fees it will charge to a uranium enrichment facility that requests DOE to disposition its DU waste; LBP-06-15, 63 NRC 591 (2006)

petitioner's argument that high-explosive munitions could fall onto DU, pulverizing and igniting the DU and generating aerosols that might travel through the air, providing an inhalation pathway for offsite exposure was contradicted by the Army's statement that it does not use high-impact explosives in the area where DU is present; CLI-10-20, 72 NRC 185 (2010)

some near-surface disposal facilities may not be capable of accepting large quantities of depleted uranium from enrichment operations, and dose pathway analyses should be performed on a site-specific basis to ensure compliance with Part 61, Subpart C; LBP-06-8, 63 NRC 241 (2006)

tails from an enrichment facility are appropriately classified as a low-level radioactive waste; CLI-09-15, 70 NRC 1 (2009)

the appropriate state or federal regulatory authority, such as an Agreement State, will conduct any necessary site-specific evaluation to confirm that applicable radiological dose limits and standards for disposal of DU can be met at a particular site; CLI-06-15, 63 NRC 687 (2006)

DEPOSITIONS

opposing trial or litigation counsel may be deposed only if no other means exist to obtain the information, and the information sought is relevant and nonprivileged, and crucial to the preparation of the case; LBP-06-10, 63 NRC 314 (2006)

DESIGN

a nuclear power plant must be designed against accidents that are anticipated during the life of the facility; CLI-10-9, 71 NRC 245 (2010)

adequacy of applicant's control room and equipment design for radiological protections, in light of the fact that the reactor is proposed to be located within the EPZ of an existing reactor, is an issue that is appropriate in a combined license or standard design certification proceeding; LBP-09-10, 70 NRC 51 (2009)

before any waste may be received at the high-level waste repository, DOE must update its application with additional information, including, specifically, additional design data obtained during construction; LBP-10-22, 72 NRC 661 (2010)

new facilities must provide for criticality control, including adherence to the double contingency principle; LBP-06-17, 63 NRC 747 (2006)

NRC is given flexibility in determining how best to provide for the use of a system of multiple barriers in the design of the repository; LBP-10-22, 72 NRC 661 (2010)

NRC's licensing regulations must provide for the use of a system of multiple barriers in the design of the high-level waste repository; LBP-10-22, 72 NRC 661 (2010)

section 121 of the Nuclear Waste Policy Act does not require that each barrier provide either wholly independent protection or a specifically quantified amount of protection in the high-level waste repository; LBP-10-22, 72 NRC 661 (2010)

special attention must be given to those items that may significantly influence the final design of the high-level waste repository; LBP-10-22, 72 NRC 661 (2010)

the reactor core and associated coolant, control, and protection systems must be designed with appropriate margin to assure that specified acceptable fuel design limits are not exceeded during any condition of normal operation, including the effects of anticipated operational occurrences; LBP-07-2, 65 NRC 153 (2007)

under the double contingency principle, process designs should incorporate sufficient factors of safety to require at least two unlikely, independent, and concurrent changes in process conditions before a criticality accident is possible; LBP-06-17, 63 NRC 747 (2006)

when reviewing a license application filed by a private applicant, NRC may appropriately accord substantial weight to the preferences of the applicant and/or sponsor and should take into account the needs and goals of the parties involved in the application; CLI-06-10, 63 NRC 451 (2006); LBP-09-7, 69 NRC 613 (2009)

SUBJECT INDEX

whether excessive safety design could lead to licensing uncertainty, unnecessary costs, or delays are not issues material to the high-level waste repository construction authorization proceeding; CLI-09-14, 69 NRC 580 (2009)

See also Containment Design; Reactor Design

DESIGN BASIS ACCIDENT

impacts of design basis accidents at spent fuel storage are characterized as small, and so, no site-specific NEPA review is required; CLI-07-8, 65 NRC 124 (2007)

nuclear reactors are required to be designed to withstand certain postulated events or accidents, which result in negligible offsite consequences because the reactor is designed to handle such events; LBP-09-10, 70 NRC 51 (2009)

DESIGN BASIS EARTHQUAKE

the stability of ISFSI concrete pads holding dry spent fuel storage casks during earthquakes is addressed; DD-07-2, 65 NRC 365 (2007)

DESIGN BASIS EVENTS

construction permit applications must consider the consequences of design basis events; CLI-10-1, 71 NRC 1 (2010)

design basis event is distinguished from design basis threat; CLI-10-1, 71 NRC 1 (2010); CLI-10-9, 71 NRC 245 (2010)

events that could cause radioactive releases, including aircraft impact events, are required to be analyzed and designed against only if the probability of such events is above one in one million per year; LBP-09-2, 69 NRC 87 (2009)

the agency uses a threshold probability for design basis events of 1 in 10 million for nuclear power plants; LBP-09-26, 70 NRC 939 (2009)

the design basis flood is the magnitude of the flood event that is used to evaluate safety structures, systems, and components important to safety during facility design; LBP-09-25, 70 NRC 867 (2009)

the threshold probability for DBEs should be set at one in a million; LBP-09-17, 70 NRC 311 (2009)

these are defined as those conditions of normal operation, including anticipated operational occurrences, design basis accidents, external events, and natural phenomena for which the plant must be designed; LBP-09-26, 70 NRC 939 (2009)

DESIGN BASIS THREAT

design basis event is distinguished from design basis threat; CLI-10-1, 71 NRC 1 (2010); CLI-10-9, 71 NRC 245 (2010)

the agency decided not to include the threat of air attacks in the 2007 revision to the design basis threat rule, a decision upheld by the Ninth Circuit; CLI-10-9, 71 NRC 245 (2010)

the DBT rule describes general adversary characteristics that designated NRC licensees, including nuclear power plant licensees, are required to defend against with high assurance; CLI-07-8, 65 NRC 124 (2007)

the need for design features to guard against DBTs is outside the scope of a combined license proceeding because it is the subject of an ongoing rulemaking; LBP-09-2, 69 NRC 87 (2009)

with respect to aircraft crash as an element of the design basis threat, adequate protection against an air threat is assured by the active defenses provided by other federal agencies, together with what reasonably could be expected of licensees; CLI-10-1, 71 NRC 1 (2010)

DESIGN CERTIFICATION

a board could refer a contention relating to a certified design to the Staff for consideration in the design certification rulemaking and hold that contention in abeyance if the contention is otherwise admissible; LBP-10-21, 72 NRC 616 (2010)

a board erred in referring a contention to the Staff for consideration in conjunction with the design certification rulemaking without first assessing its admissibility; CLI-10-1, 71 NRC 1 (2010)

a contention asserting that a combined license application is incomplete because it incorporates by reference a standard design certification and a pending application for a revision to that certified design is inadmissible; LBP-09-10, 70 NRC 51 (2009)

a license application will not be held in abeyance until the design certification rulemaking is completed; LBP-09-16, 70 NRC 227 (2009); LBP-09-18, 70 NRC 385 (2009)

adequacy of applicant's control room and equipment design for radiological protections, in light of the fact that the reactor is proposed to be located within the EPZ of an existing reactor, is an issue that is

SUBJECT INDEX

appropriate in a combined license or standard design certification proceeding; LBP-09-10, 70 NRC 51 (2009)

all environmental issues concerning severe accident mitigation design alternatives associated with the information in the NRC's environmental assessment for a certified design are considered resolved; LBP-09-19, 70 NRC 433 (2009)

all nuclear safety and environmental issues concerning severe accident mitigation design alternatives associated with NRC's environmental assessment for the AP1000 design and Appendix 1B of the generic Design Control Document are considered resolved by the Commission; LBP-09-2, 69 NRC 87 (2009)

an otherwise admissible contention raised in combined license hearing that challenges information in a design certification rulemaking should be referred to the Staff for resolution in the rulemaking and held in abeyance by the licensing board pending the outcome of the rulemaking; CLI-09-4, 69 NRC 80 (2009); CLI-09-8, 69 NRC 317 (2009); LBP-09-3, 69 NRC 139 (2009)

any contention directed at a design undergoing rulemaking review fails on its face to satisfy the admission requirements because all matters subject of a rulemaking are outside the scope of licensing proceedings; LBP-09-8, 69 NRC 736 (2009)

applicant for a combined license may, at its own risk, reference in its application a design for which a design certification application has been docketed but not granted; LBP-09-10, 70 NRC 51 (2009); LBP-09-16, 70 NRC 227 (2009); LBP-09-17, 70 NRC 311 (2009); LBP-09-18, 70 NRC 385 (2009); LBP-10-9, 71 NRC 493 (2010)

applicant may, at its own risk, submit a combined license application that does not reference a certified design; CLI-10-1, 71 NRC 1 (2010); LBP-10-17, 72 NRC 501 (2010); LBP-10-20, 72 NRC 571 (2010)

applicants are required to address severe accident mitigation design alternatives; LBP-09-19, 70 NRC 433 (2009)

at the combined license stage, applicant may reference both an early site permit and a standard design certification in its application; LBP-09-16, 70 NRC 227 (2009); LBP-09-19, 70 NRC 433 (2009)

challenge to the SAMDA analysis performed for the AP1000 certified design constitutes an impermissible challenge to NRC regulations; CLI-10-1, 71 NRC 1 (2010)

challenges to an issue already addressed in the Final Safety Evaluation Report for the ABWR Design Control Document are closed to licensing boards as an impermissible attack on the ABWR certified design; LBP-10-14, 72 NRC 101 (2010)

challenges to the Commission regulations regarding the design certification process are inadmissible; LBP-09-18, 70 NRC 385 (2009)

combined license applicants will also have to demonstrate that the site-specific parameters are bounded by the parameters developed for the certified design; LBP-09-2, 69 NRC 87 (2009)

Commission policy of permitting the conduct of an adjudicatory proceeding on a combined license that references a design certification that the Commission has not approved does not violate the Atomic Energy Act of 1954, 10 C.F.R. Part 52, or judicial decisions; CLI-09-4, 69 NRC 80 (2009)

design certification rulemaking and individual combined license adjudicatory proceedings may proceed simultaneously, and issues raised in an adjudicatory proceeding that are appropriately addressed in the generic design certification rulemaking are to be referred to the rulemaking for resolution; CLI-09-8, 69 NRC 317 (2009)

each combined license applicant will have to determine whether it will adopt *in toto* the certified design, or whether it will take exemptions thereto and/or departures therefrom; LBP-09-2, 69 NRC 87 (2009)

failure to frame a safety concern arising from the interaction of the proposed design certification document amendment with the existing certified standard design and/or a facility-specific provision of the COLA leaves the contention as an inadmissible challenge to the Part 52 regulatory framework; LBP-09-3, 69 NRC 139 (2009)

generic issues are to be resolved as part of the design certification rulemaking process, and any concerns related to those issues must be addressed in the rulemaking and not within the scope of a combined license proceeding; LBP-09-8, 69 NRC 736 (2009)

if a contention concerning a certification application that has been docketed but not granted is otherwise admissible under 10 C.F.R. 2.309(f)(1), it might be held in abeyance and referred to the Staff; LBP-09-17, 70 NRC 311 (2009)

SUBJECT INDEX

- if the combined license application references an early site permit, applicant must demonstrate that the chosen design falls within the parameters specified in the ESP or, on the safety side, request a variance; LBP-09-19, 70 NRC 433 (2009)
- in making the findings required for issuance of a combined license, the Commission shall treat as resolved those matters resolved in connection with the issuance or renewal of a design certification rule; LBP-10-21, 72 NRC 616 (2010)
- incorporation by reference in the combined license application is consistent with NRC rules when an applicant chooses to reference a standard design; CLI-09-8, 69 NRC 317 (2009); LBP-09-2, 69 NRC 87 (2009); LBP-09-8, 69 NRC 736 (2009)
- NRC rules permit the filing of a combined license application during the pendency of a design certification rulemaking; CLI-10-9, 71 NRC 245 (2010)
- “otherwise admissible” has been interpreted to mean a contention that meets the admissibility requirements of 10 C.F.R. 2.309(f)(1) but for the fact that it challenges a yet-to-be-certified reactor design; LBP-10-9, 71 NRC 493 (2010)
- petitioner’s challenge to the one-fire assumption in the AP1000 design constitutes an impermissible challenge to Commission regulations; CLI-10-9, 71 NRC 245 (2010)
- severe accident mitigation design alternative issues are resolved for an application referencing a design control document if the specific site parameters are covered by the site parameters assumed in the DCD SAMDA analysis; LBP-09-19, 70 NRC 433 (2009)
- the appropriate path for any petitioner’s challenges to proposed reactor design revisions is through participation in those rulemaking proceedings, not through a combined license proceeding; LBP-09-2, 69 NRC 87 (2009)
- the Commission generally refuses to modify, rescind, or impose new requirements on reactor design certification information, except through rulemaking; LBP-10-21, 72 NRC 616 (2010)
- the design certification rulemaking and individual COL adjudicatory proceedings may proceed simultaneously, and issues raised in an adjudicatory proceeding that are appropriately addressed in the generic design certification rulemaking are to be referred to the rulemaking for resolution; LBP-10-17, 72 NRC 501 (2010)
- the environmental report associated with each application for a standard design certification must address the costs and benefits of severe accident design mitigation alternatives; LBP-09-10, 70 NRC 51 (2009)
- the process for taking exemptions and departures from a certified design is set forth in 10 C.F.R. Part 52, App. D, § VIII; LBP-09-2, 69 NRC 87 (2009)
- the safety analysis report component of an application for a standard design certification must analyze and address the problem of extremely low probability for accidents that could result in the release of significant quantities of radioactive fission products; LBP-09-10, 70 NRC 51 (2009)
- the SAMDA analysis is part of the design certification application and thus intervenor’s contention constitutes an impermissible challenge to a future rulemaking; CLI-10-9, 71 NRC 245 (2010); LBP-10-10, 71 NRC 529 (2010)
- the universe of potential contentions in a combined license proceeding includes site-specific contentions that do not implicate issues appropriately considered in a design certification rulemaking; CLI-09-8, 69 NRC 317 (2009)
- to the degree that the general precept that a rule, including a design certification, cannot be challenged in an adjudication might be seen as placing such matters outside the scope of the proceeding; LBP-10-21, 72 NRC 616 (2010)
- until the reactor design is certified and the rulemaking proceeding concluded, the design continues to change, creating potentially new safety and environmental concerns; LBP-09-18, 70 NRC 385 (2009)
- DICTA**
- a board’s decision on one of the admission elements does not necessarily render any discussion of the other superfluous because a decision addressing only one of the two items creates the potential for significant delay if that single determination is later overturned on appeal; LBP-07-10, 66 NRC 1 (2007)
- a ruling on standing does not constitute dicta simply because the board also concluded that the petitioner had failed to proffer an admissible contention; LBP-07-10, 66 NRC 1 (2007)

SUBJECT INDEX

DIRECTED CERTIFICATION

licensing boards must promptly certify to the Commission all novel legal or policy issues that would benefit from early Commission consideration should such issues arise in this proceeding; CLI-10-4, 71 NRC 56 (2010)

DISCLOSURE

a board may impose sanctions including dismissal of the specific contentions, dismissal of the adjudication, or dismissal of the application for any continuing unexcused failure to make the required mandatory disclosures; LBP-09-30, 70 NRC 1039 (2009)

a board's determination on a request for access to sensitive unclassified nonsafeguards information is reviewed de novo; CLI-10-24, 72 NRC 451 (2010)

a dispute over the Commission's authority to direct the Department of Energy to disclose classified information to cleared state representatives over DOE's objection as the originating agency is deferred until there is an actual controversy over a specific document request; CLI-08-21, 68 NRC 351 (2008)

a party is excused from producing a document if the document is publicly available and if the party specifies where the document may be found; LBP-10-23, 72 NRC 692 (2010)

a party may comply by merely providing a description by category and location of all documents subject to mandatory disclosure; LBP-10-23, 72 NRC 692 (2010)

all parties, except NRC Staff, shall make mandatory disclosures within 45 days of the issuance of the licensing board order admitting contentions; CLI-09-15, 70 NRC 1 (2009); CLI-10-4, 71 NRC 56 (2010)

although the NRC public website states that SUNSI encompasses a wide variety of categories (e.g., personnel privacy, attorney-client privilege, confidential source), there is no legal basis for sweeping aside the well-established and long-recognized privileges such as the Privacy Act, 5 U.S.C. § 552(a), and the attorney-client privilege; LBP-10-2, 71 NRC 190 (2010)

although the phrase "possession, custody, or control" appears in 10 C.F.R. 2.336(a)(2)(i), 2.704(a)(2), and 2.707(a)(1)), no NRC decision has ever provided guidance as to what constitutes "control"; LBP-10-23, 72 NRC 692 (2010)

an appeal as of right by the NRC Staff is permitted on the question of whether a request for access to sensitive unclassified nonsafeguards information should have been denied in whole or in part; CLI-10-24, 72 NRC 451 (2010)

analysis of a motion to compel the mandatory disclosure of information under 10 C.F.R. 2.336(a) is contingent on six issues; LBP-10-23, 72 NRC 692 (2010)

Anglo-American jurisprudence has long ensured that judicial proceedings will be open to the public; LBP-10-2, 71 NRC 190 (2010)

applicant's claim that computer models should be excused from the mandatory disclosure requirements because they entail proprietary information is rejected; LBP-10-23, 72 NRC 692 (2010)

applicant's "control" of computer models prepared by and in possession of a contractor is illustrated by the fact that if NRC Staff requested these documents, applicant could obtain and provide them; LBP-10-23, 72 NRC 692 (2010)

availability, not possession, custody, or control, is the criterion for the NRC Staff's mandatory disclosure responsibilities; LBP-10-23, 72 NRC 692 (2010)

because of the security-related SUNSI categorization of a Staff guidance document used to assess an application's compliance with NRC rules, the Staff would not have to produce the document but would be required to identify the document as part of its continuing duty of disclosure; CLI-10-24, 72 NRC 451 (2010)

classified information is exempt; LBP-10-2, 71 NRC 190 (2010)

content of a statement that explains an individual's "need to know" safeguards information is described; CLI-09-15, 70 NRC 1 (2009)

contention alleging foreign ownership of applicant, failure to disclose, and various ramifications of such ownership, is found to be admissible; LBP-09-1, 69 NRC 11 (2009)

disclosure of documents under the National Environmental Policy Act is expressly governed by the Freedom of Information Act; CLI-08-5, 67 NRC 174 (2008); CLI-08-8, 67 NRC 193 (2008)

documents are deemed to be within the control of a party if the party has the right to obtain the documents on demand or if it is held by the party's attorney, expert, insurance company, accountant, or agent; LBP-10-23, 72 NRC 692 (2010)

SUBJECT INDEX

documents containing classified information or safeguards information must be evaluated paragraph by paragraph and those paragraphs containing classified information or SGI are to be redacted and the remaining paragraphs (not containing such sensitive material) are to be made available for disclosure to the public; LBP-10-2, 71 NRC 190 (2010)

documents that qualify as exempt from FOIA disclosure as sensitive unclassified nonsafeguards information are described; LBP-10-2, 71 NRC 190 (2010)

each party to a proceeding must automatically disclose and provide all documents and data compilations in their possession, custody, or control that are relevant to the admitted contentions, without waiting for a party to file a discovery request; LBP-10-23, 72 NRC 692 (2010)

even if a document contains information that is exempt from disclosure, FOIA mandates that any reasonably segregable portion of the record shall be provided to any person requesting such record after deletion of the portions that are exempt; LBP-10-2, 71 NRC 190 (2010)

hearings on alternative terrorist scenario claims could not be conducted in a meaningful way without substantial disclosure of classified and safeguards information on threat assessments and security arrangements and without substantial litigation over their significance; CLI-08-1, 67 NRC 1 (2008); CLI-08-26, 68 NRC 509 (2008)

if a requested document or data compilation is publicly available, then a citation to the document and a description of where it may be publicly obtained are sufficient; LBP-10-23, 72 NRC 692 (2010)

if an expert witness is subsequently selected, or any analysis or other authority is subsequently amended or newly developed, then this information must be promptly disclosed; LBP-09-30, 70 NRC 1039 (2009)

if the burden or expense of the proposed discovery outweighs its likely benefit, disclosure is not required; LBP-10-23, 72 NRC 692 (2010)

in its supervisory capacity, the Commission provides guidance on the "need for SUNSI" analysis, for use in those instances when an access order applies; CLI-10-24, 72 NRC 451 (2010)

interlocutory appeal to the Commission of certain rulings relating to sensitive unclassified nonsafeguards information is authorized; LBP-10-2, 71 NRC 190 (2010)

mandatory disclosure is the only form of discovery allowed in Subpart L proceedings, and all other forms are expressly prohibited; LBP-10-23, 72 NRC 692 (2010)

mandatory disclosures by parties include the disclosure of the name of any person, including any expert, upon whose opinion the party bases its claims and contentions and may rely upon as a witness, and a copy of the analysis or other authority upon which that person bases his or her opinion; LBP-09-22, 70 NRC 640 (2009)

neither legal ownership nor title is required in order for a party to have "possession, custody, or control" of a document; LBP-10-23, 72 NRC 692 (2010)

no later than 30 days before the commencement of the hearing at which an issue is to be presented, all parties other than the NRC Staff shall make the required pretrial disclosures; CLI-10-4, 71 NRC 56 (2010)

NRC need not disclose information if it falls within one of the nine exemptions in the Freedom of Information Act; LBP-08-7, 67 NRC 361 (2008)

NRC records are protected from disclosure under FOIA Exemption 2 to the extent they contain internal analytical guidance, operating rules, or practices, the disclosure of which would aid terrorists or saboteurs seeking to circumvent security measures designed to protect nuclear materials; LBP-08-7, 67 NRC 361 (2008)

once a petition to intervene has been granted, issues involving access to documents for use in the proceeding are governed by NRC discovery rules; CLI-10-24, 72 NRC 451 (2010)

once the requesting party meets its burden of demonstrating a need for a document, the burden is upon the claimant of executive privilege to demonstrate a proper entitlement to exemption from disclosure; LBP-10-2, 71 NRC 190 (2010)

parties and NRC Staff must provide a list of documents otherwise required to be disclosed for which a claim of privilege or protected status is being made, together with sufficient information for assessing the claim of privilege or protected status of the documents; LBP-09-22, 70 NRC 640 (2009)

parties and the NRC Staff have a continuing duty to update their mandatory disclosures; LBP-09-22, 70 NRC 640 (2009)

SUBJECT INDEX

petitioners or intervenors may request and, where appropriate, obtain, under protective order or other measures, information withheld from the general public for proprietary or security reasons; CLI-10-24, 72 NRC 451 (2010)

petitioners will not be given NEPA-based access to documents exempt from disclosure under FOIA, even under protective measures; CLI-08-5, 67 NRC 174 (2008)

petitioners' request for additional information on redacted portions of the combined license application is denied because the public record indicates the nature of the redacted information; CLI-09-4, 69 NRC 80 (2009)

proposed questions, submitted by the parties, for the board, that were originally filed under seal with the board, will be made public in a separate issuance; LBP-08-4, 67 NRC 105 (2008)

protective orders and in camera proceedings are the customary and favored means of handling disputes that arise in which one party to a proceeding seeks purportedly proprietary information from another; CLI-10-24, 72 NRC 451 (2010)

regarding public disclosure of an agency's NEPA analysis, Congress has established that the environmental impact statement shall be made available to the public as provided by FOIA; LBP-08-7, 67 NRC 361 (2008)

"relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence; LBP-10-23, 72 NRC 692 (2010)

safeguards information qualifies for the exemption from disclosure; LBP-10-2, 71 NRC 190 (2010)

scheduling orders are to include provisions for disclosure of electronically stored information; LBP-09-22, 70 NRC 640 (2009)

Staff's designation of its own material as SUNSI is inconsistent with SUNSI's purported objective of protecting licensee or applicant data; LBP-10-2, 71 NRC 190 (2010)

Staff's disclosure obligations are not tied to the admitted contentions, but rather, it must make available documents that relate to the application and its review as a whole; CLI-10-24, 72 NRC 451 (2010); CLI-10-25, 72 NRC 469 (2010)

the board grants intervenors' motion to compel disclosure of certain groundwater modeling information associated with a combined license application; LBP-10-23, 72 NRC 692 (2010)

the Commission may withhold from public disclosure any information that is exempt under the Freedom of Information Act; CLI-08-26, 68 NRC 509 (2008)

the concept of control extends to situations in which the party has the practical ability to obtain materials in the possession of another, even if the party does not have the legal right to compel the other person or entity to produce the requested materials; LBP-10-23, 72 NRC 692 (2010)

the disclosing party can either provide the other parties with an actual copy of the document or data compilation or can simply describe it and provide it if the other party requests it; LBP-10-23, 72 NRC 692 (2010)

the duty to make all documents available does not apply to records specifically exempted from disclosure by statute; LBP-10-2, 71 NRC 190 (2010)

the relevance standard of 10 C.F.R. 2.336 is more flexible than the relevance standard of Fed. R. Evid. 401; LBP-10-23, 72 NRC 692 (2010)

the scope of the mandatory disclosure obligations under 10 C.F.R. 2.336, which apply to Subpart L proceedings, are wide-reaching; LBP-10-23, 72 NRC 692 (2010)

the Secretary is authorized to establish procedures for obtaining access to sensitive unclassified nonsafeguards information prior to granting intervention in a licensing proceeding; LBP-10-2, 71 NRC 190 (2010)

the Secretary of the Commission will assess initially whether the proposed recipient has shown a need for sensitive unclassified nonsafeguards information or safeguards information; LBP-10-2, 71 NRC 190 (2010)

the showing required for "need" for SUNSI could include, but does not require (nor is it limited to), an explanation that the information will be used as support for a contention; CLI-10-24, 72 NRC 451 (2010)

the term "document" as used in 10 C.F.R. 2.336 includes computer models and associated electronic inputs, outputs, data, and software; LBP-10-23, 72 NRC 692 (2010)

SUBJECT INDEX

the use of any proprietary information that is produced is strictly limited to the proceeding for which it is produced, and such information must be promptly returned at the close of this proceeding; LBP-10-23, 72 NRC 692 (2010)

to demonstrate a need for SUNSI, intervenors must discuss the basis for a proffered contention and describe why the information available to the intervenors is not sufficient to provide the basis and specificity for a proffered contention; LBP-10-5, 71 NRC 329 (2010)

to overcome deliberative process privilege, petitioners have to show that their need for the information outweighs potential harm to the agency from that disclosure; CLI-08-23, 68 NRC 461 (2008)

to rule that disclosure under 10 C.F.R. 2.336(a)(2)(i) is limited to formal contractual deliverables would encourage applicants to draft consulting contracts to insulate themselves from the obligation to disclose critical computer modeling information; LBP-10-23, 72 NRC 692 (2010)

upon a showing of need, petitioners' request to obtain access to an unredacted application was granted; CLI-10-24, 72 NRC 451 (2010)

when access to documents is disputed in FOIA litigation, the government must submit detailed public affidavits identifying the documents withheld, the FOIA exemptions claimed, and a particularized explanation of why each document falls within the claimed exemption; LBP-08-7, 67 NRC 361 (2008)

withholding from public access an entire document just because it may contain some SUNSI information is not only a misuse of the SUNSI designator, but fails the logic test by excluding the public from access to information that is not security-related; LBP-10-2, 71 NRC 190 (2010)

within 30 days of the board's ruling admitting contentions, the parties must automatically make certain mandatory disclosures; LBP-09-22, 70 NRC 640 (2009)

DISCOVERY

a board does not need to reach the question of the extent of discovery permissible if no request for any discovery has been made; LBP-08-5, 67 NRC 205 (2008)

a board is to decide the motion to reopen on the information before it and has no authority to engage in discovery in order to supplement the pleadings before it; CLI-08-28, 68 NRC 658 (2008)

a board may impose sanctions including dismissal of the specific contentions, dismissal of the adjudication, or dismissal of the application for any continuing unexcused failure to make the required mandatory disclosures; LBP-09-30, 70 NRC 1039 (2009)

a non-expert witness who was identified as the source of information but who had been removed from applicant's witness list could have been subjected to discovery and compelled to provide testimony before the board; LBP-06-15, 63 NRC 591 (2006)

a privilege that is not claimed is waived; LBP-06-25, 64 NRC 367 (2006)

a showing of relevance alone is not sufficient for a party seeking a deliberative process privilege document to demonstrate that its need for the document outweighs the need to protect the document; LBP-06-3, 63 NRC 85 (2006)

all parties, except NRC Staff, shall make the mandatory disclosures required within 45 days of the issuance of the licensing board order admitting contentions; CLI-09-15, 70 NRC 1 (2009)

allowing discovery or an evidentiary hearing with respect to safety-related issues to proceed before the final safety evaluation report is issued will serve to further the Commission's objective to ensure a fair, prompt, and efficient resolution of contested issues; CLI-09-15, 70 NRC 1 (2009)

although the subject of an NRC enforcement proceeding may attempt to take advantage of his discovery rights in the civil proceeding to obtain information also useful in his criminal proceeding, that is no reason to deny him that discovery because he asserted his Fifth Amendment right not to respond to discovery requests directed to him, even if other procedural consequences might flow from that action; LBP-06-25, 64 NRC 367 (2006)

an assertion that material can be withheld must expressly state the specific privilege being claimed; LBP-06-25, 64 NRC 367 (2006)

analysis of a motion to compel the mandatory disclosure of information under 10 C.F.R. 2.336(a) is contingent on six issues; LBP-10-23, 72 NRC 692 (2010)

applicant may challenge an expert opinion in the disclosure stage, via a motion for summary disposition, if it can show that there is no genuine issue as to any material fact and that it is entitled to a decision as a matter of law; LBP-09-30, 70 NRC 1039 (2009)

SUBJECT INDEX

civil discovery can lead to perjury in the criminal case, by enabling a defendant to tailor his testimony, and that of his confederates, to jibe with, or to work around, what he learns about the state of the government's knowledge; LBP-06-13, 63 NRC 523 (2006)

Commission's rules and longstanding precedent bar discovery in connection with the preparation of proposed contentions; CLI-08-28, 68 NRC 658 (2008)

deliberative process privilege is a qualified privilege; LBP-06-3, 63 NRC 85 (2006)

deliberative process privilege requires that the information be both predecisional and deliberative; LBP-06-3, 63 NRC 85 (2006)

disclosure of a nonwitness (e.g., an expert that the party consulted, but does not intend to use as a witness) is not required; LBP-09-30, 70 NRC 1039 (2009)

disclosure of documents under the National Environmental Policy Act is expressly governed by the Freedom of Information Act; CLI-08-5, 67 NRC 174 (2008)

disclosure of the name and telephone number of an expert witness, if this information is not known to the party, is not required; LBP-09-30, 70 NRC 1039 (2009)

documents and information exchanged in the mandatory disclosures enter the adjudicatory record only if and when a party proffers the document or information as evidence for the evidentiary hearing; LBP-09-30, 70 NRC 1039 (2009)

each party to a proceeding must automatically disclose and provide all documents and data compilations in their possession, custody, or control that are relevant to the admitted contentions, without waiting for a party to file a discovery request; LBP-10-23, 72 NRC 692 (2010)

for the purpose of developing a motion to reopen the record or to assist a petitioner in the framing of contentions, discovery is not permitted; LBP-08-12, 68 NRC 5 (2008)

Freedom of Information Act litigation is ordinarily resolved on summary disposition without discovery and without evidentiary trials or hearings, and discovery is sparingly used; CLI-08-8, 67 NRC 193 (2008)

if a requested document or data compilation is publicly available, then a citation to the document and a description of where it may be publicly obtained are sufficient; LBP-10-23, 72 NRC 692 (2010)

if, after the initial disclosure, a party subsequently develops or obtains additional information or documents that meet the requirements of this section, then that party must promptly file a supplemental mandatory disclosure; LBP-09-30, 70 NRC 1039 (2009)

if an expert witness has a copy of the analysis or other authority upon which his or her opinion is based, and it is extant and reasonably available to that witness and/or the party, then the mandatory disclosure should include that analysis or other authority; LBP-09-30, 70 NRC 1039 (2009)

if any party attempts to include exhibits that were not disclosed in the mandatory disclosures, thus making it impossible for the other parties to examine the reliability of that information, then the board may prohibit the admission of this new evidence into the record; LBP-09-30, 70 NRC 1039 (2009)

if litigation over a contention brings into play financial or other information that has been designated as nonpublic, petitioners must request that the board issue a protective order that permits access; LBP-08-16, 68 NRC 361 (2008)

if the duty to make disclosures applied only to parties who have claims and contentions, it would create an unintended and invidious asymmetry in mandatory disclosures, which are the only form of discovery available in Subpart L proceedings; LBP-09-30, 70 NRC 1039 (2009)

in a proceeding involving the safety of a proposed 20% increase in the power of a nuclear power reactor, the seriousness of the litigation and the issues involved weigh in favor of disclosing deliberative process documents; LBP-06-3, 63 NRC 85 (2006)

in ruling on the qualified nature of deliberative process privilege, five factors are relevant in balancing the need for the documents against the government's interest in nondisclosure; LBP-06-3, 63 NRC 85 (2006)

initial disclosures must be made within 30 days of the order granting a request for hearing, which is typically at least 18-24 months before the evidentiary hearing begins; LBP-09-30, 70 NRC 1039 (2009)

intervenor's expert is not required to create a written analysis, but only disclose the written analysis or other documentary authority, if any, that exists and is reasonably available at the time of the disclosure; LBP-09-30, 70 NRC 1039 (2009)

it is an abuse of the adjudicatory process to use a motion for summary disposition as a subterfuge for the filing of interrogatories, requests for admission, or other discovery; LBP-06-5, 63 NRC 116 (2006)

SUBJECT INDEX

it is not a ground for objection to discovery that the information sought will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence; LBP-09-30, 70 NRC 1039 (2009); LBP-10-23, 72 NRC 692 (2010)

limited discovery may be allowed in a Freedom of Information Act dispute, but only if absolutely necessary to ensure a complete record and a fair decision; CLI-08-5, 67 NRC 174 (2008)

mandatory disclosure is the only form of discovery allowed in Subpart L proceedings, and all other forms are expressly prohibited; LBP-10-23, 72 NRC 692 (2010)

mandatory disclosures are updated every month; LBP-10-23, 72 NRC 692 (2010)

mandatory disclosures, like all discovery exchanges, cover a vast array of information and documents that are not evidence and need not meet the requirements of admissible evidence; LBP-09-30, 70 NRC 1039 (2009)

mandatory disclosures required by 10 C.F.R. 2.336 consist of an exchange of prescribed information and documents between the litigants, and do not need to be submitted to the board; LBP-09-30, 70 NRC 1039 (2009)

motions to compel or challenges regarding the adequacy of any mandatory disclosure or hearing file, redactions, or the validity of any claim that a document is privileged or protected shall be filed within 10 days after the occurrence or circumstance from which the motion arises; LBP-09-22, 70 NRC 640 (2009)

natural predeposition unease is distinguished from particularized, forceful intimidation involving threats of extra-deposition retaliation that could be communicated as part of the run-up to, or conduct of, the deposition; LBP-06-13, 63 NRC 523 (2006)

parties in NRC adjudications are generally entitled to obtain, through discovery and other pretrial activities, the fullest possible knowledge of the issues and facts before trial; LBP-06-25, 64 NRC 367 (2006)

parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense; LBP-10-2, 71 NRC 190 (2010)

parties need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost; LBP-09-22, 70 NRC 640 (2009)

privacy interests are defined using FOIA's language but their weight is tempered by the capability in the discovery process of making limited disclosure to a litigant under a protective order instead of public disclosure; LBP-06-25, 64 NRC 367 (2006)

qualified privilege materials may be excluded, depending on the particular circumstances presented; LBP-06-25, 64 NRC 367 (2006)

relevant information need not be admissible at a trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence; LBP-10-2, 71 NRC 190 (2010)

serious concern about evidence tampering stems from the possibility that the defendant, after learning in a civil proceeding about the nature of government's evidence of his possible crime, would be able to alter evidence in his possession or control to provide a defense to the charges, or to undercut the evidence against him; LBP-06-13, 63 NRC 523 (2006)

sufficient information for assessing the claim of privilege or protected status of documents withheld from discovery must be provided to the requesting party; LBP-06-25, 64 NRC 367 (2006)

tampering is not a concern when the defendant has not been employed at the relevant organization for several years and the government has given no indication as to how the defendant might employ knowledge gained through civil discovery to alter paper documents or electronic files that he has no control over whatsoever and which the government has long-since obtained through its several-years-long investigation; LBP-06-13, 63 NRC 523 (2006)

the disclosing party can either provide the other parties with an actual copy of the document or data compilation or can simply describe it and provide it if the other party requests it; LBP-10-23, 72 NRC 692 (2010)

the Federal Rules of Civil Procedure were amended in 2006 to expressly include electronically stored information; LBP-10-23, 72 NRC 692 (2010)

the greater the interest protected by the privilege, the more compelling the need and the other circumstances must be to overcome it; LBP-06-25, 64 NRC 367 (2006)

SUBJECT INDEX

the Licensing Support Network functions as a mechanism for early collection of all extant documents that normally would be collected later through traditional discovery; CLI-08-22, 68 NRC 355 (2008)

the mandatory disclosure requirements are not an opportunity to relitigate the admissibility of a contention; LBP-09-30, 70 NRC 1039 (2009)

the "need for SUNSI" inquiry is essentially a relevance inquiry just as a federal court litigant must show that information sought in discovery is relevant to its claims or defenses; CLI-10-24, 72 NRC 451 (2010)

the scope of discovery is broader than the scope of admissible evidence; LBP-10-23, 72 NRC 692 (2010)

the scope of the mandatory disclosure obligations under 10 C.F.R. 2.336, which apply to Subpart L proceedings, is wide-reaching; LBP-10-23, 72 NRC 692 (2010)

the subject of an enforcement order may benefit from more knowledge and perspective about others' roles in an incident because it might help him put his actions in a transactional context that would lessen or eliminate his responsibility for any missteps; LBP-06-25, 64 NRC 367 (2006)

the universal understanding of relevance, applicable to the NRC Staff and others, includes matters that appear reasonably calculated to lead to the discovery of admissible evidence; LBP-06-25, 64 NRC 367 (2006)

to demonstrate a need for SUNSI, intervenors must discuss the basis for a proffered contention and describe why the information available to the intervenors is not sufficient to provide the basis and specificity for a proffered contention; LBP-10-5, 71 NRC 329 (2010)

to the extent applicant may be subject to unreasonable or burdensome discovery requests in the future, it is free to seek relief from the board, which has ample authority to prevent or modify unreasonable discovery demands; CLI-09-6, 69 NRC 128 (2009)

when determining relevance of documents for discovery purposes in NRC proceedings, boards may look to the Federal Rules of Evidence for useful guidance; LBP-10-23, 72 NRC 692 (2010)

where a protective order precludes public disclosure, the strength of the privacy interest diminishes because any threatened harm in releasing the information can be virtually eliminated; LBP-06-25, 64 NRC 367 (2006)

where the privilege and the need may be equally weak, but the privilege can be protected by other means, adjudicators return to the norms of full and open discovery, so that relevancy, not need, becomes the determinative standard; LBP-06-25, 64 NRC 367 (2006)

with a confidential protection order in place, weighing the privacy invasion from public disclosure against a party's need for the materials is no longer appropriate; LBP-06-25, 64 NRC 367 (2006)

DISCOVERY AGAINST NRC STAFF

a party seeking to challenge NRC Staff's claim of privilege or protected status may file a motion to compel production of the document; CLI-10-24, 72 NRC 451 (2010)

availability, not possession, custody, or control, is the criterion for the NRC Staff's mandatory disclosure responsibilities; LBP-10-23, 72 NRC 692 (2010)

depositions of opposing trial or litigation counsel are permitted only if no other means exist to obtain the information, and the information sought is relevant and nonprivileged, and crucial to the preparation of the case; LBP-06-10, 63 NRC 314 (2006)

documents that contain the analysis, opinions, and recommendations of NRC Staff members regarding an applicant's response to prior requests for additional information or the formulation of new RAIs are deliberative and thus may qualify for deliberative process privilege; LBP-06-3, 63 NRC 85 (2006)

for documents that are otherwise discoverable, but for which there is a claim of privilege or protected status, NRC Staff must list them and provide sufficient information for assessing their privilege or protected status; CLI-10-24, 72 NRC 451 (2010); CLI-10-25, 72 NRC 469 (2010)

if and when NRC Staff relies on a document, then the Staff itself is also obliged to disclose the document, to the extent it is available; LBP-10-23, 72 NRC 692 (2010)

NRC Staff communications are factual in nature and are not protected by the deliberative process privilege when the communications summarize the procedural aspects of Staff projects or report on the status of Staff work; LBP-06-3, 63 NRC 85 (2006)

NRC Staff communications concerning the appropriate wording and scope of a potential license condition are deliberative and thus may qualify for the deliberative process privilege; LBP-06-3, 63 NRC 85 (2006)

SUBJECT INDEX

NRC Staff communications concerning whether a potential license condition should be imposed are deliberative and thus may qualify for the deliberative process privilege; LBP-06-3, 63 NRC 85 (2006)

NRC Staff shall comply with discovery requests no later than 30 days after the licensing board order admitting contentions and shall update the information at the same time as the issuance of the safety evaluation report or final environmental impact statement, and, subsequent to the publication of the SER and FEIS, as otherwise required by the Commission's regulations; CLI-09-15, 70 NRC 1 (2009)

parties shall not commence discovery under 10 C.F.R. 2.709 until issuance of the safety evaluation report or environmental impact statement unless the licensing board, in its discretion, finds that commencing discovery before these documents are issued will expedite the hearing without adversely affecting the Staff's ability to complete its evaluation in a timely manner; CLI-07-17, 65 NRC 392 (2007); CLI-10-4, 71 NRC 56 (2010)

Staff's designation of its own material as SUNSI is inconsistent with SUNSI's purported objective of protecting licensee or applicant data; LBP-10-2, 71 NRC 190 (2010)

Staff's disclosure obligations are not tied to the admitted contentions, but rather, it must make available documents that relate to the application and its review as a whole; CLI-10-24, 72 NRC 451 (2010); CLI-10-25, 72 NRC 469 (2010)

the fact that deliberative process privilege documents contain important new analyses that are relevant to admitted contentions weighs in favor of their disclosure; LBP-06-3, 63 NRC 85 (2006)

the imminent availability of Staff's authoritative position on a subject that is discussed in deliberative process documents constitutes "other evidence" such that the immediate need for the documents does not outweigh the deliberative process privilege; LBP-06-3, 63 NRC 85 (2006)

when NRC Staff is a party in a proceeding and not merely an indifferent bystander to private-party litigation, the role of the government in the litigation weighs in favor of disclosure; LBP-06-3, 63 NRC 85 (2006)

DISMISSAL OF PARTIES

dismissal due to counsel's malfeasance is a logical extension of the board's disciplinary authority to reprimand, censure, or suspend from a proceeding any party or representative who refuses to comply with its directions; CLI-08-29, 68 NRC 899 (2008)

this sanction falls within the spectrum of sanctions available to the boards to assist in the management of proceedings, although dismissal should be reserved for severe cases; CLI-08-29, 68 NRC 899 (2008)

DISMISSAL OF PROCEEDING

it is highly unusual to dispose of a proceeding on the merits, i.e., with prejudice, when in fact the health, safety, and environmental merits of an application have not been reached; LBP-10-11, 71 NRC 609 (2010)

the prospect of a second lawsuit with its expenses and uncertainties or another application does not provide the requisite quantum of legal harm to warrant dismissal of an application with prejudice; LBP-10-11, 71 NRC 609 (2010)

DISPUTE RESOLUTION

if the attorney or representative of a party is contacted pursuant to the consultation requirement, then that person (or his or her alternate) must make a sincere effort to make himself or herself available to listen and to respond to the moving party's explanation, and to resolve the factual and legal issues raised in the motion; LBP-09-22, 70 NRC 640 (2009)

it is inconsistent with the dispute avoidance/resolution purposes of NRC regulations, and thus insufficient, for the contacted attorney or representative to fail or refuse to consider the substance of the consultation attempt, or for the party to respond that it takes no position on the motion (or issues) and that it reserves the right to file a response to the motion when it is filed; LBP-09-22, 70 NRC 640 (2009)

motions will be rejected if they do not include certification by the attorney or representative of the moving party that they have made a sincere effort to contact the other parties in this proceeding, to explain to them the factual and legal issues raised in the motion, and to resolve those issues; LBP-09-22, 70 NRC 640 (2009)

to be sincere, movant should contact other parties sufficiently in advance to provide enough time for the possible resolution of the matter or issues in question; LBP-09-22, 70 NRC 640 (2009)

See Administrative Dispute Resolution

SUBJECT INDEX

DISQUALIFICATION

- a judge should disqualify himself if he has personal knowledge of disputed evidentiary facts concerning the proceeding; CLI-10-22, 72 NRC 202 (2010)
- an agency official should be disqualified only where a disinterested observer may conclude that the official has in some measure adjudged the facts as well as the law of a particular case in advance of hearing it; CLI-10-17, 72 NRC 1 (2010)
- if a licensing board member declines to grant a party's recusal motion, the motion is referred to the Commission to determine the sufficiency of the grounds alleged; CLI-10-22, 72 NRC 202 (2010)
- that an unreasonable person, focusing on only one aspect of the story, might perceive a risk of bias is irrelevant; CLI-10-22, 72 NRC 202 (2010)
- the Commission could disqualify a party's counsel from participating in an NRC proceeding upon a concrete showing that a conflict of interest or other ethics concern would obstruct its obtaining a full range of necessary safety or environmental information, or would otherwise threaten the integrity of its regulatory process; CLI-08-11, 67 NRC 379 (2008)
- the Commission does not use procedural technicalities to avoid addressing disqualification motions; CLI-10-17, 72 NRC 1 (2010)
- the disqualification standard under 28 U.S.C. § 455 is not directed to administrative judges, but the Commission and its adjudicatory boards have applied it in assessing a motion for disqualification under 10 C.F.R. 2.313, and it provides a helpful framework for such an assessment; CLI-10-22, 72 NRC 202 (2010)
- the mere fact of adverse findings and rulings on the merits does not imply a biased attitude on the board's part; CLI-10-17, 72 NRC 1 (2010)
- the standard for disqualification of a judge under 28 U.S.C. § 455 is whether the reasonable person who knows all the circumstances, would harbor doubts about the judge's impartiality; CLI-10-22, 72 NRC 202 (2010)
- to prevail in a disqualification motion, petitioner first must demonstrate that the purported instances of bias had a substantial impact on the outcome of the proceeding; CLI-10-17, 72 NRC 1 (2010)
- to prevail on a disqualification motion, petitioner must show either a bias against petitioner or its counsel based on matters outside the record or a pervasive bias against petitioner based upon matters in the record; CLI-10-17, 72 NRC 1 (2010)

DOCKETING

- the decision to docket, and the subsequent handling of an application, is within the discretion of the Staff; LBP-10-17, 72 NRC 501 (2010)
- the Director of the Office of Nuclear Material Safety and Safeguards must determine whether the tendered application is complete and acceptable; CLI-08-20, 68 NRC 272 (2008)

DOCUMENT PRODUCTION

- a document's availability on the Internet does not authorize its exclusion from the Licensing Support Network; LBP-09-6, 69 NRC 367 (2009)
- a party is excused from producing a document if the document is publicly available and if the party specifies where the document may be found; LBP-10-23, 72 NRC 692 (2010)
- an affirmative demonstration of compliance with the Licensing Support Network requirements is not required in an intervention petition; LBP-09-6, 69 NRC 367 (2009)
- applicant has a duty to continue to supplement documentary material after the initial certification; LBP-08-1, 67 NRC 37 (2008)
- applicant's claim that computer models should be excused from the mandatory disclosure requirements because they entail proprietary information is rejected; LBP-10-23, 72 NRC 692 (2010)
- applicant's "control" of computer models prepared by and in possession of a contractor is illustrated by the fact that if NRC Staff requested these documents, applicant could obtain and provide them; LBP-10-23, 72 NRC 692 (2010)
- documents are deemed to be within the control of a party if the party has the right to obtain the documents on demand or if it is held by the party's attorney, expert, insurance company, accountant, or agent; LBP-10-23, 72 NRC 692 (2010)
- DOE must make all of its documentary material available on the Licensing Support Network, and to so certify to the PAPO Board, at least 6 months before it files its application to construct the HLW geologic repository at Yucca Mountain; LBP-08-1, 67 NRC 37 (2008)

SUBJECT INDEX

DOE's production of documentary material and certification triggers the duty of other potential parties to make their documentary material available 90 days thereafter; LBP-08-1, 67 NRC 37 (2008); LBP-08-5, 67 NRC 205 (2008)

each party or potential party to the high-level waste proceeding must continue to supplement the production of its documentary material on the Licensing Support Network; LBP-09-6, 69 NRC 367 (2009)

each witness is not required to generate an analysis, but rather must disclose the analysis or other authority upon which the witness bases his or her opinion; LBP-09-30, 70 NRC 1039 (2009)

exclusions to the duty to produce documentary material in the high-level waste proceeding include preliminary drafts, basic licensing documents generated by DOE, and any additional material created after the time of initial certification; LBP-08-1, 67 NRC 37 (2008)

for Subpart G proceedings, each expert witness is required to create, sign, and submit a written expert report; LBP-09-30, 70 NRC 1039 (2009)

if, after the initial disclosure, a party subsequently develops or obtains additional information or documents that meet the requirements of this section, then that party must promptly file a supplemental mandatory disclosure; LBP-09-30, 70 NRC 1039 (2009)

if an expert witness has a copy of the analysis or other authority upon which his or her opinion is based, and it is extant and reasonably available to that witness and/or the party, then the mandatory disclosure should include that analysis or other authority; LBP-09-30, 70 NRC 1039 (2009)

if and when NRC Staff relies on a document, then the Staff itself is also obliged to disclose the document, to the extent it is available; LBP-10-23, 72 NRC 692 (2010)

if petitioner is found not to be in substantial and timely compliance with the LSN requirements, that petitioner may request party status upon a subsequent showing of compliance, but any grant of a request is conditioned on accepting the status of the proceeding at the time of admission; LBP-09-6, 69 NRC 367 (2009)

intervenors' expert is not required to create a written analysis, but only disclose the written analysis or other documentary authority, if any, that exists and is reasonably available at the time of the disclosure; LBP-09-30, 70 NRC 1039 (2009)

it is not a ground for objection that the information sought will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence; LBP-09-30, 70 NRC 1039 (2009)

mandatory disclosures, like all discovery exchanges, cover a vast array of information and documents that are not evidence and need not meet the requirements of admissible evidence; LBP-09-30, 70 NRC 1039 (2009)

mandatory disclosures required by 10 C.F.R. 2.336 consist of an exchange of prescribed information and documents between the litigants, and do not need to be submitted to the board; LBP-09-30, 70 NRC 1039 (2009)

neither legal ownership nor title is required in order for a party to have "possession, custody, or control" of a document; LBP-10-23, 72 NRC 692 (2010)

NRC's production-of-documents regulation, 10 C.F.R. 2.707(a)(1) is essentially the same as Fed. R. Civ. P. 34(a)(1); LBP-10-23, 72 NRC 692 (2010)

perfection is not required and any production is bound to have some human mistakes; LBP-09-6, 69 NRC 367 (2009)

petitioner may not be granted party status in the high-level waste proceeding if it cannot demonstrate substantial and timely compliance with the requirements in 10 C.F.R. 2.1003 concerning the availability of documentary material on the Licensing Support Network; LBP-09-6, 69 NRC 367 (2009)

section 2.1009(b) requires certification to the Pre-License Application Presiding Officer that the party or potential party has complied with the implementation procedures of section 2.1009(a)(2) and that to the best of his or her knowledge, the documentary material specified in section 2.1003 has been identified and made electronically available; LBP-09-6, 69 NRC 367 (2009)

the concept of control extends to situations in which the party has the practical ability to obtain materials in the possession of another, even if the party does not have the legal right to compel the other person or entity to produce the requested materials; LBP-10-23, 72 NRC 692 (2010)

the duty to produce all documentary material generated by, or at the direction of, or acquired by, a potential party pursuant to 10 C.F.R. 2.1003(a)(1) applies to extant documentary material and does not

SUBJECT INDEX

require that the potential party delay its initial certification until all documentary material that it intends to rely on is finished and complete; LBP-08-1, 67 NRC 37 (2008)

the duty to produce graphic-oriented material under 10 C.F.R. 2.1003(a)(2) is stated in the past tense, and thus applies only to documents in existence at the date of certification; LBP-08-1, 67 NRC 37 (2008)

the Federal Rules of Civil Procedure were amended in 2006 to expressly include electronically stored information; LBP-10-23, 72 NRC 692 (2010)

the mandatory disclosure requirements are not an opportunity to relitigate the admissibility of a contention; LBP-09-30, 70 NRC 1039 (2009)

the phrase “possession, custody, or control” as found in the Federal Rules of Civil Procedure and 10 C.F.R. 2.336(a) is in the disjunctive, and thus only one of the enumerated requirements needs to be met; LBP-10-23, 72 NRC 692 (2010)

the regulations are unclear as to whether header searchability is a prerequisite of certification; LBP-08-1, 67 NRC 37 (2008)

the term “document” as used in 10 C.F.R. 2.336 includes computer models and associated electronic inputs, outputs, data, and software; LBP-10-23, 72 NRC 692 (2010)

the term “document” as used in 10 C.F.R. 2.336, is not limited to paper documents and it refers to information stored on any medium or form, including electronically stored information; LBP-10-23, 72 NRC 692 (2010)

to rule that disclosure under 10 C.F.R. 2.336(a)(2)(i) is limited to formal contractual deliverables would encourage applicants to draft consulting contracts to insulate themselves from the obligation to disclose critical computer modeling information; LBP-10-23, 72 NRC 692 (2010)

when determining relevance of documents for discovery purposes in NRC proceedings, boards may look to the Federal Rules of Evidence for useful guidance; LBP-10-23, 72 NRC 692 (2010)

whether a call memo was required to address the retention for LSN inclusion purposes of documentary material that does not support a party’s position is decided; LBP-08-5, 67 NRC 205 (2008)

whether NRC Staff should be required to produce four paper copies of relevant documents is a matter best left to a board’s discretion; CLI-06-20, 64 NRC 15 (2006)

DOCUMENTARY MATERIAL

an agency employee’s working file constitutes an “agency record” if it both contains unique information that underlies an agency decision and it was also made available to other agency employees for purposes of helping to reach or support that decision; CLI-08-23, 68 NRC 461 (2008)

any material supporting petitioner’s contention, including those portions of the material that are not relied upon, is subject to licensing board scrutiny; LBP-07-3, 65 NRC 237 (2007)

at the time it made its initial certification, DOE was required to place on the Licensing Support Network only extant material on which it intended to rely; CLI-08-12, 67 NRC 386 (2008)

Class 1 covers information a party intends to rely upon in support of its position; CLI-06-5, 63 NRC 143 (2006)

Class 2 material is material that the party in possession knows does not support its position; CLI-06-5, 63 NRC 143 (2006)

Class 3 documentary materials are “reports and studies” prepared on behalf of potential parties to the proceeding that are relevant to the issues listed in the Topical Guidelines contained in Regulatory Guide 3.69 and must be relevant to the license application; CLI-06-5, 63 NRC 143 (2006)

DOE’s certification that it had made all of its then extant documentary material available on the NRC’s Licensing Support Network triggered the obligation of other potential parties to make their documentary material available on the LSN within 90 days; LBP-08-5, 67 NRC 205 (2008)

drafts of the license application are not Class 1, Class 2, or Class 3 material under Subpart J, so the regulations do not require making draft license applications available on the Licensing Support Network; CLI-06-5, 63 NRC 143 (2006)

federal agencies have some discretion in determining which documentary materials are appropriate for preservation as an agency “record”; CLI-08-23, 68 NRC 461 (2008)

intra-agency memoranda developed during the decisionmaking process are protected under the deliberative process privilege; CLI-08-23, 68 NRC 461 (2008)

material that falls within Class 1 or Class 2 is the underlying independent documentary material used (or not used if nonsupporting) by the Department of Energy in formulating its license application; CLI-06-5, 63 NRC 143 (2006)

SUBJECT INDEX

materials created by an employee for the individual's own use in performing his or her job, and which are not circulated and are not otherwise required by NRC policy to be maintained, may be discarded at the employee's discretion; CLI-08-23, 68 NRC 461 (2008)

providing any material or document as a basis for a contention, without setting forth an explanation of its significance, is inadequate to support the admission of the contention; LBP-07-3, 65 NRC 237 (2007)

section 2.1003's reference to "all documentary material (including circulated drafts but excluding preliminary drafts) generated by, or at the direction of, or acquired by" clearly conveys that possession or control of the documentary material is a prerequisite to the duty to produce it; CLI-08-12, 67 NRC 386 (2008)

the distinction between "preliminary" and "circulated" drafts is a significant one in the Commission's Subpart J regulations; CLI-06-5, 63 NRC 143 (2006)

the duty to produce all documentary material generated by, or at the direction of, or acquired by, a potential party pursuant to 10 C.F.R. 2.1003(a)(1) applies to extant documentary material and does not require that the potential party delay its initial certification until all documentary material that it intends to rely on is finished and complete; LBP-08-1, 67 NRC 37 (2008)

the Licensing Support Network functions as a mechanism for early collection of all extant documents that normally would be collected later through traditional discovery; CLI-08-22, 68 NRC 355 (2008)

the material provided in support of a contention will be carefully examined by a licensing board to confirm that it does indeed supply an adequate basis for the contention as asserted by the petitioner; LBP-07-3, 65 NRC 237 (2007)

the purpose of 10 C.F.R. 2.1003 is to define the availability of material, not to provide definitions of types of materials; CLI-06-5, 63 NRC 143 (2006)

the threshold question in determining if certain items must be made available on the High-Level Waste Repository Licensing Support Network is whether the particular items fall within any of the three classes of documentary material; CLI-06-5, 63 NRC 143 (2006)

to be considered "documentary material," a "basic licensing document" must still meet the definition of Class 3 documentary material; CLI-06-5, 63 NRC 143 (2006)

DOCUMENTATION

applicant must provide documentation of its compliance with the performance requirements of section 70.61 in its integrated safety analysis summary; LBP-06-17, 63 NRC 747 (2006)

licensee is not required to submit docketed information on the resolution of each fire protection noncompliance during its transition to a risk-informed and performance-based fire protection program, but it is required to implement and maintain compensatory measures for remaining noncompliances; DD-07-3, 65 NRC 643 (2007)

licensees must maintain condition reports, survey records, radiological liquid effluent and environmental monitoring reports, records of historical spills and leaks; DD-08-2, 68 NRC 339 (2008)

See also Recordkeeping

DOSE LIMITS

a combined license application must explain the kinds and quantities of radioactive materials expected to be produced in the operation and the means for controlling and limiting radioactive effluents and radiation exposures within the limits set forth in 10 C.F.R. Part 20; LBP-09-27, 70 NRC 992 (2009)

a cost-benefit analysis is employed to determine a practicable dose limit; CLI-10-8, 71 NRC 142 (2010)

a "member of the public" is any individual except when that individual is receiving an occupational dose; LBP-10-22, 72 NRC 661 (2010)

ALARA is defined as every reasonable effort to maintain exposures to radiation as far below the dose limits in Part 20 as is practical consistent with the purpose for which the licensed activity is undertaken; CLI-10-8, 71 NRC 142 (2010)

applicant shall conduct operations so that the total effective dose equivalent to individual members of the public does not exceed 100 millirems per year; LBP-10-20, 72 NRC 571 (2010)

applicant shall provide reasonable assurance that the annual dose equivalent to members of the public from planned discharges not exceed 25 millirems to the whole body; LBP-10-20, 72 NRC 571 (2010)

compliance with applicable radiation standards is deferred at the early site permit stage, and can only be determined in a COL or CP proceeding; CLI-07-27, 66 NRC 215 (2007)

compliance with limits on radiological exposures, over necessarily long time periods, requires a performance assessment; LBP-09-6, 69 NRC 367 (2009)

SUBJECT INDEX

contentions challenging NRC regulations are not admissible; LBP-08-6, 67 NRC 241 (2008)

DOE need not weigh ALARA considerations outside the geologic repository operations area for which it is responsible; LBP-10-22, 72 NRC 661 (2010)

filing of a petition for alternative soil remediation standards is permitted as long as the resulting dose would not exceed 15 mrem per year; CLI-10-8, 71 NRC 142 (2010)

if applicant pursues a new reactor design before the Commission has set specific standards applicable to that type of reactor, then applicant will be subject to the existing requirement of 10 C.F.R. 20.1301(a)(1), and will further be required to demonstrate that its emissions will be ALARA pursuant to 10 C.F.R. 50.34a, 50.36a, and 20.1101; CLI-07-27, 66 NRC 215 (2007)

in theory, a facility operator could have an inadvertent criticality, but still be in compliance with the dose limits; LBP-06-17, 63 NRC 747 (2006)

individuals located at the boundary of the exclusion area cannot be exposed to more than 25 rem total effective dose equivalent in any 2-hour period, and any individual located at the outer boundary of the low population zone cannot be exposed to more than 25 rem TEDE during the entire period of any radioactive release; LBP-09-19, 70 NRC 433 (2009)

ionizing radiation to treat fresh fruits is safe if the radiation dose does not exceed 1 kGy (100 krad); CLI-08-16, 68 NRC 221 (2008)

licensee's decommissioning plan would have to show that the maximum annual dose to any person is as low as is reasonably achievable below 15 mrem; CLI-10-8, 71 NRC 142 (2010)

licensee's efforts to maintain compliance with dose limits for individual members of the public in light of radiological effluent release from cracked spent fuel pool are described; DD-08-2, 68 NRC 339 (2008)

licensees, including Part 63 licensees, are required to use, to the extent practical, procedures and engineering controls based upon sound radiation protection principles to achieve occupational doses and doses to members of the public that are as low as is reasonably achievable; LBP-10-22, 72 NRC 661 (2010)

licensees subject to the provisions of EPA's generally applicable environmental radiation standards in 40 C.F.R. Part 190 shall comply with those standards; LBP-09-19, 70 NRC 433 (2009)

limits for individual members of the public are specified in 10 C.F.R. 20.1301-20.1302; CLI-09-16, 70 NRC 33 (2009)

New Jersey's restricted release criteria are compatible with NRC rules; CLI-10-8, 71 NRC 142 (2010)

NRC includes the EPA drinking water standard in the technical specifications that a licensee must meet; LBP-07-9, 65 NRC 539 (2007)

NRC regulations establish what the agency has found to be adequately protective radiological dose limits, and petitioners may not use an adjudicatory proceeding to challenge this generic regulatory framework; CLI-08-17, 68 NRC 231 (2008)

NRC's radiation doses and standards for members of the public may apply on a per-reactor basis, a per-license basis, or a per-site basis; LBP-07-9, 65 NRC 539 (2007)

numerical limits for radiation exposure, including occupational dose limits and radiation dose limits for members of the public, are provided; LBP-09-19, 70 NRC 433 (2009)

performance objectives for a near-surface disposal facility require that the relevant licensing entity examine whether, at any particular time after active institutional controls are removed, the section 61.41 dose limitations will be met for an inadvertent intruder; LBP-06-8, 63 NRC 241 (2006)

petitioners' assertion that no exposure levels are safe is an impermissible challenge to the exposure limits set forth in the NRC's regulations; LBP-09-16, 70 NRC 227 (2009)

the Commission has acknowledged applicability of EPA radiation exposure standards under 40 C.F.R. Part 190; LBP-09-19, 70 NRC 433 (2009)

the EPA standard of 25 mrem only applies to the uranium fuel cycle, which only includes the generation of electricity by a light-water-cooled nuclear power plant; LBP-07-9, 65 NRC 539 (2007)

the preclosure safety analysis for the high-level waste repository must demonstrate that in the event of Category 1 or Category 2 event sequences, prescribed dose limits will be met; CLI-09-14, 69 NRC 580 (2009)

unless and until specific numerical guidelines for maintaining effluent releases ALARA for non-LWRs are implemented, compliance with ALARA requirements will be determined on a case-by-case basis in the context of a future COL or CP application referencing the early site permit; CLI-07-27, 66 NRC 215 (2007)

SUBJECT INDEX

upper limitations on occupational doses are specified in 10 C.F.R. 20.1201-20.1208; CLI-09-16, 70 NRC 33 (2009)

DOSE, RADIOLOGICAL

if chelating agents are to be comingled in radioactive waste liquids or used to mitigate an accidental release, then they have to be specifically accounted for in the dose analyses; LBP-09-19, 70 NRC 433 (2009)

licensee must use procedures and controls to reduce occupational doses and doses to members of the public to levels that are as low as reasonably achievable; CLI-09-16, 70 NRC 33 (2009)

showing that estimated dose consequences associated with operation under extended power uprate conditions can be expected to increase by the 20% power level change establishes that the proposed EPU creates an obvious potential for offsite consequences; LBP-07-10, 66 NRC 1 (2007)

the limiting standard for light-water-cooled reactors is 10 C.F.R. 20.1301(e), because a licensee within the uranium fuel cycle could not release the 100-mrem limit permitted by section 20.1301(a) without necessarily violating the 25-mrem limit of section 20.1301(e) that applies to the entire site; CLI-07-27, 66 NRC 215 (2007)

See also Total Effective Dose Equivalent

DOUBLE CONTINGENCY PRINCIPLE

process designs should incorporate sufficient factors of safety to require at least two unlikely, independent, and concurrent changes in process conditions before a criticality accident is possible; LBP-06-17, 63 NRC 747 (2006)

DRAFT ENVIRONMENTAL IMPACT STATEMENT

a board may consider environmental contentions contesting applicant's environmental report as challenges to NRC's subsequent DEIS so long as the DEIS analysis or discussion at issue is essentially *in para materia* with the ER analysis or discussion that is the focus of the contention; LBP-08-2, 67 NRC 54 (2008); LBP-08-3, 67 NRC 85 (2008)

a new contention is usually considered timely if filed within 30 days of publication of the DEIS; LBP-10-16, 72 NRC 361 (2010)

although the DEIS may rely in part on applicant's environmental report, Staff must independently evaluate and be responsible for the reliability of all information used in the DEIS; LBP-09-19, 70 NRC 433 (2009)

content of Staff's DEIS is discussed; LBP-09-19, 70 NRC 433 (2009)

for an early site permit, NRC Staff must address the matters specified in 10 C.F.R. 51.45; LBP-09-7, 69 NRC 613 (2009)

if admitted contentions are resolved before the FEIS is issued so as to conclude the contested portion of a proceeding, an intervenor could timely seek to litigate contentions regarding FEIS data or conclusions that differ significantly from the ER or the DEIS; LBP-07-3, 65 NRC 237 (2007)

petitioners must raise NEPA contentions in response to the environmental report, rather than await the agency's DEIS; LBP-09-4, 69 NRC 170 (2009)

Staff is required to independently evaluate and be responsible for the reliability of all information used in the DEIS; LBP-09-7, 69 NRC 613 (2009)

there may be mistakes in the DEIS, but in an NRC adjudication, it is intervenors' burden to show their significance and materiality; LBP-07-3, 65 NRC 237 (2007)

when filed with an intervention petition, an environmental contention and its associated bases quite properly address an applicant's ER, rather than the then still-being-developed Staff DEIS; LBP-08-2, 67 NRC 54 (2008); LBP-08-3, 67 NRC 85 (2008)

DREDGING

adequacy of the final environmental impact statement discussion and analysis of the extent and duration of any dredging, the impacts on water quality, the disposal of any dredged material, and the impacts on aquatic biota as a result of any dredging is decided; LBP-09-7, 69 NRC 613 (2009)

the fact that disposal of dredged or fill material in wetlands is regulated by the Environmental Protection Agency and the U.S. Army Corps of Engineers does not render a contention inadmissible; LBP-09-10, 70 NRC 51 (2009)

where there is no proposal for major federal action within the meaning of National Environmental Policy Act § 102(C), there is no requirement for a NEPA analysis of dredging; CLI-10-5, 71 NRC 90 (2010)

SUBJECT INDEX

DROUGHT

this issue clearly falls within any reasonable consideration of the concepts expressed in 10 C.F.R. 51.45; LBP-08-6, 67 NRC 241 (2008)

DRY CASK STORAGE

the stability of ISFSI concrete pads holding dry spent fuel storage casks during earthquakes is addressed; DD-07-2, 65 NRC 365 (2007)

to the extent that petitioners argue that the provisions of 10 C.F.R. 50.54(hh) should be applied to dry cask storage, they may file a rulemaking petition with the Commission; LBP-09-17, 70 NRC 311 (2009)

DRYWELL

the Commission asks the parties to address the whether the structural analysis that applicant has committed to perform on its primary containment drywell shell matches or bounds the sensitivity analyses that one of the ALSBP judges would impose; CLI-08-10, 67 NRC 357 (2008)

DUE PROCESS

an NRC Staff decision to grant a power uprate license amendment does not leave intervenors without effective redress because the license amendment can be revoked or conditioned after a full hearing if the board determines that the license amendment should not have been granted; CLI-06-8, 63 NRC 235 (2006)

granting a license amendment prior to a board decision does not circumvent intervenors' right to a hearing; CLI-06-8, 63 NRC 235 (2006)

in ASLBP proceedings, collateral estoppel may bar a party from relitigating the admissibility of a contention when an earlier board refused to admit the same contention in an earlier proceeding involving the same facility; LBP-08-23, 68 NRC 679 (2008)

petitioners' allegation that NRC regulations are insufficient to protect the constitutional right of due process under the law by allowing citizens to be exposed to impermissible levels of radiation is inadmissible; LBP-08-16, 68 NRC 361 (2008)

the right to hold specific private employment and to follow a chosen profession free from unreasonable governmental interference comes within the liberty and property concepts of the Fifth Amendment; LBP-06-13, 63 NRC 523 (2006)

the subject of an enforcement action has a property interest in his employment-related license sufficient to invoke the procedural protections of the Due Process Clause, the vindication of which invokes a public interest; LBP-06-25, 64 NRC 367 (2006)

EARLY SITE PERMIT APPLICATION

a description and safety assessment of the site must include an analysis and evaluation of the major structures, systems, and components of the facility that bear significantly on the acceptability of the site under radiological consequence evaluation factors; LBP-09-19, 70 NRC 433 (2009)

all reasonable alternatives to the site proposed for the early site permit are to be identified; LBP-09-19, 70 NRC 433 (2009)

an applicant may make a number of choices regarding the scope, and therefore the content, of its application; LBP-06-28, 64 NRC 460 (2006)

any gaps and questions concerning groundwater transport and hydrology safety issues are acceptable and deferred until the construction permit or combined license stage; LBP-07-9, 65 NRC 539 (2007)

any power level selected at the COL stage other than the target value used in the environmental impact statement's alternative energy analysis for the early site permit would constitute new information that, if found to be significant, would have to be evaluated at the construction permit or combined license application stage; CLI-07-14, 65 NRC 216 (2007)

applicant is excused from examination, in its environmental report, of the benefits of the proposed project or analysis regarding energy alternatives, and relevant regulations may not be construed to require that the draft or final environmental impact statement include an assessment of the benefits of the proposed action; LBP-06-28, 64 NRC 460 (2006)

applicant may propose for review and approval by the NRC major features of its emergency plan or a complete and integrated emergency plan; LBP-06-28, 64 NRC 460 (2006)

applicant may request that a limited work authorization be issued in conjunction with the ESP; LBP-09-19, 70 NRC 433 (2009)

SUBJECT INDEX

applicant may submit a plan for redress of the site, which if accepted as part of an approved ESP would allow an applicant to perform certain preconstruction activities without additional authorization; LBP-06-28, 64 NRC 460 (2006)

applicant must describe equipment to be installed to maintain control over radioactive materials in gaseous and liquid effluents produced during normal reactor operations, including expected operational occurrences; LBP-09-19, 70 NRC 433 (2009)

applicant must file an environmental report, addressing the five factors of 10 C.F.R. 51.45(b)(1)-(5); LBP-09-19, 70 NRC 433 (2009)

applicant must submit a safety assessment that includes an analysis of a fission product release from an accident, using the expected demonstrable containment leak rate and any fission product cleanup systems intended to mitigate the consequences of the accidents; LBP-09-19, 70 NRC 433 (2009)

applicant's environmental report must include an analysis of alternatives available for reducing or avoiding adverse environmental effects; LBP-09-19, 70 NRC 433 (2009)

as partial construction permit applications, ESP applications are subject to the Atomic Energy Act hearing requirement, as well as all procedural requirements in 10 C.F.R. Part 2; LBP-09-19, 70 NRC 433 (2009)

for applications filed after January 2, 1971, applicant must identify design objectives and means to maintain levels of radioactive effluents as low as is reasonably achievable; LBP-09-19, 70 NRC 433 (2009)

if applicant determines that there are physical characteristics that could pose a significant impediment to the development of emergency plans, the application must identify mitigation measures; LBP-09-19, 70 NRC 433 (2009)

in its review, Staff must consider physical characteristics of the site, specifically noting that factors important to hydrological radionuclide transport must be obtained from onsite measurements; LBP-09-19, 70 NRC 433 (2009)

it is appropriate to defer issues concerning the effects of short-term damage to the environment and the irretrievable commitment of resources to the construction permit or combined license stage; CLI-07-14, 65 NRC 216 (2007)

NRC provides detailed guidance for Staff personnel reviewing the safety aspects of applications; LBP-09-19, 70 NRC 433 (2009)

NRC Staff is required to prepare an environmental impact statement in connection with issuance of an ESP; LBP-09-19, 70 NRC 433 (2009)

NRC Staff's environmental impact statement prepared during review of an early site permit application must include an evaluation of alternative sites to determine whether there is any obviously superior alternative to the site proposed; LBP-09-19, 70 NRC 433 (2009)

severe accident mitigation design alternative issues are resolved for an application referencing a design control document if the specific site parameters are covered by the site parameters assumed in the DCD SAMDA analysis; LBP-09-19, 70 NRC 433 (2009)

Staff is to review ESP applications according to the applicable standards set out in 10 C.F.R. Part 50 and its appendices and 10 C.F.R. Part 100; LBP-09-19, 70 NRC 433 (2009)

the Commission may defer resolution of severe accident mitigation alternatives until the construction permit or combined license stage; LBP-09-19, 70 NRC 433 (2009)

the environmental report for an ESP application may evaluate the environmental impacts of a reactor or reactors falling within the site characteristics and design parameters for the ESP application; LBP-09-19, 70 NRC 433 (2009)

the required content of applicant's environment report is described; LBP-09-7, 69 NRC 613 (2009)

the site safety analysis report filed with an early site permit application must include information that identifies physical characteristics of the proposed site, such as egress limitations from the area surrounding the site, that could pose a significant impediment to the development of emergency plans; LBP-09-19, 70 NRC 433 (2009)

the site safety analysis report submitted with an early site permit application must contain the seismic, meteorological, hydrologic, and geologic characteristics of the proposed site; LBP-09-19, 70 NRC 433 (2009)

SUBJECT INDEX

where applicant's amended license application has eliminated the dispute, there remains no genuine dispute of material fact and applicant is entitled to summary disposition as a matter of law; LBP-06-24, 64 NRC 360 (2006)

with regard to alternative sites for an early site permit, NRC Staff must evaluate both the process (i.e., methodology) used by the applicant and the reasonableness of the product (e.g., potential sites) identified by that process; LBP-09-19, 70 NRC 433 (2009)

EARLY SITE PERMIT PROCEEDING

a baseline NEPA issue that a board must make in a mandatory hearing on an ESP application is whether the requirements of NEPA § 102(2)(A), (C), and (E) and 10 C.F.R. Part 51 have been met; LBP-07-9, 65 NRC 539 (2007)

a baseline NEPA issue that a board must make in a mandatory hearing is to independently consider the final balance among conflicting factors contained in the record of the proceeding with a view to determining the appropriate action to be taken; LBP-07-9, 65 NRC 539 (2007)

a baseline NEPA issue that a board must make in a mandatory proceeding is whether a construction permit should be issued, denied, or appropriately conditioned to protect environmental values; LBP-07-9, 65 NRC 539 (2007)

a board must determine whether the application and the record of the proceeding contain sufficient information, and the review of the application by the NRC Staff has been adequate, to support a negative finding on the question of whether the issuance of an early site permit will be inimical to the common defense and security or to the health and safety of the public; LBP-07-9, 65 NRC 539 (2007)

a board's initial decision is not effective until the Commission reviews it and takes final agency action; LBP-07-9, 65 NRC 539 (2007)

because an early site permit is a type of construction permit, a mandatory hearing is required by the Atomic Energy Act and thus the case will continue as an uncontested proceeding; LBP-06-24, 64 NRC 360 (2006)

benefit-cost analysis can be postponed until the reactor licensing stage; LBP-07-9, 65 NRC 539 (2007)

boards should conduct a simple sufficiency review of uncontested issues; LBP-06-28, 64 NRC 460 (2006)

boards should not second-guess underlying technical or factual findings by the NRC Staff; LBP-06-28, 64 NRC 460 (2006)

in an uncontested proceeding, the board must narrow its inquiry to those topics or sections in NRC Staff documents that it deems most important and should concentrate on portions of the documents that do not on their face adequately explain the logic, underlying facts, and applicable regulations and guidance; LBP-07-1, 65 NRC 27 (2007)

in complying with the mandate of the Atomic Energy Act, the board must independently evaluate the record and the adequacy of the Staff's review and then to decide six fundamental issues that are specified by the law and regulations; LBP-07-9, 65 NRC 539 (2007)

in the mandatory proceeding, the board must review the sufficiency of the record and the sufficiency of the NRC Staff's review, and decide if they are adequate to support the Staff's proposed findings; LBP-07-9, 65 NRC 539 (2007)

issues resolved in the ESP proceeding are treated as resolved in a subsequent construction permit or COL proceeding that references the ESP, unless a contention is admitted under narrowly specified conditions; CLI-07-12, 65 NRC 203 (2007)

licensing boards must perform two types of inquiries with respect to safety matters in uncontested proceedings; LBP-06-28, 64 NRC 460 (2006)

on NEPA baseline issues in the mandatory hearing, the Board must reach its own independent determination; LBP-07-9, 65 NRC 539 (2007)

on uncontested safety and environmental issues, the board's role is analogous to that of an appellate court applying the substantial evidence test; LBP-07-9, 65 NRC 539 (2007)

Staff's underlying technical and factual findings are not open to board reconsideration unless, after a review of the record, the board finds the NRC Staff review inadequate or its findings insufficient; LBP-06-28, 64 NRC 460 (2006)

the board must decide whether, taking into consideration the site criteria contained in 10 C.F.R. Part 100, a reactor or reactors, having the characteristics that fall within the parameters for the site, can be constructed without undue risk to the health and safety of the public; LBP-07-9, 65 NRC 539 (2007)

SUBJECT INDEX

- the NRC Staff's underlying technical and factual findings on an ESP application are not open to board reconsideration unless, after a review of the record, the board finds the NRC Staff review inadequate or its findings insufficient; LBP-07-9, 65 NRC 539 (2007)
- the overriding NEPA issue that a board must determine in a mandatory proceeding on an ESP application is whether the NEPA review conducted by the NRC Staff has been adequate; LBP-07-9, 65 NRC 539 (2007)
- the scope of the licensing board's environmental review in an uncontested proceeding is discussed; LBP-07-1, 65 NRC 27 (2007)
- the scope of the licensing board's safety review in an uncontested early site permit proceeding is described; LBP-07-1, 65 NRC 27 (2007)
- the three NEPA-related factors that the board is required to address are discussed; LBP-06-28, 64 NRC 460 (2006)
- uncontested ESP proceedings are still subject to a mandatory hearing; CLI-07-12, 65 NRC 203 (2007)
- where the Standard Review Plan had not been followed, no specific Regulatory Guide was applicable, a Regulatory Guide required adaptation, or the Staff's logic was incomplete or unclear, the Board sought a thorough explanation of the Staff's rationale for the process it ultimately adopted along with its conclusions, and examined that process and those conclusions to ensure they were well founded in fact and logic; LBP-06-28, 64 NRC 460 (2006)
- EARLY SITE PERMIT PROCEEDINGS**
- a matter need not be actually litigated in order to be "resolved" in an ESP proceeding; LBP-08-15, 68 NRC 294 (2008)
- all environmental issues concerning severe accident mitigation design alternatives associated with the information in the NRC's environmental assessment for a certified design are considered resolved; LBP-09-19, 70 NRC 433 (2009)
- an environmental contention is not litigable in a combined license proceeding if it has already been resolved in an ESP proceeding; CLI-09-3, 69 NRC 68 (2009)
- board authority to make findings on limited work authorizations is discussed; LBP-09-19, 70 NRC 433 (2009)
- compliance with applicable radiation standards is deferred at the ESP stage, and can only be determined in a COL or CP proceeding; CLI-07-27, 66 NRC 215 (2007)
- environmental findings that a board must make to authorize issuance of an ESP are described; LBP-09-19, 70 NRC 433 (2009)
- for purposes of the mandatory/uncontested portion of an ESP proceeding, the board takes official notice of publicly available documents associated with the Staff's safety and environmental reviews; LBP-09-19, 70 NRC 433 (2009)
- given that the *Federal Register* notice defines the scope of the issues that may properly be raised in a request for a hearing, it also defines the scope of the issues that could reasonably be deemed resolved during an ESP proceeding; LBP-08-15, 68 NRC 294 (2008)
- in a mandatory ESP hearing, NRC must address six issues; CLI-07-27, 66 NRC 215 (2007)
- in a mandatory hearing, a licensing board must narrow its inquiry to those topics or sections in Staff documents that it deems most important and should concentrate on portions of the documents that do not on their face adequately explain the logic, underlying facts, and applicable regulations and guidance; LBP-09-19, 70 NRC 433 (2009)
- items for which sufficient information is lacking at the ESP stage of the licensing process may be subject to deferral for consideration at the combined license stage of the process; LBP-09-19, 70 NRC 433 (2009)
- matters resolved in an ESP proceeding are considered resolved in a subsequent combined license proceeding when the COL application references the ESP, subject to certain exceptions; LBP-08-15, 68 NRC 294 (2008); LBP-08-23, 68 NRC 679 (2008)
- on baseline NEPA issues in early site permit cases, boards must reach their own independent determination, but should do so without second-guessing underlying technical or factual findings by the NRC Staff; LBP-09-19, 70 NRC 433 (2009)
- prior to issuance of an ESP, the findings required by 10 C.F.R. Part 51, Subpart A must be made; LBP-09-19, 70 NRC 433 (2009)

SUBJECT INDEX

- safety findings that a board must make for issuance of an ESP are clarified; LBP-09-19, 70 NRC 433 (2009)
- the mandatory hearing board is required to answer six questions for uncontested proceedings; LBP-08-15, 68 NRC 294 (2008)
- when an ESP is issued with an associated limited work authorization, the board must find relative to the LWA that any significant adverse environmental impact resulting from activities requested under 10 C.F.R. 52.17(c) can be redressed; LBP-09-19, 70 NRC 433 (2009)
- when reviewing an ESP application in an uncontested proceeding, licensing boards are to conduct a simple sufficiency review rather than a de novo review on both Atomic Energy Act and National Environmental Policy Act issues; LBP-09-19, 70 NRC 433 (2009)
- with respect to certain NEPA findings, boards in ESP proceedings are to make independent environmental judgments, though they need not rethink or redo every aspect of the NRC Staff's environmental findings or undertake their own fact-finding activities; LBP-09-19, 70 NRC 433 (2009)
- EARLY SITE PERMITS**
- a board shall determine whether, taking into consideration the site criteria contained in 10 C.F.R. Part 100, a reactor having characteristics that fall within the parameters for the site, and which meets the terms and conditions proposed by the Staff in the Safety Evaluation Report, can be constructed and operated without undue risk to the health and safety of the public; LBP-06-28, 64 NRC 460 (2006)
- a combined license application reference to an ESP must include a safety analysis report that either includes or incorporates by reference the ESP site safety analysis report and that contains additional information and analyses sufficient to demonstrate that the design of the facility falls within the site characteristics and design parameters specified in the ESP; LBP-09-19, 70 NRC 433 (2009)
- a contention arising from a matter resolved in an early site permit proceeding is within the scope of a combined license proceeding that references the ESP if it concerns whether emergency planning matters resolved in the ESP should be revisited; LBP-08-15, 68 NRC 294 (2008)
- a future applicant for a construction permit, an operating license, or a combined license may seek early NRC review and approval of some siting and environmental issues, and therefore, "bank" a site for up to 20 years in anticipation of its future reference in an application for a CP or COL; LBP-06-28, 64 NRC 460 (2006)
- a safety contention arising from a matter resolved in an early site permit proceeding is within the scope of a combined license proceeding that references the ESP if it concerns whether a term or condition in the ESP has been met; LBP-08-15, 68 NRC 294 (2008)
- a safety contention arising from a matter resolved in an early site permit proceeding is within the scope of a combined license proceeding that references the ESP if it concerns whether a variance from the ESP requested by the COL applicant is unwarranted or should be modified; LBP-08-15, 68 NRC 294 (2008)
- a site redress plan remains in effect for an EST applicant even if the ESP with which the LWA is issued is not referenced in a construction permit or COL application during the period that the ESP remains valid; LBP-09-19, 70 NRC 433 (2009)
- agencies are required to use a systematic, interdisciplinary approach that will ensure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking that may have an impact on man's environment; LBP-07-1, 65 NRC 27 (2007)
- agencies must include a detailed statement on the environmental impact of the proposed action, any unavoidable adverse environmental effects, alternatives to the proposed action, the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented; LBP-07-1, 65 NRC 27 (2007)
- although a presiding officer should issue a separate partial initial decision regarding a limited work authorization request, the board finds no practical or logical basis for separating its consideration of the adequacy of the LWA request from its determination regarding the early site permit with which it is associated; LBP-09-19, 70 NRC 433 (2009)
- an applicant who may apply for a construction permit under Part 50, or a combined license under Part 52, may apply for an ESP; LBP-09-19, 70 NRC 433 (2009)

SUBJECT INDEX

an ESP focuses on the suitability of a proposed site, and is defined as Commission approval for a site or sites for one or more nuclear power facilities; LBP-08-15, 68 NRC 294 (2008); LBP-09-19, 70 NRC 433 (2009)

an ESP is a partial construction permit, whose issuance does not authorize an applicant to construct nuclear power reactors; CLI-07-27, 66 NRC 215 (2007); LBP-08-15, 68 NRC 294 (2008)

an ESP is considered a partial construction permit, and thus requires action by the Commission even in the absence of any appeal from the board's initial decision; CLI-07-12, 65 NRC 203 (2007)

an ESP specifies design parameters for the site; LBP-09-19, 70 NRC 433 (2009)

an initial decision directing the issuance or amendment of a limited work authorization or an early site permit is immediately effective upon issuance unless the presiding officer finds that good cause has been shown by a party why the initial decision should not become immediately effective; LBP-09-19, 70 NRC 433 (2009)

any permit conditions imposed that are not met before a combined license referencing the ESP is issued will attach to the combined license; LBP-09-19, 70 NRC 433 (2009)

applicant has the option of either proposing a complete and integrated emergency plan or proposing major features of the emergency plan for review and approval by NRC, in consultation with the Department of Homeland Security; LBP-09-19, 70 NRC 433 (2009)

applicant is authorized to perform certain site preparation activities that would otherwise only be permitted following the issuance of a Part 50 construction permit or a Part 52 combined license; LBP-09-19, 70 NRC 433 (2009)

applicant is not required to provide detailed design information concerning each of the types of reactor designs covered by the application and may provide a plant parameter envelope instead; LBP-07-9, 65 NRC 539 (2007)

applicant may request that a limited work authorization be issued in conjunction with the ESP; LBP-09-19, 70 NRC 433 (2009)

applicant must perform an evaluation and analysis of the postulated fission product release to evaluate the offsite radiological consequences; LBP-09-19, 70 NRC 433 (2009)

applicant's environmental report must include an evaluation of alternative sites to determine whether there is any obviously superior alternative to the site proposed; LBP-09-19, 70 NRC 433 (2009)

applicant's initial consideration of DOE's Portsmouth, Ohio, and SRS sites as alternative sites was reasonable as part of its alternative site analysis; LBP-09-19, 70 NRC 433 (2009)

at the combined license stage, applicant may reference both an ESP and a standard design certification in its application; LBP-09-19, 70 NRC 433 (2009)

before an early site permit can be made effective, the Commission must review and approve the Atomic Safety and Licensing Board's initial decision authorizing its issuance; CLI-07-4, 65 NRC 24 (2007); CLI-07-7, 65 NRC 122 (2007)

before an early site permit can be made effective, the Commission must review and approve the licensing board's initial decision authorizing its issuance; CLI-07-23, 66 NRC 35 (2007)

brownfield sites owned by companies other than applicant may reasonably be excluded as alternative sites; LBP-09-19, 70 NRC 433 (2009)

ESPs are partial construction permits and, as such, are subject to the mandatory hearing requirements under AEA § 189a; LBP-07-1, 65 NRC 27 (2007)

even when an ESP does not authorize any construction activity, the NRC Staff is required by Council on Environmental Quality regulations to consider actions that are related to other actions that could lead to a significant impact on the environment; LBP-07-1, 65 NRC 27 (2007)

factors to be considered when evaluating a proposed site include population density and use characteristics, the nature and proximity of man-related hazards such as airports, and the physical characteristics of the site including seismology, meteorology, geology, and hydrology; LBP-07-9, 65 NRC 539 (2007)

for purposes of the environmental impact statement, the potential construction and operation of the plant or plants for which the early site permit is being obtained is the proposed action that must be the focus of the board's NEPA review; LBP-07-1, 65 NRC 27 (2007)

for uncontested applications, section 52.21, the notice requirements of section 2.104(b)(2), and the Notice of Hearing itself outline a board's review obligation; LBP-06-28, 64 NRC 460 (2006)

SUBJECT INDEX

- if a combined operating license or construction permit is never issued or ultimately denied, the ESP permit holder would be required to redress even limited site preparation activities and restore the site; LBP-07-9, 65 NRC 539 (2007)
- if applicant chooses to submit a complete and integrated emergency plan, applicant also is required to make a good-faith effort to obtain a certification from federal, state, and local governmental agencies with emergency planning responsibilities; LBP-09-19, 70 NRC 433 (2009)
- if applicant submits a complete and integrated emergency plan in conjunction with an ESP application, NRC Staff must find that the emergency plans provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency; LBP-09-19, 70 NRC 433 (2009)
- if granted, an ESP evidences Commission approval of a site for one or more nuclear power facilities; LBP-09-19, 70 NRC 433 (2009)
- if limited work authorization activities are approved by NRC in conjunction with an ESP, the ESP as issued shall specify those authorized activities; LBP-09-19, 70 NRC 433 (2009)
- if the combined license application references an ESP, applicant must demonstrate that the chosen design falls within the parameters specified in the ESP or, on the safety side, request a variance; LBP-09-19, 70 NRC 433 (2009)
- if the Commission decides to authorize issuance of an ESP, the issued ESP must specify the site characteristics, design parameters, and terms and conditions of the ESP that the Commission deems appropriate; LBP-09-19, 70 NRC 433 (2009)
- if the proposed siting of a plant slated for an ESP involves unresolved conflicts concerning alternative uses of available resources, then this discussion must be sufficiently complete to allow the Staff to develop and explore appropriate alternatives to the ESP pursuant to NEPA § 102(2)(E); LBP-09-19, 70 NRC 433 (2009)
- in reaching its determinations on the baseline National Environmental Policy Act issues, the board will not second-guess the underlying technical or factual findings of the NRC Staff, but if it finds that the Staff review is incomplete or that the Staff findings lack sufficient explanation, it will make its own determination of technical and factual findings; LBP-07-1, 65 NRC 27 (2007)
- it is not reasonable or necessary to consider, as a system design alternative to the application for an ESP for Units 3 and 4, the imposition of water conservation measures on preexisting Units 1 and 2; LBP-07-9, 65 NRC 539 (2007)
- noninclusion of DOE sites in alternative site analysis that are far outside applicant's region of interest is reasonable; LBP-09-19, 70 NRC 433 (2009)
- NRC Staff is required to prepare an environmental impact statement in connection with the issuance of an ESP; LBP-07-1, 65 NRC 27 (2007); LBP-09-7, 69 NRC 613 (2009)
- NRC Staff must first prepare a draft environmental impact statement; LBP-09-7, 69 NRC 613 (2009)
- preconstruction activities that do not require NRC approval are discussed; LBP-09-19, 70 NRC 433 (2009)
- representations, assumptions, and unresolved issues discussed in the final environmental impact statement neither place limitations on the ESP or the ESP holder, nor bind a CP or COL applicant in the preparation of future applications referencing the ESP; CLI-07-27, 66 NRC 215 (2007)
- seismic siting factors are part of the safety determination a board must make; LBP-07-9, 65 NRC 539 (2007)
- Staff's environmental impact statement for an ESP need not include an assessment of the benefits such as need for power; LBP-07-1, 65 NRC 27 (2007)
- the Commission may appropriately condition the license approved by the board; CLI-07-12, 65 NRC 203 (2007)
- the Commission must hold a hearing on each application for a construction permit for a facility; LBP-07-1, 65 NRC 27 (2007)
- the environmental impact statement must focus on the environmental effects of construction and operation of reactors that have the characteristics of the postulated site parameters, and must include an evaluation of alternatives to determine whether there are any obviously superior options to the proposed action; LBP-07-1, 65 NRC 27 (2007)

SUBJECT INDEX

- the inspections, tests, analyses, and acceptance criteria associated with emergency planning reflect those aspects of the emergency plan that cannot be described or completed until the plant is further along in the licensing and construction process; LBP-09-19, 70 NRC 433 (2009)
- the main differences between an early partial decision and an early site permit are that the early partial decision lasts only 5 years and resolves only those site suitability issues that the applicant specifically asks to resolve, whereas the early site permit lasts for 20 years and once it is issued it covers the site; LBP-07-9, 65 NRC 539 (2007)
- the potential for tritium contamination of water is primarily a NEPA issue because it involves the environmental impacts of the proposed early site permit and possible mitigation measures, but also has a safety element because safety regulations require that exposure to radiation be as low as reasonably achievable; LBP-07-9, 65 NRC 539 (2007)
- the proposed site for the nuclear reactors is “banked” or approved and the regulations applicable to the site are frozen as of the date that the ESP is issued; LBP-07-9, 65 NRC 539 (2007)
- the Staff is required to provide an environmental justice analysis in greater detail when the low-income or minority population thresholds are met; LBP-07-9, 65 NRC 539 (2007)
- to grant an ESP, the Commission must find that the proposed inspections, tests, analyses, and acceptance criteria, including any on emergency planning, are necessary and sufficient, within the scope of the ESP, to provide reasonable assurance that the facility has been constructed and will be operated in conformity with the license, the provisions of the Act, and the Commission’s regulations; LBP-09-19, 70 NRC 433 (2009)
- when a combined license application references an ESP, neither applicant nor Staff needs to address environmental issues resolved in the ESP proceeding unless new and significant information arises on those issues; LBP-10-1, 71 NRC 165 (2010)
- when a proceeding involving an application for a construction permit is uncontested, the Board will not conduct a de novo review, but rather will conduct a simple sufficiency review of the uncontested issues; LBP-07-1, 65 NRC 27 (2007)
- when one or more particular environmental impacts cannot be meaningfully assessed at the ESP stage, those matters may be designated as “unresolved,” provided they do not interfere with the Staff’s ability to determine whether there is any obviously superior alternative to the proposed site; CLI-07-27, 66 NRC 215 (2007)
- EARTHQUAKE MOTION**
- the stability of ISFSI concrete pads holding dry spent fuel storage casks during earthquakes is addressed; DD-07-2, 65 NRC 365 (2007)
- EARTHQUAKES**
- contention alleging a failure to evaluate the impact of a severe accident at one unit on other units when the initiating event is an external event such as an earthquake is found inadmissible; LBP-10-10, 71 NRC 529 (2010)
- contention that the environmental report is based on incomplete information because a new earthquake fault has been discovered within 600 meters of nuclear reactors and the results of studies concerning the new fault will be available in the near term is admissible; LBP-10-15, 72 NRC 257 (2010)
- ECONOMIC EFFECTS**
- assertions that building two new nuclear reactors in a troubled economy is fiscally irresponsible is outside the scope of a combined license proceeding; LBP-09-10, 70 NRC 51 (2009)
- if petitioner has proffered an admissible contention asserting an environmentally preferable alternative to the proposed reactors, this also would trigger the requirement that the environmental report contain cost estimates; CLI-10-9, 71 NRC 245 (2010)
- impact of a proposed action on ratepayers is outside the scope of a NEPA analysis; LBP-10-14, 72 NRC 101 (2010)
- it is inappropriate for the agency to consider economic costs when no environmentally preferable alternative has been identified; CLI-10-9, 71 NRC 245 (2010)
- motion for summary disposition of contention questioning applicant’s handling of its severe accident mitigation alternatives analysis; LBP-07-13, 66 NRC 131 (2007)
- new evidence that potentially alters the financial cost-benefit analysis, but which does not significantly affect the physical environment, does not warrant supplementing the environmental impact statement; CLI-06-19, 63 NRC 19 (2006)

SUBJECT INDEX

the board erred in admitting a contention concerning the economic value of wetlands without requiring petitioners to demonstrate that the proposed licensing action or no-action alternative would have any effect on wetlands; CLI-09-9, 69 NRC 331 (2009)

whether applicant will improve the general welfare, increase the standard of living, or strengthen free competition in private enterprise is not a litigable issue; LBP-08-16, 68 NRC 361 (2008)

ECONOMIC INJURY

economic harm has been held sufficient to establish standing under the Nuclear Waste Policy Act; LBP-10-11, 71 NRC 609 (2010)

economic interests of an organization representing nuclear utility members confer standing upon the organization; LBP-09-6, 69 NRC 367 (2009)

litigation inevitably results in the parties' loss of both time and money; CLI-06-18, 64 NRC 1 (2006)

ratepayer impacts are outside the scope of a combined license proceeding because the state, not the NRC, is charged with protecting ratepayers' interests; LBP-09-10, 70 NRC 51 (2009)

ECONOMIC INTERESTS

delaying the opening of the Yucca Mountain repository would inflict concrete harm on members of an organization who expend substantial sums to operate their own storage facilities; LBP-09-6, 69 NRC 367 (2009)

promotion of economic use of energy falls outside the zone of interests protected by either the Atomic Energy Act or the National Environmental Policy Act; CLI-07-18, 65 NRC 399 (2007)

to establish standing, economic interests must be linked to potential radiological or environmental risks; LBP-09-6, 69 NRC 367 (2009)

ECONOMIC ISSUES

accuracy of project cost estimates only becomes relevant if an environmentally preferable alternative has been identified; LBP-09-2, 69 NRC 87 (2009)

an agency cannot redefine the applicant's goals, and the EIS alternatives analysis should be based around the applicant's goals, including its economic goals; LBP-09-17, 70 NRC 311 (2009)

it is inappropriate for the agency to consider economic costs when no environmentally preferable alternative has been identified; CLI-10-1, 71 NRC 1 (2010)

NRC is not in the business of regulating the market strategies of licensees and leaves to them the ongoing business decisions that relate to costs and profit; LBP-09-2, 69 NRC 87 (2009)

petitioners' allegation that applicant's environmental report fails to provide reasonably current and accurate information regarding the costs of nuclear power, costs of alternative energy sources, and financial risks posed by using nuclear power as an energy source is admissible; LBP-08-16, 68 NRC 361 (2008)

quibbling over the details of an economic analysis amounts to standing NEPA on its head by asking that the license be rejected not due to environmental costs, but because the economic benefits are not as great as estimated; LBP-09-2, 69 NRC 87 (2009)

revenue decoupling is a state regulatory matter that is outside of the scope of, and not material to, the NRC licensing process; LBP-09-10, 70 NRC 51 (2009)

See also Costs; Decommissioning Funding; Financial Assurance; Financial Qualifications; Financial Resources

EFFECTIVENESS

a board's initial decision on an early site permit is not effective until the Commission reviews it and takes final agency action; LBP-07-9, 65 NRC 539 (2007); LBP-09-19, 70 NRC 433 (2009)

a renewed license takes effect immediately, with a term of up to 20 years plus the number of years remaining on the initial operating license; CLI-08-23, 68 NRC 461 (2008)

before an early site permit can be made effective, the Commission must review and approve the licensing board's initial decision authorizing its issuance; CLI-07-23, 66 NRC 35 (2007)

if a construction permit holder wishes to discontinue construction activities at a facility but continue to have its 10 C.F.R. Part 50 construction authorization remain effective, it can do so under the terms of the 1987 Commission Policy Statement on Deferred Plants; LBP-10-7, 71 NRC 391 (2010)

See also Immediate Effectiveness

ELECTRICAL EQUIPMENT

motion to reopen to introduce a new contention asserting issues related to aging management of effects of moist or wet environments on buried, below-grade, underground, or hard-to-access safety-related electrical cables is denied; LBP-10-19, 72 NRC 529 (2010)

SUBJECT INDEX

ELECTRONIC FILING

all participants in NRC proceedings must submit and serve all adjudicatory documents over the Internet or, in some cases, mail copies on electronic storage media; CLI-09-15, 70 NRC 1 (2009)

an electronic signature on a document serves as the signer's representation that the document has been subscribed in the capacity specified with full authority, that he or she has read it and knows the contents, that to the best of his or her knowledge, information, and belief the statements made in it are true, and that it is not interposed for delay; LBP-09-6, 69 NRC 367 (2009)

for good cause shown, the board grants the requests of petitioners for exemptions from compliance with the Commission's E-filing requirement; LBP-10-4, 71 NRC 216 (2010)

participants may not submit paper copies of their filings unless they seek a waiver; CLI-09-15, 70 NRC 1 (2009)

participants who believe that they have a good cause for not submitting documents electronically must file an exemption request with their initial paper filing, requesting authorization to continue to submit documents in paper format; CLI-10-4, 71 NRC 56 (2010)

petitioners will not be denied the opportunity to participate in a proceeding because of an error that can easily be corrected and that has caused no prejudice to any other participant; LBP-09-4, 69 NRC 170 (2009)

procedures for electronic filing and for obtaining waivers from e-filing requirements are described; CLI-09-15, 70 NRC 1 (2009)

requirements for high-level waste repository proceeding are specified; LBP-08-10, 67 NRC 450 (2008)

ELECTRONICALLY STORED INFORMATION

the Federal Rules of Civil Procedure were amended in 2006 to expressly include ESI; LBP-10-23, 72 NRC 692 (2010)

the term "document" as used in 10 C.F.R. 2.336, is not limited to paper documents and it refers to information stored on any medium or in any form, including ESI; LBP-10-23, 72 NRC 692 (2010)

EMBRITTLLEMENT

reactor pressure vessel integrity is within the scope of a license renewal proceeding; LBP-06-10, 63 NRC 314 (2006)

whether a plan is necessary to manage the cumulative effects of embrittlement of the reactor pressure vessels and associated internals is within the scope of a license renewal proceeding; LBP-08-13, 68 NRC 43 (2008)

EMERGENCY ACTION LEVELS

EALs are the criteria used to determine the notifications that need to be made to federal, state, and local authorities and to determine the appropriate protective responses to a particular set of emergency conditions; LBP-09-19, 70 NRC 433 (2009)

EMERGENCY BACKUP POWER

in situ leach mining facilities are not required to maintain backup power because if such a facility were to experience a power failure, uranium recovery operations would simply cease; LBP-08-24, 68 NRC 691 (2008)

licensees of plants located where there is a permanent population in excess of 15,000,000 within a 50-mile radius of the power plant are required to have backup power for the emergency notification system, including the emergency siren warning system; DD-09-1, 69 NRC 501 (2009)

system requirements for the backup power supply for the public alerting system are discussed; DD-09-1, 69 NRC 501 (2009)

EMERGENCY NOTIFICATION SYSTEM

licensees of plants located where there is a permanent population in excess of 15,000,000 within a 50-mile radius of the power plant are required to have backup power for the emergency notification system, including the emergency siren warning system; DD-09-1, 69 NRC 501 (2009)

petitioner's concerns regarding licensee's failure to implement the new emergency notification siren system in a timely manner are addressed; DD-08-2, 68 NRC 339 (2008)

petitioner's request under 10 C.F.R. 2.206 for suspension of operations and imposition of civil penalty for deficiencies in licensee's siren system is denied; DD-09-1, 69 NRC 501 (2009)

procedures must be established to provide for early notification and clear instructions to the populace within the plume exposure pathway emergency planning zone; LBP-09-16, 70 NRC 227 (2009)

SUBJECT INDEX

system requirements for the backup power supply for the public alerting system are discussed; DD-09-1, 69 NRC 501 (2009)

EMERGENCY OPERATIONS FACILITY

construction activities associated with onsite emergency facilities necessary to comply with section 50.47 and 10 C.F.R. Part 50, Appendix E require a limited work authorization; LBP-09-19, 70 NRC 433 (2009)

EMERGENCY PLANNING

a combined license application must include emergency planning information for the emergency planning zone, generally consisting of an area with a 10-mile radius from the proposed reactor; LBP-09-10, 70 NRC 51 (2009)

a combined license application must include the proposed inspections, tests, and analyses, including those applicable to emergency planning, to be performed and the acceptance criteria that are necessary and sufficient to support the Commission's finding that a COL can be granted; LBP-09-19, 70 NRC 433 (2009)

a contention arising from a matter resolved in an early site permit proceeding is within the scope of a combined license proceeding that references the ESP if it concerns whether emergency planning matters resolved in the ESP should be revisited; LBP-08-15, 68 NRC 294 (2008)

a contention that a plant's evacuation plan does not adequately protect the health and safety of public and plant workers must be denied because emergency planning is not within the scope of license renewal as a safety issue; LBP-07-11, 66 NRC 41 (2007)

adequacy of emergency planning is outside the scope of license renewal proceedings; LBP-10-13, 71 NRC 673 (2010)

an emergency evacuation issue was admitted in a license renewal proceeding because it was in the context of three of the specific input data for the severe accident mitigation alternatives analysis that license renewal applicants are required to perform; LBP-07-4, 65 NRC 281 (2007)

challenge to specific input data to the severe accident mitigation alternatives analysis could bring a contention on adequacy of an evacuation plan within the scope of license renewal; LBP-07-11, 66 NRC 41 (2007)

existence of another independent nuclear power plant within the 10-mile-radius emergency planning zone of a proposed new nuclear power plant is a significant factor for purposes of emergency planning for the new reactor; LBP-09-10, 70 NRC 51 (2009)

if an early site permit applicant determines that there are physical characteristics that could pose a significant impediment to the development of emergency plans, the application must identify measures that would mitigate or eliminate the significant impediment; LBP-09-19, 70 NRC 433 (2009)

procedures must be established to provide for early notification and clear instructions to the populace within the plume exposure pathway emergency planning zone; LBP-09-16, 70 NRC 227 (2009)

such issues are beyond the scope of license renewal proceedings; LBP-06-20, 64 NRC 131 (2006)

the site safety analysis report filed with an early site permit application must include information that identifies physical characteristics of the proposed site, such as egress limitations from the area surrounding the site, that could pose a significant impediment to the development of emergency plans; LBP-09-19, 70 NRC 433 (2009)

there is no need for a review of these issues in the context of license renewal; LBP-08-13, 68 NRC 43 (2008)

there is no requirement that such concerns must be raised in the environmental report; LBP-10-10, 71 NRC 529 (2010)

this issue is excluded from license renewal proceedings because the issue is not germane to age-related degradation or unique to the period of time covered by the license renewal; LBP-07-4, 65 NRC 281 (2007)

EMERGENCY PLANNING ZONES

existence of another independent nuclear power plant within the 10-mile-radius emergency planning zone of a proposed new nuclear power plant is a significant factor for purposes of emergency planning for the new reactor; LBP-09-10, 70 NRC 51 (2009)

potassium iodide distribution beyond the 10-mile EPZ is not necessary; LBP-09-16, 70 NRC 227 (2009)

procedures must be established to provide for early notification and clear instructions to the populace within the plume exposure pathway EPZ; LBP-09-16, 70 NRC 227 (2009)

SUBJECT INDEX

the EPZ is established based on safety considerations and is not intended for use as a boundary for assessing environmental impacts; LBP-09-16, 70 NRC 227 (2009)
the plume exposure pathway EPZ shall generally consist of an area covering a radius of about 10 miles; LBP-09-16, 70 NRC 227 (2009)

EMERGENCY PLANS

a contention questioning whether particular bits of information taken from an emergency plan are sufficiently accurate for use in computing the health and safety consequences of a severe accident, as an environmental issue, is admissible; LBP-06-23, 64 NRC 257 (2006)
an early site permit applicant has the option of either proposing a complete and integrated emergency plan or proposing major features of the emergency plan for review and approval by NRC, in consultation with the Department of Homeland Security; LBP-09-19, 70 NRC 433 (2009)
an ESP applicant may propose for review and approval by the NRC major features of its plan or a complete and integrated plan; LBP-06-28, 64 NRC 460 (2006)
challenges to the implementing procedures for a reactor emergency plan are not material in a materials license proceeding; LBP-06-12, 63 NRC 403 (2006)
content of a complete and integrated emergency plan is discussed; LBP-09-19, 70 NRC 433 (2009)
FEMA's finding on emergency plans constitutes a rebuttable presumption on questions of adequacy and implementation capability in NRC licensing proceedings; LBP-09-19, 70 NRC 433 (2009)
if applicant chooses to submit a complete and integrated emergency plan at the early site permit stage, applicant also is required to make a good-faith effort to obtain a certification from federal, state, and local governmental agencies with emergency planning responsibilities; LBP-09-19, 70 NRC 433 (2009)
if applicant submits a complete and integrated emergency plan in conjunction with an early site permit application, NRC Staff must find that the emergency plans provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency; LBP-09-19, 70 NRC 433 (2009)
if applicant submits a complete and integrated emergency plan under section 52.17(b)(2)(ii), it must include in the ESP application the proposed inspections, tests, and analyses that will be performed, and the acceptance criteria that are necessary and sufficient for the Commission's required findings for issuance of the ESP; LBP-09-19, 70 NRC 433 (2009)
in its review of emergency plans, NRC Staff must take into account FEMA's findings; LBP-09-19, 70 NRC 433 (2009)
licensees must have and follow emergency or abnormal event procedures, appropriate for the irradiation type, for a prolonged loss of electrical power; LBP-06-12, 63 NRC 403 (2006)
licensees must have and follow emergency procedures for natural phenomena as appropriate for the geographical location of the facility; LBP-06-12, 63 NRC 403 (2006)
NRC Staff's review of an integrated emergency plan focuses primarily on the applicant-prepared onsite provisions of the plans, which include the evacuation time estimate provided by applicant, and the inspections, tests, analyses, and acceptance criteria; LBP-09-19, 70 NRC 433 (2009)
the inspections, tests, analyses, and acceptance criteria associated with emergency planning reflect those aspects of the emergency plan that cannot be described or completed until the plant is further along in the licensing and construction process; LBP-09-19, 70 NRC 433 (2009)

EMERGENCY RESPONSE

emergency action levels are the criteria used to determine the notifications that need to be made to federal, state, and local authorities and to determine the appropriate protective responses to a particular set of emergency conditions; LBP-09-19, 70 NRC 433 (2009)
shutting down or derating of a nuclear power plant during flooding is not warranted because emergency response organizations can implement protective actions if necessary, regardless of local severe weather conditions or other natural disasters coincident with an emergency; DD-06-2, 63 NRC 425 (2006)

EMPLOYEE PROTECTION

operating reactor licensees are not required to implement an employee concerns program, but are required to establish and implement an effective corrective action program; DD-10-1, 72 NRC 149 (2010)
petitioner's request for action concerning deficiencies in licensee's employee concerns program is denied; DD-10-1, 72 NRC 149 (2010)

SUBJECT INDEX

the purpose of 10 C.F.R. 50.7(f) is to ensure that licensees do not enter into employment agreements that would prohibit, restrict, or otherwise discourage an employee or former employee from providing the NRC with information of regulatory significance; DD-10-1, 72 NRC 149 (2010)

EMPLOYMENT

the right to follow any of the common occupations of life is an inalienable right that was formulated as such under the phrase "pursuit of happiness" in the Declaration of Independence and it is a large ingredient in the civil liberty of the citizen; LBP-09-24, 70 NRC 676 (2009)

the right to hold specific private employment and to follow a chosen profession free from unreasonable governmental interference comes within the liberty and property concepts of the Fifth Amendment; LBP-06-13, 63 NRC 523 (2006)

the subject of an enforcement action has a property interest in his employment-related license sufficient to invoke the procedural protections of the Due Process Clause, the vindication of which invokes a public interest; LBP-06-25, 64 NRC 367 (2006)

where the government has deprived an individual of a property interest without a hearing, the government must be prepared to show an important government interest, accompanied by a substantial assurance that the deprivation is not baseless or unwarranted; LBP-09-24, 70 NRC 676 (2009)

ENDANGERED SPECIES

contention alleging that the threatened eastern fox snake inhabits the nuclear plant site and that construction activities for the new reactor will kill snakes, destroy their habitat, and might eliminate them from the area is within the scope of a combined license proceeding; LBP-09-16, 70 NRC 227 (2009)

direct, indirect, and cumulative impingement/entrainment and thermal effluent discharge impacts of the proposed cooling system intake and discharge structures on aquatic resources are discussed; LBP-09-7, 69 NRC 613 (2009)

licensing boards lack the authority to require applicant to adopt additional mitigation measures for the protection of endangered or threatened species; LBP-09-16, 70 NRC 227 (2009)

portions of a contention that allege that the environmental report failed to adequately address the zone of environmental impact, impact on listed species, and appropriate mitigation are admissible; LBP-09-10, 70 NRC 51 (2009)

the impact of extended operation on endangered or threatened species varies from one location to another, and is thus included within Category 2; LBP-07-4, 65 NRC 281 (2007)

ENERGY

NRC proceedings are not an open forums for discussing the country's need for energy and spent fuel storage; CLI-10-10, 71 NRC 281 (2010)

ENERGY AND WATER DEVELOPMENT APPROPRIATIONS ACT

NRC appropriations shall not be used to pay the expenses of, or otherwise compensate, parties intervening in regulatory or adjudicatory proceedings; LBP-09-1, 69 NRC 11 (2009)

ENERGY CONSERVATION

the generic environmental impact statement addresses the need to consider energy conservation for the no-action alternative; LBP-08-13, 68 NRC 43 (2008)

ENERGY EFFICIENCY

applicant is not obliged to examine general efficiency or conservation proposals that would do nothing to satisfy the particular project's goals of producing baseload power; LBP-09-17, 70 NRC 311 (2009)

impact of proposed energy conservation alternatives regarding demand for energy must be susceptible to a reasonable degree of proof; LBP-10-10, 71 NRC 529 (2010)

neither NRC nor applicant has the mission or authority to implement a general societal interest in energy efficiency; LBP-08-13, 68 NRC 43 (2008)

NEPA's rule of reason does not demand an analysis of energy efficiency because conservation measures are beyond the ability of an applicant to implement, and are therefore outside the scope required by a NEPA review of reasonable alternatives; LBP-08-13, 68 NRC 43 (2008)

the National Environmental Policy Act's rule of reason excludes consideration of demand-side management if the proposed new plant is intended to be a merchant plant, selling power on the open market, because it is not feasible for licensee to engage in demand-side management; CLI-10-21, 72 NRC 197 (2010)

SUBJECT INDEX

the NEPA rule of reason does not require applicant to consider energy efficiency in its NEPA analysis, because energy efficiency is not a reasonable alternative for a merchant power producer; CLI-10-1, 71 NRC 1 (2010)

See also Demand-Side Management

ENERGY POLICY ACT

licensees of plants located where there is a permanent population in excess of 15,000,000 within a 50-mile radius of the power plant are required to have backup power for the emergency notification system, including the emergency siren warning system; DD-09-1, 69 NRC 501 (2009)

ENERGY POLICY ACT OF 1992

NRC must modify its technical requirements and criteria for the high-level waste repository as necessary to be consistent with final EPA standards; CLI-08-20, 68 NRC 272 (2008)

ENERGY REORGANIZATION ACT

action of the Commission is determined by a majority vote of the members present; CLI-09-1, 69 NRC 1 (2009)

ENFORCEMENT ACTIONS

a board did not commit clear error in finding that an enforcement action target did not know certain facts despite Staff's showing that the target was on the recipient list of documents and e-mails that included those facts; CLI-10-23, 72 NRC 210 (2010)

a government motion for an indefinite enforcement hearing delay must be denied when the government fails to show that the prompt conduct of the NRC hearing process would interfere with the government's prosecution of the criminal charges and when the subject of the order has shown that the delay would continue to deprive him of his chosen livelihood and its anticipated income; LBP-06-13, 63 NRC 523 (2006)

a request that the Commission require licensees to return spent fuel pools to their original low-density storage configuration and to use dry storage for any excess fuel is not appropriate for litigation in a license renewal hearing; CLI-06-26, 64 NRC 225 (2006)

although the subject of an NRC enforcement proceeding may attempt to take advantage of his discovery rights in the civil proceeding to obtain information also useful in his criminal proceeding, that is no reason to deny him that discovery because he asserted his Fifth Amendment right not to respond to discovery requests directed to him, even if other procedural consequences might flow from that action; LBP-06-25, 64 NRC 367 (2006)

based on results of its problem identification and resolution biennial team inspections with annual followup of selected issues at licensed facilities, NRC takes any appropriate enforcement action to ensure compliance with 10 C.F.R. Part 50, Appendix B, Criterion XVI; DD-10-1, 72 NRC 149 (2010)

deliberately submitting to NRC inaccurate or incomplete information on Yucca Mountain is misconduct suitable for enforcement action; CLI-08-11, 67 NRC 379 (2008)

engaging in deliberate misconduct that caused inaccurate and incomplete information to be provided to the NRC concerning conditions at a reactor resulted in debarment from licensed activities for 5 years; LBP-09-11, 70 NRC 151 (2009)

exercise of the power of compulsory process must be carefully circumscribed when the investigative process tends to impinge upon such highly sensitive areas as freedom of speech or press, freedom of political association, and freedom of communication of ideas; LBP-09-24, 70 NRC 676 (2009)

failure of a licensee to fulfill responsibilities associated with a license amendment issued by the Staff gives rise to an enforcement issue that does not come within the purview of a license amendment adjudication; LBP-07-7, 65 NRC 507 (2007)

hydrofluoric acid exposure to licensee operators is assessed a civil monetary penalty in the amount of \$32,500 on the basis of a determined Severity Level III violation; LBP-10-18, 72 NRC 519 (2010)

if petitioners wish to propose security measures in addition to those laid out in a Staff enforcement order, their remedy is to petition NRC under 10 C.F.R. 2.206 for further enforcement action or to ask NRC to institute a rulemaking to impose broader security measures; CLI-10-3, 71 NRC 49 (2010)

in determining whether there is good cause to delay a proceeding challenging an immediately effective license suspension order, NRC evaluates five factors; LBP-06-13, 63 NRC 523 (2006)

NRC initiates the civil penalty process by issuing a notice of violation and proposed imposition of a civil penalty; DD-07-3, 65 NRC 643 (2007)

SUBJECT INDEX

NRC normally will not take enforcement action for a violation involving a problem related to engineering, design, implementing procedures, or installation, if the violation is documented in an inspection report and it meets certain criteria including the licensee's voluntary initiative to adopt the risk-informed performance-based fire protection program; DD-07-3, 65 NRC 643 (2007)

outside the adjudicatory context, a petitioner's concerns may be addressed through a request that the NRC Staff take enforcement action under section 2.206; CLI-07-8, 65 NRC 124 (2007); LBP-07-4, 65 NRC 281 (2007)

pendency of a criminal trial does not automatically toll the time for instituting a civil proceeding; LBP-06-13, 63 NRC 523 (2006)

request for an enforcement-type action where the underlying concern is the partial collapse of a cooling tower is credible and sufficient to warrant further inquiry; DD-08-1, 67 NRC 347 (2008)

requests for diagnostic evaluation team examination, safety culture assessment, and the NRC investigation at other licensee facilities are rejected for review because they are not requests for enforcement-type actions; DD-08-1, 67 NRC 347 (2008)

the subject of an enforcement action has a property interest in his employment-related license sufficient to invoke the procedural protections of the Due Process Clause, the vindication of which invokes a public interest; LBP-06-25, 64 NRC 367 (2006)

the subject of an enforcement order may benefit from more knowledge and perspective about others' roles in an incident because it might help him put his actions in a transactional context that would lessen or eliminate his responsibility for any missteps; LBP-06-25, 64 NRC 367 (2006)

to the extent that petitioners have any basis for claiming that there are current, ongoing excessive radiological releases from a facility, petitioners may seek NRC action under 10 C.F.R. 2.206; CLI-08-17, 68 NRC 231 (2008)

when the NRC Staff can, consistent with its duty to protect public health and safety, accord some form of predeprivation hearing, such a course of action is advisable in light of the important private interest in retaining employment and the fact that such a proceeding provides some opportunity for the employee to present his side of the case; LBP-09-24, 70 NRC 676 (2009)

willful violations of 10 C.F.R. 63.11 and 63.73, among others, are subject to criminal penalties; CLI-08-11, 67 NRC 379 (2008)

ENFORCEMENT ORDERS

a challenge to an enforcement order in which the petitioner contends that the order needs strengthening is prohibited; LBP-06-12, 63 NRC 403 (2006)

a challenge to immediate effectiveness must state with particularity the reasons why the enforcement order is unsound; LBP-09-24, 70 NRC 676 (2009)

a hearing challenging an immediately effective enforcement order will be conducted expeditiously, giving due consideration to the rights of the parties; LBP-09-24, 70 NRC 676 (2009)

a Staff order that neither repudiates nor rescinds any NRC safety and security requirements, but rather imposes new, more stringent security requirements that supplement those already found in NRC regulations does not amount to unlawfully promulgated regulations; CLI-10-3, 71 NRC 49 (2010)

an unexplained lapse of several years between the Staff's completion of a thorough investigation and its initiation of an immediately effective enforcement order may jeopardize both public confidence in government decisionmaking and public protection from asserted safety threats, and may require an explanation if the immediate effectiveness of the order were to be challenged; LBP-06-26, 64 NRC 431 (2006)

conviction of a crime that is identical to a charge in an enforcement order provides substantial assurance that the enforcement order was not baseless or unwarranted; LBP-09-24, 70 NRC 676 (2009)

in a challenge to an NRC Staff immediately effective enforcement order prohibiting a former licensee employee from working in NRC-licensed activities for 5 years, the licensing board finds a proposed settlement to be in the public interest, so that no adjudication is required; LBP-06-21, 64 NRC 219 (2006)

Staff may make an enforcement order immediately effective on the basis of public health and safety or a willful violation; LBP-06-26, 64 NRC 431 (2006)

the subject of an enforcement order has the right to challenge, on limited grounds, the immediate effectiveness of the order; LBP-09-24, 70 NRC 676 (2009)

SUBJECT INDEX

upon submitting for approval to work under a reciprocity agreement licensee will send a copy of the board order confirming the settlement agreement to the regulator processing the reciprocity application at least 2 weeks prior to engaging in activity authorized by the reciprocity agreement; LBP-09-12, 70 NRC 159 (2009)

ENFORCEMENT POLICY

NRC may exercise enforcement discretion for certain violations of the fire protection requirements; DD-07-3, 65 NRC 643 (2007)

NRC normally will not take enforcement action for a violation involving a problem related to engineering, design, implementing procedures, or installation, if the violation is documented in an inspection report and it meets certain criteria including the licensee's voluntary initiative to adopt the risk-informed performance-based fire protection program; DD-07-3, 65 NRC 643 (2007)

when a licensee is applying to extend its operating license, the NRC cannot address requests for enforcement action; DD-07-3, 65 NRC 643 (2007)

ENFORCEMENT PROCEEDINGS

a hearing challenging an immediately effective enforcement order will be conducted expeditiously, giving due consideration to the rights of the parties; LBP-09-24, 70 NRC 676 (2009)

a stipulation or compromise is subject to approval by the designated presiding officer, who may order such adjudication of the issues as he may deem to be required in the public interest; LBP-06-18, 63 NRC 830 (2006)

although a proximity presumption has been invoked when resolving issues of standing for cases involving reactor licensing, in a case involving an enforcement order, the standing requirement is also based on the confirmatory order itself and the adverse effect of the confirmatory order; LBP-07-16, 66 NRC 277 (2007)

although the civil discovery process could lead to the tainting of evidence in a criminal case and to the defendant's obtaining access to evidence that would provide him an unfair advantage over the government, the moving party must provide some practical applicability to the particular circumstances of the case in order for it to obtain the delay sought; LBP-06-13, 63 NRC 523 (2006)

assertion of hearing right and risk of erroneous deprivation generally are given less weight in deciding an abeyance motion unless the assertion was dilatory or perfunctory or the risk can be shown to be either quite high or vanishingly low; LBP-06-13, 63 NRC 523 (2006)

board's finding that "knowledge" does not necessarily follow simply from previous exposure to individual facts, but rather an individual must have a current appreciation of those facts and their meaning in the circumstances presented is a finding of fact, not of law; CLI-10-23, 72 NRC 210 (2010)

boards are not to consider whether enforcement orders need strengthening; LBP-07-16, 66 NRC 277 (2007)

boards should not be in the position of upholding Staff enforcement orders on legal theories that the Staff did not and does not embrace and in any event do not fit the circumstances of the case before them; LBP-09-24, 70 NRC 676 (2009)

challenges to NRC's authority to engage in administrative dispute resolution is beyond the scope of enforcement proceedings; LBP-08-14, 68 NRC 279 (2008)

claims by a nonlicensee to the effect that the root causes or facts underpinning a confirmatory order are inaccurate are not valid claims in an enforcement proceeding; LBP-08-14, 68 NRC 279 (2008)

delay of a proceeding is allowed only if the Staff can demonstrate an important government interest coupled with factors minimizing the risk of an erroneous deprivation; CLI-06-12, 63 NRC 495 (2006)

enforcement orders limit adjudication to whether the facts as stated in the order are true and whether the proposed sanction is supported by those facts; CLI-06-16, 63 NRC 708 (2006)

five factors that need to be balanced when deciding whether to delay a proceeding are length of delay, reason for delay, prejudice to the recipient of the enforcement order, risk of erroneous deprivation, and recipient's assertion of a right to a hearing; CLI-06-12, 63 NRC 495 (2006)

for purpose of interlocutory review, a board decision is "pervasive" and "unusual" when it stops the entire proceeding in its tracks for an indeterminate length of time; CLI-06-12, 63 NRC 495 (2006)

hearings regarding immediately effective enforcement orders must be held expeditiously; CLI-06-19, 64 NRC 9 (2006); CLI-07-6, 65 NRC 112 (2007)

if petitioner requests a remedy that is beyond the scope of the hearing, then the hearing request must be denied because redressability is an element of standing; LBP-08-14, 68 NRC 279 (2008)

SUBJECT INDEX

in addition to having the burden on immediate effectiveness, the target is apparently expected to address the merits at that point as well; LBP-09-24, 70 NRC 676 (2009)

in considering the reason for a requested delay, it is important to consider which party initiated the civil action and which party is seeking relief from its going forward; LBP-06-13, 63 NRC 523 (2006)

inquiry into an individual's actual knowledge is entirely factual, requiring examination of the record; LBP-09-24, 70 NRC 676 (2009)

it is unlikely that petitioners will often obtain hearings on confirmatory enforcement orders; LBP-08-14, 68 NRC 279 (2008)

knowledge of a fact requires not only an awareness of that fact but also an understanding or recognition of its significance; CLI-10-23, 72 NRC 210 (2010)

licensing boards must be satisfied that the terms of a proposed agreement reflect a fair and reasonable resolution of the matter at hand and is in keeping with the objectives of NRC's enforcement policy and satisfies the requirements of 10 C.F.R. 2.338(g) and (h); LBP-09-11, 70 NRC 151 (2009)

licensing boards review NRC Staff's enforcement orders de novo to determine on the basis of the hearing record whether the charges are sustained and the sanction imposed is warranted; LBP-09-24, 70 NRC 676 (2009)

NRC Staff brings the charges that frame the board's review of enforcement orders; LBP-09-24, 70 NRC 676 (2009)

NRC Staff's role in an enforcement proceeding is akin to that of a prosecutor, and it has the burden to prove its allegations by a preponderance of the reliable, probative, and substantial evidence; LBP-09-24, 70 NRC 676 (2009)

once a licensing proceeding has been closed, petitioners will still have the opportunity to raise issues by filing a request for action under 10 C.F.R. 2.206; CLI-10-17, 72 NRC 1 (2010)

petitioners may not seek to enhance the measures outlined in an enforcement order; LBP-08-14, 68 NRC 279 (2008)

petitioners must provide factual support for their claim that an enforcement-related injury could be redressed by a favorable board ruling; CLI-10-3, 71 NRC 49 (2010)

providing predeprivation notice and informal hearing permits the employee to give his version of the events and provides a meaningful hedge against erroneous action; LBP-09-24, 70 NRC 676 (2009)

standing is determined by reviewing the alleged injury stemming from the regulatory action, not that asserted to arise generally from operation of the facility or the actions of the licensee involved in the proceeding; LBP-07-16, 66 NRC 277 (2007)

tampering is not a concern when the defendant has not been employed at the relevant organization for several years and the government has given no indication as to how the defendant might employ knowledge gained through civil discovery to alter paper documents or electronic files that he has no control over whatsoever and which the government has long-since obtained through its several-years-long investigation; LBP-06-13, 63 NRC 523 (2006)

the Commission does not lightly second-guess DOJ's views on whether, and how, premature disclosure might affect its criminal prosecutions; CLI-06-19, 64 NRC 9 (2006)

the Commission is generally inclined to accommodate an abeyance request from DOJ as long as it provides at least some showing of potential detrimental effect on its parallel criminal case; CLI-07-6, 65 NRC 112 (2007)

the critical issues to be determined when deciding a motion for delay involve "relative harm," that is, whether and to what extent movant has shown that not granting a delay will harm it versus whether and to what extent granting that same delay will harm the movant's opponent; LBP-06-13, 63 NRC 523 (2006)

the party requesting a delay must provide detailed and specific reasons demonstrating some type of cognizable harm would result absent that relief; LBP-06-13, 63 NRC 523 (2006)

the question whether to hold an NRC enforcement proceeding in abeyance pending a related criminal prosecution is generally suitable for interlocutory Commission review because the abeyance issue cannot await the end of the proceeding; CLI-06-19, 64 NRC 9 (2006); CLI-07-6, 65 NRC 112 (2007)

the scope of an enforcement adjudication is limited to the question of whether the order should be sustained; CLI-10-3, 71 NRC 49 (2010); LBP-07-16, 66 NRC 277 (2007)

SUBJECT INDEX

- the scope of early review of an enforcement order is severely limited and the order's immediate effectiveness depriving the accused of the freedom to work pending trial is presumptively valid, placing the burden on the accused to demonstrate its invalidity; LBP-09-24, 70 NRC 676 (2009)
- the scope of the proceeding is defined by the Commission in its initial hearing notice and order referring the proceeding to the licensing board; LBP-07-16, 66 NRC 277 (2007)
- the weight to be given the Staff's reason for seeking an abeyance turns on the quality of the factual record; CLI-06-19, 64 NRC 9 (2006)
- to prevail in establishing that the accused's actions constituted a violation, Staff must demonstrate by a preponderance of the evidence that the accused had actual knowledge of the information associated with his actions and that he deliberately acted contrary to that knowledge; LBP-09-24, 70 NRC 676 (2009)
- to successfully challenge an enforcement order, the target must show that the order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error; LBP-09-24, 70 NRC 676 (2009)
- to the extent that petitioner's request for release of information seeks to enhance the enforcement measures already outlined by the Staff in the confirmatory order, this is outside the scope of the proceeding; LBP-07-16, 66 NRC 277 (2007)
- when evaluating whether a settlement is in the public interest, four factors are considered; LBP-06-18, 63 NRC 830 (2006)
- when the party opposing a stay motion does not express undue concern that delay will diminish the quality of the evidence, that possibility may be put aside as nonspecific and not credited as prejudicing the subject of the order; LBP-06-13, 63 NRC 523 (2006)
- where the record in an enforcement proceeding may be devoid of direct evidence to establish knowledge, the Staff may have to build its case upon circumstantial evidence alone; LBP-09-24, 70 NRC 676 (2009)
- whether continuation of an NRC enforcement adjudication could at least arguably jeopardize a related criminal proceeding is a key factor in any abeyance ruling in an NRC enforcement proceeding; CLI-06-19, 64 NRC 9 (2006)
- ENTRAINMENT**
- adequacy of the final environmental impact statement discussion and analysis of direct, indirect, and cumulative impingement/entrainment and thermal effluent discharge impacts of the proposed cooling system intake and discharge structures on aquatic resources is decided; LBP-09-7, 69 NRC 613 (2009)
- ENTRAINMENT AND IMPINGEMENT**
- applicant is required to provide in its environmental report a site-specific analysis of entrainment, impingement, and heat shock/thermal discharge impacts from its once-through cooling systems; LBP-08-13, 68 NRC 43 (2008)
- ENVIRONMENTAL ANALYSIS**
- a conclusion that something is a "connected action" does not necessarily inform the type of impact analysis that is performed, whether direct, indirect, or cumulative; LBP-09-7, 69 NRC 613 (2009)
- a contention based on another agency's draft EA that does not apply to the time period in which proposed reactor units would be operational is not material to the findings the licensing board must make in the proceeding; LBP-10-1, 71 NRC 165 (2010)
- a federal agency must study, develop, and describe appropriate alternatives to the recommended courses of action in any proposal that involves unresolved conflicts concerning alternative uses of available resources; LBP-06-28, 64 NRC 460 (2006)
- a NEPA analysis of the potential impacts of deliberate attacks on a spent fuel pool and analysis of alternatives to mitigate spent fuel pool accidents are beyond the scope of a license renewal proceeding and therefore inadmissible; CLI-09-10, 69 NRC 521 (2009)
- a reasonably close causal relationship between federal agency action and environmental consequences is necessary to trigger NEPA; CLI-07-8, 65 NRC 124 (2007)
- a Staff determination that certain scenarios, such as Part 61 intruder scenarios, are so unlikely as to fall outside the scope of the Staff's NEPA review is a proper exercise of NEPA's rule of reason; LBP-06-8, 63 NRC 241 (2006)
- absent particular circumstances for excluding intruder scenarios in evaluating compliance with the Part 61 regulations, they must be considered by the licensing entity at the time of initial licensing or any subsequent license amendment; LBP-06-8, 63 NRC 241 (2006)

SUBJECT INDEX

agencies are given broad discretion in determining how thoroughly to analyze a particular subject, and may decline to examine issues that an agency in good faith considers remote and speculative or inconsequentially small; LBP-06-8, 63 NRC 241 (2006); LBP-09-7, 69 NRC 613 (2009)

agencies are required to use a systematic, interdisciplinary approach that will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking that may have an impact on man's environment; LBP-06-28, 64 NRC 460 (2006); LBP-07-1, 65 NRC 27 (2007)

agencies must include a detailed statement on the environmental impact of the proposed action, any unavoidable adverse environmental effects, alternatives to the proposed action, the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented; LBP-07-1, 65 NRC 27 (2007)

although the Commission has complied with the Ninth Circuit's ruling for facilities within the Ninth Circuit, that experience is very limited and does not demonstrate that conducting environmental analyses of terrorist scenarios for the licensing of all major facilities would be practicable or lead to meaningful additional information; CLI-10-9, 71 NRC 245 (2010)

although the primary duties of NEPA fall on the NRC Staff in NRC proceedings, the initial requirement to analyze the environmental impacts of an action, including license renewal, is directed to applicants; LBP-07-4, 65 NRC 281 (2007)

an agency environmental impact statement must address both direct and indirect, or secondary, effects of an action; LBP-06-8, 63 NRC 241 (2006)

an agency must affirmatively provide a reasoned explanation of the applicability of a categorical exclusion when special circumstances are alleged; LBP-06-4, 63 NRC 99 (2006)

an agency must consult with and obtain the comments of any federal agency that has jurisdiction by law or special expertise with respect to any environmental impact involved; LBP-06-28, 64 NRC 460 (2006)

an EA must include a Reference Document List that identifies the sources used; LBP-08-7, 67 NRC 361 (2008)

analysis of entrainment and impingement of fish, and heat shock, is required only for plants with once-through cooling or cooling ponds, because it has been determined generically that such impacts are small for plants that use cooling towers; LBP-07-4, 65 NRC 281 (2007)

applicant must provide enough information and in sufficient detail to allow for an evaluation of important impacts; LBP-07-3, 65 NRC 237 (2007)

asserted deficiencies in the environmental report intake/discharge impact discussion as it is associated with the baseline discussion of aquatic resources, if properly supported, can be admitted for further litigation; LBP-08-16, 68 NRC 361 (2008)

boards do not sit to flyspeck environmental documents or to add details or nuances; LBP-07-3, 65 NRC 237 (2007)

consideration of environmental impacts need not address every impact that could possibly result, but rather only those that are reasonably foreseeable or have some likelihood of occurring; LBP-09-7, 69 NRC 613 (2009)

cumulative impacts analysis looks to whether the proposed action's impacts will be significantly enhanced by already existing environmental effects from prior actions; LBP-06-1, 63 NRC 41 (2006); LBP-06-19, 64 NRC 53 (2006)

federal agencies must take a hard look at the environmental impacts of a proposed action, as well as reasonable alternatives to that action; LBP-09-7, 69 NRC 613 (2009)

for impacts that are reasonably foreseeable, but for which the agency lacks complete information in its analysis, the agency must indicate that such information is lacking; LBP-09-7, 69 NRC 613 (2009)

if the accident sought to be considered is sufficiently unlikely, such that it can be characterized fairly as remote and speculative, then consideration under NEPA is not required as a matter of law; LBP-09-4, 69 NRC 170 (2009)

in accord with the environmental justice executive order, NRC has obligated itself to address only the disproportionate distribution of high and adverse effects on minority and low-income populations in its NEPA analysis; LBP-07-3, 65 NRC 237 (2007)

SUBJECT INDEX

in its conclusions regarding the environmental impacts of a proposed action or alternative actions, the Staff uses as guidance a standard scheme to categorize or quantify the impacts; LBP-09-7, 69 NRC 613 (2009)

in its environmental justice analysis, NRC makes nearby nuclear facility-related harm an appropriate issue to consider cumulatively with any impacts from proposed reactors; LBP-07-3, 65 NRC 237 (2007)

in reviewing environmental justice claims, adverse impacts that fall heavily on minority and impoverished citizens call for particularly close scrutiny; LBP-07-3, 65 NRC 237 (2007)

irradiators are categorically excluded from the requirement to prepare an EA; CLI-08-16, 68 NRC 221 (2008)

it is the NRC, not applicant, that has the legal duty to perform a NEPA analysis and to issue appropriate NEPA documents; CLI-06-18, 64 NRC 1 (2006)

location of an irradiator may be a circumstance in which the categorical exclusions in 10 C.F.R. 51.22(b) might not apply; LBP-06-4, 63 NRC 99 (2006)

NEPA analyses are subject to a rule of reason, but it is necessary to have a criterion upon which reasonableness may be determined; LBP-09-4, 69 NRC 170 (2009)

NEPA does not require a decision whether an environmental impact report is based on the best scientific methodology available, nor does NEPA require resolution of disagreements among various scientists as to methodology; CLI-08-26, 68 NRC 509 (2008)

NEPA imposes procedural restraints on agencies, requiring that they take a "hard look" at the environmental impacts of a proposed action and reasonable alternatives to that action; LBP-06-8, 63 NRC 241 (2006)

NRC can presume that increases in emissions that still fall within statutory limits will be insignificant; CLI-08-16, 68 NRC 221 (2008)

NRC Staff may adopt the underlying scientific data and inferences from another agency's analysis without independent review, as long as it exercises independent judgment with respect to conclusions about the environmental impacts of the current proposed agency action; LBP-09-7, 69 NRC 613 (2009)

NRC's analysis in connection with licensing nuclear facilities should extend to related offsite construction projects such as connecting roads and railroad spurs; LBP-09-6, 69 NRC 367 (2009)

once the adverse environmental effects of a proposed action are adequately identified and evaluated, the agency is not constrained from deciding that other values outweigh the environmental costs; LBP-09-7, 69 NRC 613 (2009)

secondary or indirect consequences of disposal of the waste generated by a facility cannot, and need not for the purposes of satisfying the agency's NEPA obligation, be examined with particularity when a specific disposal site has not yet been identified; LBP-06-8, 63 NRC 241 (2006)

Staff is ultimately responsible for the work undertaken, or not undertaken, by its contractors; LBP-06-8, 63 NRC 241 (2006)

the appropriate state or federal regulatory authority, such as an Agreement State, will conduct any necessary site-specific evaluation to confirm that applicable radiological dose limits and standards for disposal of depleted uranium can be met at a particular site; CLI-06-15, 63 NRC 687 (2006)

the Commission to reveal sensitive government security information regarding the agency's; CLI-08-26, 68 NRC 509 (2008)

the National Environmental Policy Act does not require the analysis of potential terrorist attacks on a proposed nuclear facility; LBP-08-21, 68 NRC 554 (2008)

the National Environmental Policy Act is not an appropriate vehicle for exploring questions about the potential for a terrorist attack on a proposed nuclear facility; LBP-09-2, 69 NRC 87 (2009)

the National Infrastructure Protection Plan is concerned with security issues, not environmental quality standards and requirements, and it is environmental quality standards and requirements that the environmental analysis is obliged to address, not security issues; CLI-08-1, 67 NRC 1 (2008)

the three levels of impacts adopted by NRC are described; LBP-09-7, 69 NRC 613 (2009)

the unavailability of information does not halt all government action, particularly when information may become available at a later time and can still be used to influence the agency's decision; LBP-09-7, 69 NRC 613 (2009)

when reviewing a license application filed by a private applicant, as opposed to a federally sponsored project, an agency may give substantial weight to the stated preferences of the applicant with regard to issues such as site selection and facility design; LBP-09-7, 69 NRC 613 (2009)

SUBJECT INDEX

where quantification is not possible, the Commission expects license applicants and NRC Staff to assess pertinent factors in qualitative terms; CLI-08-26, 68 NRC 509 (2008)

where there is no proposal for major federal action within the meaning of National Environmental Policy Act § 102(C), there is no requirement for a NEPA analysis of dredging; CLI-10-5, 71 NRC 90 (2010)

ENVIRONMENTAL ASSESSMENT

a more detailed environmental impact statement is not required unless the contemplated action is a major federal action significantly affecting the quality of the human environment; CLI-08-26, 68 NRC 509 (2008)

all environmental issues concerning severe accident mitigation design alternatives associated with the information in the NRC's EA for a certified design are considered resolved; LBP-09-19, 70 NRC 433 (2009)

although NRC will consider the fact that an applicant is subject to, and compliant with, other environmental laws and permits, it must still perform an EA prior to any major federal action significantly affecting the environment; LBP-06-20, 64 NRC 131 (2006)

although the discussion of alternatives in the environmental assessment need only be brief, it must be sufficient to fully comply with the requirement to study, develop, and describe appropriate alternatives; CLI-10-18, 72 NRC 56 (2010)

an environmental assessment, with its accompanying finding of no significant impact, constitutes an agency's evaluation of the environmental effects of a proposed action unless a more detailed statement is required; CLI-08-26, 68 NRC 509 (2008)

any member of the public who wishes to comment on the draft environmental assessment outside of the adjudicatory process, pursuant to NRC's normal environmental process, must do so within 30 days after it is made available (or within 45 days) of the publication of a draft environmental impact statement; CLI-07-11, 65 NRC 148 (2007)

as long as all reasonable alternatives have been considered and an appropriate explanation is provided as to why an alternative was eliminated, the regulatory requirement is satisfied; CLI-10-18, 72 NRC 56 (2010)

certain actions are designated as categorically excluded from the requirement to prepare an environmental assessment or an environmental impact statement; CLI-10-18, 72 NRC 56 (2010)

content of an EA for proposed actions is described; CLI-10-18, 72 NRC 56 (2010)

contentions asserting that the risks associated with terrorist attacks require that the agency prepare an environmental assessment or an environmental impact statement are outside the scope of agency NEPA review and are inadmissible; LBP-06-4, 63 NRC 99 (2006)

cultural and historic resources are to be considered as part of the environmental impacts assessment that must be completed; LBP-10-16, 72 NRC 361 (2010)

federal agencies are required, to the fullest extent possible, to include in every recommendation or report on proposals for major federal actions significantly affecting the quality of the human environment a detailed statement on the environmental impact of the proposed action; CLI-10-18, 72 NRC 56 (2010)

general statements about possible effects and some risk do not constitute a hard look absent a justification regarding why more definitive information could not be provided; CLI-10-18, 72 NRC 56 (2010)

in assessing impacts, an agency may rely on other specialized agencies with jurisdiction to enforce related permits and measures; CLI-08-16, 68 NRC 221 (2008)

in determining whether to prepare an environmental impact statement, the federal agency shall prepare an EA, which will briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact; LBP-06-27, 64 NRC 438 (2006)

it is not enough to consider only the proposed action and the no-action alternative in an EA; CLI-10-18, 72 NRC 56 (2010)

licensing boards do not sit to flyspeck environmental documents or to add details or nuances; LBP-10-14, 72 NRC 101 (2010)

NEPA does not require the NRC to assess the potential health effects of consuming irradiated food; CLI-10-18, 72 NRC 56 (2010)

NRC must provide the public with sufficient environmental information, considered in the totality of circumstances, to permit members of the public to weigh in with their views and thus inform the agency decisionmaking process; CLI-10-18, 72 NRC 56 (2010)

SUBJECT INDEX

one purpose of an EA is to facilitate preparation of an environmental impact statement when one is necessary; CLI-10-18, 72 NRC 56 (2010)

Staff's failure to disclose data underlying its terrorism analysis in the final environmental assessment failed to meet the NEPA-mandated hard-look standard; CLI-10-18, 72 NRC 56 (2010)

Staff's obligations for preparation of an EA are discussed; CLI-10-18, 72 NRC 56 (2010)

the alternatives provision of NEPA § 102(2)(E) applies both when an agency prepares an environmental impact statement and when it prepares an environmental assessment; CLI-10-18, 72 NRC 56 (2010)

the obligation of agencies to consider alternatives is a lesser one under an environmental assessment than under an environmental impact statement; CLI-10-18, 72 NRC 56 (2010)

the range of alternatives that must be considered need not extend beyond those reasonably related to the purposes of the project and a rule of reason necessarily informs that choice; CLI-10-18, 72 NRC 56 (2010)

there is no per se regulatory bar that precludes the Staff from using the hearing process to clarify the administrative record supporting its final EA, and that record, along with any adjudicatory decision, becomes, in effect, part of the final environmental document; CLI-10-18, 72 NRC 56 (2010)

there is no requirement that the field sampling plan describe the collection of information needed for the decommissioning plan's environmental assessment or environmental impact statement; LBP-08-4, 67 NRC 105 (2008)

to raise an admissible contention with respect to a Staff finding of no significant impact, petitioner need not demonstrate that there will be a significant environmental impact as a consequence of the proposed action, but it must allege facts that, if true, show that the proposed project may significantly degrade some human environmental factor; LBP-06-27, 64 NRC 438 (2006)

ENVIRONMENTAL EFFECTS

agencies need not elevate environmental concerns over other appropriate considerations, but rather must only take a hard look at the environmental consequences before taking a major action; LBP-06-19, 64 NRC 53 (2006)

all federal agencies must apply a systematic, interdisciplinary approach that will ensure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking that may have an impact on the human environment; LBP-06-17, 63 NRC 747 (2006)

all significant environmental impacts and all reasonable alternatives should be considered for a combined license, but these are governed by the rule of reason; LBP-09-10, 70 NRC 51 (2009)

although applicant's description of existing water quality conditions did not separately evaluate the contributions of specific sources, it nonetheless formed an environmental baseline against which to measure the cumulative impact of the proposed new reactor; LBP-09-16, 70 NRC 227 (2009)

Council on Environmental Quality regulations state that an environmental impact statement must address both direct and indirect effects of an action; LBP-09-7, 69 NRC 613 (2009)

"cumulative impact" is defined as the impact on the environment that results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions; LBP-09-16, 70 NRC 227 (2009)

cumulative impacts analysis looks to whether a new impact is significantly enhanced by already existing effects; LBP-06-1, 63 NRC 41 (2006)

cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time; LBP-09-19, 70 NRC 433 (2009)

direct effects are those caused by the federal action, and occurring at the same time and place as that action, while indirect effects are those caused by the action at a later time or more distant place, yet are still reasonably foreseeable; LBP-06-8, 63 NRC 241 (2006); LBP-09-7, 69 NRC 613 (2009)

direct environmental impacts are those caused by the federal action, and occurring at the same time and place as that action; LBP-09-19, 70 NRC 433 (2009)

even if offsite construction does not appear to be part of the plan, it does not follow that offsite consequences need not be considered; CLI-10-18, 72 NRC 56 (2010)

experience with and information about past direct and indirect effects of individual past actions may be useful in illuminating or predicting the direct and indirect effects of a proposed action; LBP-09-16, 70 NRC 227 (2009)

failure to receive a benefit from a project is not an environmental impact; LBP-08-6, 67 NRC 241 (2008)

SUBJECT INDEX

if a NEPA contention alleges that impacts or alternatives that are patently outside the realm of reason must be considered, then the contention should be denied for failure to demonstrate that the issue raised is within the legitimate scope of NEPA; LBP-09-10, 70 NRC 51 (2009)

if federal agencies were free to ignore related environmental effects that they do not directly regulate, the National Environmental Policy Act would be meaningless; LBP-09-6, 69 NRC 367 (2009)

if the adverse environmental effects of the proposed action are adequately identified and evaluated, the agency is not constrained by NEPA from deciding that other values outweigh the environmental costs; LBP-07-4, 65 NRC 281 (2007)

impacts of design basis accidents at spent fuel storage installations are characterized as small, and so, no site-specific NEPA review is required; CLI-07-8, 65 NRC 124 (2007)

impacts that are reasonably foreseeable under NEPA must be analyzed publicly, even if their probability of occurrence is low; CLI-10-18, 72 NRC 56 (2010)

impacts that are remote and speculative or inconsequentially small need not be examined; LBP-10-14, 72 NRC 101 (2010)

in a supplemental environmental impact statement, Staff must address the adverse environmental effects that cannot be avoided; LBP-07-4, 65 NRC 281 (2007)

in an environmental analysis, agencies are required to consider both the context and intensity of impacts; LBP-09-7, 69 NRC 613 (2009)

in the context of NEPA, NRC is obligated to study matters that may be far afield of its primary mission, including the environmental impacts related to the permits and licenses issued by other governmental agencies; LBP-09-21, 70 NRC 581 (2009)

indirect effects are distinguished from connected actions under 40 C.F.R. 1508.25(a)(1); CLI-10-18, 72 NRC 56 (2010)

indirect environmental impacts are caused by the action at a later time or more distant place, yet are still reasonably foreseeable; LBP-09-19, 70 NRC 433 (2009)

it would be inconsistent with NEPA's rule of reason to require that the cumulative impacts analysis individually analyze the effects of remote facilities absent a demonstration that such additional effort would lead to a different conclusion; LBP-09-4, 69 NRC 170 (2009)

NEPA requires that only reasonably foreseeable indirect environmental effects of a proposed licensing action be considered; CLI-06-15, 63 NRC 687 (2006)

portions of a contention that allege that the environmental report failed to adequately address the zone of environmental impact, impact on listed species, and appropriate mitigation are admissible; LBP-09-10, 70 NRC 51 (2009)

prior NRC precedent is consistent with Supreme Court NEPA doctrine, which requires a reasonably close causal relationship between federal agency action and environmental consequences before NEPA is triggered, a relationship similar to that of proximate cause in tort law; LBP-07-14, 66 NRC 169 (2007)

severe accident mitigation alternatives analysis must be site specific and given careful consideration in order to comply with the National Environmental Policy Act; LBP-09-10, 70 NRC 51 (2009)

the central purpose of Part 51 rules is to allow NRC to comply with NEPA by identifying and evaluating environmental impacts that are generic to reactor license renewal proceedings and then allowing applicant and NRC to dispense with site-specific evaluations of such environmental impacts in situations covered by the generic analysis; LBP-10-15, 72 NRC 257 (2010)

the decision as to whether an alleged environmental impact or alternative is significant or reasonable is the merits of a NEPA contention and should not be adjudicated at the contention admissibility stage under the guise of materiality or scope; LBP-09-10, 70 NRC 51 (2009)

the duty under NEPA to consider the environmental impacts of a proposed action incorporates, at least implicitly, considerations of the probability of a particular consequence occurring; LBP-10-15, 72 NRC 257 (2010)

the effects that must be considered in an environmental impact statement are those that are caused by the action, and there must be a reasonably close causal relationship between the proposed action and an alleged environmental effect or impact, similar to proximate cause in tort law, before that effect need be considered; LBP-07-4, 65 NRC 281 (2007)

the emergency planning zone is established based on safety considerations and is not intended for use as a boundary for assessing environmental impacts; LBP-09-16, 70 NRC 227 (2009)

SUBJECT INDEX

- the environmental baseline reflects the effects of all currently existing pollution sources in the relevant watershed, including contributions of all nuclear power plants, and petitioners failed to provide information indicating that this aggregate analysis was insufficient under NEPA; LBP-09-16, 70 NRC 227 (2009)
- the environmental consequences of proposals being considered by an agency within a region must be considered together to determine the synergistic and cumulative environmental effects; LBP-09-16, 70 NRC 227 (2009)
- the environmental report shall discuss the impacts of the proposed action on the environment in proportion to their significance; LBP-09-25, 70 NRC 867 (2009)
- the plain language of 10 C.F.R. 63.305 does not say anything about analyzing future climate based upon the historical geological record; LBP-10-22, 72 NRC 661 (2010)
- the questions of the safety and environmental impacts of onsite low-level waste storage are, in the Commission's view, largely site- and design-specific, and appropriately decided in an individual licensing proceeding, provided that litigants proffer properly framed and supported contentions; CLI-09-3, 69 NRC 68 (2009)
- when an early site permit is issued with an associated limited work authorization, the board must find relative to the LWA that any significant adverse environmental impact resulting from activities requested under section 52.17(c) can be redressed; LBP-09-19, 70 NRC 433 (2009)
- when one or more particular environmental impacts cannot be meaningfully assessed at the ESP stage, those matters may be designated as "unresolved," provided they do not interfere with the Staff's ability to determine whether there is any obviously superior alternative to the proposed site; CLI-07-27, 66 NRC 215 (2007)
- where, in weighing the balance of harms, injury to the environment is not at all probable, an injunction is not appropriate; LBP-06-27, 64 NRC 399 (2006)
- See also Aquatic Impacts; Endangered Species
- ENVIRONMENTAL IMPACT STATEMENT**
- a contention challenging the failure to include in the EIS for license renewal any consideration of the effects of an aircraft attack is inadmissible; LBP-10-10, 71 NRC 529 (2010)
- a contention may challenge a draft EIS even though its ultimate conclusion on a particular issue is the same as that in the ER, as long as the DEIS relies on significantly different data than the environmental report to support the determination; LBP-10-24, 72 NRC 720 (2010)
- a detailed statement concerning the environmental impact of the proposed action, any adverse environmental effects that cannot be avoided should the proposal be implemented, and any irreversible and irretrievable commitments of resources that would be involved in the proposed action should it be implemented must be provided; LBP-09-16, 70 NRC 227 (2009)
- a detailed statement of reasonable alternatives to a proposed action must be included; LBP-10-24, 72 NRC 720 (2010)
- a draft or final EIS is not considered deficient per se simply because its various NEPA findings do not include an explanation that is sufficient on its face to enable independent verification of any scientific results that underlie those findings; LBP-06-9, 63 NRC 289 (2006)
- a more detailed EIS is not required unless the contemplated action is a major federal action significantly affecting the quality of the human environment; CLI-08-26, 68 NRC 509 (2008)
- a supplement is needed where new information raises new concerns of sufficient gravity such that another, formal in-depth look at the environmental consequences of the proposed action is necessary; CLI-06-19, 63 NRC 19 (2006)
- a tribe is free to file a contention later on in the proceeding if, after Staff releases its environmental documents, the tribe believes that the Staff has failed to satisfy its obligations under NEPA and the National Historic Preservation Act; LBP-10-16, 72 NRC 361 (2010)
- affidavits supporting environmental contentions in the high-level waste proceeding must set forth significant and substantial grounds for the claim that it is not practicable to adopt the environmental impact statement for the proposed repository prepared by DOE; LBP-09-6, 69 NRC 367 (2009)
- agencies are required to consider both the context and intensity of impacts; LBP-09-7, 69 NRC 613 (2009)
- agencies are required to study, develop, and describe appropriate alternatives to recommended courses of action in any proposal that involves unresolved conflicts concerning alternative uses of available

SUBJECT INDEX

resources and include a detailed statement of the alternatives to the proposed action; LBP-09-10, 70 NRC 51 (2009)

agencies are to exercise a degree of skepticism in dealing with the self-serving statements from the prime beneficiary of a project and to look at the general goal of the project, rather than only those alternatives by which a particular applicant can reach its own specific goals; LBP-09-10, 70 NRC 51 (2009)

agencies may defer certain issues in an EIS for a multistage project when detailed useful information on a given topic is not meaningfully possible to obtain, and the unavailable information is not essential to determination at the earlier stage; CLI-07-27, 66 NRC 215 (2007)

agencies must consult with and obtain the comments of any federal agency that has jurisdiction by law or special expertise with respect to any environmental impact involved; LBP-06-17, 63 NRC 747 (2006)

agencies need only discuss those alternatives that are reasonable and will bring about the ends of the proposed action; LBP-10-6, 71 NRC 350 (2010)

all federal agencies are to use a systematic and interdisciplinary approach in considering environmental issues and, before taking any major federal action significantly affecting the quality of the human environment; LBP-07-9, 65 NRC 539 (2007)

all reasonable alternatives must be identified and discussed; LBP-09-17, 70 NRC 311 (2009); LBP-09-19, 70 NRC 433 (2009)

alternative energy sources that will be dependent on future environmental safeguards and technological developments need not be considered in an environmental impact statement; LBP-09-7, 69 NRC 613 (2009)

alternatives analysis is the heart of the EIS; LBP-10-24, 72 NRC 720 (2010)

alternatives that are remote and speculative do not require detailed discussion; LBP-10-10, 71 NRC 529 (2010)

although all environmental contentions may, in a general sense, ultimately be challenges to the NRC's compliance with NEPA, factual disputes of particular issues can be raised before the draft environmental impact statement is prepared; CLI-10-2, 71 NRC 27 (2010)

although NEPA requires that the environmental impact statement identify and address all reasonable alternatives, this does not mean that every conceivable alternative must be included; LBP-10-10, 71 NRC 529 (2010)

although the primary duties of NEPA fall on the NRC Staff in NRC proceedings, the initial requirement to analyze the environmental impacts of an action is directed to applicants; LBP-07-11, 66 NRC 41 (2007)

although there will always be more data that could be gathered, agencies must have some discretion to draw the line and move forward with decisionmaking; CLI-10-11, 71 NRC 287 (2010)

an agency cannot redefine the applicant's goals, and the alternatives analysis should be based around the applicant's goals, including its economic goals; LBP-09-10, 70 NRC 51 (2009); LBP-09-17, 70 NRC 311 (2009)

an agency is not required to discuss indirect effects it considers remote or speculative; LBP-06-8, 63 NRC 241 (2006)

an agency is to include in every recommendation or report on major federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on the environmental impact of the proposed action; LBP-08-6, 67 NRC 241 (2008)

an agency may rely on an EIS prepared by another federal agency if such reliance will aid in the presentation of issues, eliminate repetition, or reduce the length of an EIS; LBP-09-7, 69 NRC 613 (2009)

an agency must address both direct and indirect, or secondary, effects of an action; LBP-06-8, 63 NRC 241 (2006)

an agency must consider all reasonable alternatives but is not required to choose the most environmentally benign site; LBP-07-9, 65 NRC 539 (2007)

an agency must consider direct, indirect, and cumulative impacts of an action; LBP-09-19, 70 NRC 433 (2009)

an agency's consideration of alternatives is sufficient if it considers an appropriate range of alternatives, even if it does not consider every available alternative; LBP-10-24, 72 NRC 720 (2010)

SUBJECT INDEX

an assessment of all environmental impacts and alternatives must be included, even though NRC has no jurisdiction to regulate such impacts or jurisdiction to impose such alternatives; LBP-09-10, 70 NRC 51 (2009)

an EIS ensures that an agency, in reaching its decision, will have available, and will carefully consider, detailed information concerning significant environmental impacts; LBP-07-11, 66 NRC 41 (2007)

an EIS for a materials license must include a statement on the alternatives to the proposed action, including a discussion of the no-action alternative; CLI-09-15, 70 NRC 1 (2009)

an EIS for an early site permit application must include an evaluation of alternative sites to determine whether there is any obviously superior alternative to the site proposed; LBP-09-19, 70 NRC 433 (2009)

an EIS guarantees that the relevant information will be made available to the larger audience that may also play a role in both the decisionmaking process and the implementation of that decision; LBP-07-11, 66 NRC 41 (2007)

an EIS is not intended to be a research document, reflecting the frontiers of scientific methodology, studies, and data; CLI-10-11, 71 NRC 287 (2010); CLI-10-22, 72 NRC 202 (2010)

an EIS is not required when the proposed federal action will effect no change in the status quo; LBP-07-4, 65 NRC 281 (2007)

an EIS must disclose measures that will mitigate potential adverse environmental impacts; LBP-09-4, 69 NRC 170 (2009)

an EIS must rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives that were eliminated from detailed study, briefly discuss the reasons for their having been eliminated; LBP-10-10, 71 NRC 529 (2010)

an otherwise reasonable alternative will not be excluded from discussion in an EIS solely on the ground that it is not within the jurisdiction of the NRC; LBP-09-10, 70 NRC 51 (2009); LBP-09-17, 70 NRC 311 (2009); LBP-10-10, 71 NRC 529 (2010)

any EIS prepared in connection with a repository proposed to be constructed by DOE shall, to the extent practicable, be adopted by the NRC in connection with the issuance by the NRC of a construction authorization and license for such repository; LBP-09-6, 69 NRC 367 (2009)

any power level selected at the COL stage other than the target value used in the environmental impact statement's alternative energy analysis for the early site permit would constitute new information that, if found to be significant, would have to be evaluated at the construction permit or combined license application stage; CLI-07-14, 65 NRC 216 (2007)

applicant may not define the objectives of its action in terms so unreasonably narrow that only one alternative would accomplish the applicant's goals because this would make the agency's alternatives analysis a foreordained formality; LBP-09-10, 70 NRC 51 (2009)

applicant's environmental report is not the same as the NRC's EIS; LBP-09-10, 70 NRC 51 (2009)

at the early site permit stage, relevant regulations may not be construed to require that the draft or final EIS include an assessment of the benefits of the proposed action; LBP-06-28, 64 NRC 460 (2006)

because of the questions of law and policy about the environmental impacts of terrorist attacks, the Commission decides to consider this issue itself; LBP-06-28, 64 NRC 404 (2006)

because the environmental report is the only environmental document available when NRC issues its notice of opportunity to request a hearing, all initial contentions necessarily focus on the adequacy of the applicant's ER, but the public will have a new opportunity to file environmental contentions when the NRC Staff issues the EIS; LBP-09-10, 70 NRC 51 (2009); LBP-09-25, 70 NRC 867 (2009)

before taking any action significantly affecting the quality of the human environment, the agency must prepare a detailed statement, which must be made available to the public, discussing the environmental impact of the proposed action and possible alternatives; LBP-06-19, 64 NRC 53 (2006)

benefit-cost analysis can be postponed until the reactor licensing stage; LBP-07-9, 65 NRC 539 (2007)

boards do not sit to flyspeck environmental documents or to add details or nuances; LBP-10-10, 71 NRC 529 (2010); LBP-10-14, 72 NRC 101 (2010)

certain actions are designated as categorically excluded from the requirement to prepare an environmental assessment or an environmental impact statement; CLI-10-18, 72 NRC 56 (2010)

compliance with NEPA requires that, if new and significant information arises after the date of the issuance of the EIS and before the agency decision, then the agency must supplement or revise its EIS and consider such information; LBP-10-15, 72 NRC 257 (2010)

SUBJECT INDEX

consideration of alternatives need not discuss every possible alternative, but rather every reasonable alternative; LBP-09-7, 69 NRC 613 (2009)

contentions asserting that the risks associated with terrorist attacks require that the agency prepare an environmental assessment or an environmental impact statement are outside the scope of agency NEPA review and are inadmissible; LBP-06-4, 63 NRC 99 (2006)

Council on Environmental Quality regulations define direct, indirect, and cumulative impacts and require that they be considered in the EIS; LBP-09-10, 70 NRC 51 (2009)

Council on Environmental Quality regulations state that an EIS must address both direct and indirect effects of an action; LBP-09-7, 69 NRC 613 (2009)

documents must be written in plain language so that decisionmakers and the public can readily understand them; LBP-10-16, 72 NRC 361 (2010)

DOE's EIS is not to consider the need for the high-level waste repository, the time of initial availability of a repository, alternative sites to the Yucca Mountain site, or nongeologic alternatives to such site; LBP-10-11, 71 NRC 609 (2010)

environmental issues common to all (or to a certain category of) reactors, designated Category 1 issues, which include such matters as onsite land use, noise, bird collisions with cooling towers, and onsite spent fuel storage, have already been considered generically by NRC and need not be considered again for license renewal; CLI-06-24, 64 NRC 111 (2006)

even when an early site permit does not authorize any construction activity, the NRC Staff is required by Council on Environmental Quality regulations to consider actions that are related to other actions that could lead to a significant impact on the environment; LBP-07-1, 65 NRC 27 (2007)

existence of reasonable but unexamined alternatives renders an EIS inadequate; LBP-10-24, 72 NRC 720 (2010)

federal agencies are required, to the fullest extent possible, to include in every recommendation or report on proposals for major federal actions significantly affecting the quality of the human environment a detailed statement on the environmental impact of the proposed action; CLI-10-18, 72 NRC 56 (2010)

federal agencies must address the environmental impact of the proposed action, any adverse environmental effects that cannot be avoided, alternatives to the proposed action, the relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity, and any irreversible and irretrievable commitments of resources that would be involved in the proposed action; LBP-06-17, 63 NRC 747 (2006); LBP-06-28, 64 NRC 460 (2006)

federal agencies must include in every recommendation or report on major federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on the environmental impact of the proposed action; LBP-06-23, 64 NRC 257 (2006); LBP-07-4, 65 NRC 281 (2007); LBP-07-11, 66 NRC 41 (2007)

federal agencies must study, develop, and describe appropriate alternatives to the recommended courses of action in any proposal that involves unresolved conflicts concerning alternative uses of available resources; LBP-06-17, 63 NRC 747 (2006)

federal courts and the NRC use a rule of reason in identifying alternatives and do not require that unreasonable alternatives be examined; LBP-07-9, 65 NRC 539 (2007)

for a combined license, Staff must discuss the reasonably foreseeable environmental impacts of the proposed project; CLI-10-2, 71 NRC 27 (2010)

for NEPA purposes, the "major federal action" triggering the EIS is issuance of the license, not adjudication of the license; CLI-06-19, 63 NRC 19 (2006)

for purposes of the mandatory/uncontested portion of an ESP proceeding, the board takes official notice of publicly available documents associated with the Staff's safety and environmental reviews; LBP-09-19, 70 NRC 433 (2009)

if a harm does not have a sufficiently close connection to the physical environment, NEPA does not apply, regardless of the gravity of the harm; CLI-08-16, 68 NRC 221 (2008)

if a major federal action significantly affects the quality of the human environment, an environmental impact statement must be prepared; CLI-08-8, 67 NRC 193 (2008)

if NRC Staff has not previously considered severe accident mitigation alternatives for the applicant's plant in an environmental impact statement or related supplement or in an environmental assessment, a consideration of alternatives to mitigate severe accidents must be provided; LBP-07-13, 66 NRC 131 (2007)

SUBJECT INDEX

- if significant new information becomes available, NRC Staff must explain how it took the new information into account in determining whether the additional generating capacity is required; LBP-10-24, 72 NRC 720 (2010)
- if the adverse environmental effects of the proposed action are adequately identified and evaluated, the agency is not constrained by NEPA from deciding that other values outweigh the environmental costs; LBP-06-19, 64 NRC 53 (2006)
- in determining whether to prepare an EIS, the federal agency shall prepare an environmental assessment, which will briefly provide sufficient evidence and analysis for determining whether to prepare an EIS or a finding of no significant impact; LBP-06-27, 64 NRC 438 (2006)
- in performing NEPA evaluations, agencies must consider three types of actions, three types of alternatives, and three types of impacts; CLI-10-5, 71 NRC 90 (2010); LBP-09-7, 69 NRC 613 (2009)
- in preparing an EIS, Staff can rely upon the environmental analyses in another agency's EIS regarding environmental impacts; LBP-06-9, 63 NRC 289 (2006)
- in the context of NEPA, one must examine underlying policies or legislative intent to draw a manageable line between those causal changes that make an agency responsible for an effect and those that do not; CLI-08-16, 68 NRC 221 (2008)
- inaccurate, incomplete, or misleading information in an EIS concerning the comparison of alternatives is itself sufficient to render the EIS unlawful and to compel its revision; LBP-10-24, 72 NRC 720 (2010)
- information underlying EISs or environmental assessments shall be made available to the President, the Council on Environmental Quality, and to the public, but information that must be considered as part of the NEPA decisionmaking process may be withheld from public disclosure pursuant to FOIA exemptions; CLI-08-1, 67 NRC 1 (2008)
- it is not reasonable or necessary to consider, as a system design alternative to the application for an early site permit for Units 3 and 4, the imposition of water conservation measures on preexisting Units 1 and 2; LBP-07-9, 65 NRC 539 (2007)
- it is the NRC Staff, not the intervenors, that has the burden of complying with NEPA; LBP-10-24, 72 NRC 720 (2010)
- low probability is the key to applying NEPA's rule-of-reason test to contentions that allege that specified accident scenarios present a significant environmental impact that must be evaluated; LBP-10-10, 71 NRC 529 (2010)
- NEPA § 102(2)(C)(ii) implicitly requires that the EIS disclose mitigation measures; LBP-09-16, 70 NRC 227 (2009)
- NEPA does not call for examination of every conceivable aspect of federally licensed projects; LBP-07-3, 65 NRC 237 (2007)
- NEPA requires an analysis of all impacts of connected actions, including direct, indirect, and cumulative impacts; CLI-10-5, 71 NRC 90 (2010)
- NEPA requires federal agencies to consider the likely environmental impacts of the preferred course of action as well as reasonable alternatives; LBP-10-24, 72 NRC 720 (2010)
- new evidence that potentially alters the financial cost-benefit analysis, but which does not significantly affect the physical environment, does not warrant supplementing the EIS; CLI-06-19, 63 NRC 19 (2006)
- no discussion of environmental impacts of spent fuel storage for the specified period is required in an environmental report or an environmental impact statement prepared in connection with the requested action; LBP-09-18, 70 NRC 385 (2009)
- NRC adjudicatory hearings are not EIS editing sessions; CLI-09-11, 69 NRC 529 (2009)
- NRC cannot either fail to perform an adequate evaluation or evade a NEPA responsibility by deferring to another agency; CLI-10-5, 71 NRC 90 (2010)
- NRC is not required to assess every impact or effect of its proposed action, only effects on the environment; CLI-08-16, 68 NRC 221 (2008)
- NRC is required to evaluate and balance both the claimed benefits and the environmental costs of a proposed new reactor; LBP-09-16, 70 NRC 227 (2009)
- NRC must analyze the need for additional power when it relies upon a benefit in performing the balancing of benefits and costs; LBP-09-16, 70 NRC 227 (2009)

SUBJECT INDEX

NRC regulations require petitioner to raise contentions related to NEPA as challenges to the applicant's environmental report, which acts as a surrogate for the EIS during the early stages of a relicensing proceeding; LBP-08-26, 68 NRC 905 (2008)

NRC Staff is required to prepare an EIS in connection with issuance of an early site permit; LBP-07-1, 65 NRC 27 (2007); LBP-09-7, 69 NRC 613 (2009); LBP-09-19, 70 NRC 433 (2009)

NRC Staff is required to present its position on whether it is practicable to adopt DOE's environmental impact statement for Yucca Mountain without supplementation; LBP-09-6, 69 NRC 367 (2009)

NRC Staff must discuss alternatives to the proposed action, and this discussion must incorporate a hard look at alternatives; LBP-10-10, 71 NRC 529 (2010)

NRC Staff must first prepare a draft environmental impact statement for an early site permit; LBP-09-7, 69 NRC 613 (2009)

NRC Staff's issuance of its draft and final EISs may lead to the filing of additional contentions if the data or conclusions contained in them are significantly different from the data or conclusions found in the applicant's documents; LBP-10-10, 71 NRC 529 (2010)

NRC's adoption of any EIS prepared in connection with a repository shall be deemed to also satisfy the responsibilities of NRC under NEPA and no further consideration shall be required except any independent responsibilities of NRC to protect public health under the Atomic Energy Act; LBP-09-6, 69 NRC 367 (2009)

NRC's alternatives analysis should be based around the applicant's goals, including the applicant's economic goals; LBP-07-9, 65 NRC 539 (2007)

NRC's NEPA process for preparation of an EIS mandates openness and clarity; CLI-07-27, 66 NRC 215 (2007)

petitioner may amend contentions based on the applicant's environmental report or file new contentions if there are data or conclusions in the NRC draft or final EIS, environmental assessment, or any supplements relating thereto, that differ significantly from the data or conclusions in the applicant's documents; LBP-10-24, 72 NRC 720 (2010)

potential environmental impacts of a proposed action and any reasonable alternatives must be discussed; LBP-10-10, 71 NRC 529 (2010)

preparation of an EIS is required for all major federal actions significantly affecting the quality of the human environment; LBP-06-27, 64 NRC 438 (2006)

presentation of alternatives in an applicant's environmental report and in an NRC EIS must be in comparative form; LBP-09-19, 70 NRC 433 (2009)

purpose of the cost-benefit analysis called for by NEPA is to identify each significant environmental cost and to determine whether, all other factors considered, on balance the incurring of that cost is warranted; LBP-10-24, 72 NRC 720 (2010)

reasonable alternatives do not include alternatives that are impractical, that present unique problems, or that cause extraordinary costs; LBP-09-7, 69 NRC 613 (2009)

"reasonably foreseeable" impacts include those that have catastrophic consequences, even if their probability of occurrence is low, provided that the analysis of the impacts is supported by credible scientific evidence, is not based on pure conjecture, and is within the rule of reason; CLI-08-8, 67 NRC 193 (2008)

regarding public disclosure of an agency's NEPA analysis, Congress has established that the EIS shall be made available to the public as provided by FOIA; LBP-08-7, 67 NRC 361 (2008)

rejection of even viable and reasonable alternatives, after an appropriate evaluation, is not arbitrary and capricious; LBP-10-10, 71 NRC 529 (2010)

remote or speculative environmental effects need not be discussed; LBP-09-7, 69 NRC 613 (2009)

someone living adjacent to the site for proposed construction of a federally licensed facility has standing to challenge the licensing agency's failure to prepare an EIS, even though he cannot establish with any certainty that the statement will cause the license to be withheld or altered, and even though the facility will not be completed for many years; LBP-10-24, 72 NRC 720 (2010)

Staff must address matters such as the environmental impacts of unregulated seepage into adjacent groundwater; LBP-09-25, 70 NRC 867 (2009)

Staff must evaluate alternatives to determine whether there are any obviously superior options to the proposed action; LBP-07-6, 65 NRC 429 (2007)

SUBJECT INDEX

Staff will use information from applicant's environmental report in preparing its EIS; CLI-10-2, 71 NRC 27 (2010)

Staff's draft and final EISs are to include a statement that will briefly describe and specify the need for the proposed action; LBP-06-17, 63 NRC 747 (2006)

Staff's EIS for an early site permit need not include an assessment of the benefits such as need for power; LBP-07-1, 65 NRC 27 (2007)

technologically unproven alternatives need not be considered; LBP-09-7, 69 NRC 613 (2009)

the alternatives provision of NEPA § 102(2)(E) applies both when an agency prepares an EIS and when it prepares an environmental assessment; CLI-10-18, 72 NRC 56 (2010)

the analysis of reasonably foreseeable significant adverse impacts regarding those events with potential catastrophic consequences must be supported by credible scientific evidence, must not be based on pure conjecture, and must be within the rule of reason; LBP-09-26, 70 NRC 939 (2009)

the cost-benefit analysis involves the scrutiny of many factors, among them, offsetting benefits, available alternatives, and the possible means (and attendant costs) of reducing the environmental harm; LBP-10-24, 72 NRC 720 (2010)

the draft EIS is distributed for public comment and, based on the comments received, a review of information provided by the applicant, and supplemental independent information and analysis, the Staff prepares and issues a final EIS; LBP-09-7, 69 NRC 613 (2009)

the effects that must be considered are those that are caused by the action and there must be a reasonably close causal relationship between the proposed action and an alleged environmental effect or impact, similar to proximate cause in tort law, before that effect need be considered; LBP-07-4, 65 NRC 281 (2007)

the EIS for an early site permit must focus on the environmental effects of construction and operation of reactors that have the characteristics of the postulated site parameters, and must include an evaluation of alternatives to determine whether there are any obviously superior options to the proposed action; LBP-07-1, 65 NRC 27 (2007)

the environmental costs of a uranium enrichment facility must be compared to the Staff's assessment of the benefits derived from the additional domestic supply of enriched uranium and the presence of upgraded enrichment technology in the United States; LBP-07-6, 65 NRC 429 (2007)

the environmental effect of terrorism caused by third-party miscreants is simply too far removed from the natural or expected consequences of agency action to require a study under NEPA; CLI-07-10, 65 NRC 144 (2007)

the environmental report impact analysis must include sufficient data and the alternatives analysis must be sufficiently complete to aid the Commission in preparing the EIS; LBP-09-10, 70 NRC 51 (2009)

the environmental report is required to address a list of environmental considerations that correspond to the environmental considerations that NEPA § 102(2)(C)(i)-(v) requires the agency to address in the EIS; LBP-09-16, 70 NRC 227 (2009)

the fact that an environmental impact is regulated by another federal agency or by a state does not justify the exclusion of the analysis in NRC's EIS; LBP-09-16, 70 NRC 227 (2009)

the hard look required by NEPA is subject to a rule of reason, such that it is not necessary to look at every conceivable alternative to the proposed licensing action, but only those that are feasible and reasonably related to the scope and goals of the proposed action; LBP-10-10, 71 NRC 529 (2010)

the National Environmental Policy Act allows agencies to select their own methodology as long as that methodology is reasonable; CLI-10-11, 71 NRC 287 (2010)

the National Environmental Policy Act does not require agencies to use technologies and methodologies that are still emerging and under development, or to study phenomena for which there are not yet standard methods of measurement or analysis; CLI-10-11, 71 NRC 287 (2010)

the National Environmental Policy Act requires an EIS for any agency action that is a major action significantly affecting the environment; LBP-10-7, 71 NRC 391 (2010)

the NEPA alternatives analysis to the proposed action is the heart of an EIS; LBP-09-16, 70 NRC 227 (2009); LBP-09-17, 70 NRC 311 (2009)

the NEPA requirement to prepare an EIS is a procedural mechanism designed to ensure that agencies give proper consideration to the environmental consequences of their actions; LBP-10-24, 72 NRC 720 (2010)

SUBJECT INDEX

- the Nuclear Waste Policy Act's mandate that the EIS be adopted by NRC to the extent practicable is intended to avoid duplication of the environmental review process but does not permit NRC to premise a construction-authorization or licensing decision upon an EIS that does not meet the substantive requirements of NEPA or the Council on Environmental Quality's regulations; LBP-09-6, 69 NRC 367 (2009)
- the obligation of agencies to consider alternatives is a lesser one under an environmental assessment than under an environmental impact statement; CLI-10-18, 72 NRC 56 (2010)
- the only relevant test for a claim that it is not practicable to adopt the DOE environmental impact statement is whether the supporting affidavit presents significant and substantial new information or new considerations sufficient to render such EIS inadequate; LBP-09-6, 69 NRC 367 (2009)
- the potential construction and operation of the plant or plants for which the early site permit is being obtained is the proposed action that must be the focus of the Board's review; LBP-07-1, 65 NRC 27 (2007)
- the presiding officer should treat as a cognizable "new consideration" an attack on the Yucca Mountain environmental impact statements based on significant and substantial information that, if true, would render the statements inadequate; CLI-08-25, 68 NRC 497 (2008)
- the requirement to discuss alternatives in the environmental report parallels NEPA's requirement that an EIS provide a detailed statement of reasonable alternatives to a proposed action; LBP-09-16, 70 NRC 227 (2009)
- the scope of admissible issues in the high-level waste repository proceeding is discussed; LBP-09-6, 69 NRC 367 (2009)
- the Staff is required to provide an environmental justice analysis in greater detail when the low-income or minority population thresholds are met; LBP-07-9, 65 NRC 539 (2007)
- the statutory language of the National Environmental Policy Act requires an EIS only in the event of a proposed action, and thus in the absence of a proposal there is nothing that could be the subject of the analysis envisioned by the statute for an EIS; CLI-10-5, 71 NRC 90 (2010)
- the statutory requirement that a federal agency contemplating a major action prepare an EIS serves NEPA's action-forcing purpose in two important respects; LBP-06-23, 64 NRC 257 (2006)
- there is no requirement that the field sampling plan describe the collection of information needed for the decommissioning plan's environmental assessment or EIS; LBP-08-4, 67 NRC 105 (2008)
- there is no requirement to use the best scientific methodology, and NEPA should be construed in the light of reason if it is not to demand virtually infinite study and resources; CLI-10-11, 71 NRC 287 (2010)
- to be encompassed by NEPA, there needs to be a reasonably close causal relationship between a change in the physical environment and the effect at issue; CLI-08-16, 68 NRC 221 (2008)
- to the fullest extent possible, all federal agencies shall include in every recommendation or report on proposals for legislation and other major federal actions significantly affecting the quality of the human environment, a detailed statement discussing the environmental impact of the proposed action and possible alternatives; CLI-08-26, 68 NRC 509 (2008)
- under NEPA the Commission looks to the reasonably foreseeable impacts of simply licensing the facility, not the reasonably foreseeable effects of a successful terrorist attack; LBP-09-26, 70 NRC 939 (2009)
- under NEPA, the NRC must balance the benefits of the project against its environmental costs; LBP-10-24, 72 NRC 720 (2010)
- under the rule of reason, the EIS need not consider an infinite range of alternatives, only reasonable or feasible ones; LBP-09-16, 70 NRC 227 (2009); LBP-09-17, 70 NRC 311 (2009); LBP-09-21, 70 NRC 581 (2009)
- use of the disjunctive phrase "data *or* conclusions" means that it is sufficient that either data or conclusions in the draft EIS differ significantly from those in the environmental report; LBP-10-24, 72 NRC 720 (2010)
- when Staff has prepared a DEIS or FEIS by the time environmental contentions come before a licensing board on the merits, such contentions are appropriately treated as challenges to the EIS; LBP-09-7, 69 NRC 613 (2009)
- where the agency's action is to approve or deny a proposal by a private party, the agency should ordinarily accord substantial weight to the preferences of the applicant and/or sponsor in the siting and design of the project; LBP-10-6, 71 NRC 350 (2010)

SUBJECT INDEX

whether and how the Staff fulfills its National Historic Preservation Act and NEPA obligations are issues that could form the basis of a new contention; LBP-10-16, 72 NRC 361 (2010)

See also Draft Environmental Impact Statement; Final Environmental Impact Statement; Generic Environmental Impact Statement; Supplemental Environmental Impact Statement

ENVIRONMENTAL ISSUES

a baseline NEPA issue that a board must make in a mandatory hearing on an early site permit application is whether the requirements of NEPA § 102(2)(A), (C), and (E) and 10 C.F.R. Part 51 have been met; LBP-07-9, 65 NRC 539 (2007)

a baseline NEPA issue that a board must make in a mandatory hearing on an early site permit application is to independently consider the final balance among conflicting factors contained in the record of the proceeding with a view to determining the appropriate action to be taken; LBP-07-9, 65 NRC 539 (2007)

a baseline NEPA issue that a board must make in a mandatory proceeding on an early site permit application is whether a construction permit should be issued, denied, or appropriately conditioned to protect environmental values; LBP-07-9, 65 NRC 539 (2007)

a board may consider environmental contentions contesting applicant's environmental report as challenges to NRC's subsequent draft environmental impact statement so long as the DEIS analysis or discussion at issue is essentially *in para materia* with the ER analysis or discussion that is the focus of the contention; LBP-08-2, 67 NRC 54 (2008); LBP-08-3, 67 NRC 85 (2008)

a late-filed environmental contention may be admitted only where petitioner relies upon newly available, significant information, meets the late filing requirements, or successfully argues for supplementing the EIS; LBP-08-11, 67 NRC 460 (2008)

a presiding officer considering environmental contentions in the high-level waste proceeding should apply NRC reopening procedures and standards in 10 C.F.R. 2.326 to the extent possible; CLI-08-25, 68 NRC 497 (2008)

absent a waiver pursuant to 10 C.F.R. 2.335, Category 1 issues are not subject to challenge in a relicensing proceeding because they involve environmental effects that are essentially similar for all plants and need not be assessed repeatedly on a site-specific basis; LBP-08-13, 68 NRC 43 (2008)

affidavits supporting environmental contentions in the high-level waste proceeding must set forth significant and substantial grounds for the claim that it is not practicable to adopt the environmental impact statement for the proposed repository prepared by DOE; LBP-09-6, 69 NRC 367 (2009)

although all environmental contentions may, in a general sense, ultimately be challenges to the NRC's compliance with NEPA, factual disputes of particular issues can be raised before the draft environmental impact statement is prepared; CLI-10-2, 71 NRC 27 (2010)

although the primary duties of NEPA fall on the NRC Staff in NRC proceedings, the initial requirement to analyze the environmental impacts of an action is directed to applicants; LBP-07-11, 66 NRC 41 (2007)

an environmental contention is not litigable in a combined license proceeding if it has already been resolved in an early site permit proceeding; CLI-09-3, 69 NRC 68 (2009)

an environmental contention may be admitted during a COL proceeding if it concerns a significant issue that was not resolved in the early site permit proceeding or if it involves the impacts of construction and operation of the facility and significant new information has been identified; LBP-08-15, 68 NRC 294 (2008)

applicant is required to address new and significant information for either Category 1 or Category 2 issues in its environmental report for a license renewal application; LBP-08-13, 68 NRC 43 (2008)

applicant is required to provide in its environmental report a site-specific analysis of entrainment, impingement, and heat shock/thermal discharge impacts from its once-through cooling systems; LBP-08-13, 68 NRC 43 (2008)

because a contention focuses on the safety-related aspects of a COL application, it is not apparent that the issue resolved in the board's admissibility ruling has any particular implications for a contention challenging the environmental impacts of long-term onsite low-level radioactive waste storage admitted and pending in another proceeding; LBP-10-8, 71 NRC 433 (2010)

because applicant did not apply for an early site permit, petitioners thus are not precluded from raising an issue relative to failure of applicant's environmental report to assess the onsite impacts of potential long-term storage of low-level waste; LBP-08-16, 68 NRC 361 (2008)

SUBJECT INDEX

Category 2 issues are not essentially similar for all plants because they must be reviewed on a site-specific basis and thus challenges relating to these issues are properly part of a license renewal proceeding; LBP-08-13, 68 NRC 43 (2008)

Category 2 issues involve environmental impact severity levels that could differ significantly from plant to plant, or involve impacts for which additional plant-specific mitigation measures should be considered; LBP-06-10, 63 NRC 314 (2006); LBP-06-23, 64 NRC 257 (2006); LBP-07-4, 65 NRC 281 (2007); LBP-07-11, 66 NRC 41 (2007)

Category 2, or plant specific, issues are within the scope of license renewal, and applicants must provide a plant-specific review of them; LBP-06-23, 64 NRC 257 (2006)

commencement of evidentiary hearings on environmental issues is prohibited until after the final environmental impact statement is issued; LBP-09-22, 70 NRC 640 (2009)

contentions must be based on documents or information available when the hearing petition is to be filed; LBP-08-2, 67 NRC 54 (2008); LBP-08-3, 67 NRC 85 (2008)

contested proceedings litigate particular contentions that may include arguable NEPA-analysis shortfalls, whereas the Staff's NEPA analysis encompasses the full range of NEPA issues whether or not a contested proceeding even takes place; CLI-10-5, 71 NRC 90 (2010)

environmental issues identified as "Category 1," or "generic," issues in 10 C.F.R. Part 51, Subpart A, Appendix B, are not within the scope of a license renewal proceeding; LBP-07-11, 66 NRC 41 (2007)

federal agencies must include in every recommendation or report on major federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on the environmental impact of the proposed action; LBP-07-11, 66 NRC 41 (2007)

for an early site permit, NRC is required to provide a detailed statement on alternatives to the proposed action; CLI-07-27, 66 NRC 215 (2007)

in a license renewal proceeding, petitioners must demonstrate that an issue focuses on the potential impacts of an additional 20 years of nuclear power plant operation, not on everyday operational issues; CLI-06-4, 63 NRC 32 (2006)

in addition to meeting NRC's regular contention admissibility requirements in 10 C.F.R. 2.309(f), environmental contentions addressing any DOE environmental impact statement or supplement in the high-level waste proceeding must also conform to the requirements and address the applicable factors outlined in 10 C.F.R. 51.109; CLI-08-25, 68 NRC 497 (2008)

in an uncontested uranium enrichment proceeding, a licensing board, without conducting a de novo evaluation of the application, will determine whether the application and record of the proceeding contain sufficient information to support licensing and whether the Staff's review of the application has been adequate; LBP-06-17, 63 NRC 747 (2006)

in conducting its analysis of the impact of the license renewal on land use, applicant should consider the impact on real estate values that would be caused by license renewal or nonrenewal; LBP-08-13, 68 NRC 43 (2008)

in the mandatory early site permit proceeding, NRC must address whether the requirements of section 102(2)(A), (C), and (E) of the National Environmental Policy Act and the regulations in 10 C.F.R. Part 51, Subpart A have been complied with; CLI-07-27, 66 NRC 215 (2007)

in the mandatory early site permit proceeding, NRC must address whether the review conducted by the Commission pursuant to the National Environmental Policy Act has been adequate; CLI-07-27, 66 NRC 215 (2007)

in the mandatory early site permit proceeding, NRC must determine, after considering reasonable alternatives, whether the construction permit should be issued, denied, or appropriately conditioned to protect environmental values; CLI-07-27, 66 NRC 215 (2007)

in the mandatory early site permit proceeding, NRC must independently consider the final balance among the conflicting factors contained in the record of the proceeding with a view to determining the appropriate action to be taken; CLI-07-27, 66 NRC 215 (2007)

intervenors are required to file contentions in the first instance based on the applicant's environmental report; LBP-09-7, 69 NRC 613 (2009)

new or amended environmental contentions can be freely filed if new data or conclusions appear in new documents; LBP-07-14, 66 NRC 169 (2007)

SUBJECT INDEX

NRC hearings on safety issues concern the adequacy of the license application, not the NRC Staff's work, but NRC hearings on NEPA issues focus entirely on the adequacy of the NRC Staff's work; CLI-07-17, 65 NRC 392 (2007)

on NEPA baseline issues in the mandatory hearing on an early site permit application, the board must reach its own independent determination; LBP-07-9, 65 NRC 539 (2007)

petitioners are to file their NEPA contentions based on the applicant's environmental report, and, later, if the NRC Staff's draft or final environmental impact statement contains data or conclusions that differ significantly from the data or conclusions in the applicant's documents, petitioners may file new or amended contentions; CLI-06-15, 63 NRC 687 (2006)

presentation of an alternative analysis is, without more, insufficient to support a contention alleging that the original analysis failed to meet applicable requirements; LBP-08-13, 68 NRC 43 (2008)

prior to 2004, in addition to meeting the substantive admissibility criteria found in 10 C.F.R. 2.714(b)(2), the issue statement was based on environmental impact statement or environmental assessment information that differed significantly from the data or conclusions in the applicant's environmental report; LBP-10-1, 71 NRC 165 (2010)

regardless of whether a uranium enrichment facility proceeding is contested or uncontested, a licensing board must consider three baseline NEPA issues; LBP-06-17, 63 NRC 747 (2006)

spent fuel pool fires are Category 1 issues and therefore are addressed generically in the generic environmental impact statement for license renewals; LBP-08-13, 68 NRC 43 (2008)

the impact of extended operation on endangered or threatened species varies from one location to another, and is thus included within Category 2; LBP-07-4, 65 NRC 281 (2007)

the licensing board's standard of review in a mandatory uncontested proceeding on a uranium enrichment facility application is discussed; LBP-07-6, 65 NRC 429 (2007)

the overriding NEPA issue that a board must determine in a mandatory proceeding on an early site permit application is whether the NEPA review conducted by the NRC Staff has been adequate; LBP-07-9, 65 NRC 539 (2007)

the potential for tritium contamination of water is primarily a NEPA issue because it involves the environmental impacts of the proposed early site permit and possible mitigation measures, but also has a safety element because safety regulations require that exposure to radiation be as low as reasonably achievable; LBP-07-9, 65 NRC 539 (2007)

the presiding officer or licensing board has discretion to accelerate the merits hearing on safety issues, but not on environmental issues; CLI-07-17, 65 NRC 392 (2007)

the presiding officer should treat as a cognizable "new consideration" an attack on the Yucca Mountain environmental impact statements based on significant and substantial information that, if true, would render the statements inadequate; CLI-08-25, 68 NRC 497 (2008)

the underlying purpose of NEPA as an information-gathering and disclosure mechanism requires a different view of the concept of "materiality" under 10 C.F.R. 2.309(f)(1)(iv) than might be applied to a contention seeking to establish a health and safety issue; LBP-08-16, 68 NRC 361 (2008)

threshold environmental legal and policy issues need not await issuance of the final environmental impact statement; CLI-07-17, 65 NRC 392 (2007)

to challenge a SAMA analysis, petitioner must, at a minimum, address the approximate relative cost and benefit of the SAMA; LBP-08-13, 68 NRC 43 (2008)

when a combined license application references an early site permit, neither applicant nor Staff needs to address environmental issues resolved in the ESP proceeding unless new and significant information arises on those issues; LBP-10-1, 71 NRC 165 (2010)

when Staff has prepared a DEIS or FEIS by the time environmental contentions come before a licensing board on the merits, such contentions are appropriately treated as challenges to the EIS; LBP-09-7, 69 NRC 613 (2009)

See also Aquatic Impacts

ENVIRONMENTAL JUSTICE

although Staff's explanation of how it reached its conclusions regarding environmental justice is cursory, the Commission believes that the review was sufficient; CLI-07-27, 66 NRC 215 (2007)

an admissible contention must allege sufficiently specific disproportionate effects with a nexus to the physical environment, falling on low-income and minority communities; LBP-06-10, 63 NRC 314 (2006)

SUBJECT INDEX

- contentions must be based on the specific characteristics of a particular minority community; LBP-07-3, 65 NRC 237 (2007)
- contentions must present support regarding the alleged existence of adverse impacts or harm on the physical or human environment, and must make a supported case that these purported adverse impacts could disproportionately affect poor or minority communities in the vicinity of the facility at issue; LBP-07-3, 65 NRC 237 (2007)
- contentions must show that the affected local population qualifies as a minority or low-income population; LBP-09-18, 70 NRC 385 (2009)
- each agency should identify and address, as appropriate, any disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority or low-income populations; LBP-06-19, 64 NRC 53 (2006)
- Executive Order 12898 itself does not establish new substantive or procedural requirements applicable to NRC regulatory or licensing activities; CLI-07-27, 66 NRC 215 (2007)
- given the fact-specific nature of environmental justice issues and inquiries, the methods and form of Staff review, including any decision whether to hold discussions with knowledgeable community and governmental representatives, is best left to the informed discretion of the Staff; CLI-07-27, 66 NRC 215 (2007)
- in accord with the environmental justice executive order, NRC has obligated itself to address only the disproportionate distribution of high and adverse effects in its NEPA analysis; LBP-07-3, 65 NRC 237 (2007)
- in its environmental analysis, NRC makes nearby nuclear facility-related harm an appropriate issue to consider cumulatively with any impacts from proposed reactors; LBP-07-3, 65 NRC 237 (2007)
- in reviewing environmental justice claims, adverse impacts that fall heavily on minority and impoverished citizens call for particularly close scrutiny; LBP-07-3, 65 NRC 237 (2007)
- NEPA is the only legal grounds for an admissible contention relating to environmental justice issues; LBP-09-18, 70 NRC 385 (2009)
- the essence of an environmental justice claim, in NRC practice, is disparate environmental harm; LBP-08-6, 67 NRC 241 (2008)
- the purpose of this review is to ensure that the Commission considers and publicly discloses environmental factors peculiar to minority or low-income populations that may cause them to suffer harm disproportionate to that suffered by the general population; LBP-08-13, 68 NRC 43 (2008)
- the Staff is required to provide an environmental justice analysis in greater detail when the low-income or minority population thresholds are met; LBP-07-9, 65 NRC 539 (2007)
- under NEPA, the Commission is ultimately responsible for analyzing environmental justice issues, but license renewal applicants are required to assist the Commission with that evaluation; LBP-08-26, 68 NRC 905 (2008)
- ENVIRONMENTAL PROTECTION AGENCY**
- alternative thermal effluent limitations do not apply to a plant that employs closed-cycle cooling; CLI-07-25, 66 NRC 101 (2007)
- carbon dioxide falls within the Clear Air Act's definition of air pollutants subject to EPA's regulatory authority; LBP-09-17, 70 NRC 311 (2009)
- EPA is responsible for promulgating standards for environmental protection, and NRC is tasked with promulgating the criteria it will apply in the licensing proceeding; LBP-09-6, 69 NRC 367 (2009)
- except for its overall NEPA balancing, the NRC can limit its analysis of aquatic impacts to those determined by the EPA, when EPA has analyzed an alternative technology extensively and made conclusions as to its suitability; LBP-07-3, 65 NRC 237 (2007)
- licensees subject to the provisions of EPA's generally applicable environmental radiation standards in 40 C.F.R. Part 190 shall comply with those standards; LBP-09-19, 70 NRC 433 (2009)
- nothing in the National Environmental Policy Act shall be deemed to authorize any federal agency to review any effluent limitation or other requirement established pursuant to the Clean Water Act or to authorize any such agency to impose any effluent limitation other than those set by EPA or a state agency that has been delegated such authority; LBP-09-25, 70 NRC 867 (2009)
- NRC must modify its technical requirements and criteria for the high-level waste repository as necessary to be consistent with final EPA standards; CLI-08-20, 68 NRC 272 (2008)

SUBJECT INDEX

- NRC's criteria must not be inconsistent with EPA's environmental protection standards; LBP-09-6, 69 NRC 367 (2009)
- the Commission has acknowledged applicability of EPA radiation exposure standards under 40 C.F.R. Part 190; LBP-09-19, 70 NRC 433 (2009)
- when water quality decisions have been made by a state pursuant to the Clean Water Act and these decisions are raised in NRC licensing proceedings, the NRC is bound to take EPA's considered decisions at face value; LBP-09-25, 70 NRC 867 (2009)
- ENVIRONMENTAL QUALIFICATION OF ELECTRICAL EQUIPMENT
- all structures, systems, and components relied on in safety analyses or plant evaluations to perform a function that demonstrates compliance with the NRC's regulations are subject to aging management review for license renewal; CLI-10-14, 71 NRC 449 (2010)
- ENVIRONMENTAL REPORT
- a board may consider environmental contentions contesting applicant's ER as challenges to NRC's subsequent draft environmental impact statement so long as the DEIS analysis or discussion at issue is essentially *in para materia* with the ER analysis or discussion that is the focus of the contention; LBP-08-2, 67 NRC 54 (2008); LBP-08-3, 67 NRC 85 (2008);
- a contention challenging the absence in the ER of consideration of impacts from a severe radiological accident at one unit on other collocated units, supported by fact-based argument demonstrating a genuine dispute on a material issue and identifying supporting reasons for petitioners' belief, is admitted; LBP-09-17, 70 NRC 311 (2009)
- a contention may challenge a draft environmental impact statement even though its ultimate conclusion on a particular issue is the same as that in the ER, as long as the DEIS relies on significantly different data than the ER to support the determination; LBP-10-24, 72 NRC 720 (2010)
- a contention that impacts from a severe radiological accident at any one unit on operation of other units at the site had not been, and should be, considered in the application's environmental report is found to be moot; LBP-10-10, 71 NRC 529 (2010)
- a license renewal applicant has no obligation to discuss in its ER the impacts of a potential expansion of the independent spent fuel storage installation; LBP-08-26, 68 NRC 905 (2008)
- a license renewal applicant must submit with its application an environmental report, which must describe the proposed action, including the applicant's plans to modify the facility or its administrative control procedures, and the modifications directly affecting the environment or affecting plant effluents that affect the environment; LBP-07-4, 65 NRC 281 (2007)
- a reviewing agency determines whether an alternative is appropriate by looking at the objectives (i.e., purpose and need) of a project sponsor; LBP-09-2, 69 NRC 87 (2009)
- a solely wind- or solar-powered facility could not satisfy a project's purpose of providing baseload power; LBP-09-17, 70 NRC 311 (2009)
- a waiver of 10 C.F.R. 2.335 is necessary to litigate an applicant's failure to include new and significant information concerning a Category 1 issue; LBP-06-20, 64 NRC 131 (2006)
- accuracy of project cost estimates only becomes relevant if an environmentally preferable alternative has been identified; LBP-09-2, 69 NRC 87 (2009)
- after applicant's amendment to its ER, whereby it changed its cooling method for the proposed reactor to a no-discharge cooling system that uses a combination of wet and dry cooling towers, there remains no genuine dispute about discharge of heated water; LBP-06-24, 64 NRC 360 (2006)
- agencies must consider alternatives that are appropriate to recommended courses of action; LBP-09-2, 69 NRC 87 (2009)
- all reasonable alternatives must be identified; LBP-10-10, 71 NRC 529 (2010)
- allegation that the ER's analysis of cancer deaths and illnesses relative to natural radiation source exposures is inadequate is inadmissible; LBP-08-16, 68 NRC 361 (2008)
- although construction of the provisions of 10 C.F.R. Part 51 mandating the contents of applicant's ER may be informed by consideration of general National Environmental Policy Act principles, the Commission must look to the wording of the Part 51 regulations to determine if an ER is satisfactory or deficient; LBP-09-10, 70 NRC 51 (2009)
- although the draft environmental impact statement may rely in part on applicant's ER, Staff must independently evaluate and be responsible for the reliability of all information used in the DEIS; LBP-09-19, 70 NRC 433 (2009)

SUBJECT INDEX

although the obligations under NEPA fall to the agency and therefore the NRC Staff, petitioners are required to raise environmental objections based on the applicant's ER; LBP-10-15, 72 NRC 257 (2010)

although the requirements of NEPA are directed to federal agencies and the primary duties of NEPA accordingly fall on the NRC Staff in NRC proceedings, the initial requirement to analyze the environmental impacts of an action is directed to applicants; LBP-10-10, 71 NRC 529 (2010)

an assessment of all environmental impacts and alternatives must be included, even though NRC has no jurisdiction to regulate such impacts or jurisdiction to impose such alternatives; LBP-09-10, 70 NRC 51 (2009)

an ER for a materials license must include a statement on the alternatives to the proposed action, including a discussion of the no-action alternative; CLI-09-15, 70 NRC 1 (2009)

analysis must consider and balance the environmental effects of the proposed action, the environmental impacts of alternatives to the proposed action, and alternatives available for reducing or avoiding adverse environmental effects; LBP-10-16, 72 NRC 361 (2010)

analysis of economic, technical, and other benefits must be included; LBP-08-16, 68 NRC 361 (2008)

any new and significant information regarding the environmental impacts of license renewal of which the applicant is aware must be included, even if this concerns a category 1 issue; LBP-07-11, 66 NRC 41 (2007)

applicant for an early site permit may evaluate the environmental impacts of a reactor or reactors falling within the site characteristics and design parameters for the ESP application; LBP-09-19, 70 NRC 433 (2009)

applicant for an early site permit must file an ER, addressing the five factors of 10 C.F.R. 51.45(b)(1)-(5); LBP-09-19, 70 NRC 433 (2009)

applicant for an early site permit must submit an environmental report containing a description of the proposed action, a statement of its purposes, and a description of the environment affected; LBP-09-7, 69 NRC 613 (2009)

applicant is not obliged to examine general efficiency or conservation proposals that would do nothing to satisfy the particular project's goals of producing baseload power; LBP-09-17, 70 NRC 311 (2009); LBP-09-21, 70 NRC 581 (2009)

applicant is required to address a list of environmental considerations that correspond to the environmental considerations that NEPA § 102(2)(C)(i)-(v) requires the agency to address in the environmental impact statement; LBP-09-16, 70 NRC 227 (2009)

applicant is required to address new and significant information for either Category 1 or Category 2 issues in its license renewal application; LBP-08-13, 68 NRC 43 (2008)

applicant is required to analyze the alternatives available for reducing or avoiding adverse environmental effects; LBP-09-10, 70 NRC 51 (2009); LBP-09-19, 70 NRC 433 (2009)

applicant is required to evaluate only alternatives that support the purpose of the project; LBP-09-21, 70 NRC 581 (2009)

applicant is required to present a cost-benefit analysis (and therefore provide cost estimates) for nuclear power plants and facilities only where the applicant's alternatives analysis indicates that there is an environmentally preferable alternative; LBP-08-21, 68 NRC 554 (2008)

applicant is required to provide a site-specific analysis of entrainment, impingement, and heat shock/thermal discharge impacts from its once-through cooling systems; LBP-08-13, 68 NRC 43 (2008)

applicant is required to take Table S-3 as the basis for evaluating the contribution of the environmental effects of management of high-level wastes related to uranium fuel cycle activities; LBP-09-21, 70 NRC 581 (2009)

applicant must address matters such as the environmental impacts of unregulated seepage into adjacent groundwater; LBP-09-25, 70 NRC 867 (2009)

applicant must include a description of the proposed action, a statement of its purposes, and a discussion of the impacts, adverse environmental effects, and alternatives to the proposed action; LBP-09-10, 70 NRC 51 (2009); LBP-09-17, 70 NRC 311 (2009)

applicant must include an evaluation of alternative sites to determine whether there is any obviously superior alternative to the site proposed; LBP-09-19, 70 NRC 433 (2009)

applicant must provide additional analysis of even a Category 1 issue if new and significant information has surfaced; LBP-06-20, 64 NRC 131 (2006); LBP-06-23, 64 NRC 257 (2006)

SUBJECT INDEX

applicant must provide enough information and in sufficient detail to allow for an evaluation of important impacts; LBP-08-16, 68 NRC 361 (2008)

applicant must submit a supplement to its ER at the operating license stage that discusses the same matters described in 10 C.F.R. 51.45, 51.51, and 51.52, which would have been initially discussed in the ER at the construction permit stage, but only to the extent that those matters differ from those discussed or reflect new information; LBP-09-26, 70 NRC 939 (2009)

applicant shall discuss the impacts of the proposed action on the environment in proportion to their significance; LBP-09-25, 70 NRC 867 (2009)

applicant's comparison of the environmental impacts of nuclear and wind/compressed air energy storage is insufficient to adequately inform decisionmakers about the competing choices; LBP-10-10, 71 NRC 529 (2010)

applicant's ER for license renewal must contain a description of the proposed action, including plans to modify the facility or its administrative control procedures, and must describe in detail the modifications directly affecting the environment or affecting plant effluents that affect the environment; LBP-06-23, 64 NRC 257 (2006)

applicant's ER is not required to contain analyses of environmental impacts identified as Category 1, or generic, issues; CLI-07-3, 65 NRC 13 (2007); LBP-07-4, 65 NRC 281 (2007)

applicant's ER is not the same as the NRC's environmental impact statement; LBP-09-10, 70 NRC 51 (2009)

applicant's ER must describe the proposed action, state its purposes, describe the environment affected, and discuss the project's environmental impacts in proportion to their significance and alternatives to the proposal; CLI-10-2, 71 NRC 27 (2010)

applicant's ER must, in relevant part, contain a discussion of alternatives sufficiently complete to aid the Commission in developing and exploring, pursuant to section 102(2)(E) of NEPA, appropriate alternatives to recommended courses of action; LBP-10-6, 71 NRC 350 (2010)

applicant's license renewal application must include a severe accident mitigation alternatives analysis, outlining the costs and benefits of potential mitigation measures to reduce severe accident risk or consequences; CLI-10-30, 72 NRC 564 (2010)

applicants must provide a plant-specific analysis of all Category 2 issues; CLI-09-10, 69 NRC 521 (2009)

applicants' assertion that low-level radioactive waste could be transferred to another licensee or that some other arrangement might be established in the future is not sufficient to erase the requirement that reasonably foreseeable environmental impacts be assessed in an environmental report; CLI-09-20, 70 NRC 911 (2009)

as long as applicant has not set forth an unreasonably narrow objective of its project, NRC adheres to the principle that when the purpose is to accomplish one thing, it makes no sense to consider alternative ways by which another thing might be accomplished; LBP-09-2, 69 NRC 87 (2009)

asserted deficiencies in the ER intake/discharge impact discussion as it is associated with the baseline discussion of aquatic resources, if properly supported, can be admitted for further litigation; LBP-08-16, 68 NRC 361 (2008)

assertion that some analysis, calculation, or survey must be included in an ER or environmental impact statement is not necessarily sufficient, in and of itself, to require consideration of whether that additional information-gathering and disclosure mechanism should be included; LBP-08-16, 68 NRC 361 (2008)

at the early site permit stage, applicant is excused from examination of the benefits of the proposed project or analysis regarding energy alternatives, and relevant regulations may not be construed to require that the draft or final environmental impact statement include an assessment of the benefits of the proposed action; LBP-06-28, 64 NRC 460 (2006)

because applicant did not apply for an early site permit, petitioners thus are not precluded from raising an environmental issue relative to failure of applicant's ER to assess the onsite impacts of potential long-term storage of low-level waste; LBP-08-16, 68 NRC 361 (2008)

because Category 1 issues already have been reviewed on a generic basis for all plants, an applicant's environmental report need not provide a site-specific analysis of these issues; CLI-09-10, 69 NRC 521 (2009)

SUBJECT INDEX

because petitioners fail to create a genuine issue, the board need not resolve whether applicant's purpose is unreasonably narrow or whether a proposed alternative is so far beyond the realm of reason that it must be rejected out of hand; LBP-09-21, 70 NRC 581 (2009)

because the environmental report is the only environmental document available when NRC issues its notice of opportunity to request a hearing, initial contentions necessarily focus on the adequacy of the applicant's ER under Part 51; LBP-09-10, 70 NRC 51 (2009); LBP-09-25, 70 NRC 867 (2009)

carbon dioxide emissions from the uranium fuel cycle are to be listed as zero; LBP-09-21, 70 NRC 581 (2009)

Category 1, or generic, issues need not be repeatedly assessed on a plant-by-plant basis, and license renewal applicants may refer to and adopt the generic environmental impact findings in 10 C.F.R. Part 51, Subpart A, Appendix B, Table B-1; LBP-06-23, 64 NRC 257 (2006)

Category 2, or plant-specific, issues are within the scope of license renewal, and applicants must provide a plant-specific review of them; LBP-07-11, 66 NRC 41 (2007)

Category 2, or plant-specific, issues involve environmental impact severity levels that might differ significantly from one plant to another, or impacts for which additional plant-specific mitigation measures should be considered; LBP-07-4, 65 NRC 281 (2007)

challenge to the technical adequacy of baseline water quality data and adequate confinement of the host aquifer in applicant's ER is admissible; LBP-10-16, 72 NRC 361 (2010)

contention that applicant's failure to address externally initiated accident scenarios is a material omission from the environmental report is inadmissible; LBP-10-10, 71 NRC 529 (2010)

contention that the ER is based on incomplete information because a new earthquake fault has been discovered within 600 meters of nuclear reactors and the results of studies concerning the new fault will be available in the near term is admissible; LBP-10-15, 72 NRC 257 (2010)

contentions that seek compliance with NEPA must be based on applicant's ER; CLI-10-2, 71 NRC 27 (2010)

discussion of unaffected areas or sites is not required by 10 C.F.R. 51.45(b); CLI-06-9, 63 NRC 433 (2006)

documents must be written in plain language so that decisionmakers and the public can readily understand them; LBP-10-16, 72 NRC 361 (2010)

each application for a standard design certification must address the costs and benefits of severe accident design mitigation alternatives; LBP-09-10, 70 NRC 51 (2009)

each of the five subelements covered by NEPA § 102(2)(C) must be discussed; LBP-09-16, 70 NRC 227 (2009)

environmental costs of management of low-level wastes and high-level wastes related to uranium fuel cycle activities must be included; LBP-08-15, 68 NRC 294 (2008)

even though a matter may normally fall within a Category 1 issue, ERs are also required to contain any new and significant information regarding the environmental impacts of license renewal of which the applicant is aware; LBP-07-4, 65 NRC 281 (2007)

failure of an applicant to include new and significant information concerning a Category 1 issue relating to dangers of high-density racking of spent fuel in its environmental report does not give rise to an admissible contention; LBP-06-20, 64 NRC 131 (2006)

failure to provide facts or expert opinion sufficient to show that the environmental report disregarded a feasible alternative based on either wind power, solar power, or some combination of the two renders the contention inadmissible; LBP-09-16, 70 NRC 227 (2009)

for license renewal, the ER must describe the proposed action, including the applicant's plans to modify the facility or its administrative control procedures, and provide detail on the modifications directly affecting the environment or affecting plant effluents that affect the environment; LBP-07-11, 66 NRC 41 (2007)

general assertions, without some effort to show why the assertions undercut findings or analyses in applicant's ER, fail to satisfy the contention admissibility requirements of 10 C.F.R. 2.309(f)(1)(vi); LBP-10-6, 71 NRC 350 (2010)

if applicant's plant utilizes a once-through cooling system, applicant shall provide a copy of a Clean Water Act § 316a variance or equivalent state permit and supporting documentation or shall assess the impact of the proposed action on fish and shellfish resources resulting from heat shock; CLI-07-16, 65 NRC 371 (2007)

SUBJECT INDEX

if intervenors provide no facts or expert opinion explaining why a conclusion in applicant's ER is incorrect, or fail to identify any SAMDAs that should be adopted if some unspecified new analysis were performed or any cost-beneficial SAMAs, their contention should be dismissed; LBP-10-10, 71 NRC 529 (2010)

if petitioner has proffered an admissible contention asserting an environmentally preferable alternative to the proposed reactors, this also would trigger the requirement that the ER contain cost estimates; CLI-10-9, 71 NRC 245 (2010)

if the environmental impact of mining activities is potentially significant, then the failure of the ER to disclose the location of the offsite mine does not immunize it from being the subject of a legitimate contention; LBP-09-10, 70 NRC 51 (2009)

information submitted in the ER should not be confined to information supporting the proposed action but should also include adverse information; LBP-09-16, 70 NRC 227 (2009)

information that the ER provides must be accurate and up-to-date in order to support an agency's determination that a project will have no significant impact on the environment; LBP-09-16, 70 NRC 227 (2009)

intervenors are required to file environmental contentions in the first instance based on the applicant's ER; LBP-09-7, 69 NRC 613 (2009)

license renewal applicants are required to consider severe accident mitigation alternatives in the ER prepared in connection with the application; CLI-10-11, 71 NRC 287 (2010)

license renewal applicants may refer to and adopt the generic environmental impact findings found in 10 C.F.R. Part 51, Subpart A, Appendix B, Table B-1, for all Category 1 issues; LBP-07-11, 66 NRC 41 (2007); LBP-06-10, 63 NRC 314 (2006)

license renewal applications must include a severe accident mitigation alternatives analysis if not previously considered by NRC Staff; LBP-10-15, 72 NRC 257 (2010)

license renewal ERs need not discuss economic or technical benefits and costs of the proposed action or alternatives except as they are either essential for determining whether an alternative should be included or relevant to mitigation; LBP-08-13, 68 NRC 43 (2008)

licensing boards do not sit to flyspeck environmental documents or to add details or nuances; LBP-10-10, 71 NRC 529 (2010); LBP-10-14, 72 NRC 101 (2010)

NEPA charges federal agencies with weighing the environmental effects and impacts of the proposed project and its alternatives against each other and balancing those effects against the benefits of each such project; LBP-09-2, 69 NRC 87 (2009)

NEPA does not require applicants or licensees to consider terrorist attacks as part of their environmental reviews; LBP-09-26, 70 NRC 939 (2009)

NEPA has only a limited role to play in interpreting Part 51's requirements for the ER; LBP-09-16, 70 NRC 227 (2009)

NEPA-related contentions are to be filed based on an applicant's ER; LBP-10-10, 71 NRC 529 (2010)

no discussion of any environmental impact of spent fuel storage for the period following the term of the reactor combined license is required; LBP-09-17, 70 NRC 311 (2009); LBP-09-18, 70 NRC 385 (2009)

no discussion of need for power or alternative energy sources is required in a supplemental environmental report at the operating license stage; LBP-09-26, 70 NRC 939 (2009)

no-action alternative discussions can be brief and can incorporate by reference other sections of an ER discussing the project's adverse consequences; LBP-07-3, 65 NRC 237 (2007)

nothing in the agency's Part 51 NEPA regulations or the Staff's ER preparation guidance in regard to providing a description of the local environment, indicates exactly how, as a general matter, a baseline for NEPA analysis is to be established; LBP-07-3, 65 NRC 237 (2007)

NRC may comply with NEPA without requiring that applicant submit an ER, but NEPA and Council on Environmental Quality regulations permit agencies to request information from an applicant for a license or permit that will require a NEPA analysis; CLI-10-2, 71 NRC 27 (2010)

NRC regulations require petitioner to raise contentions related to NEPA as challenges to the applicant's ER, which acts as a surrogate for the environmental impact statement during the early stages of a relicensing proceeding; LBP-08-26, 68 NRC 905 (2008)

NRC's NEPA responsibilities and, by extension, the applicant's responsibilities under 10 C.F.R. Part 51, are subject to a rule of reason; LBP-10-6, 71 NRC 350 (2010)

SUBJECT INDEX

NRC's obligations under the National Environmental Policy Act focus on the adjective "environmental," and NEPA does not require the agency to assess every impact or effect, but only the impact or effect on the environment; LBP-09-2, 69 NRC 87 (2009)

omitting consideration of accident scenarios anticipated under 10 C.F.R. 50.150 and 50.54(hh) is contrary to the requirements of 42 U.S.C. § 2133(d); LBP-10-10, 71 NRC 529 (2010)

on issues arising under the National Environmental Policy Act, petitioner shall file contentions based on the applicant's ER; LBP-10-24, 72 NRC 720 (2010)

only Category 2 environmental issues must be addressed in an environmental report and may therefore be litigated at an adjudicatory hearing; CLI-07-16, 65 NRC 371 (2007)

petitioner may amend contentions based on the applicant's environmental report or file new contentions if there are data or conclusions in the NRC draft or final environmental impact statement, environmental assessment, or any supplements relating thereto, that differ significantly from the data or conclusions in the applicant's documents; LBP-10-24, 72 NRC 720 (2010)

petitioners must raise NEPA contentions in response to the ER, rather than await the agency's draft environmental impact statement; LBP-09-4, 69 NRC 170 (2009)

petitioners question the underlying analysis of fish kills in the environmental report as being outdated, but they fail to provide any information to show that the results of the study are no longer representative; LBP-09-16, 70 NRC 227 (2009)

petitioners' allegation that applicant's ER fails to provide reasonably current and accurate information regarding the costs of nuclear power, costs of alternative energy sources, and financial risks posed by using nuclear power as an energy source is admissible; LBP-08-16, 68 NRC 361 (2008)

petitioners' assertion that applicant's ER fails to include an analysis of the impacts of a governmental entity managing long-term storage of high-level waste onsite and cost quantifications of such management fails to create a genuine dispute; LBP-09-21, 70 NRC 581 (2009)

presentation of alternatives in an applicant's ER and in an NRC environment impact statement must be in comparative form; LBP-09-19, 70 NRC 433 (2009)

quibbling over the details of an economic analysis amounts to standing NEPA on its head by asking that the license be rejected not due to environmental costs, but because the economic benefits are not as great as estimated; LBP-09-2, 69 NRC 87 (2009)

reasonable alternatives under NEPA for license renewal proceedings are limited to discrete electric generation sources that are feasible technically and available commercially; LBP-08-13, 68 NRC 43 (2008)

significant inaccuracies and omissions from the ER are proper subjects of contentions but details or nuances are not, nor are boards to flyspeck environmental documents; LBP-10-10, 71 NRC 529 (2010)

Staff review must ensure that the analysis of the need for power and alternatives is reasonable and meets high quality standards; LBP-08-16, 68 NRC 361 (2008)

Staff will use information from applicant's ER in preparing its environmental impact statement; CLI-10-2, 71 NRC 27 (2010)

sufficient data should be included to aid the Commission in its development of an independent analysis of whether any historic or archaeological properties will be affected by the proposed project; LBP-08-26, 68 NRC 905 (2008)

the alternatives discussion in the ER or environmental impact statement need not include every possible alternative, but every reasonable alternative; LBP-09-16, 70 NRC 227 (2009)

the Clean Water Act does not authorize regulation of discharges to groundwater and so applicant's ER must address those discharges to groundwater; LBP-10-14, 72 NRC 101 (2010)

the draft environmental impact statement may rely in part on the ER, but agency regulations require the Staff to independently evaluate and be responsible for the reliability of all information used in the DEIS; LBP-09-7, 69 NRC 613 (2009)

the ER prepared for the combined license stage must take Table S-3 as the basis for evaluating the contribution of the environmental effects of the fuel cycle to the environmental costs of licensing the reactor; CLI-09-21, 70 NRC 927 (2009)

the fact that an environmental impact is regulated by another federal agency or by a state does not justify the exclusion of the analysis from applicant's ER; LBP-09-16, 70 NRC 227 (2009)

the impact analysis must include sufficient data and the alternatives analysis must be sufficiently complete to aid the Commission in preparing the environmental impact statement; LBP-09-10, 70 NRC 51 (2009)

SUBJECT INDEX

the requirement of Part 51 that the ER cover all significant environmental impacts associated with a project includes offsite as well as onsite impacts; LBP-09-10, 70 NRC 51 (2009)

the requirement to discuss alternatives in the ER parallels NEPA's requirement that an environmental impact statement provide a detailed statement of reasonable alternatives to a proposed action; LBP-09-16, 70 NRC 227 (2009)

there is no requirement that safety and emergency planning concerns must be raised; LBP-10-10, 71 NRC 529 (2010)

under NEPA, the Commission is ultimately responsible for analyzing environmental justice issues, but license renewal applicants are required to assist the Commission with that evaluation; LBP-08-26, 68 NRC 905 (2008)

use of the disjunctive phrase "data *or* conclusions" means that it is sufficient that either data or conclusions in the draft environmental impact statement differ significantly from those in the ER; LBP-10-24, 72 NRC 720 (2010)

when filed with an intervention petition, an environmental contention and its associated bases quite properly address an applicant's ER, rather than the then still-being-developed Staff draft environmental impact statement; LBP-08-2, 67 NRC 54 (2008); LBP-08-3, 67 NRC 85 (2008)

whether a SAMA must be analyzed in an ER hinges on whether it could be cost-beneficial; LBP-08-13, 68 NRC 43 (2008)

ENVIRONMENTAL REVIEW

a Part 51 license renewal environmental review has both a generic component and a plant-specific component and is focused on renewal-specific issues, rather than duplicating the review required for an initial license; CLI-06-24, 64 NRC 111 (2006)

a reasonably close causal relationship must exist between a federal agency action and any environmental consequences of that action in order to trigger a NEPA review, and such a relationship does not exist with terrorism; LBP-08-6, 67 NRC 241 (2008)

agencies must reconsider their environmental review of proposed actions when new and significant information arises; LBP-08-11, 67 NRC 460 (2008)

an agency has discretion to rely on data, analyses, or reports prepared by persons or entities other than agency staff, including competent and responsible state authorities; LBP-06-8, 63 NRC 241 (2006)

an agency only needs to account for those impacts that have some likelihood of occurring or are reasonably foreseeable; LBP-06-8, 63 NRC 241 (2006)

an environmental assessment, with its accompanying finding of no significant impact, constitutes an agency's evaluation of the environmental effects of a proposed action unless a more detailed statement is required; CLI-08-26, 68 NRC 509 (2008)

an issue cannot be identified as Category 1 if NRC has not made a generic determination that additional mitigation measures are unlikely to be warranted, given mitigation practices already in place; CLI-10-14, 71 NRC 449 (2010)

applicants and NRC Staff must assess certain site-specific, Category 2 environmental issues for license renewal; CLI-06-24, 64 NRC 111 (2006)

applicants need not provide site-specific analyses of environmental impacts of subjects identified as Category 1 issues in Appendix B to 10 C.F.R. Part 51, Subpart A; CLI-10-14, 71 NRC 449 (2010)

Category 2 issues, for which an applicant must make a plant-specific analysis of environmental impacts in its environmental report and the NRC Staff must prepare a supplemental environmental impact statement, ordinarily are deemed to be within the scope of license renewal proceedings; LBP-06-7, 63 NRC 188 (2006)

environmental impacts from the spent fuel pool, including potential beyond-design-basis accidents and the need for mitigation measures, are addressed in NRC's generic environmental impact statement for license renewal and do not require a site-specific analysis as part of an individual license renewal environmental review; CLI-10-14, 71 NRC 449 (2010)

environmental issues that might otherwise be relevant to license renewal shall be resolved generically for all plants and thus are beyond the scope of a license renewal hearing; LBP-06-7, 63 NRC 188 (2006)

findings that a board must make to authorize issuance of an early site permit are described; LBP-09-19, 70 NRC 433 (2009)

in reaching its determinations on the baseline National Environmental Policy Act issues, the board will not second-guess the underlying technical or factual findings of the NRC Staff, but if it finds that the

SUBJECT INDEX

- Staff review is incomplete or that the Staff findings lack sufficient explanation, it will make its own determination of technical and factual findings; LBP-07-1, 65 NRC 27 (2007)
- merely contemplating a certain action, even if accompanied by research or study, does not necessarily constitute a proposal for a major federal action requiring NEPA review; CLI-09-14, 69 NRC 580 (2009)
- neither the number nor location of public meetings required to satisfy an agency's public review process for its environmental document is specified; LBP-09-6, 69 NRC 367 (2009)
- NEPA does not call for certainty or precision, but an estimate of anticipated (not unduly speculative) impacts; LBP-06-8, 63 NRC 241 (2006)
- NEPA review in the license renewal process is unlike the Commission's Part 54 review because the NEPA review covers all environmental impacts associated with license renewal and is not limited to aging-related issues; LBP-10-15, 72 NRC 257 (2010)
- NRC is prohibited from reviewing any effluent limitation or other requirement established pursuant to the Clean Water Act; CLI-07-16, 65 NRC 371 (2007)
- Part 51 was amended to establish environmental requirements for license renewals that are both efficient and more effectively focused; LBP-07-11, 66 NRC 41 (2007)
- Part 54 compliance is not dependent on complete fulfillment of Part 51 requirements, given that the Commission has explicitly excluded SAMA analysis from Part 54 and distinguished the safety requirements of Part 54 from the environmental evaluation commanded by Part 51; LBP-10-13, 71 NRC 673 (2010)
- pending resolution of a rulemaking petition, NRC Staff may, where appropriate, seek the Commission's permission to suspend the generic determination of a Category 1 issue and include a new analysis in the plant-specific environmental impact statements; CLI-07-3, 65 NRC 13 (2007)
- the agency's environmental review need only account for those impacts that have some likelihood of occurring or are reasonably foreseeable; LBP-09-26, 70 NRC 939 (2009); LBP-10-10, 71 NRC 529 (2010)
- the Commission has declined to require the agency (outside of the Ninth Circuit) to consider terrorist threats as part of the NEPA review process; LBP-09-10, 70 NRC 51 (2009)
- the primary duties of NEPA fall on the NRC Staff in NRC proceedings, but the initial requirement to analyze the environmental impacts of an action, including license renewal, is directed to applicants; LBP-06-23, 64 NRC 257 (2006)
- the scope of the licensing board's review in an uncontested early site permit proceeding is discussed; LBP-07-1, 65 NRC 27 (2007)
- EQUIPMENT, SAFETY-RELATED**
- applicant is to describe equipment to be installed to maintain control over radioactive materials in gaseous and liquid effluents produced during normal reactor operations, including expected operational occurrences; LBP-09-19, 70 NRC 433 (2009)
- EROSION**
- the board may not consider that long-term erosion might entirely eliminate the proposed repository's upper geologic barrier unless the erosion is also shown to be a safety concern in the relatively near term; LBP-10-22, 72 NRC 661 (2010)
- ERROR**
- a board did not commit clear error in finding that an enforcement action target did not know certain facts despite Staff's showing that the target was the recipient on a list of documents and e-mails that included those facts; CLI-10-23, 72 NRC 210 (2010)
- a board did not err in reformulating a contention to state that the application failed to comply with 10 C.F.R. Part 51, rather than with the National Environmental Policy Act; CLI-10-2, 71 NRC 27 (2010)
- a board erred in admitting a contention on adverse health effects of exposure to arsenic, where petitioners had not laid a foundation and their arguments were speculative; CLI-09-9, 69 NRC 331 (2009)
- a board erred in referring a contention to the Staff for consideration in conjunction with the design certification rulemaking without first assessing the contention's admissibility; CLI-10-1, 71 NRC 1 (2010); CLI-10-9, 71 NRC 245 (2010)
- a board erred when it disregarded the rule that a reply cannot expand the scope of the arguments set forth in the original hearing request; CLI-09-12, 69 NRC 535 (2009)

SUBJECT INDEX

- a licensing board erred in holding that it lacked authority to consider contentions based on recent revisions to a license application, but the error was harmless because the intervenor had never submitted any contentions on the revisions; CLI-10-23, 72 NRC 210 (2010)
- because appellant submitted no offer of proof, its case could be so weak that the denial of a right to reply by the licensing board would have been harmless error; CLI-10-23, 72 NRC 210 (2010)
- contentions involving possible errors in Table S-3 have been referred to the Commission; LBP-09-21, 70 NRC 581 (2009)
- if a board erroneously rejected petitioner's motions, but the record does not suggest that petitioner suffered any prejudicial error, Commission review is not warranted; CLI-10-14, 71 NRC 449 (2010)
- if leave to file a motion for reconsideration is granted, the motion must show compelling circumstances, such as the existence of an unanticipated, clear, and material error, which could not have been anticipated, that renders the decision invalid; CLI-10-9, 71 NRC 245 (2010)
- mere demonstration that a board erred is not sufficient to warrant appellate relief, but rather the complaining party must demonstrate actual prejudice, i.e., that the ruling had a substantial effect on the outcome of the proceeding; CLI-10-23, 72 NRC 210 (2010)
- parties taking appeals on purely procedural points are expected to explain precisely what injury to them was occasioned by the asserted error; CLI-10-23, 72 NRC 210 (2010)
- petitioner's argument regarding rejection of its contention satisfies the prejudicial procedural error standard for review; CLI-10-17, 72 NRC 1 (2010)
- petitioners' contention that NRC Staff has not consulted with an affected Indian tribe is premature because it was filed prior to the time for the Staff to act, and the board erred in admitting it; CLI-09-9, 69 NRC 331 (2009)
- Staff's petition for review is granted on the grounds that Staff has demonstrated substantial questions as to the Board's correct application of NEPA jurisprudence, and as to whether certain actions taken by the board constituted prejudicial procedural error; CLI-10-18, 72 NRC 56 (2010)
- the board erred in admitting a contention concerning the economic value of wetlands without requiring petitioners to demonstrate that the proposed licensing action or no-action alternative would have any effect on wetlands; CLI-09-9, 69 NRC 331 (2009)
- the Commission cannot find clear error in a board's failing to acknowledge an argument that was not brought to its attention and to which the petitioners had no opportunity to respond; CLI-09-12, 69 NRC 535 (2009)
- the Commission defers to a board's factual findings and generally steps in only to correct clearly erroneous findings, that is, findings not even plausible in light of the record viewed in its entirety; CLI-10-5, 71 NRC 90 (2010)
- the Commission defers to a board's rulings on standing and contention admissibility unless the appeal points to an error of law or abuse of discretion; CLI-09-14, 69 NRC 580 (2009); CLI-09-20, 70 NRC 911 (2009); CLI-10-1, 71 NRC 1 (2010); CLI-10-2, 71 NRC 27 (2010); CLI-10-9, 71 NRC 245 (2010); CLI-10-12, 71 NRC 319 (2010); CLI-10-20, 72 NRC 185 (2010); CLI-10-21, 72 NRC 197 (2010)
- the fact that the board accorded greater weight to one party's evidence than to the other's is not a basis for overturning the initial decision; CLI-10-23, 72 NRC 210 (2010)
- the licensing board did not commit reversible error by admitting a contention based on low-level radioactive waste storage duration because the NRC Staff itself had issued a request for additional information on this very issue and thus this conflicted with Staff's argument that the issue is immaterial to the findings that must be made on the application; LBP-09-27, 70 NRC 992 (2009)
- the mere potential for legal error in a contention admissibility decision is not a ground for interlocutory review; CLI-10-30, 72 NRC 564 (2010)
- the standard of clear error for overturning a board's factual findings is quite high; CLI-10-5, 71 NRC 90 (2010); CLI-10-18, 72 NRC 56 (2010)
- to show clear error, appellant must demonstrate that the board's findings are not even plausible in light of the record viewed in its entirety; CLI-10-23, 72 NRC 210 (2010)
- when the Commission reviews board rulings on contention admissibility, it employs the clear error and abuse of discretion standards of review; CLI-10-17, 72 NRC 1 (2010)
- ETHICAL ISSUES**
- absent written consent of the party and the prior appearance of another attorney, many courts require that an attorney file a motion to withdraw; LBP-10-21, 72 NRC 616 (2010)

SUBJECT INDEX

counsel, as officers of the court, have an ethical duty to alert NRC adjudicatory bodies to information relevant to the matters being adjudicated; LBP-08-6, 67 NRC 241 (2008)
most jurisdictions require, and the board expects, that counsel will promptly correct statements of material fact that are no longer true; LBP-09-28, 70 NRC 1019 (2009)

EVACUATION

shutting down or derating of a nuclear power plant is not warranted during flooding because the state has established and coordinated potential alternative evacuation routes in the unlikely event of an emergency at the nuclear power plant; DD-06-2, 63 NRC 425 (2006)

EVACUATION PLANS

a contention that a plant's evacuation plan does not adequately protect the health and safety of public and plant workers must be denied because emergency planning is not within the scope of license renewal as a safety issue; LBP-07-11, 66 NRC 41 (2007)

EVACUATION TIME ESTIMATES

motion for summary disposition of contention questioning applicant's handling of its severe accident mitigation alternatives analysis; LBP-07-13, 66 NRC 131 (2007)
where it is shown that even with no evacuation a severe accident mitigation alternative is still not cost-effective, any errors in assumptions regarding the evacuation time or pattern cannot reasonably be expected to rise to a level necessary to cause implementation of any SAMA to become cost-effective; LBP-07-13, 66 NRC 131 (2007)

EVIDENCE

a jury may infer that a taxpayer read his return and knew its contents from the bare fact that he signed it under penalty of perjury; LBP-09-24, 70 NRC 676 (2009)
a new issue is raised only when the argument itself, as distinct from its chances of success, was not apparent at the time of the application; CLI-09-7, 69 NRC 235 (2009)
an individual's later recall of the contents of any document will turn on the effort that the worker put into its creation or application, the need for the worker to have responded to the document, and the significance of the information in the document to those tasks assigned to the worker that are viewed as having higher priority or greater significance than others; LBP-09-24, 70 NRC 676 (2009)
at the admissibility stage, petitioner is not required to prove its contention or to provide all the evidence for its contention that may be required later in the proceeding; LBP-06-20, 64 NRC 131 (2006)
boards are authorized to restrict irrelevant, immaterial, unreliable, duplicative, or cumulative evidence; LBP-09-30, 70 NRC 1039 (2009)
compliance or noncompliance with regulatory guidance, even if proven, is simply evidence and does not relieve the board of the duty to determine whether an applicant has satisfied the relevant legal and regulatory requirements; LBP-08-25, 68 NRC 763 (2008)
contention admissibility rules require a concise statement of the alleged facts or expert opinions that support petitioner's position, but does not require the submission of an expert opinion or require that an expert opinion be submitted in the form of admissible evidence; LBP-06-7, 63 NRC 188 (2006)
documents and information exchanged in the mandatory disclosures enter the adjudicatory record only if and when a party proffers the document or information as evidence for the evidentiary hearing; LBP-09-30, 70 NRC 1039 (2009)
if any party attempts to include exhibits that were not disclosed in the mandatory disclosures, thus making it impossible for the other parties to examine the reliability of that information, then the board may prohibit the admission of this new evidence into the record; LBP-09-30, 70 NRC 1039 (2009)
if appellant had submitted an offer of proof, indicating what rebuttal evidence it would have offered to the board, then the Commission might have some basis for determining whether that evidence would be substantial enough to justify a remand to the board; CLI-10-23, 72 NRC 210 (2010)
in ruling on summary disposition motions, the evidence of the nonmovant is to be believed, and all justifiable inferences are to be drawn in his favor; CLI-10-11, 71 NRC 287 (2010)
in the case of any motion resting on assertions of fact, it is reasonable to expect that the movant will buttress it with some concrete evidence; LBP-08-5, 67 NRC 205 (2008)
individual pieces of evidence, insufficient in themselves to prove a point, may in cumulation prove it; LBP-09-24, 70 NRC 676 (2009)
it is not for any court to examine the strength of the evidence upon which Congress based its judgment to approve the Yucca Mountain site; LBP-10-11, 71 NRC 609 (2010)

SUBJECT INDEX

mandatory disclosures, like all discovery exchanges, cover a vast array of information and documents that are not evidence and need not meet the requirements of admissible evidence; LBP-09-30, 70 NRC 1039 (2009)

new information concerning safety may be new evidence, but not necessarily raise a new issue; CLI-09-7, 69 NRC 235 (2009)

not every document processed by an individual gets the same level of attention, but the degree of attention paid to a document initially can later be a strong determinant of the extent to which a person can later recall the contents of, and therefore can be said to have "knowledge" of, that particular document; LBP-09-24, 70 NRC 676 (2009)

plaintiff may prove his case by direct or circumstantial evidence; CLI-10-23, 72 NRC 210 (2010)

reliability of scientific evidence is verified by assessing whether the reasoning or methodology underlying the evidence is scientifically valid; LBP-08-24, 68 NRC 691 (2008)

saying the government needs to demonstrate the potential for the tainting of evidence is not the equivalent of insisting that the government establish that perjury or intimidation would necessarily take place; LBP-06-13, 63 NRC 523 (2006)

tampering is not a concern when the defendant has not been employed at the relevant organization for several years and the government has given no indication as to how the defendant might employ knowledge gained through civil discovery to alter paper documents or electronic files that he has no control over whatsoever and which the government has long-since obtained through its several-years-long investigation; LBP-06-13, 63 NRC 523 (2006)

the court draws no distinction between the probative value of direct and circumstantial evidence; CLI-10-23, 72 NRC 210 (2010)

the overly simplistic view that "he saw it, so he knew it" is an analytical conundrum that cannot be the rule; LBP-09-24, 70 NRC 676 (2009)

the scope of discovery is broader than the scope of admissible evidence; LBP-10-23, 72 NRC 692 (2010)

there is a presumption that governmental officials, acting in their official capacities, have properly discharged their duties, and clear evidence is usually required to rebut this presumption; CLI-06-22, 64 NRC 37 (2006)

unless and until a document or information is proffered into evidence, there is no basis for a party to object that the information it received in a mandatory disclosure was unreliable or otherwise not admissible as evidence; LBP-09-30, 70 NRC 1039 (2009)

where the nonmoving party declines to oppose a motion for summary disposition, the moving party is not perforce entitled to a favorable judgment, but has the burden to show that he is entitled to judgment under established principles; LBP-08-7, 67 NRC 361 (2008)

where the record in an enforcement proceeding may be devoid of direct evidence to establish knowledge, the Staff may have to build its case upon circumstantial evidence alone; LBP-09-24, 70 NRC 676 (2009)

EVIDENCE, HEARSAY

a non-expert's testimony based on what he was told by an anonymous expert may be stricken as unreliable hearsay; LBP-06-15, 63 NRC 591 (2006)

EVIDENTIARY HEARINGS

a party is entitled to conduct such cross-examination as may be required for a full and true disclosure of the facts; LBP-09-22, 70 NRC 640 (2009)

commencement of hearings on environmental issues is prohibited until after the final environmental impact statement is issued; LBP-09-22, 70 NRC 640 (2009)

decisions on evidentiary questions fall within boards' authority to regulate hearing procedure; CLI-10-5, 71 NRC 90 (2010)

documents and information exchanged in the mandatory disclosures enter the adjudicatory record only if and when a party proffers the document or information as evidence for the evidentiary hearing; LBP-09-30, 70 NRC 1039 (2009)

if the board concludes that it has no questions for any witness concerning a particular contention, it will so advise the parties and will resolve that contention; LBP-09-22, 70 NRC 640 (2009)

licensing boards normally have considerable discretion in making evidentiary rulings; CLI-10-5, 71 NRC 90 (2010)

SUBJECT INDEX

the Commission will review decisions on evidentiary questions under an abuse of discretion standard;
CLI-10-5, 71 NRC 90 (2010)

EXAMINATION

See Reactor Operator Examinations

EXECUTIVE ORDER 12898

this order does not establish new substantive or procedural requirements applicable to NRC regulatory or
licensing activities; CLI-07-27, 66 NRC 215 (2007)

EXECUTIVE PRIVILEGE

once the requesting party meets its burden of demonstrating a need for a document, the burden is upon
the claimant of executive privilege to demonstrate a proper entitlement to exemption from disclosure;
LBP-10-2, 71 NRC 190 (2010)

EXEMPTIONS

a request for an exemption from a particular regulatory provision does not render a license application
deficient; CLI-06-10, 63 NRC 451 (2006)

an agency must affirmatively provide a reasoned explanation of the applicability of a categorical exclusion
when special circumstances are alleged; LBP-06-4, 63 NRC 99 (2006)

an exemption can be granted if it is authorized by law and will not endanger life or property or the
common defense and security, and is otherwise in the public interest; CLI-06-10, 63 NRC 451 (2006);
LBP-07-6, 65 NRC 429 (2007)

applicant seeks an exemption from the disposal site requirements of 10 C.F.R. 30.3 and 70.3 to allow
disposal of low-activity radioactive waste from the Hematite facility at a site near Grand View, Idaho,
that is not licensed by the NRC; LBP-09-28, 70 NRC 1019 (2009)

because a petitioner's military service in Iraq interrupted his operator license testing, he is exempted from
the 6-month waiting period required for a third application for a reactor operator license, contingent
upon participation in licensed operator requalification training program; LBP-06-2, 63 NRC 80 (2006)

because DOE has legal authority to indemnify a uranium enrichment facility licensee against claims
arising from nuclear incidents, an exemption from the regulatory requirement for liability insurance is
authorized by law; LBP-07-6, 65 NRC 429 (2007)

combined license applicants will also have to demonstrate that the site-specific parameters are bounded by
the parameters developed for the certified design; LBP-09-2, 69 NRC 87 (2009)

containers are exempted from labeling requirements if they are attended by an individual who takes the
precautions necessary to prevent the exposure of individuals in excess of the established limits;
LBP-07-6, 65 NRC 429 (2007)

each combined license applicant will have to determine whether it will adopt in toto the certified design,
or whether it will take exemptions thereto and/or departures therefrom; LBP-09-2, 69 NRC 87 (2009)

FOIA Exemption 2 authorizes an agency to withhold matters that are related solely to the internal
personnel rules and practices of an agency; LBP-08-7, 67 NRC 361 (2008)

for good cause shown, the board grants the requests of petitioners for exemptions from compliance with
the Commission's E-filing requirement; LBP-10-4, 71 NRC 216 (2010)

if it seeks to withhold a document from a party or the public, or to bar a party or member of the public
from attending any adjudicatory proceeding before a licensing board, NRC Staff must carry the burden
of proving that the document or situation fits one of FOIA's specifically enumerated exceptions;
LBP-10-2, 71 NRC 190 (2010)

in evaluating the validity of a claimed FOIA exemption, the experience and expertise of an affiant,
coupled with a detailed and specific affidavit, lends special weight to the affiant's statements and
conclusions; LBP-08-7, 67 NRC 361 (2008)

individuals requesting access to safeguards information who believe that they belong to one or more of
the categories of individuals that are exempt from the criminal history records check and background
check requirements should specifically state which exemption the requestor is invoking and explain the
requestor's basis for believing that the exemption is applicable; CLI-09-15, 70 NRC 1 (2009); CLI-10-4,
71 NRC 56 (2010)

it is not necessary for licensee to perform large transient testing in order to satisfy the relevant legal
requirement for an extended power uprate; LBP-07-2, 65 NRC 153 (2007)

SUBJECT INDEX

- it may be inferred that an exemption is implicitly authorized by law if all of the conditions for granting the exemption are met and no other provision prohibits, or otherwise restricts, its application; LBP-07-6, 65 NRC 429 (2007)
- location of an irradiator may be a circumstance in which the categorical exclusions in 10 C.F.R. 51.22(b) might not apply; LBP-06-4, 63 NRC 99 (2006)
- NRC has traditionally read the language "authorized by law" to be the functional equivalent of "not prohibited by law"; LBP-07-6, 65 NRC 429 (2007)
- NRC need not disclose information if it falls within one of the nine exemptions in the Freedom of Information Act; LBP-08-7, 67 NRC 361 (2008)
- NRC records are protected from disclosure under FOIA Exemption 2 to the extent they contain internal analytical guidance, operating rules, or practices, the disclosure of which would aid terrorists or saboteurs seeking to circumvent security measures designed to protect nuclear materials; LBP-08-7, 67 NRC 361 (2008)
- once the requesting party meets its burden of demonstrating a need for a document, the burden is upon the claimant of executive privilege to demonstrate a proper entitlement to exemption from disclosure; LBP-10-2, 71 NRC 190 (2010)
- participants who believe that they have a good cause for not submitting documents electronically must file an exemption request with their initial paper filing requesting authorization to continue to submit documents in paper format; CLI-10-4, 71 NRC 56 (2010)
- states may provide exemptions from their rules upon application and a showing of hardship or compelling need, with the approval of the Commission on Radiation Protection; CLI-10-8, 71 NRC 142 (2010)
- the duty to make all documents available does not apply to records specifically exempted from disclosure by statute; LBP-10-2, 71 NRC 190 (2010)
- the process for taking exemptions and departures from a certified design is set forth in 10 C.F.R. Part 52, App. D, § VIII; LBP-09-2, 69 NRC 87 (2009)
- use of conspicuously posted signs, in conjunction with the applicant's radiation work permit program, is an acceptable alternative to section 20.1601(a) requirements; LBP-07-6, 65 NRC 429 (2007)
- when access to documents is disputed in FOIA litigation, the government must submit detailed public affidavits identifying the documents withheld, the FOIA exemptions claimed, and a particularized explanation of why each document falls within the claimed exemption; LBP-08-7, 67 NRC 361 (2008)
- EXPERT WITNESSES**
- credibility of a witness testifying based on technical expertise is not the same as the credibility of an eyewitness to a past event; CLI-09-7, 69 NRC 235 (2009)
- the rule for Subpart G procedures explicitly applies to eyewitnesses, not expert witnesses; CLI-09-7, 69 NRC 235 (2009)
- EXPORT LICENSE PROCEEDINGS**
- standing as of right is not available but the Commission has exercised its discretion to hold an open legislative-type hearing; LBP-09-1, 69 NRC 11 (2009)
- there appear to be special considerations, including interaction with the Executive Branch and other agencies and time limits on decisions, that may distinguish these proceedings from other NRC adjudicatory proceedings; LBP-09-1, 69 NRC 11 (2009)
- EXPORT LICENSES**
- application for a license that would authorize the export back to Italy of any low-level radioactive waste that cannot be disposed of in Utah following processing is held in abeyance; CLI-08-24, 68 NRC 491 (2008)
- petitioners' claim that a foreign-owned company would be more likely than a U.S.-owned company to export its product overseas falls outside the scope of a materials license amendment proceeding, where the applicant had not applied for a license to export recovered uranium; CLI-09-12, 69 NRC 535 (2009)
- EXPOSURE**
- See Radiological Exposure
- EXTENSION OF TIME**
- a motion to file late should generally be denied, except under extraordinary conditions; LBP-10-21, 72 NRC 616 (2010)

SUBJECT INDEX

- a party at risk of filing out of time can request an extension, doing so well before the time specified expires; LBP-10-21, 72 NRC 616 (2010)
- a petitioner may in instances of exigent or unavoidable circumstances file a request for an extension of time to file an original hearing petition and contentions; LBP-07-4, 65 NRC 281 (2007); LBP-09-17, 70 NRC 311 (2009)
- counsel's alleged unfamiliarity with the agency's rules of practice or counsel's asserted busy schedule are not satisfactory explanations for late filings; LBP-10-21, 72 NRC 616 (2010)
- difficulties in coordinating action among volunteers and large public interest organizations and the challenge of simultaneously preparing for an environmental scoping meeting while drafting contentions does not constitute good cause necessary to justify an extension of the deadline to file hearing requests or petitions to intervene; CLI-09-4, 69 NRC 80 (2009)
- if licensee perceives a difficulty in meeting the deadline for submission of a revised decommissioning plan, it may request an extension of time from the Agreement State; CLI-10-8, 71 NRC 142 (2010)
- if petitioner requests additional time to file before the 30-day period expires, new or amended contentions in the high-level waste repository proceeding may be considered timely upon a board finding that there has been an adequate showing of need for the additional time requested; LBP-08-10, 67 NRC 450 (2008)
- if there are problems with meeting a filing date, participants should seek an extension of time or, if the time for filing has passed, submit a motion for leave to file out of time; LBP-08-16, 68 NRC 361 (2008)
- in the event of some 11th-hour unforeseen development, a party may tender a document belatedly, but the tender must be accompanied by a motion for leave to file out-of-time which satisfactorily explains not only the reason for the lateness, but also why a motion for an extension of time could not have been seasonably submitted; CLI-10-26, 72 NRC 474 (2010)
- open-ended extension requests should not be granted because hearing requests must be based on documents or other information available at the time the petition is to be filed; LBP-10-4, 71 NRC 216 (2010)
- participant filing out of time must offer a satisfactory explanation for its lateness, including, if necessary, an account as to why a request for extension could not have been filed beforehand; LBP-10-21, 72 NRC 616 (2010)
- parties are expected to file motions for extensions of time so that they are received by NRC well before the time specified expires; CLI-10-26, 72 NRC 474 (2010); LBP-10-21, 72 NRC 616 (2010)
- requests for extension of time to file a petition for review are to be determined by the relevant appellate body, and accordingly, must be directed to that body; LBP-07-17, 66 NRC 327 (2007)
- the Commission or presiding officer may extend a time limit upon a showing of good cause; CLI-09-4, 69 NRC 80 (2009)
- the newness of a deadline, along with petitioners' companion requests for additional resources to support their requests for safeguards information justify a 10-day extension to request access to the information; CLI-09-4, 69 NRC 80 (2009)
- the presiding officer may grant extensions of time for individual milestones for the participants' filings, and may delay its own issuances for up to 30 days beyond the date of the milestone set in the hearing schedule; CLI-08-18, 68 NRC 246 (2008)
- to avoid unnecessary delays in a uranium enrichment facility proceeding, the licensing board should not routinely grant requests for extensions of time and should manage the schedule such that the overall hearing process is completed within 28-1/2 months; CLI-09-15, 70 NRC 1 (2009)
- See also Deadlines
- EYEWITNESSES**
- credibility of a witness testifying based on technical expertise is not the same as the credibility of an eyewitness to a past event; CLI-09-7, 69 NRC 235 (2009)
- the rule for Subpart G procedures explicitly applies to eyewitnesses, not expert witnesses; CLI-09-7, 69 NRC 235 (2009)
- FAIRNESS**
- in establishing and enforcing schedule deadlines, boards must take care not to compromise the Commission's fundamental commitment to a fair and thorough hearing process; LBP-10-21, 72 NRC 616 (2010)

SUBJECT INDEX

the Commission has long endorsed a balanced approach to hearings that both expedites the hearing process and ensures fairness in order to produce a record that leads to high-quality decisions that adequately protect the public health and safety, the common defense and security, and the environment; LBP-10-21, 72 NRC 616 (2010)

when the unique circumstances of a case could result in the compromise of a participant's hearing rights, the Commission has taken action to ensure that hearings are fair and accommodate the rights of participants; CLI-09-13, 69 NRC 575 (2009)

FAULTS

contention that the environmental report is based on incomplete information because a new earthquake fault has been discovered within 600 meters of nuclear reactors and the results of studies concerning the new fault will be available in the near term is admissible; LBP-10-15, 72 NRC 257 (2010)

FEDERAL COURTS

a conflict in the Circuits is a key criterion informing the exercise of the Supreme Court's certiorari jurisdiction; CLI-07-8, 65 NRC 124 (2007)

NRC is not obligated to adhere, in all of its proceedings, to the first court of appeals decision to address a controversial question; CLI-07-8, 65 NRC 124 (2007)

under preclusion doctrines, a court of appeals decision may prevent the government from relitigating the same issue with the same party, but it still leaves the government free to litigate the same issue in the future with other litigants; CLI-07-8, 65 NRC 124 (2007)

FEDERAL EMERGENCY MANAGEMENT AGENCY

findings on emergency plans constitute a rebuttable presumption on questions of adequacy and implementation capability in NRC licensing proceedings; LBP-09-19, 70 NRC 433 (2009)

in its review of emergency plans, NRC Staff must take into account FEMA's findings; LBP-09-19, 70 NRC 433 (2009)

FEDERAL FOOD, DRUG, AND COSMETIC ACT

irradiation sources, including radioactive isotopes, particle accelerators, and X-ray machines, intended for use in processing food are included in the term "food additives"; CLI-08-16, 68 NRC 221 (2008)

FEDERAL RECORDS ACT

federal agencies have some discretion in determining which documentary materials are appropriate for preservation as an agency "record"; CLI-08-23, 68 NRC 461 (2008)

FEDERAL REGISTER

prior to operation under a combined license, a notice of intended operation will be published not less than 180 days before the date scheduled for initial loading of fuel; LBP-09-19, 70 NRC 433 (2009)

publication in the *Federal Register* is legally sufficient notice to all interested or affected persons regardless of actual knowledge or hardship resulting from ignorance, except those who are legally entitled to personal notice; LBP-09-20, 70 NRC 565 (2009)

FEDERAL RULES OF CIVIL PROCEDURE

neither legal ownership nor title is required in order for a party to have "possession, custody, or control" of a document; LBP-10-23, 72 NRC 692 (2010)

NRC generally applies the same standard for summary disposition that federal courts apply when ruling on motions for summary judgment under Fed. R. Civ. P. 56; CLI-10-11, 71 NRC 287 (2010); LBP-10-20, 72 NRC 571 (2010)

NRC's production-of-documents regulation, 10 C.F.R. 2.707(a)(1) is essentially the same as Fed. R. Civ. P. 34(a)(1); LBP-10-23, 72 NRC 692 (2010)

the phrase "possession, custody, or control" as found in the Federal Rules of Civil Procedure and 10 C.F.R. 2.336(a) is in the disjunctive, and thus only one of the enumerated requirements needs to be met; LBP-10-23, 72 NRC 692 (2010)

the rules were amended in 2006 to expressly include electronically stored information; LBP-10-23, 72 NRC 692 (2010)

FEDERAL RULES OF CRIMINAL PROCEDURE

the disclosures necessary for a fair balance between criminal defendants' and prosecutors' interests relative to delay of a civil proceeding pending completion of the criminal proceeding are described; CLI-06-12, 63 NRC 495 (2006)

SUBJECT INDEX

FEDERAL RULES OF EVIDENCE

“relevant evidence” means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence; LBP-10-23, 72 NRC 692 (2010)

the relevance standard of 10 C.F.R. 2.336 is more flexible than the relevance standard of Fed. R. Evid. 401; LBP-10-23, 72 NRC 692 (2010)

when determining relevance of documents for discovery purposes in NRC proceedings, boards may look to the FRE for useful guidance; LBP-10-23, 72 NRC 692 (2010)

when the Commission endorsed the use of the Federal Rules of Evidence as guidance for the boards, it did so with the express proviso that boards must apply the Part 2 rules with *greater flexibility* than the FRE; LBP-10-23, 72 NRC 692 (2010)

FEDERAL WATER POLLUTION CONTROL ACT

alternative thermal effluent limitations do not apply to a plant that employs closed-cycle cooling; CLI-07-25, 66 NRC 101 (2007)

nothing in the National Environmental Policy Act shall be deemed to authorize any federal agency to review any effluent limitation or other requirement established pursuant to the Clean Water Act or to authorize any such agency to impose any effluent limitation other than those set by the Environmental Protection Agency or a state agency that has been delegated such authority; LBP-09-25, 70 NRC 867 (2009)

NRC is barred from imposing or second-guessing effluent limitations or water quality certification requirements imposed by EPA or an authorized state, but it may address water quality matters in its assessment of the environmental impact of a license renewal; LBP-06-20, 64 NRC 131 (2006)

the reach of 33 U.S.C. § 1371(c)(2) is confined to navigable waters, which do not even encompass all surface waters; LBP-09-25, 70 NRC 867 (2009)

when water quality decisions have been made by a state pursuant to the Clean Water Act and these decisions are raised in NRC licensing proceedings, the NRC is bound to take the Environmental Protection Agency’s considered decisions at face value; LBP-09-25, 70 NRC 867 (2009)

FEEDWATER SYSTEMS

components that are part of the reactor coolant pressure boundary must meet the requirements of Class 1 components in Section III of the ASME Boiler and Pressure Vessel Code; LBP-08-25, 68 NRC 763 (2008)

FEES

even if the Commission could waive the application fee for access to safeguards information, the mere fact that petitioners are public interest organizations provides no special reason for departing from well-established NRC practice; CLI-09-4, 69 NRC 80 (2009)

NRC is explicitly prohibited by law from paying the expenses of or otherwise compensating intervenors, and thus cannot grant petitioners funds to prepare requests for access to safeguards information or sensitive unclassified nonsafeguards information; CLI-09-4, 69 NRC 80 (2009)

the fee for access to safeguards information is used by NRC to pay the costs it incurs in determining whether the individual should be granted access to SGI; CLI-09-4, 69 NRC 80 (2009)

FIELD SAMPLING PLAN

a site characterization must include sufficient information so that it can effectively track pathways for significant offsite contamination and estimate the quantity of those pathways; LBP-08-4, 67 NRC 105 (2008)

analysis of waterways is intended to identify groundwater, possible cave, and surface water paths and to assess the contents of those waters to determine if depleted uranium is leaching or will leach off the site in quantities significant enough that humans might receive more than 25 mrems of total radioactive exposure from all of the site’s pathways; LBP-08-4, 67 NRC 105 (2008)

the board finds that the biota sampling component of the field sampling plan is sufficient to meet the criteria for a 5-year alternate schedule for submission of a decommissioning plan; LBP-08-4, 67 NRC 105 (2008)

there is no requirement that the licensee describe the collection of information needed for the decommissioning plan’s environmental assessment or environmental impact statement; LBP-08-4, 67 NRC 105 (2008)

SUBJECT INDEX

FIFTH AMENDMENT

although the subject of an NRC enforcement proceeding may attempt to take advantage of his discovery rights in the civil proceeding to obtain information also useful in his criminal proceeding, that is no reason to deny him that discovery because he asserted his Fifth Amendment right not to respond to discovery requests directed to him, even if other procedural consequences might flow from that action; LBP-06-25, 64 NRC 367 (2006)

carefully crafted restraints in the Constitution preserve freedom by curbing the exercise of power; LBP-09-24, 70 NRC 676 (2009)

exercise of the power of compulsory process must be carefully circumscribed when the investigative process tends to impinge upon such highly sensitive areas as freedom of speech or press, freedom of political association, and freedom of communication of ideas; LBP-09-24, 70 NRC 676 (2009)

states can be required to tailor carefully the means of satisfying a legitimate state interest when fundamental liberties and rights are threatened; LBP-09-24, 70 NRC 676 (2009)

FILINGS

a filing will be considered complete by electronic transmission when the filer performs the last act that it must perform to transmit a document, in its entirety, electronically; LBP-08-16, 68 NRC 361 (2008)

petitioner may in instances of exigent or unavoidable circumstances file a request for an extension of time to file an original hearing petition and contentions; LBP-09-17, 70 NRC 311 (2009)

petitioners must raise NEPA contentions in response to the environmental report, rather than await the agency's draft environmental impact statement; LBP-09-4, 69 NRC 170 (2009)

petitioners will not be denied the opportunity to participate in a proceeding because of an error that can easily be corrected and that has caused no prejudice to any other participant; LBP-09-4, 69 NRC 170 (2009)

the time an E-Filing submission is received by the system server is not necessarily controlling relative to the timeliness of the filing; LBP-08-16, 68 NRC 361 (2008)

to be considered timely, a document must be submitted to the E-Filing system for docketing and service by 11:59 p.m. Eastern Time; LBP-08-16, 68 NRC 361 (2008)

See also Electronic Filing

FINAL ENVIRONMENTAL IMPACT STATEMENT

a cost-benefit analysis among alternatives must consider and weigh the environmental effects of the proposed action and the alternatives available for reducing or avoiding adverse environmental effects; LBP-06-19, 64 NRC 53 (2006)

a description of the underlying purpose and need of a proposed project is required by NEPA; LBP-06-19, 64 NRC 53 (2006)

a mitigation plan need not be legally enforceable, funded, or even in final form to comply with NEPA's procedural requirements; CLI-06-29, 64 NRC 417 (2006)

a record of decision must accompany any Commission decision on any action for which an FEIS has been prepared; LBP-06-8, 63 NRC 241 (2006)

adequacy of discussion and analysis of direct, indirect, and cumulative impingement/entrainment and thermal effluent discharge impacts of the proposed cooling system intake and discharge structures on aquatic resources is decided; LBP-09-7, 69 NRC 613 (2009)

adequacy of the discussion and analysis of the alternative of implementing a dry cooling system for the proposed units is decided; LBP-09-7, 69 NRC 613 (2009)

adequacy of the discussion and analysis of the extent and duration of any dredging, the impacts on water quality, the disposal of any dredged material, and the impacts on aquatic biota as a result of any dredging is decided; LBP-09-7, 69 NRC 613 (2009)

although federal permits and exemptions must be mentioned in the FEIS, the absence of such mention does not render the FEIS invalid; LBP-06-19, 64 NRC 53 (2006)

although Staff inadvertently omitted information about background radiation from the final environmental impact statement, but the information was made available to the public in the draft environmental impact statement and was taken into account by Staff in its NEPA analysis in the FEIS, intervenors were not prejudiced nor was the correctness of the Staff's analysis undermined; LBP-06-19, 64 NRC 53 (2006)

SUBJECT INDEX

an FEIS can overcome unavoidably incomplete or unavailable information if it states that fact, explains how the missing information is relevant, sets forth the existing information, and evaluates the environmental impacts to the best of the agency's ability; CLI-07-27, 66 NRC 215 (2007)

any licensing board merits litigation-based findings have the effect of amending or supplementing the FEIS; LBP-07-3, 65 NRC 237 (2007)

because blending down highly enriched uranium for reactor fuel would not promote applicant's primary purpose of maintaining the viability of a dwindling domestic uranium industry, it is outside the scope of reasonable alternatives that must be considered under NEPA; LBP-06-19, 64 NRC 53 (2006)

benefits described by the project's purpose and need are among the factors that are weighed against the project's costs in striking the cost-benefit balance required by NEPA; LBP-06-19, 64 NRC 53 (2006)

boards must decide whether the alternatives discussion is sufficiently complete to aid the Commission in developing and exploring appropriate alternatives to recommended courses of action in any proposal that involves unresolved conflicts concerning alternative uses of available resources; LBP-09-7, 69 NRC 613 (2009)

commencement of evidentiary hearings on environmental issues is prohibited until after the FEIS is issued; LBP-09-22, 70 NRC 640 (2009)

discussion need not be elaborate or lengthy, but a conclusory statement on some negative impact on property values, without explanation or analysis, is plainly deficient; CLI-07-27, 66 NRC 215 (2007)

discussion of the no-action alternative is governed by a rule of reason and need not be exhaustive or inordinately detailed; LBP-06-19, 64 NRC 53 (2006)

even if an EIS prepared by the Staff is found to be inadequate in certain respects, the board's findings, as well as the adjudicatory record, become, in effect, part of the FEIS; LBP-09-7, 69 NRC 613 (2009)

except for its overall NEPA balancing, the NRC can limit its analysis of aquatic impacts to those determined by the Environmental Protection Agency, when EPA has analyzed an alternative technology extensively and made conclusions as to its suitability; LBP-07-3, 65 NRC 237 (2007)

if admitted contentions are resolved before the FEIS is issued so as to conclude the contested portion of a proceeding, an intervenor could timely seek to litigate contentions regarding FEIS data or conclusions that differ significantly from the ER or the DEIS; LBP-07-3, 65 NRC 237 (2007)

if NRC Staff concludes that the legal threshold for new and significant information has been met, it is authorized to supplement the FEIS; CLI-10-29, 72 NRC 556 (2010)

in conducting its environmental review, an agency has discretion to rely on data, analyses, or reports prepared by persons or entities other than agency staff, including competent and responsible state authorities; LBP-06-8, 63 NRC 241 (2006)

in its environmental review of a private applicant's proposed project, the agency may accord appropriate deference to the applicant's proposed siting and design plans; LBP-06-19, 64 NRC 53 (2006)

in response to comments received, the FEIS may supplement, refine, or otherwise adapted the project alternatives; LBP-06-19, 64 NRC 53 (2006)

in the environmental context, the contents of the FEIS bound the reach of both issue preclusion and Staff inquiry into new and significant information in a future CP or COL proceeding referencing an ESP granted for the ESP site; CLI-07-27, 66 NRC 215 (2007)

intervenors' preference that the FEIS contain additional details on any particular issue is not, standing alone, probative of the FEIS's adequacy; LBP-06-19, 64 NRC 53 (2006)

mitigation measures must be discussed in sufficient detail to ensure that environmental consequences have been fairly evaluated, but the EIS need not contain a complete mitigation plan; CLI-06-29, 64 NRC 417 (2006)

NEPA imposes no obligation to select the most environmentally benign alternative; LBP-06-19, 64 NRC 53 (2006)

no-action alternative discussions can be brief and can incorporate by reference other sections of an environmental report discussing the project's adverse consequences; LBP-07-3, 65 NRC 237 (2007)

NRC Staff may not offer the FEIS in evidence or present the Staff's position on matters within the scope of NEPA until the FEIS is filed with the Environmental Protection Agency, furnished to commenting agencies, and made available to the public; CLI-07-17, 65 NRC 392 (2007)

NRC Staff's final environmental impact statement need not include a discussion of the need for power or alternative energy sources; LBP-10-12, 71 NRC 656 (2010)

SUBJECT INDEX

representations and assumptions help to form the basis for the Staff's finality determinations in the environmental arena during any subsequent CP or COL proceeding; CLI-07-27, 66 NRC 215 (2007)

Staff must consider measures to mitigate environmental impacts by examining alternatives available for reducing or avoiding adverse effects and must discuss the mitigation measures in sufficient detail to ensure that environmental consequences have been fairly evaluated; LBP-06-19, 64 NRC 53 (2006)

the adjudicatory record and board decision and any Commission appellate decisions become, in effect, part of the FEIS; CLI-08-26, 68 NRC 509 (2008); LBP-06-19, 64 NRC 53 (2006)

the board may decide to proceed to an early hearing on the merits of safety issues before the NRC Staff finishes its safety evaluation but the board may not commence a hearing on environmental issues before the FEIS has been issued; CLI-07-17, 65 NRC 392 (2007)

the Commission's discussion of the Staff's underlying review adds necessary additional details and constitutes a supplement to the FEIS's alternative site review; CLI-07-27, 66 NRC 215 (2007)

the discussion of alternatives shall identify reasonable alternatives, present the environmental impacts of the proposal and the alternatives in comparative form, and include a final recommendation on the action to be taken; LBP-06-19, 64 NRC 53 (2006)

the draft environmental impact statement is distributed for public comment and, based on the comments received, a review of information provided by the applicant, and supplemental independent information and analysis, the Staff prepares and issues a final EIS; LBP-09-19, 70 NRC 433 (2009)

the proper inquiry for determining the sufficiency of the purpose and need statement is whether the FEIS, read as a whole, includes a correct and adequate description of the purpose of and need for the proposed action; LBP-06-19, 64 NRC 53 (2006)

the purpose of addressing possible mitigation measures is to ensure that the agency has taken a hard look at the potential environmental impacts of a proposed action; CLI-06-29, 64 NRC 417 (2006)

the statement of purpose and need in the FEIS is independent of any specific project area, and thus a prior decision of the Commission adjudicating an intervenor's challenge to the statement of purpose and need applies with equal force to all areas of a proposed project; LBP-06-19, 64 NRC 53 (2006)

threshold environmental legal and policy issues need not await issuance of the FEIS; CLI-07-17, 65 NRC 392 (2007)

when a board decision supplements or differs from the findings of the Staff as set forth in its FEIS, the FEIS is deemed modified by the board's decision to that extent; LBP-06-8, 63 NRC 241 (2006)

when the purpose of a proposed action is to accomplish one thing, it makes no sense to consider the alternative ways by which another thing might be achieved; LBP-06-19, 64 NRC 53 (2006)

where the discussion of alternative sites was insufficient, the board independently reviewed the record on greenfield, competitors' brownfield, noncompetitors' brownfield, and applicant's other nuclear sites to conclude that the Staff's underlying alternative site review was adequate; LBP-09-19, 70 NRC 433 (2009)

FINAL SAFETY ANALYSIS REPORT

adequacy of the seismic analysis for the site found in the FSAR is not a litigable issue; LBP-08-16, 68 NRC 361 (2008)

an amended contention challenging applicant's final safety analysis report on its low-level radioactive waste storage plan was admitted based on intervenor's adequately supported challenge to the plan's provisions regarding waste volume reduction; LBP-10-8, 71 NRC 433 (2010)

analysis of a severe accident involving a fission product release from the core into the containment including any fission product cleanup systems intended to mitigate the consequences of the accidents must be included; LBP-09-10, 70 NRC 51 (2009)

applicant's contingent long-term onsite low-level radioactive waste storage facility and the contents of its FSAR with regard to that facility are not governed by 10 C.F.R. 52.79(a)(4) as a part of the reactor facilities to be constructed under the requested combined licenses; LBP-10-8, 71 NRC 433 (2010)

each applicant for a license to operate a power plant must submit an FSAR that includes the managerial and administrative controls to be used to assure safe operation; LBP-07-2, 65 NRC 153 (2007)

further inquiry is warranted into the safety-related matter of whether the FSAR has failed to include necessary information concerning applicant's plans for onsite management of Class B and C waste; LBP-08-16, 68 NRC 361 (2008)

information to be included is described; CLI-09-16, 70 NRC 33 (2009)

SUBJECT INDEX

- purported failures to provide detailed information regarding design, location, and worker health impacts do not identify a deficiency in low-level radioactive waste information that is required to be provided in the COL application; LBP-10-8, 71 NRC 433 (2010)
- the final safety analysis report shall include a level of information sufficient to enable the Commission to reach a final conclusion on all safety matters that must be resolved by the Commission before issuance of a combined license; LBP-10-20, 72 NRC 571 (2010)
- the fission product release is based on a major accident assumed to result in substantial meltdown of the core with subsequent release into the containment of appreciable quantities of fission products; LBP-09-10, 70 NRC 51 (2009)
- the FSAR must include the applicant's plans for preoperational testing and initial operations; LBP-07-2, 65 NRC 153 (2007)
- the FSAR must include the kinds and quantities of radioactive materials expected to be produced by low-level radioactive waste in the operation and the means for controlling and limiting radioactive effluents and radiation exposures within the limits set forth in 10 C.F.R. Part 20; LBP-10-20, 72 NRC 571 (2010)
- the FSAR was configured to accommodate at least 10 years of onsite storage; LBP-10-20, 72 NRC 571 (2010)
- the function of 10 C.F.R. 50.59 is to deal with changes to a nuclear power plant, and it requires, as a prerequisite to any such change, that the licensee perform safety analyses in addition to those contained in the FSAR; LBP-10-20, 72 NRC 571 (2010)
- there is no requirement in section 52.79(a)(3) for applicant's FSAR to include details regarding building materials and high-integrity containers, exact location, or health impacts on employees for the contingent onsite long-term LLRW storage facility; LBP-10-20, 72 NRC 571 (2010)
- topics that must be covered in the FSAR and the level of information that is sufficient for each topic are specified in 10 C.F.R. 52.79; LBP-10-20, 72 NRC 571 (2010)
- FINAL SAFETY EVALUATION REPORT**
- NRC Staff's revision of the FSER to account for applicant's confirmatory analysis would not, standing alone, be a materially different result that justifies reopening the record, because it would neither change the outcome of the renewal proceeding nor impose a different licensing condition on an applicant; LBP-08-12, 68 NRC 5 (2008)
- See also Updated Final Safety Analysis Report
- FINALITY**
- a licensing board order is final for appellate purposes when it either disposes of at least a major segment of the case or terminates a party's right to participate, and rulings that do neither are interlocutory; CLI-06-18, 64 NRC 1 (2006)
- if Staff approves a license transfer application prior to the Commission completing its adjudication, the application will lack the agency's final approval until and unless the Commission concludes the adjudication in the applicant's favor; CLI-08-19, 68 NRC 251 (2008)
- once a board has admitted original contentions, conducted the evidentiary hearing, and issued its ruling on the merits, and after the parties have appealed that decision, and the Commission has rendered its decision on the merits of the matter, the adjudicatory proceeding should be over, absent some extenuating circumstances; LBP-10-19, 72 NRC 529 (2010)
- the mere potential that an issue may become moot in the future due to a rulemaking does not affect the finality of a decision resting on current law; CLI-07-13, 65 NRC 211 (2007)
- the pendency of an appeal has no effect on the finality or binding effect of a trial court's holding; LBP-09-24, 70 NRC 676 (2009)
- when intervenor has no claim remaining in either adjudication, a request for judicial review must be brought immediately if at all; CLI-07-13, 65 NRC 211 (2007)
- FINANCIAL ASSURANCE**
- a combined license applicant must obtain the financial instrument and submit a copy to the Commission as provided in 10 C.F.R. 50.75(e)(3); LBP-09-15, 70 NRC 198 (2009)
- a finding that a particular strategy is plausible is a necessary precursor to a finding that a cost estimate is documented and reasonable; LBP-06-15, 63 NRC 591 (2006)

SUBJECT INDEX

- a parent-company guarantee of funds for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in 10 C.F.R. Part 30, Appendix A; LBP-09-15, 70 NRC 198 (2009)
- a plausible strategy for private conversion of depleted uranium tails does not mean a definite or certain strategy, to include completion of all necessary contractual arrangements, but it must represent more than mere speculation; LBP-06-15, 63 NRC 591 (2006)
- a surety bond must be funded in an amount greater than or equal to the decommissioning cost estimate set forth in the licensee's decommissioning funding plan; LBP-06-17, 63 NRC 747 (2006)
- acceptable methods of decommissioning funding include a sinking fund, prepayment of the entire decommissioning amount, and a surety method, insurance, or other guarantee method; LBP-09-15, 70 NRC 198 (2009)
- an applicant must demonstrate a "plausible strategy" for dispositioning depleted uranium waste to provide a foundation upon which to build reasonable cost estimates for various elements related to ultimate decommissioning of the proposed facility; LBP-06-15, 63 NRC 591 (2006)
- an applicant seeking a license to construct and operate a uranium enrichment facility must submit a proposed decommissioning funding plan with its license application; LBP-06-15, 63 NRC 591 (2006); LBP-06-17, 63 NRC 747 (2006)
- applicant is permitted to choose a single method or a combination of methods to demonstrate financial assurance; LBP-09-4, 69 NRC 170 (2009)
- applicant may provide estimates for each of the elements of its decommissioning funding plan by obtaining estimates of the actual cost of providing a service from experienced third parties; LBP-06-15, 63 NRC 591 (2006)
- applicant must adjust its cost estimates and associated financial assurance levels at least once every 3 years; LBP-06-17, 63 NRC 747 (2006)
- applicant must submit a certification with its decommissioning funding plan that financial assurance for decommissioning the facility has been provided in an amount equal to the decommissioning cost estimate, as well as a signed original or appropriate duplicate of the funding instrument whereby the applicant will provide financial assurance; LBP-06-15, 63 NRC 591 (2006)
- cost of constructing and operating a deconversion facility may be based on prior experience with a similar facility, but such estimates must include the entirety of expected costs to the applicant or a third party by, for example, providing a thorough analysis such as would typically be developed and used for any new project; LBP-06-15, 63 NRC 591 (2006)
- creditor regulations in 10 C.F.R. 50.81 apply to the creation of creditor interests in equipment, devices, or important parts thereof, capable of separating the isotopes of uranium or enriching uranium in the isotope U-235; CLI-10-4, 71 NRC 56 (2010)
- creditor regulations in 10 C.F.R. 70.44 apply to the creation of creditor interests in special nuclear material; CLI-10-4, 71 NRC 56 (2010)
- decommissioning funding plans must contain a cost estimate for decommissioning and a description of the method of assuring funds for decommissioning, including means for adjusting cost estimates and associated funding levels periodically over the life of the facility, at least triennially; LBP-06-15, 63 NRC 591 (2006)
- financial criteria of 10 C.F.R. 70.22(a)(8) and 70.23(a)(5) can be met by conditioning the license to require funding commitments to be in place prior to construction and operation; CLI-10-4, 71 NRC 56 (2010)
- for decommissioning funding, a private applicant may use prepayment into a segregated account prior to start of facility operations, a surety or other guarantee method, or annual deposits into an external sinking fund coupled with a surety method whereby the surety value decreases over time by the amount accrued in the sinking fund; LBP-06-15, 63 NRC 591 (2006); LBP-06-17, 63 NRC 747 (2006)
- holder of a combined license must begin filing biannual reports on the status of decommissioning funding once the Commission has made a finding that all acceptance criteria in the license have been met; LBP-09-15, 70 NRC 198 (2009)
- if licensee changes its method of decommissioning funding assurance, the new method will also have to pass any applicable financial test; LBP-09-15, 70 NRC 198 (2009)
- in estimating labor costs for its proposed uranium mining operation, an applicant is entitled to draw upon its prior experience in that field as a basis for its cost estimates; LBP-06-15, 63 NRC 591 (2006)

SUBJECT INDEX

- NRC will defer to state economic regulators where decommissioning funding is assured by the fact that any shortfall in decommissioning funds will be provided by ratepayers pursuant to state law; LBP-09-21, 70 NRC 581 (2009)
- Part 70 financial criteria can be met by conditioning the materials license to require funding commitments to be in place prior to construction and operation; CLI-09-15, 70 NRC 1 (2009)
- regulations and guidance documents fail to state when proof of applicant's financial assurance for decommissioning funding is required; LBP-09-4, 69 NRC 170 (2009)
- Staff reviews the mechanisms specified in an applicant's decommissioning funding plan to determine whether the proposed mechanisms are acceptable and to ensure that the certification specifies the correct amount of financial assurance and attests compliance with the appropriate regulatory requirements; LBP-06-15, 63 NRC 591 (2006)
- surety bonds must be directly payable to an acceptable standby trust that will be used to fund decommissioning if the licensee defaults on its decommissioning obligation; LBP-06-17, 63 NRC 747 (2006)
- surety bonds must either be open-ended or written for a specified term subject to automatic renewal, and must specify that the full face value will be automatically paid to the NRC prior to expiration if the licensee does not provide an acceptable mechanism within a specified period of time; LBP-06-17, 63 NRC 747 (2006)
- surety bonds must remain in effect until license termination; LBP-06-17, 63 NRC 747 (2006)
- the amount for decommissioning funding must be adjusted annually, using a rate calculated pursuant to 10 C.F.R. 50.75(c)(2); LBP-09-15, 70 NRC 198 (2009)
- the purpose of the triennial adjustment of cost estimates for decommissioning funding is to help ensure that funding for decommissioning will not become inadequate as a result of changing disposal prices or other factors; LBP-06-17, 63 NRC 747 (2006)
- the requirements of 10 C.F.R. 50.75 are intended to ensure that entities who construct and operate a nuclear power plant will have sufficient funds at the end of the operational life of the plant to complete the decommissioning of the plant; LBP-09-15, 70 NRC 198 (2009)
- there is no provision that requires an applicant or licensee to choose one form of decommissioning assurance over another; LBP-09-4, 69 NRC 170 (2009)
- transfer of depleted uranium from enrichment operations to DOE for deconversion and disposal constitutes a plausible strategy for dispositioning; LBP-06-15, 63 NRC 591 (2006)
- whether an applicant has presented a plausible strategy, although related to disposition costs, is an inquiry distinct from and precedent to the question of the adequacy of an applicant's dispositioning cost estimates; LBP-06-15, 63 NRC 591 (2006)
- FINANCIAL ASSURANCE PLAN**
- a board can only decide whether or not a current funding proposal fulfills NRC requirements; LBP-09-18, 70 NRC 385 (2009)
- at the time the combined license application is submitted, it must identify the method of decommissioning funding assurance that the applicant proposes to use and to show that the method complies with any applicable financial test; LBP-09-15, 70 NRC 198 (2009); LBP-09-18, 70 NRC 385 (2009)
- applicant, 2 years before and 1 year before the scheduled date for the initial fuel loading, shall submit a report to NRC containing a certification updating the financial information, including a copy of the financial instrument to be used; LBP-09-18, 70 NRC 385 (2009)
- applicant may choose one or more of the funding methods provided in 10 C.F.R. 50.75(e); LBP-09-18, 70 NRC 385 (2009)
- final decommissioning financial assurance documents must be submitted to the NRC 30 days after the notification in the *Federal Register* pursuant to section 52.103(a) that licensee has set a date to load fuel; LBP-09-15, 70 NRC 198 (2009); LBP-09-21, 70 NRC 581 (2009)
- for combined license applications, the report must contain a certification that financial assurance for decommissioning will be provided no later than 30 days after the Commission publishes notice in the *Federal Register* of the initial fuel load; LBP-09-18, 70 NRC 385 (2009)
- if applicant plans to use a parent company guarantee for financial assurance of decommissioning funding, the assurance must provide the information required by 10 C.F.R. 50.75(e)(1)(iii)(B); LBP-09-15, 70 NRC 198 (2009)

SUBJECT INDEX

petitioners' claim that applicant must pursue the prepayment method for decommissioning conflicts with the NRC guidance and rules and so is outside the permissible scope of a combined license proceeding; LBP-09-21, 70 NRC 581 (2009)

the parent company guarantee is based on a financial test and may only be used if the guarantee and test are as contained in Appendix A to 10 C.F.R. Part 30; LBP-09-18, 70 NRC 385 (2009)

FINANCIAL QUALIFICATIONS

a licensee need not be an electric utility, but a non-electric utility license applicant must meet heightened financial qualifications; CLI-07-18, 65 NRC 399 (2007); LBP-07-4, 65 NRC 281 (2007)

an applicant seeking to renew or extend the term of an operating license for a power reactor need not submit the financial information that is required in an application for an initial license; LBP-07-4, 65 NRC 281 (2007)

applicant for a combined license must show that it possesses funds or has reasonable assurance of obtaining funds necessary to cover estimated construction and fuel cycle costs; LBP-09-10, 70 NRC 51 (2009)

electric utilities are presumed to be financially qualified to operate nuclear power plants and thus the Commission has exempted them from NRC review of their financial qualifications to cover operational costs; LBP-08-17, 68 NRC 431 (2008)

electric utilities need not include operating and maintenance costs in their demonstration of financial qualifications in a combined license application; LBP-09-10, 70 NRC 51 (2009)

in a license transfer case, a petitioner cannot successfully claim injury based on the financial qualifications and assurances of the transferor; CLI-07-22, 65 NRC 525 (2007)

it is beyond licensing board authority to require applicant to choose a particular method of decommissioning funding; LBP-09-15, 70 NRC 198 (2009)

neither market capitalization nor share price are variables to be used in the financial test for decommissioning funding assurance; LBP-09-15, 70 NRC 198 (2009)

the financial test for a parent company guarantee is a material issue because the Staff must decide whether the test is satisfied in order to grant the combined license; LBP-09-15, 70 NRC 198 (2009)

the purpose of the requirements of 10 C.F.R. 50.33(f) is to ensure the protection of public health and safety and the common defense and security, not to evaluate the financial wisdom of the proposed project; LBP-09-10, 70 NRC 51 (2009)

FINANCIAL RESOURCES

creditor interests are created in equipment, devices, or important parts thereof, capable of separating the isotopes of uranium or enriching uranium in the isotope U-235; CLI-09-15, 70 NRC 1 (2009)

FINDING OF NO SIGNIFICANT IMPACT

to raise an admissible contention with respect to a Staff finding of no significant impact, petitioner need not demonstrate that there will be a significant environmental impact as a consequence of the proposed action, but it must allege facts that, if true, show that the proposed project may significantly degrade some human environmental factor; LBP-06-27, 64 NRC 438 (2006)

FINDINGS OF FACT

a board rested its findings regarding a contention, in part, on certain facts that it officially noticed; CLI-10-17, 72 NRC 1 (2010)

a board's analysis of decommissioning cost estimates should be tailored to the specifics of the proceeding; CLI-06-22, 64 NRC 37 (2006)

a board's examination of licensee's decommissioning cost estimates for reliability is consistent with its obligation to verify whether the estimates provided reasonable assurance for decommissioning funding; CLI-06-22, 64 NRC 37 (2006)

a board's findings regarding a particular witness's knowledge or state of mind depend, as a general rule, largely on that witness's credibility; CLI-10-23, 72 NRC 210 (2010)

a party's failure to raise a matter in its proposed findings of fact and conclusions of law seemingly waives these items as grounds for its challenge to the final environmental impact statement; LBP-09-7, 69 NRC 613 (2009)

any licensing board merits litigation-based findings have the effect of amending or supplementing the final environmental impact statement; LBP-07-3, 65 NRC 237 (2007)

SUBJECT INDEX

- board's finding that "knowledge" does not necessarily follow simply from previous exposure to individual facts, but rather an individual must have a current appreciation of those facts and their meaning in the circumstances presented is a finding of fact, not of law; CLI-10-23, 72 NRC 210 (2010)
- compliance or noncompliance with regulatory guidance, even if proven, is simply evidence and does not relieve the board of the duty to determine whether an applicant has satisfied the relevant legal and regulatory requirements; LBP-08-25, 68 NRC 763 (2008)
- environmental findings that a board must make to authorize issuance of an early site permit are described; LBP-09-19, 70 NRC 433 (2009)
- if a board does not explain how it had arrived at its findings of fact, it would fail to comply with its responsibilities under the Administrative Procedure Act to issue a reasoned decision; CLI-10-23, 72 NRC 210 (2010)
- licensing board findings of fact that turn on witness credibility receive the Commission's highest deference on appeal; CLI-10-23, 72 NRC 210 (2010)
- the Commission does not exercise its authority to make de novo findings of fact where a licensing board has issued a plausible decision that rests on carefully rendered findings of fact; CLI-06-22, 64 NRC 37 (2006); CLI-09-7, 69 NRC 235 (2009); CLI-10-5, 71 NRC 90 (2010); CLI-10-18, 72 NRC 56 (2010)
- the Commission will not overturn a hearing judge's findings simply because the Commission might have reached a different result; CLI-10-23, 72 NRC 210 (2010)
- the Commission's standard of clear error for overturning a board's factual finding is quite high, and the Commission defers to its boards' findings unless clearly erroneous, i.e., not even plausible in light of the record viewed in its entirety; CLI-09-7, 69 NRC 235 (2009); CLI-10-5, 71 NRC 90 (2010)
- the licensing board's principal role in the adjudicatory process is to carefully review all of the evidence, including testimony and exhibits, and to resolve any factual disputes; CLI-10-5, 71 NRC 90 (2010)
- to grant an early site permit, the Commission must find that the proposed inspections, tests, analyses, and acceptance criteria, including any on emergency planning, are necessary and sufficient, within the scope of the ESP, to provide reasonable assurance that the facility has been constructed and will be operated in conformity with the license, the provisions of the Act, and the Commission's regulations; LBP-09-19, 70 NRC 433 (2009)
- to show clear error, appellant must demonstrate that the board's findings are not even plausible in light of the record viewed in its entirety; CLI-10-23, 72 NRC 210 (2010)
- unless there is a strong reason to believe that in a particular case a board has overlooked or misunderstood important evidence, the Commission will defer to its findings of fact; CLI-09-7, 69 NRC 235 (2009)
- when a presiding officer has reviewed an extensive record in detail, with the assistance of a technical advisor, the Commission is generally disinclined to upset his findings and conclusions, particularly on matters involving fact-specific issues or where the affidavits or submissions of experts must be weighed; CLI-06-1, 63 NRC 1 (2006)
- when an early site permit is issued with an associated limited work authorization, the board must find relative to the LWA that any significant adverse environmental impact resulting from activities requested under 10 C.F.R. 52.17(c) can be redressed; LBP-09-19, 70 NRC 433 (2009)
- where a party merely complains that the board improperly weighed the evidence and identifies no clear board factual or legal error requiring further Commission consideration on appellate review, the Commission is disinclined to second-guess the board's assessment of the party's affidavits; CLI-08-28, 68 NRC 658 (2008)
- FIRE BARRIERS**
- any challenge to an NRC Staff decision to grant an exemption from a 1-hour barrier to a 24/30-minute barrier is a direct challenge to the current licensing basis and unrelated to the effects of plant aging and the license renewal application; LBP-08-13, 68 NRC 43 (2008)
- evaluation of the fire protection properties of Thermo-Lag, Hemyc, and Kaowool materials and licensees' responses to those findings are discussed; DD-06-1, 63 NRC 133 (2006)
- FIRE PROTECTION**
- a contention that challenges compliance with fire protection regulations at an existing unit is outside the scope of a combined license proceeding; CLI-10-9, 71 NRC 245 (2010)
- petitioner's assertions regarding the historical fire protection situation at the existing unit outside the scope of the combined license proceeding; LBP-08-21, 68 NRC 554 (2008)

SUBJECT INDEX

petitioner's challenge to the one-fire assumption in the AP1000 design constitutes an impermissible challenge to Commission regulations; CLI-10-9, 71 NRC 245 (2010)

FIRE PROTECTION SYSTEMS

all structures, systems, and components relied on in safety analyses or plant evaluations to perform a function that demonstrates compliance with the NRC's regulations are subject to aging management review for license renewal; CLI-10-14, 71 NRC 449 (2010)

condensate storage system buried pipes are outside the scope of a license renewal proceeding with respect to their safety functionality, but that does not eliminate the need for consideration of potential leaks from those buried pipes because of their role in fire protection; LBP-08-22, 68 NRC 590 (2008)

evaluation of the fire protection properties of Thermo-Lag, Hemyc, and Kaowool fire barrier materials and licensees' responses to those findings are discussed; DD-06-1, 63 NRC 133 (2006)

licensee is not required to submit docketed information on the resolution of each fire protection noncompliance during its transition to a risk-informed and performance-based fire protection program, but it is required to implement and maintain compensatory measures for remaining noncompliances; DD-07-3, 65 NRC 643 (2007)

licensees may voluntarily adopt a risk-informed and performance-based fire protection program; DD-07-3, 65 NRC 643 (2007)

licensees of plants licensed to operate before January 1, 1979, must comply with fire protection requirements specified in 10 C.F.R. Part 50, Appendix R, and licensees of plants licensed to operate after January 1, 1979, must comply with the approved fire protection program incorporated into their operating license; DD-06-1, 63 NRC 133 (2006)

NRC normally will not take enforcement action for a violation involving a problem related to engineering, design, implementing procedures, or installation, if the violation is documented in an inspection report and it meets certain criteria including the licensee's voluntary initiative to adopt the risk-informed performance-based fire protection program; DD-07-3, 65 NRC 643 (2007)

FIRE SAFETY

issues already the focus of ongoing regulatory processes do not come within the NRC's safety review of a license renewal application; LBP-07-11, 66 NRC 41 (2007)

the manner in which residual heat from an electrical cabinet fire is dissipated, and the potential for reignition of an electrical cabinet fire after it is extinguished with an inert gas and the cabinet is opened before the residual heat has dissipated, is discussed; LBP-06-17, 63 NRC 747 (2006)

FIRES

a contention on spent fuel pool fires is rejected as an impermissible challenge to NRC regulations and the license renewal generic environmental impact statement; CLI-10-11, 71 NRC 287 (2010)

combined license applications must describe plans for implementing guidance and strategies intended to maintain or restore core cooling, containment, and spent fuel pool cooling capabilities if large areas of the plant are lost due to explosions or fire; LBP-10-5, 71 NRC 329 (2010)

spent fuel pool fires are Category 1 issues and therefore are addressed generically in the generic environmental impact statement for license renewals; LBP-08-13, 68 NRC 43 (2008)

the licensing board rules on issues that concern guidance and strategies for addressing certain circumstances that might arise from potential beyond-design-basis explosions and fires; LBP-10-5, 71 NRC 329 (2010)

FIRST AMENDMENT

public access to courts is grounded in the First Amendment and free speech carries with it some freedom to listen; LBP-10-2, 71 NRC 190 (2010)

FISH AND SHELLFISH

applicant is required to provide in its environmental report a site-specific analysis of entrainment, impingement, and heat shock/thermal discharge impacts from its once-through cooling systems; LBP-08-13, 68 NRC 43 (2008)

FITNESS-FOR-DUTY PROGRAM

a person may be denied access at a licensee facility based on NRC requirements such as falsification of information, trustworthiness or reliability issues, and issues related to fitness for duty; DD-10-2, 72 NRC 163 (2010)

SUBJECT INDEX

an individual requiring clarification or resolution of an access authorization concern must resolve the issue with the licensee where unescorted access was last held or otherwise denied; DD-10-2, 72 NRC 163 (2010)

each licensee must evaluate access denial status on a case-by-case basis and make a determination of trustworthiness and reliability; DD-10-2, 72 NRC 163 (2010)

nuclear industry was required to develop, implement, and maintain an industry database accessible by NRC-licensed facilities to share information, including determination of whether an individual is denied access at any other NRC-licensed facility; DD-10-2, 72 NRC 163 (2010)

potentially disqualifying information for unescorted access authorization may include unfavorable information from an employer, developed or disclosed criminal history, credit history, judgments, unfavorable reference information, evidence of drug or alcohol abuse, discrepancies between information disclosed and developed; DD-10-2, 72 NRC 163 (2010)

FLOOD PROTECTION

the design basis flood is the magnitude of the flood event that is used to evaluate safety structures, systems, and components important to safety during facility design; LBP-09-25, 70 NRC 867 (2009)

FLOODS

shutting down or derating of a nuclear power plant is not warranted because the state has established and coordinated potential alternative evacuation routes in the unlikely event of an emergency at the nuclear power plant; DD-06-2, 63 NRC 425 (2006)

FLOW ACCELERATED CORROSION

applicant must establish an aging management program that is adequate to provide reasonable assurance that the intended function of the piping subject to FAC will be maintained in accordance with the current licensing basis for the period of extended operation; LBP-08-25, 68 NRC 763 (2008)

FOOD ADDITIVES

a food additive is presumed to be unsafe until demonstrated otherwise; CLI-08-16, 68 NRC 221 (2008)

for the FDA to determine that a food additive is safe, it must find, after a fair evaluation of the data, that there is a reasonable certainty in the minds of competent scientists that the substance is not harmful under all intended conditions of use; CLI-08-16, 68 NRC 221 (2008)

irradiation sources, including radioactive isotopes, particle accelerators, and X-ray machines, intended for use in processing food are included in this term; CLI-08-16, 68 NRC 221 (2008)

FOODS

See Irradiated Foods

FOREIGN OWNERSHIP

a domestic corporation in which a foreign entity has an ownership interest is considered controlled or dominated if its will is subjugated to the will of the foreign entity on primary safety matters or access policies that may be inimical to the national defense and security of the United States; LBP-09-4, 69 NRC 170 (2009)

a facility is foreign-owned when a foreign interest has the power, direct or indirect, whether or not exercised, to direct or decide matters affecting the management or operations of the applicant; LBP-08-6, 67 NRC 241 (2008)

a license will not be prohibited if the foreign entity's influence is on other licensing activities not of primary concern to the NRC, or if the corporation follows NRC-implemented conditions to isolate safety matters from foreign control; LBP-09-4, 69 NRC 170 (2009)

an affirmative finding by the Commission that issuance of a license for a uranium enrichment facility will not be inimical to the common defense and security is required; CLI-09-15, 70 NRC 1 (2009)

analysis of compliance with section 103d of the Atomic Energy Act is a function performed by the NRC Staff as part of its evaluation of the combined license application; CLI-09-20, 70 NRC 911 (2009)

applicant's failure to disclose ownership by a foreign corporation in its license renewal application constitutes a contention of omission; LBP-08-24, 68 NRC 691 (2008)

citizenship of an applicant may be considered in the context of a license application; CLI-09-9, 69 NRC 331 (2009)

concerns related to an applicant's ownership are potentially material to the safety and environmental requirements of 10 C.F.R. Part 40; LBP-08-6, 67 NRC 241 (2008); LBP-08-24, 68 NRC 691 (2008)

congressional intent for the phrase "common defense and security," is analyzed in the context of foreign ownership prohibitions; LBP-08-6, 67 NRC 241 (2008)

SUBJECT INDEX

contention alleging foreign ownership of applicant, failure to disclose, and various ramifications of such ownership is found to be admissible; LBP-09-1, 69 NRC 11 (2009)

creditor regulations may be augmented by license conditions as necessary to allow ownership arrangements, such as sale and leaseback, provided it can be found that such arrangements are not inimical to the common defense and security of the United States; CLI-09-15, 70 NRC 1 (2009); CLI-10-4, 71 NRC 56 (2010)

issuance of a materials license to a licensee wholly owned by a foreign parent is not prohibited; CLI-09-12, 69 NRC 535 (2009)

neither a uranium enrichment facility nor a nuclear power plant may be owned, controlled, or dominated by a foreign entity; CLI-09-9, 69 NRC 331 (2009)

no license may be issued to an alien or any corporation or other entity if the Commission knows or has reason to believe it is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government; CLI-09-20, 70 NRC 911 (2009)

NRC case law and precedent do not prohibit considering the percentage of foreign ownership as one element in NRC's overall analysis and finding of whether the foreign entity is a threat to the national defense and security of the United States; LBP-09-4, 69 NRC 170 (2009)

petitioners' claim that a foreign-owned company would be more likely than a U.S.-owned company to export its product overseas falls outside the scope of a materials license amendment proceeding, where the applicant had not applied for a license to export recovered uranium; CLI-09-12, 69 NRC 535 (2009)

the Atomic Energy Act restriction focuses on safeguarding access to nuclear materials, a security issue, and not on other licensing matters; LBP-09-4, 69 NRC 170 (2009)

the Commission has not determined a specific threshold above which it would be conclusive that an applicant is controlled by foreign interests through ownership of a percentage of the applicant's stock; CLI-09-20, 70 NRC 911 (2009); LBP-09-4, 69 NRC 170 (2009)

the common defense and security standard refers principally to the safeguarding of special nuclear material, the absence of foreign control over the applicant, the protection of restricted data, and the availability of special nuclear material for defense needs; CLI-09-9, 69 NRC 331 (2009)

the decision of whether to grant a license to a corporation hinges on whether the applicant is being controlled or dominated by the foreign entity; LBP-09-4, 69 NRC 170 (2009)

the requirement that materials licenses not be inimical to the common defense and security has been interpreted as referring to the absence of foreign control over the applicant; LBP-09-1, 69 NRC 11 (2009)

there is no statutory or regulatory bar, per se, on a foreign-owned or -controlled company holding a source materials license, whether as a licensee or as a parent entity; CLI-09-9, 69 NRC 331 (2009)

FREEDOM OF INFORMATION ACT

a participant in administrative litigation, having an even greater interest in obtaining access to SUNSI than does the general public, is entitled to obtain documents under standards no more restrictive than would be accorded the general public under FOIA; LBP-10-2, 71 NRC 190 (2010)

challenges in FOIA cases routinely are resolved on the basis of summary judgment pleadings; LBP-08-7, 67 NRC 361 (2008)

classified information is exempt from disclosure; LBP-10-2, 71 NRC 190 (2010)

copies of environmental impact statements shall be made available to the President, the Council on Environmental Quality, and the public; CLI-08-1, 67 NRC 1 (2008)

disclosure of documents under the National Environmental Policy Act is expressly governed by the Freedom of Information Act; CLI-08-5, 67 NRC 174 (2008); CLI-08-8, 67 NRC 193 (2008)

documents that qualify as exempt from FOIA disclosure as sensitive unclassified nonsafeguards information are described; LBP-10-2, 71 NRC 190 (2010)

even if a document contains information that is exempt from disclosure, FOIA mandates that any reasonably segregable portion of the record shall be provided to any person requesting such record after deletion of the portions that are exempt; LBP-10-2, 71 NRC 190 (2010)

Exemption 2 authorizes an agency to withhold matters that are related solely to the internal personnel rules and practices of an agency; LBP-08-7, 67 NRC 361 (2008)

if it seeks to withhold a document from a party or the public, or to bar a party or member of the public from attending any adjudicatory proceeding before a licensing board, NRC Staff must carry the burden

SUBJECT INDEX

of proving that the document or situation fits one of FOIA's specifically enumerated exceptions; LBP-10-2, 71 NRC 190 (2010)

in evaluating the validity of a claimed FOIA exemption, the experience and expertise of an affiant, coupled with a detailed and specific affidavit, lends special weight to the affiant's statements and conclusions; LBP-08-7, 67 NRC 361 (2008)

information in an environment impact statement or environmental assessment that must be considered as part of the NEPA decisionmaking process may be withheld from public disclosure pursuant to FOIA exemptions; CLI-08-1, 67 NRC 1 (2008)

intra-agency memoranda developed during the decisionmaking process are protected under the deliberative process privilege; CLI-08-23, 68 NRC 461 (2008)

limited discovery may be allowed in a FOIA dispute, but only if absolutely necessary to ensure a complete record and a fair decision; CLI-08-5, 67 NRC 174 (2008)

litigation is ordinarily resolved on summary disposition without discovery and without evidentiary trials or hearings, and discovery is sparingly used; CLI-08-5, 67 NRC 174 (2008); CLI-08-8, 67 NRC 193 (2008)

NEPA does not contemplate adjudications resulting in the disclosure of matters under law considered secret or confidential; CLI-08-8, 67 NRC 193 (2008)

NRC implements and repeats the FOIA obligation that, with nine enumerated exceptions, each agency make copies of all records available to the public; LBP-10-2, 71 NRC 190 (2010)

NRC need not disclose information if it falls within one of the nine exemptions in the Freedom of Information Act; LBP-08-7, 67 NRC 361 (2008)

NRC records are protected from disclosure under FOIA Exemption 2 to the extent they contain internal analytic guidance, operating rules, or practices, the disclosure of which would aid terrorists or saboteurs seeking to circumvent security measures designed to protect nuclear materials; LBP-08-7, 67 NRC 361 (2008)

regarding public disclosure of an agency's NEPA analysis, Congress has established that the environmental impact statement shall be made available to the public as provided by FOIA; LBP-08-7, 67 NRC 361 (2008)

safeguards information qualifies for the exemption from disclosure; LBP-10-2, 71 NRC 190 (2010)

the duty to make all documents available does not apply to records specifically exempted from disclosure by statute; LBP-10-2, 71 NRC 190 (2010)

the public is entitled to copies of the transcripts of all hearings; LBP-10-2, 71 NRC 190 (2010)

under the National Environmental Policy Act, the Commission may withhold from public disclosure any information that is exempt under FOIA; CLI-08-26, 68 NRC 509 (2008)

when access to documents is disputed in FOIA litigation, the government must submit detailed public affidavits identifying the documents withheld, the FOIA exemptions claimed, and a particularized explanation of why each document falls within the claimed exemption; LBP-08-7, 67 NRC 361 (2008)

when the agency has submitted detailed public affidavits that permit resolution of FOIA issues, in camera review of redacted information or sealed documents is not necessary; LBP-08-7, 67 NRC 361 (2008)

FUEL FABRICATION FACILITY LICENSING

applicant is not required to "request" a completion finding, or call for a single action, such as an inspection, on the part of the Staff that would serve as a discrete starting point for revising a contention; CLI-09-2, 69 NRC 55 (2009)

because Intervenor's inability to satisfy the contention admissibility rules is due to factors beyond their control, the Commission declines to require them to meet both the strict late-filing requirements and the even stricter reopening standards if they identify safety issues during the upcoming years of ongoing construction; CLI-09-2, 69 NRC 55 (2009)

the requirement that the issue raised in a contention must be within the scope of the proceeding is of particular relevance given the two-stage jurisdictional procedure established prior to the first mixed oxide fuel fabrication facility proceeding; LBP-07-14, 66 NRC 169 (2007)

when environmental issues are dealt with in a separate proceeding, environmental contentions are beyond the scope of the safety proceeding unless they meet requirements beyond the ordinary contention admissibility tests; LBP-07-14, 66 NRC 169 (2007)

SUBJECT INDEX

FUEL LOADING

prior to operation under a combined license, a notice of intended operation will be published in the *Federal Register* not less than 180 days before the date scheduled for initial loading of fuel; LBP-09-19, 70 NRC 433 (2009)

GENERAL DESIGN CRITERIA

the criteria are not applicable to nuclear power plants with construction permits issued prior to May 21, 1971; LBP-08-13, 68 NRC 43 (2008)

GENERAL LICENSES

the assertion that applicant might need to obtain a Part 72 license is irrelevant because a grant of a combined license could be accompanied by grant of a Part 72 general license if applicant complies with certain conditions; LBP-09-21, 70 NRC 581 (2009)

the Commission has issued a general license for the storage of spent fuel at an onsite independent spent fuel storage installation to all persons authorized to possess or operate nuclear power reactors under 10 C.F.R. Part 50 or Part 52; LBP-09-20, 70 NRC 565 (2009)

GENERIC ENVIRONMENTAL IMPACT STATEMENT

a contention on spent fuel pool fires is rejected as an impermissible challenge to NRC regulations and the license renewal GEIS; CLI-10-11, 71 NRC 287 (2010)

environmental effects of storing spent fuel for an additional 20 years at the site of nuclear reactors would be not significant; CLI-07-3, 65 NRC 13 (2007)

generic environmental impacts analyzed in the GEIS for license renewal are designated "Category 1" issues, and the license renewal applicant is generally excused from discussing them; CLI-07-3, 65 NRC 13 (2007)

Staff's GEIS for license renewal has already performed a discretionary analysis of terrorist acts in connection with license renewal and concluded that the core damage and radiological release from such acts would be no worse than the damage and release to be expected from internally initiated events; CLI-07-8, 65 NRC 124 (2007)

the GEIS addresses the need to consider energy conservation for the no-action alternative; LBP-08-13, 68 NRC 43 (2008)

the GEIS for license renewal provides data supporting the table of Category 1 and 2 issues in 10 C.F.R. Part 51, Subpart A, Appendix B; LBP-06-23, 64 NRC 257 (2006)

the GEIS for license renewal was part of an amendment of the requirements of Part 51 undertaken by the Commission to establish environmental review requirements for license renewals that were both efficient and more effectively focused; LBP-07-4, 65 NRC 281 (2007)

the GEIS must be updated if new and significant information or changed circumstances would change the outcome of the environmental analysis; LBP-10-15, 72 NRC 257 (2010)

when a petitioner argues that new information contradicts assumptions underlying the entire generic analysis for all facilities or a whole class of facilities, the appropriate remedy is a rulemaking petition; CLI-07-3, 65 NRC 13 (2007)

GENERIC ISSUES

a license renewal applicant need not discuss severe accident mitigation alternatives for Category 1 issues; CLI-07-3, 65 NRC 13 (2007)

absent a waiver pursuant to 10 C.F.R. 2.335, Category 1 issues are not subject to challenge in a relicensing proceeding because they involve environmental effects that are essentially similar for all plants and need not be assessed repeatedly on a site-specific basis; LBP-08-13, 68 NRC 43 (2008)

adjudicating Category 1 issues site by site based merely on a claim of new and significant information would defeat the purpose of resolving generic issues in a GEIS; CLI-07-3, 65 NRC 13 (2007)

any new and significant information regarding the environmental impacts of license renewal of which the applicant is aware must be included in the environmental report even if this concerns a Category 1 issue; LBP-06-23, 64 NRC 257 (2006)

because Category 1 issues already have been reviewed on a generic basis for all plants, an applicant's environmental report need not provide a site-specific analysis of these issues; LBP-07-4, 65 NRC 281 (2007); CLI-09-10, 69 NRC 521 (2009)

Category 1 issues need not be repeatedly assessed on a plant-by-plant basis, and license renewal applicants may in their ERs refer to and adopt the generic environmental impact findings found in 10 C.F.R. Part 51, Subpart A, Appendix B, Table B-1; LBP-06-23, 64 NRC 257 (2006)

SUBJECT INDEX

environmental effects of storing spent fuel for an additional 20 years at the site of nuclear reactors would be not significant; CLI-07-3, 65 NRC 13 (2007)

environmental impacts from the spent fuel pool, including potential beyond-design-basis accidents and the need for mitigation measures, are addressed generically in the NRC's generic environmental impact statement for license renewal, and do not require a site-specific analysis as part of an individual license renewal environmental review; CLI-10-14, 71 NRC 449 (2010)

environmental issues identified as "Category 1," or "generic," issues in 10 C.F.R. Part 51, Subpart A, Appendix B, are not within the scope of a license renewal proceeding; LBP-07-11, 66 NRC 41 (2007) even though a matter may normally fall within a Category 1 issue, ERs are also required to contain any new and significant information regarding the environmental impacts of license renewal of which the applicant is aware; LBP-07-4, 65 NRC 281 (2007)

for all issues designated as Category 1 the Commission has concluded (generically) that additional site-specific mitigation alternatives are unlikely to be beneficial; CLI-07-3, 65 NRC 13 (2007)

generic analysis is an appropriate method of meeting the agency's statutory obligations under NEPA; CLI-07-3, 65 NRC 13 (2007)

generic NRC policies and standards and the nature of the NRC Staff's licensing review are not subject to challenge in an adjudicatory proceeding; CLI-08-17, 68 NRC 231 (2008)

if a rule is suspended for analysis, each supplemental EIS would reflect the corrected analysis until such time as the rule is amended; CLI-07-3, 65 NRC 13 (2007)

if petitioners are dissatisfied with NRC's generic approach to a problem, their remedy lies in the rulemaking process, not in adjudication; LBP-09-18, 70 NRC 385 (2009)

in conducting its analysis of the impact of the license renewal on land use, applicant should consider the impact on real estate values that would be caused by license renewal or nonrenewal; LBP-08-13, 68 NRC 43 (2008)

intervention petitioners may not demand an adjudicatory hearing to attack generic NRC requirements or regulations or to express generalized grievances about NRC policies; LBP-07-11, 66 NRC 41 (2007)

introduction of issues that are not unique to any given reactor are inappropriate in an individual reactor licensing proceeding absent evidence that the generic issue applies to that particular proceeding; LBP-06-11, 63 NRC 391 (2006)

issue of whether location of a nuclear plant in a densely populated area allowed adoption of generic risk factors and a severe accident mitigation design alternatives decision supported by a policy statement rather than a rulemaking was confronted; LBP-10-10, 71 NRC 529 (2010)

issues on which the Commission can draw generic conclusions applicable to all existing nuclear power plants, or to a specific subgroup of plants are identified as "Category 1" issues; LBP-07-4, 65 NRC 281 (2007)

issues resolved as part of the design certification rulemaking process and any concerns related to those issues are not within the scope of a combined license proceeding; LBP-09-8, 69 NRC 736 (2009)

it makes more sense for NRC to study whether, as a technical matter, the agency should modify its requirements for all plants across the board than to litigate in particular adjudications whether generic findings in the GEIS are impeached by a claim of new information; CLI-07-3, 65 NRC 13 (2007)

NRC cannot generically dispense with the consideration of SAMAs, under NEPA, through a policy statement issued pursuant to its Atomic Energy Act authority; LBP-10-13, 71 NRC 673 (2010)

NRC rules recognize the possibility of new and significant information calling into question prior generic findings, and a petition for rulemaking is one means to alert the Commission to new information that may render a GEIS finding incorrect; CLI-09-10, 69 NRC 521 (2009)

one way to challenge a generic finding, or Category 1 issue, in a license renewal proceeding is to apply for a waiver where special circumstances are such that the application of the rule or regulation would not serve the purposes for which the rule or regulation was adopted; CLI-07-3, 65 NRC 13 (2007)

pending resolution of a rulemaking petition, NRC Staff may, where appropriate, seek the Commission's permission to suspend the generic determination of a Category 1 issue and include a new analysis in the plant-specific environmental impact statements; CLI-07-3, 65 NRC 13 (2007)

spent fuel from an additional 20 years of operation can be stored safely, with small environmental effects, at all plants, and such impacts are classified as Category 1 issues that are not within the scope of individual license renewal proceedings; LBP-10-15, 72 NRC 257 (2010)

SUBJECT INDEX

spent fuel pool fires are Category 1 issues and therefore are addressed generically in the generic environmental impact statement for license renewals; LBP-08-13, 68 NRC 43 (2008)

the central purpose of Part 51 rules is to allow NRC to comply with NEPA by identifying and evaluating environmental impacts that are generic to reactor license renewal proceedings and then allowing applicant and NRC to dispense with site-specific evaluations of such environmental impacts in situations covered by the generic analysis; LBP-10-15, 72 NRC 257 (2010)

threat of terrorist attack at spent fuel pools has been evaluated generically by NRC and special circumstances for rule waiver have not been shown; LBP-10-15, 72 NRC 257 (2010)

where a petitioner argues that new information contradicts assumptions underlying the entire generic analysis for all facilities or a whole class of facilities, the appropriate remedy is a rulemaking petition; CLI-07-3, 65 NRC 13 (2007)

GENERIC SAFETY ISSUES

Category 1 issues in Appendix B to Subpart A of Part 51 are not within the scope of a license renewal proceeding; LBP-06-10, 63 NRC 314 (2006)

GEOLOGIC CONDITIONS

applicant's site safety analysis report must include seismic and geologic characteristics of the proposed site with appropriate consideration of the most severe historical natural phenomena that have been reported for the site; LBP-09-19, 70 NRC 433 (2009)

in providing information on seismic and geologic characteristics of a proposed site, applicants must conform to the requirements of 10 C.F.R. 100.23; LBP-09-19, 70 NRC 433 (2009)

possibility of existence of undetected caves and sinkholes on the proposed reactor site and the adequacy of the seismic analysis are not litigable issues; LBP-08-16, 68 NRC 361 (2008)

the plain language of 10 C.F.R. 63.305 does not say anything about analyzing future climate based upon the historical geological record; LBP-10-22, 72 NRC 661 (2010)

the site safety analysis report submitted with an early site permit application must contain the seismic, meteorological, hydrologic, and geologic characteristics of the proposed site; LBP-09-19, 70 NRC 433 (2009)

GEOLOGIC REPOSITORIES

the board may not consider that long-term erosion might entirely eliminate the proposed repository's upper geologic barrier unless the erosion is also shown to be a safety concern in the relatively near term; LBP-10-22, 72 NRC 661 (2010)

GLOBAL WARMING

See Climate Change

GOVERNMENT PARTIES

a state that wishes to be a party in a proceeding for a facility located within its boundaries need not address the standing requirements; LBP-06-23, 64 NRC 257 (2006)

the Commission's decision not to entertain a state intervenor's integrity and competence contentions in the high-level waste repository proceeding is consistent with its practice of extending comity to other governmental entities; CLI-09-14, 69 NRC 580 (2009)

the definition of "party" under the Nuclear Waste Policy Act implies that local governments enjoy standing as of right; LBP-08-10, 67 NRC 450 (2008)

GREENHOUSE GAS EMISSIONS

allegation of failure to include in the combined license application any information regarding the project's greenhouse gas emissions or carbon footprint is inadmissible; LBP-08-16, 68 NRC 361 (2008)

carbon dioxide emissions from the uranium fuel cycle are to be listed as zero; LBP-09-21, 70 NRC 581 (2009)

carbon dioxide falls within the Clean Air Act's definition of air pollutants subject to the Environmental Protection Agency's regulatory authority; LBP-09-17, 70 NRC 311 (2009)

contention alleging that the environmental report failed to address the alleged greenhouse gas and global climate disruption impacts resulting from prematurely killing trees is inadmissible; LBP-09-10, 70 NRC 51 (2009)

each environmental report prepared for the combined license stage must take Table S-3 as the basis for evaluating the contribution of the environmental effects of the fuel cycle to the environmental costs of licensing the reactor; CLI-09-21, 70 NRC 927 (2009)

SUBJECT INDEX

the Commission may have more to offer regarding the need for a NEPA carbon footprint analysis in new reactor licensing proceedings; LBP-09-19, 70 NRC 433 (2009)

GREEN'S FUNCTION METHOD

conservatism in use of Green's function to determine cumulative usage factor related to metal fatigue in the recirculation nozzle is discussed; LBP-08-12, 68 NRC 5 (2008)

use of a simplified Green's function methodology for the environmentally adjusted cumulative usage factor metal fatigue analyses for the core spray and reactor recirculation outlet nozzles is inconsistent with the ASME Code and thus cannot serve as the analysis-of-record and does not satisfy the requirements of 10 C.F.R. 54.21(c)(1) or 54.29(a); LBP-08-25, 68 NRC 763 (2008)

GROUNDWATER CONTAMINATION

a challenge to applicant's site-specific measurements of adsorption and retention coefficients relative to hydrological radionuclide transport is an admissible contention; LBP-09-16, 70 NRC 227 (2009)

a request for action regarding leaks or potential leaks of radioactively contaminated water into the ground is granted in part regarding power reactors and denied regarding research and test reactors; DD-06-3, 64 NRC 407 (2006)

challenges to the adequacy of the NRC's groundwater restoration standards are impermissible; LBP-08-6, 67 NRC 241 (2008)

contention based on a recent study suggesting a link between low levels of arsenic in drinking water and diabetes is rejected; CLI-09-12, 69 NRC 535 (2009)

contentions relating to the conclusions that the NRC Staff reaches in its NEPA analysis with regard to the environmental impacts from radiological releases to groundwater must await future publication of its supplemental environmental impact statement; LBP-08-13, 68 NRC 43 (2008)

health effects of arsenic contamination of drinking water from mining operations is an admissible issue in a materials license amendment proceeding; LBP-09-1, 69 NRC 11 (2009)

in its review of early site permit applications, Staff must consider physical characteristics of the site, specifically noting that factors important to hydrological radionuclide transport must be obtained from onsite measurements; LBP-09-19, 70 NRC 433 (2009)

it is enough that petitioner has demonstrated a realistic threat of sustaining a direct injury as a result of contaminated groundwater flowing from the site to his property; LBP-10-16, 72 NRC 361 (2010)

petitioner's concerns regarding underground leakage of contaminated water at Indian Point are addressed; DD-08-2, 68 NRC 339 (2008)

petitioners' concerns regarding applicant's commitments to relax conservatisms in its laboratory testing and groundwater release analysis are in regard to the revised analysis to be submitted in response to the Staff request for additional information and therefore are dismissed as outside the scope of the proceeding; LBP-09-16, 70 NRC 227 (2009)

Staff and applicant must address matters such as the environmental impacts of unregulated seepage into adjacent groundwater in their environmental impact statement and environmental report; LBP-09-25, 70 NRC 867 (2009)

the Clean Water Act does not authorize regulation of discharges to groundwater and so applicant's environmental report must address those discharges; LBP-10-14, 72 NRC 101 (2010)

the field sampling plan's analysis of waterways is intended to identify groundwater, possible cave, and surface water paths and to assess the contents of those waters to determine if depleted uranium is leaching or will leach off the site in quantities significant enough that humans might receive more than 25 mrems of total radioactive exposure from all of the site's pathways; LBP-08-4, 67 NRC 105 (2008)

to the extent contaminants can plausibly migrate from leach mining operations to the aquifer from which a petitioner obtains his or her water, a petitioner would have a claim of a cognizable injury and could be accorded standing; LBP-08-24, 68 NRC 691 (2008)

HAZARDOUS MATERIALS

hydrofluoric acid exposure to licensee operators is assessed a civil monetary penalty in the amount of \$32,500 on the basis of a determined Severity Level III violation; LBP-10-18, 72 NRC 519 (2010)

HEALTH AND SAFETY

a board must determine whether an ESP application and the record of the proceeding contain sufficient information, and the review of the application by the NRC Staff has been adequate, to support a negative finding on the question of whether the issuance of an early site permit will be inimical to the common defense and security or to the health and safety of the public; LBP-07-9, 65 NRC 539 (2007)

SUBJECT INDEX

- after completion of decommissioning, neither licensee nor the NRC retains any continuing obligation or jurisdiction, respectively, with respect to a site, unless new information shows that the Part 20 criteria were not met and the residual radioactivity remaining on the site could result in a significant threat to public health and safety; CLI-09-1, 69 NRC 1 (2009)
- allegations that mining activities may cause harm to public health and safety are within the scope of a materials license renewal proceeding and material to the findings the NRC must make; LBP-08-27, 68 NRC 951 (2008)
- an application to renew the operating license of a commercial nuclear power plant may be granted only if the Commission finds that the continued operation of the facility will be in accord with the common defense and security and will provide adequate protection to the health and safety of the public; LBP-08-25, 68 NRC 763 (2008)
- for early site permits, section 52.21, the notice requirements of section 2.104(b)(2), and the Notice of Hearing itself outline a board's review obligation; LBP-06-28, 64 NRC 460 (2006)
- interim protective measures to prevent contamination from slag and baghouse dust piles until final decommissioning is completed are discussed; CLI-09-1, 69 NRC 1 (2009)
- offsite health and safety impacts caused by onsite activities can support the admissibility of a contention; LBP-09-6, 69 NRC 367 (2009)
- renewal applicants must demonstrate that they will adequately manage the detrimental effects of aging for all important components and structures, with attention, for example, to metal fatigue, erosion, corrosion, thermal and radiation embrittlement, microbiologically induced effects, creep, and shrinkage; CLI-06-24, 64 NRC 111 (2006)
- review of a license renewal application does not reopen issues relating to a plant's current licensing basis, or any other issues that are subject to routine and ongoing regulatory oversight and enforcement; CLI-06-24, 64 NRC 111 (2006)
- the Part 54 safety review is limited to those potential detrimental effects of aging that are not routinely addressed by ongoing regulatory oversight programs; CLI-06-24, 64 NRC 111 (2006)
- the phrase "reasonable assurance" specified in 10 C.F.R. 54.29 is not defined, but requires, at a minimum, that an applicant demonstrate compliance with all of NRC's safety regulations; LBP-08-25, 68 NRC 763 (2008)
- to the extent that any analyses performed during the initial licensing process were limited to the initial 40-year license period, a license renewal applicant must show that it has reassessed these time-limited aging analyses and that these analyses remain valid for the period of extended operation; CLI-06-24, 64 NRC 111 (2006)
- HEALTH EFFECTS**
- a board erred in admitting a contention on adverse health effects of exposure to arsenic, where petitioners had not laid a foundation and their arguments were speculative; CLI-09-9, 69 NRC 331 (2009)
- allegation that NRC has inadequately characterized human health impacts of radiation exposure from the high-level waste repository is inadmissible in a combined license proceeding; LBP-08-16, 68 NRC 361 (2008)
- contention alleging that depleted uranium-contaminated bombing plume dust causes health issues in the community is inadmissible because it lacks a supporting statement of the alleged facts or expert opinions; LBP-10-4, 71 NRC 216 (2010)
- contention based on a recent study suggesting a link between low levels of arsenic in drinking water and diabetes is rejected; CLI-09-12, 69 NRC 535 (2009)
- potential for diabetes and pancreatic cancer from arsenic contamination of drinking water from mining operations is an admissible issue in a materials license amendment proceeding; LBP-09-1, 69 NRC 11 (2009)
- Table S-3 does not include health effects from the effluents described in the table, and that issue may be the subject of litigation in individual licensing proceedings; LBP-09-16, 70 NRC 227 (2009)
- HEARING FILE**
- in Subpart L proceedings, NRC Staff must produce a hearing file and make it available to all parties; LBP-09-22, 70 NRC 640 (2009)
- NRC Staff has a continuing duty to update the hearing file; LBP-09-22, 70 NRC 640 (2009)

SUBJECT INDEX

HEARING PROCEDURES

- a board, in its sound discretion, must determine the type of hearing procedures most appropriate for the specific contentions before it; LBP-06-20, 64 NRC 131 (2006); LBP-08-24, 68 NRC 691 (2008); LBP-09-10, 70 NRC 51 (2009)
- a motion and proposed new contention may address the selection of the appropriate hearing procedure for the proposed new contention; LBP-09-22, 70 NRC 640 (2009)
- a party is entitled to conduct such cross-examination as may be required for a full and true disclosure of the facts; LBP-09-10, 70 NRC 51 (2009); LBP-09-22, 70 NRC 640 (2009)
- an immediate right to appeal a board ruling selecting a hearing procedure is provided; CLI-09-12, 69 NRC 535 (2009)
- circumstances where a particular hearing procedure is required are specified in 10 C.F.R. 2.310(b)-(k); LBP-09-10, 70 NRC 51 (2009)
- cross-examination occurs virtually automatically in Subpart G hearings, subject to normal judicial management and the requirement to file a cross-examination plan; LBP-09-10, 70 NRC 51 (2009)
- determination of specific hearing procedures to be used for a proceeding is made on a contention-by-contention basis, and selection of the hearing procedure is dependent on what is most appropriate for the specific contentions before it; LBP-08-24, 68 NRC 691 (2008)
- if a contention does not fall within one of the categories of 10 C.F.R. 2.310(b)-(h), then proceedings may be conducted under Subpart L; LBP-10-15, 72 NRC 257 (2010)
- if a hearing on a contention is expected to take no more than 2 days to complete, the board can impose the Subpart N procedures for expedited proceedings with oral hearings specified by 10 C.F.R. 2.1400-1407; LBP-10-16, 72 NRC 361 (2010)
- if no particular procedure is compelled, the board must exercise its discretion and select the hearing procedure most appropriate for the newly admitted contentions; LBP-10-15, 72 NRC 257 (2010)
- if no particular procedure is required, then the board may conduct the proceeding for a particular contention under Subpart L; LBP-09-10, 70 NRC 51 (2009)
- in a license renewal proceeding, the board determines the hearing procedure on a contention-by-contention basis, selecting the most appropriate procedure for each contention; LBP-07-15, 66 NRC 261 (2007)
- in an evidentiary hearing, the board may weigh competing evidence and expert opinion and may resolve/decide factual disputes, whereas this is not possible when ruling on motions for summary disposition, which are restricted to situations where there is no genuine issue as to any material fact; LBP-09-22, 70 NRC 640 (2009)
- requirements for applying Subpart G to a particular proceeding are set out in 10 C.F.R. 2.700; CLI-09-7, 69 NRC 235 (2009)
- selection of appropriate procedures in a license renewal proceeding is a contention-by-contention matter, dependent on the nature of the specific issues involved in the contention; LBP-06-20, 64 NRC 131 (2006)
- selection of hearing procedures for contentions at the outset of a proceeding is not immutable because the availability of Subpart G procedures depends critically on whether the credibility of eyewitnesses is important in resolving a contention, and witnesses relevant to each contention are not identified until after contentions are admitted; LBP-09-10, 70 NRC 51 (2009); LBP-10-16, 72 NRC 361 (2010)
- the Atomic Energy Act does not give a state an absolute right of cross-examination, but requires only that the Commission shall afford reasonable opportunity for state representatives to interrogate witnesses; LBP-06-20, 64 NRC 131 (2006)
- the Commission has long endorsed a balanced approach to hearings that both expedites the hearing process and ensures fairness in order to produce a record that leads to high-quality decisions that adequately protect the public health and safety, the common defense and security, and the environment; LBP-10-21, 72 NRC 616 (2010)
- the Commission regards good sense, judgment, and managerial skills as the proper guideposts for conducting an efficient hearing; LBP-10-21, 72 NRC 616 (2010)
- the Commission will endeavor to identify efficiencies, and provide pertinent resources, to further reduce the time the agency needs to complete reviews and reach decisions in licensing uranium enrichment facilities; CLI-07-17, 65 NRC 392 (2007)
- the substantive standard for allowing parties to conduct cross-examination is the same under 10 C.F.R. Part 2, Subparts G and L; LBP-09-10, 70 NRC 51 (2009)

SUBJECT INDEX

under 10 C.F.R. 2.309(g) and 2.310, the board determines which hearing procedure will be used (Subpart G or L) on a contention-by-contention basis; LBP-09-10, 70 NRC 51 (2009); LBP-10-15, 72 NRC 257 (2010)

under Subpart L, a party seeking to conduct cross-examination must file a written motion and obtain leave from the board; LBP-09-10, 70 NRC 51 (2009)

upon admission of a contention, the board must identify the specific hearing procedures to be used; LBP-10-15, 72 NRC 257 (2010); LBP-10-16, 72 NRC 361 (2010)

HEARING REQUESTS

a hearing request is timely when the petitioner lacks both actual and constructive notice of its opportunity to request a hearing as of the deadline specified by the agency, and the petitioner files the hearing request promptly upon receipt of actual notice; LBP-09-20, 70 NRC 565 (2009)

a hearing request must state the name, address, and telephone number of the requestor, the nature of the requestor's right under the governing statutes to be made a party to the proceeding, the nature and extent of the requestor's property, financial, or other interest in the proceeding, and the possible effect of any decision or order that may be issued in the proceeding on the requestor's interest; LBP-09-28, 70 NRC 1019 (2009)

a licensing board will grant a request for a hearing if it determines that the requestor has standing under the provisions of this section and has proposed at least one admissible contention; LBP-10-4, 71 NRC 216 (2010)

anyone who wishes to request a hearing concerning a proposed licensing action must establish standing and proffer at least one admissible contention; LBP-09-28, 70 NRC 1019 (2009)

difficulties in coordinating action among volunteers and large public interest organizations and the challenge of simultaneously preparing for an environmental scoping meeting while drafting contentions does not constitute good cause necessary to justify an extension of the deadline to file hearing requests or petitions to intervene; CLI-09-4, 69 NRC 80 (2009)

in ruling on a request for a hearing, a licensing board is to consider the nature of petitioner's right under the Atomic Energy Act or the National Environmental Policy Act to be made a party to the proceeding, the nature and extent of petitioner's property, financial, or other interest in the proceeding, and the possible effect of any decision or order that may be issued in the proceeding on petitioner's interest; LBP-08-24, 68 NRC 691 (2008)

intervention petitions must set forth with particularity the contentions sought to be raised; CLI-10-9, 71 NRC 245 (2010)

licensing boards will determine whether petitioner has an interest affected by the proceeding; LBP-09-23, 70 NRC 659 (2009)

open-ended extension requests should not be granted because hearing requests must be based on documents or other information available at the time the petition is to be filed; LBP-10-4, 71 NRC 216 (2010)

petitioners have 60 days to file intervention petitions and hearing requests in NRC proceedings other than those for license transfer requests and a construction authorization application for a high-level waste repository; CLI-08-18, 68 NRC 246 (2008)

sanctions have been imposed against a party seeking to file a written request for hearing only when that party has not followed established Commission procedures; LBP-08-19, 68 NRC 545 (2008); LBP-08-20, 68 NRC 549 (2008)

twenty days in which to request a hearing is the minimum required by the agency's regulations; LBP-09-20, 70 NRC 565 (2009)

See also Amendment of Hearing Requests

HEARING REQUESTS, LATE-FILED

a request is timely when petitioner lacks both actual and constructive notice of its opportunity to request a hearing as of the deadline specified by the agency, and the petitioner files the hearing request promptly upon receipt of actual notice; LBP-09-20, 70 NRC 565 (2009)

boards must balance eight factors in evaluating nontimely intervention petitions, hearing requests, and contentions; LBP-10-24, 72 NRC 720 (2010)

eight factors of 10 C.F.R. 2.309(c)(1) apply to nontimely intervention petitions, hearing requests, and contentions; LBP-10-9, 71 NRC 493 (2010)

SUBJECT INDEX

factors that must be addressed for nontimely intervention petitions, hearing requests, and contentions are set forth; LBP-09-20, 70 NRC 565 (2009)

nontimely hearing requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the licensing board that the petition and/or request should be granted and/or the contentions should be admitted based on a balancing of the factors specified in 10 C.F.R. 2.309(c)(1)(i)-(viii); LBP-10-4, 71 NRC 216 (2010)

under appropriate circumstances, petitions to intervene, requests for hearing, and new and amended contentions may be filed after the initial 30-day deadline; LBP-08-1, 67 NRC 37 (2008)

HEARING RIGHTS

a hearing challenging an immediately effective enforcement order will be conducted expeditiously, giving due consideration to the rights of the parties; LBP-09-24, 70 NRC 676 (2009)

allowing applicant to postpone the performance of an analysis-of-record time-limited aging analysis until after the license renewal is issued would violate the intervenor's hearing rights; LBP-08-25, 68 NRC 763 (2008)

assertion of a hearing right weighs against granting abeyance of a proceeding, but this factor is, by its nature, merely procedural, and consequently is of little importance when balancing real-life equities; CLI-06-12, 63 NRC 495 (2006)

even in the absence of constructive notice, the possibility remains that a petitioner had actual notice of the right to request a hearing; LBP-09-20, 70 NRC 565 (2009)

granting a license amendment prior to a board decision does not circumvent intervenors' right to a hearing; CLI-06-8, 63 NRC 235 (2006)

intervenors do not have a right to an adjudicatory hearing on future determinations that may be made under license conditions; CLI-06-1, 63 NRC 1 (2006)

NRC must provide a hearing upon the request of any person whose interest may be affected by the proceeding; CLI-09-20, 70 NRC 911 (2009); LBP-06-10, 63 NRC 314 (2006); LBP-06-23, 64 NRC 257 (2006); LBP-07-4, 65 NRC 281 (2007); LBP-07-11, 66 NRC 41 (2007); LBP-08-24, 68 NRC 691 (2008); LBP-09-1, 69 NRC 11 (2009); LBP-09-13, 70 NRC 168 (2009); LBP-09-16, 70 NRC 227 (2009); LBP-09-17, 70 NRC 311 (2009); LBP-09-20, 70 NRC 565 (2009); LBP-09-21, 70 NRC 581 (2009); LBP-10-4, 71 NRC 216 (2010); LBP-10-17, 72 NRC 501 (2010)

NRC regulations preserve the right to a hearing when an application is amended by allowing new or amended contentions to be filed in response to material new information; LBP-10-17, 72 NRC 501 (2010)

NRC Staff verification that a licensee complies with preapproved design or testing criteria is a highly technical inquiry not particularly suitable for hearing; CLI-06-1, 63 NRC 1 (2006)

petitioner may not demand a hearing to challenge a federal statute; LBP-08-17, 68 NRC 431 (2008)

petitioners who rely on water supplies adjacent to a mining site have a right to a hearing; LBP-08-24, 68 NRC 691 (2008)

section 189(a)'s hearing requirement does not unduly limit the Commission's wide discretion to structure its licensing hearings in the interests of speed and efficiency; CLI-08-28, 68 NRC 658 (2008)

standing as of right is not available in export license proceedings but the Commission has exercised its discretion to hold an open legislative-type hearing; LBP-09-1, 69 NRC 11 (2009)

the "direct participation of local citizens in nuclear reactor licensing" is not a right to have all legal arguments on contention admissibility take place near the facility at issue, but rather the right of persons with standing to file contentions in licensing proceedings and litigate admissible contentions; LBP-08-23, 68 NRC 679 (2008)

the proximity presumption does not permit persons with no actual or imminent claim of injury to obtain a hearing; LBP-09-4, 69 NRC 170 (2009)

the right to a hearing embraces not only the right to present evidence, but also a reasonable opportunity to know the claims of the opposing party and to meet them; LBP-09-24, 70 NRC 676 (2009)

the subject of an enforcement order has the right to challenge, on limited grounds, the immediate effectiveness of the order and the promise of an expedited hearing; LBP-09-24, 70 NRC 676 (2009)

there is no inherent right under the Atomic Energy Act, based on U.S. citizenship or otherwise, to participate as a party in a proceeding; LBP-08-18, 68 NRC 533 (2008)

when the NRC Staff can, consistent with its duty to protect public health and safety, accord some form of predeprivation hearing, such a course of action is advisable in light of the important private interest

SUBJECT INDEX

in retaining employment and the fact that such a proceeding provides some opportunity for the employee to present his side of the case; LBP-09-24, 70 NRC 676 (2009)

when the unique circumstances of a case could result in the compromise of a participant's hearing rights, the Commission has taken action to ensure that hearings are fair and accommodate the rights of participants; CLI-09-13, 69 NRC 575 (2009)

with respect to combined licenses, interested persons may request a hearing as to the adequacy of construction after issuance of a combined license; CLI-09-2, 69 NRC 55 (2009)

HEARINGS

"close of the hearing" in 10 C.F.R. 2.1209 refers to the closing of the evidentiary record; CLI-08-9, 67 NRC 353 (2008)

in cases where a federal agency is a party, a request for rehearing may be made within 45 days after entry of judgment; CLI-08-9, 67 NRC 353 (2008)

the presiding officer or licensing board has discretion to accelerate the merits hearing on safety issues, but not on environmental issues; CLI-07-17, 65 NRC 392 (2007)

See also Deferral of Hearing

HEAT SHOCK

effects of heat shock on the protection and propagation of fish and shellfish is a Category 2 environmental issue and must be addressed on a case-by-case basis; CLI-07-16, 65 NRC 371 (2007)

NPDES permits may address thermal discharges into bodies of water; CLI-07-16, 65 NRC 371 (2007)

HIGH-ENRICHED URANIUM

because blending down HEU for reactor fuel would not promote applicant's primary purpose of maintaining the viability of a dwindling domestic uranium industry, it is outside the scope of reasonable alternatives that must be considered under NEPA; LBP-06-19, 64 NRC 53 (2006)

HIGH-LEVEL WASTE REPOSITORY

a detailed, specific procedure for site selection and review by the Secretary of Energy, the President, and the Congress, followed by submission of the application for a construction permit, review, and final decision thereon by NRC was set out; LBP-10-11, 71 NRC 609 (2010)

a preclosure safety analysis must be performed and it must demonstrate, among other things, that the requirements of 10 C.F.R. 63.111(a) are met; CLI-09-14, 69 NRC 580 (2009)

a quality assurance program is required to provide adequate confidence that the geologic repository and its structures, systems, or components will perform satisfactorily in service; LBP-10-22, 72 NRC 661 (2010)

adequate confidence in the performance assessment is derived from sufficient analyses, data, and the technical basis offered to demonstrate compliance with postclosure performance objectives; LBP-10-22, 72 NRC 661 (2010)

allegation that NRC has inadequately characterized human health impacts of radiation exposure from the high-level waste repository is inadmissible in a combined license proceeding; LBP-08-16, 68 NRC 361 (2008)

analysis is required of only those features, events, and processes that cannot be excluded on the basis of low probability of occurrence and whose exclusion would result in a significant change in the results of the performance assessment in the first 10,000-year period; LBP-10-22, 72 NRC 661 (2010)

any performance assessment used to demonstrate compliance with 10 C.F.R. 63.113 must consider alternative conceptual models; LBP-09-6, 69 NRC 367 (2009)

applicant may perform its climate change analysis using a specified percolation rate; LBP-10-22, 72 NRC 661 (2010)

applicant's climate change analysis for the 990,000-year period may be limited to the effects of increased water flow through the repository as a result of climate change; LBP-10-22, 72 NRC 661 (2010)

because there is no requirement to demonstrate quantitatively the independent contribution of the drip shields, DOE need not perform a barrier neutralization analysis to ascertain each individual barrier's contribution to the repository's multiple barrier system; LBP-10-22, 72 NRC 661 (2010)

before authorizing construction of the proposed repository, the Commission must determine that there is reasonable expectation that the materials can be disposed of without unreasonable risk to the health and safety of the public; LBP-10-22, 72 NRC 661 (2010)

SUBJECT INDEX

before issuing a license to receive and possess high-level waste at the repository, the Commission must find that construction of any underground storage space required for initial operation has been substantially completed; LBP-10-22, 72 NRC 661 (2010)

climate projections should be based on cautious, but reasonable assumptions; LBP-10-22, 72 NRC 661 (2010)

Congress did not intend that its explicit mandate to NRC to consider and decide the merits of the high-level waste repository application might be nullified by a nonspecific reference to an obscure NRC procedural regulation as being among the laws to be applied; LBP-10-11, 71 NRC 609 (2010)

DOE is prohibited from characterizing a second repository site unless Congress has specifically authorized and appropriated funds for such activities; LBP-10-11, 71 NRC 609 (2010)

DOE may elect to use the method specified in 10 C.F.R. 63.342(c)(2) to analyze the effects of climate change during the post-10,000-year period, regardless of whether it is required to analyze the effects of climate change during the initial 10,000-year period; LBP-10-22, 72 NRC 661 (2010)

DOE must assess the effects of climate change during the 990,000-year period regardless of whether it necessarily must assess climate change during the initial 10,000-year period under the criteria set forth in sections 63.342(a) and (b); LBP-10-22, 72 NRC 661 (2010)

DOE must make all of its documentary material available on the Licensing Support Network, and to so certify to the PAPO Board, at least 6 months before it files its application to construct the HLW geologic repository at Yucca Mountain; LBP-08-1, 67 NRC 37 (2008)

DOE need not weigh ALARA considerations outside the geologic repository operations area for which it is responsible; LBP-10-22, 72 NRC 661 (2010)

DOE was directed to limit its site selection efforts to Yucca Mountain and to provide for an orderly phase-out of site-specific activities at all other candidate sites; LBP-10-11, 71 NRC 609 (2010)

DOE's environmental impact statement is not to consider the need for the repository, the time of initial availability of a repository, alternative sites to the Yucca Mountain site, or nongeologic alternatives; LBP-10-11, 71 NRC 609 (2010)

DOE's production of documentary material and certification triggers the duty of other potential parties to make their documentary material available 90 days thereafter; LBP-08-1, 67 NRC 37 (2008)

during site characterization, DOE may determine that the Yucca Mountain site is unsuitable for development as a repository; LBP-10-11, 71 NRC 609 (2010)

each potential party shall continue to supplement its documentary material made available to other participants via the Licensing Support Network with any additional material created after the time of its initial certification; LBP-08-1, 67 NRC 37 (2008)

if the performance margins analysis is needed to establish adequate confidence in the total system performance assessment, then it is subject to the quality assurance requirements of 10 C.F.R. 63.142; LBP-10-22, 72 NRC 661 (2010)

it is not for any court to examine the strength of the evidence upon which Congress based its judgment to approve the Yucca Mountain site; LBP-10-11, 71 NRC 609 (2010)

licensees, including Part 63 licensees, are required to use, to the extent practical, procedures and engineering controls based upon sound radiation protection principles to achieve occupational doses and doses to members of the public that are as low as is reasonably achievable; LBP-10-22, 72 NRC 661 (2010)

no requirement for a quantitative evaluation of an individual barrier's capabilities appears in the statutory language of the Nuclear Waste Policy Act; LBP-10-22, 72 NRC 661 (2010)

NRC is given flexibility in determining how best to provide for the use of a system of multiple barriers in the design of the repository; LBP-10-22, 72 NRC 661 (2010)

NRC's licensing regulations must provide for the use of a system of multiple barriers in the design of the repository; LBP-10-22, 72 NRC 661 (2010)

only features, events, and processes that produce significant changes in releases or doses within the first 10,000 years after disposal must be included in performance assessments; LBP-10-22, 72 NRC 661 (2010)

"repository" is defined as any system licensed by the Commission that is intended to be used for, or may be used for the permanent deep geologic disposal of high-level radioactive waste and spent nuclear fuel; LBP-09-6, 69 NRC 367 (2009)

SUBJECT INDEX

- section 121 of the Nuclear Waste Policy Act does not require that each barrier provide either wholly independent protection or a specifically quantified amount of protection; LBP-10-22, 72 NRC 661 (2010)
- submission of the application to construct a high-level waste geologic repository at Yucca Mountain triggered a duty on NRC's part to consider and to render a decision on the application; LBP-10-11, 71 NRC 609 (2010)
- that Congress may have authorized NRC to regulate DOE's disposal of radioactive waste before it enacted the Nuclear Waste Policy Act hardly negates the fact that in the NWPA, Congress specifically directed NRC to issue requirements and criteria for evaluating repository-related applications and, not insignificantly, how to do so; LBP-10-11, 71 NRC 609 (2010)
- the Commission may authorize construction if the application provides a reasonable assurance of preclosure safety and a reasonable expectation of postclosure safety; LBP-09-6, 69 NRC 367 (2009)
- the court deferred to NRC's interpretation of the Nuclear Waste Policy Act in promulgating regulations to be applied in administering the licensing stage for the high-level waste repository; LBP-10-11, 71 NRC 609 (2010)
- the Director of the Office of Nuclear Material Safety and Safeguards must determine whether the tendered high-level waste repository construction authorization application is complete and acceptable for docketing; CLI-08-20, 68 NRC 272 (2008)
- the duty to produce all documentary material generated by, or at the direction of, or acquired by, a potential party pursuant to 10 C.F.R. 2.1003(a)(1) applies to extant documentary material and does not require that the potential party delay its initial certification until all documentary material that it intends to rely on is finished and complete; LBP-08-1, 67 NRC 37 (2008)
- the effects of the quality assurance program can be taken into account in determining the probability and consequences of a feature, event, or process; LBP-10-22, 72 NRC 661 (2010)
- the geologic repository operations area must meet the requirements of 10 C.F.R. Part 20; CLI-09-14, 69 NRC 580 (2009)
- the law on withdrawal of an application does not require a determination of whether applicant's decision to withdraw is sound where the applicant's filing was wholly voluntary in the first place; LBP-10-11, 71 NRC 609 (2010)
- the performance assessment must meet a number of very specific requirements; LBP-09-6, 69 NRC 367 (2009)
- the performance margins analysis cannot be used to validate or provide confidence in the total systems performance assessment if its data and models are not qualified under DOE's quality assurance program; LBP-10-22, 72 NRC 661 (2010)
- the plain language of 10 C.F.R. 63.305 does not say anything about analyzing future climate based upon the historical geological record; LBP-10-22, 72 NRC 661 (2010)
- the preclosure safety analysis must demonstrate that in the event of Category 1 or Category 2 event sequences, prescribed dose limits will be met; CLI-09-14, 69 NRC 580 (2009)
- the public interest would best be served by leaving the option open to the applicant should changed conditions warrant pursuit of a withdrawn application; LBP-10-11, 71 NRC 609 (2010)
- the quality assurance program must be applied to all structures, systems, and components that are important to waste isolation and to related activities, defined as including analyses of samples and data; LBP-10-22, 72 NRC 661 (2010)
- the Secretary of the Department of Energy does not have the discretion to substitute his policy for the one established by Congress that mandates progress toward a merits decision by NRC on a construction permit for the high-level waste repository; LBP-10-11, 71 NRC 609 (2010)
- three phases of operations are recognized; LBP-10-22, 72 NRC 661 (2010)
- throughout the repository development program, the Secretary and other agencies must meet the general requirements and the spirit of NEPA; LBP-09-6, 69 NRC 367 (2009)
- HIGH-LEVEL WASTE REPOSITORY APPLICATION**
- a board may grant party status only to a single representative for each affected federally recognized Indian tribe; LBP-09-6, 69 NRC 367 (2009)
- a genuine dispute exists despite the fact that character or integrity is not required by regulation to be addressed in the license application; LBP-09-6, 69 NRC 367 (2009)

SUBJECT INDEX

a legal issue contention raises a genuine dispute with the application, because it challenges DOE's performance assessment for the post-10,000-year period; LBP-09-29, 70 NRC 1028 (2009)

a state can meet the requirements for standing as a matter of right, based on the threat posed by transportation of radioactive waste through that state; LBP-09-6, 69 NRC 367 (2009)

affidavits supporting NEPA contentions must set forth factual and/or technical bases for the claim that it is not practicable to adopt the DOE environmental impact statement; LBP-09-6, 69 NRC 367 (2009)

an affected federally recognized Indian tribe is automatically entitled to participate in the proceeding; LBP-09-6, 69 NRC 367 (2009)

an affirmative demonstration of compliance with the Licensing Support Network requirements is not required in an intervention petition; LBP-09-6, 69 NRC 367 (2009)

an evaluation of the natural features of the geologic setting and design features of the engineered barrier system that are considered barriers important to waste isolation must be set forth; CLI-08-20, 68 NRC 272 (2008)

an organization seeking to intervene in a representational capacity must demonstrate that the licensing action will affect at least one of its members, identify that member by name and address, and show that it is authorized by that member to request a hearing on his or her behalf; LBP-09-6, 69 NRC 367 (2009)

any affected unit of local government need not address standing in the high-level waste proceeding, but rather shall be considered a party provided that it files at least one admissible contention in accordance with 10 C.F.R. 2.309(f); LBP-09-6, 69 NRC 367 (2009)

any environmental impact statement prepared in connection with a repository proposed to be constructed by DOE shall, to the extent practicable, be adopted by the NRC in connection with the issuance by the NRC of a construction authorization and license for such repository; LBP-09-6, 69 NRC 367 (2009)

assessment of the ability of the proposed geologic repository to limit radiological exposures to the reasonably maximally exposed individual for the period after permanent closure must be included; CLI-08-20, 68 NRC 272 (2008)

assessment of the anticipated response of the geomechanical, hydrogeologic, and geochemical systems to the range of design thermal loadings under consideration must be included; CLI-08-20, 68 NRC 272 (2008)

because the significance of the current capacity limitation for the deep waste repository is unclear, a contention is admitted as a legal issue; LBP-09-6, 69 NRC 367 (2009)

before any waste may be received at the high-level waste repository, DOE must update its application with additional information, including, specifically, additional design data obtained during construction; LBP-10-22, 72 NRC 661 (2010)

contention asserting that DOE's description of its expert elicitation relating to a probabilistic volcanic hazard analysis update fails to comply with NRC regulations or the guidance document that DOE formally committed to follow is admissible; LBP-09-29, 70 NRC 1028 (2009)

contention that the application inadequately addresses generalized corrosion because it relies on flawed experimental data raises a genuine, material dispute with the application by pointing to specific sections that allegedly fail to comply with the NRC's requirements for conducting a post-closure performance assessment; LBP-09-29, 70 NRC 1028 (2009)

contentions that DOE lacks management integrity to operate a high-level waste geologic repository are impermissible challenges to the Nuclear Waste Policy Act and are therefore beyond the scope of the proceeding; CLI-09-14, 69 NRC 580 (2009)

criteria and procedures of 10 C.F.R. 2.326 are either irrelevant or redundant; LBP-09-6, 69 NRC 367 (2009)

DOE is precluded from the need to consider alternatives to geologic disposal, or alternative to the Yucca Mountain site; LBP-09-6, 69 NRC 367 (2009)

each factual NEPA contention must be accompanied by one or more affidavits, but a purely legal-issue contention cannot logically require affidavit support, as by definition such a contention alleges no facts that require support; LBP-09-6, 69 NRC 367 (2009)

each party or potential party must continue to supplement the production of its documentary material on the Licensing Support Network; LBP-09-6, 69 NRC 367 (2009)

explanation of measures used to support the models used to provide the information required must be provided; CLI-08-20, 68 NRC 272 (2008)

SUBJECT INDEX

if petitioner is found not to be in substantial and timely compliance with the LSN requirements, that petitioner may request party status upon a subsequent showing of compliance, but any grant of a request is conditioned on accepting the status of the proceeding at the time of admission; LBP-09-6, 69 NRC 367 (2009)

in determining whether an individual or organization should be granted party status as of right, NRC applies judicial standing concepts; LBP-09-6, 69 NRC 367 (2009)

in ruling on petitions to intervene, boards must consider any failure of the petitioner to participate as a potential party in the pre-license application phase under 10 C.F.R. Part 2, Subpart J; LBP-09-6, 69 NRC 367 (2009)

intervention is permitted by the state and local governmental body in which the geologic repository operations area is located, and by any affected federally recognized Indian tribe; LBP-09-6, 69 NRC 367 (2009)

intervention petitioner must establish that it has standing, be able to demonstrate substantial and timely Licensing Support Network compliance, and proffer at least one admissible contention; LBP-09-6, 69 NRC 367 (2009)

NRC must undertake its own assessment of DOE's environmental documents to determine whether it is practicable to adopt them; LBP-09-6, 69 NRC 367 (2009)

NRC Staff is required to present its position on whether it is practicable to adopt DOE's environmental impact statement for Yucca Mountain without supplementation; LBP-09-6, 69 NRC 367 (2009)

NRC's adoption of any environmental impact statement prepared in connection with a repository shall be deemed to also satisfy the responsibilities of NRC under NEPA and no further consideration shall be required except any independent responsibilities of NRC to protect public health under the Atomic Energy Act; LBP-09-6, 69 NRC 367 (2009)

once petitioner's LSN compliance has been raised in an answer to an intervention petition, petitioner then has the opportunity to respond to the challenges in its reply; LBP-09-6, 69 NRC 367 (2009)

petitioner may not be granted party status if it cannot demonstrate substantial and timely compliance with the requirements in 10 C.F.R. 2.1003 concerning the availability of documentary material on the Licensing Support Network; LBP-09-6, 69 NRC 367 (2009)

petitioner organizations have established standing based on their members' proximity to transportation routes, even where it was not possible to predict with accuracy which of its members were most likely to be harmed or the extent of the damage; LBP-09-6, 69 NRC 367 (2009)

section 2.1009(b) requires certification to the Pre-License Application Presiding Officer that the party or potential party has complied with the implementation procedures of section 2.1009(a)(2) and that, to the best of his or her knowledge, the documentary material specified in section 2.1003 has been identified and made electronically available; LBP-09-6, 69 NRC 367 (2009)

section 63.21(a) requires only that the application must be as complete as possible in light of the information that is reasonably available at the time of docketing; LBP-10-22, 72 NRC 661 (2010)

section 63.21(c)(7) requires that the license application include a description of plans for retrieval and alternate storage of the radioactive wastes, should retrieval be necessary; LBP-10-22, 72 NRC 661 (2010)

site characterization and environmental impact statement approval process are discussed in context of the scope of admissible issues; LBP-09-6, 69 NRC 367 (2009)

special attention must be given to those items that may significantly influence the final design; LBP-10-22, 72 NRC 661 (2010)

the board may not consider that long-term erosion might entirely eliminate the proposed repository's upper geologic barrier unless the erosion is also shown to be a safety concern in the relatively near term; LBP-10-22, 72 NRC 661 (2010)

the Commission conferred standing as of right on certain parties; LBP-09-6, 69 NRC 367 (2009)

the engineered barrier system, including the design criteria used and their relationships to the post-closure performance objectives specified in NRC regulations, must be described; CLI-08-20, 68 NRC 272 (2008)

the member of an organization that seeks standing must qualify for standing in his or her own right, and the interests that the organization seeks to protect must be germane to its own purpose; LBP-09-6, 69 NRC 367 (2009)

SUBJECT INDEX

- the Nuclear Waste Policy Act's mandate that the environmental impact statement be adopted by NRC to the extent practicable is intended to avoid duplication of the environmental review process but does not permit NRC to premise a construction-authorization or licensing decision upon an EIS that does not meet the substantive requirements of the NEPA or the Council on Environmental Quality's NEPA regulations; LBP-09-6, 69 NRC 367 (2009)
- the only relevant test for a claim that it is not practicable to adopt the DOE environmental impact statement is whether the supporting affidavit presents significant and substantial new information or new considerations sufficient to render such EIS inadequate; LBP-09-6, 69 NRC 367 (2009)
- the presiding officer in the high-level waste proceeding shall resolve disputes concerning adoption of the DOE environmental impact statement by using, to the extent possible, the criteria and procedures that are followed in ruling on motions to reopen; LBP-09-6, 69 NRC 367 (2009)
- the prospect of a second lawsuit with its expenses and uncertainties or another application does not provide the requisite quantum of legal harm to warrant dismissal of an application with prejudice; LBP-10-11, 71 NRC 609 (2010)
- there is no legal requirement that the Staff find that the proposed design is not too conservative or that the associated costs are not excessive as part of its safety review of the construction authorization application; CLI-09-14, 69 NRC 580 (2009)
- when an organization takes formal corporate action to initiate litigation not only germane but integral to its purpose, that action can constitute the requisite, if implicit, proof of authorization; LBP-09-6, 69 NRC 367 (2009)
- when its Licensing Support Network compliance is challenged, petitioner need only make a straightforward statement in its reply that it has complied with the LSN requirements; LBP-09-6, 69 NRC 367 (2009)
- where a petitioner is not conferred automatic standing, a petition to intervene must provide information supporting petitioner's claim to standing, including the nature of petitioner's right under the governing statutes to be made a party, the nature of petitioner's interest in the proceeding, and the possible effect of any decision or order on petitioner's interest; LBP-09-6, 69 NRC 367 (2009)
- whether excessive safety design could lead to licensing uncertainty, unnecessary costs, or delays are not material issues; CLI-09-14, 69 NRC 580 (2009)
- withdrawal of an application after the issuance of a notice of hearing shall be on such terms as the presiding officer may prescribe; CLI-10-13, 71 NRC 387 (2010)
- HIGH-LEVEL WASTE REPOSITORY PROCEEDING**
- a nontimely petition or contention will not be entertained in the high-level waste proceeding unless the Commission, an Atomic Safety and Licensing Board, or a presiding officer designated to rule on the petition determines that the late petition or contention meets the late-filing requirements; CLI-08-25, 68 NRC 497 (2008)
- a party who files a motion must certify that he or she has made a reasonable effort to consult with counsel for the other parties in an effort to resolve the matter in advance of filing the motion; CLI-08-25, 68 NRC 497 (2008)
- a person denied party or interested governmental participant status may request such status upon a showing of subsequent compliance with the requirements of 10 C.F.R. 2.1003; CLI-08-25, 68 NRC 497 (2008)
- a presiding officer considering environmental contentions should apply NRC reopening procedures and standards in 10 C.F.R. 2.326 to the extent possible; CLI-08-25, 68 NRC 497 (2008)
- any person whose interest may be affected by the high-level waste proceeding and who desires to participate as a party must file a written petition for leave to intervene; CLI-08-25, 68 NRC 497 (2008)
- appeals may be taken from certain specified decisions of the pre-license application presiding officer and the presiding officer; CLI-10-10, 71 NRC 281 (2010)
- appeals of an initial decision or partial initial decision of the presiding officer are permitted; CLI-10-10, 71 NRC 281 (2010)
- as part of compliance with the LSN requirements, each petitioner must identify all its documentary material required by 10 C.F.R. 2.1003 and designate a responsible LSN official, who can certify that to the best of his or her knowledge all such material has been made electronically available; LBP-10-11, 71 NRC 609 (2010)

SUBJECT INDEX

before petitioner can be granted party status in the high-level waste proceeding, it must be able to demonstrate substantial and timely compliance with the Licensing Support Network requirements; LBP-10-11, 71 NRC 609 (2010)

binding case management requirements and related recommendations pertaining to petitions to intervene, contentions, responses and replies, standing arguments, and referencing or attaching supporting materials are provided; LBP-08-10, 67 NRC 450 (2008)

conditions are proposed that would ensure that DOE's documentary material is appropriately preserved and archived should its request to withdraw its application be granted; LBP-10-11, 71 NRC 609 (2010)

DOE's certification that it had made all of its then extant documentary material available on the NRC's Licensing Support Network triggered the obligation of other potential parties to make their documentary material available on the LSN within 90 days; LBP-08-5, 67 NRC 205 (2008)

electronic production, filing, and service of all documents are required in the high-level waste proceeding; CLI-08-25, 68 NRC 497 (2008)

hearing schedule milestones have been modified for the high-level-waste proceeding; CLI-08-25, 68 NRC 497 (2008)

if petitioner fails to demonstrate substantial and timely compliance with the Licensing Support Network requirements, it may later request party status upon a showing of subsequent compliance; LBP-10-11, 71 NRC 609 (2010)

in addition to meeting NRC's regular contention admissibility requirements in 10 C.F.R. 2.309(f), environmental contentions addressing any DOE environmental impact statement or supplement must also conform to the requirements and address the applicable factors outlined in 10 C.F.R. 51.109; CLI-08-25, 68 NRC 497 (2008)

in ruling on a petition to intervene in high-level waste proceeding, the presiding officer shall consider any failure of the petitioner to participate as a potential party in the pre-license application phase; CLI-08-25, 68 NRC 497 (2008)

in ruling on a petition to intervene in high-level waste proceeding, the presiding officer shall consider the factors in 10 C.F.R. 2.309 on standing to intervene; CLI-08-25, 68 NRC 497 (2008)

in the case of the yet-to-issue NRC rules, the Commission is dispensing in advance with all late-filing factors except the "good cause" factor; CLI-08-25, 68 NRC 497 (2008)

in the pre-license application phase, the board denies the Department of Energy's motion to strike the State of Nevada's certification that it has made all its documentary material available on the Licensing Support Network; LBP-08-5, 67 NRC 205 (2008)

no appeals may be taken from any presiding officer order or decision, except as otherwise permitted by 10 C.F.R. 2.1015(a); CLI-10-10, 71 NRC 281 (2010)

NRC rules governing the high-level waste proceeding do not provide for interlocutory review; CLI-10-13, 71 NRC 387 (2010)

participants must make a good-faith effort to have made available all documentary material on the Licensing Support Network by the date specified for initial compliance; CLI-08-22, 68 NRC 355 (2008)

petitioner may not be granted party or interested governmental participant status if petitioner cannot demonstrate substantial and timely compliance with the requirements in 10 C.F.R. 2.1003 at the time of the request for participation in the high-level waste proceeding; CLI-08-25, 68 NRC 497 (2008)

state and local governmental bodies in which the geologic repository operations area is located and any affected federally recognized Indian tribe need not address the standing requirements; CLI-08-25, 68 NRC 497 (2008)

the 30-day hearing petition and contention-filing deadlines set forth in this section have been modified for the high-level waste proceeding; CLI-08-25, 68 NRC 497 (2008)

the Commission dispensed with all but the good cause factor for late-filed contentions; LBP-09-29, 70 NRC 1028 (2009)

the Commission shall permit intervention by the state and local governmental body in which the geologic repository operations area is located, and by any affected federally recognized Indian tribe if the contention requirements in 10 C.F.R. 2.309(f) are satisfied with respect to at least one contention; CLI-08-25, 68 NRC 497 (2008)

the presiding officer has no authority or duty to resolve uncontested issues; CLI-08-25, 68 NRC 497 (2008)

SUBJECT INDEX

the presiding officer should treat as a cognizable "new consideration" an attack on the Yucca Mountain environmental impact statements based on significant and substantial information that, if true, would render the statements inadequate; CLI-08-25, 68 NRC 497 (2008)

under appropriate circumstances, petitions to intervene, requests for hearing, and new and amended contentions may be filed after the initial 30-day deadline; LBP-08-1, 67 NRC 37 (2008)

whether a call memo was required to address the retention for LSN inclusion purposes of documentary material that does not support a party's position is decided; LBP-08-5, 67 NRC 205 (2008)

HISTORIC SITES

cultural and historic resources are to be considered as part of the environmental impact assessment that must be completed; LBP-10-16, 72 NRC 361 (2010)

federal agencies must follow notification and consultation procedures prior to a federal undertaking to consider the undertaking's effect on historic properties; LBP-10-16, 72 NRC 361 (2010)

federal agencies should be sensitive to the special concerns of Indian tribes in historic preservation issues, which often extend beyond Indian lands to other historic properties, and should invite the governing body of the responsible tribe to be a consulting party and to concur in any agreement; LBP-10-16, 72 NRC 361 (2010)

prior to issuance of any license, federal agencies must take into account the effect of the federal action on any area eligible for inclusion in the National Register of Historic Places; LBP-10-16, 72 NRC 361 (2010)

HURRICANES

licensees must have and follow emergency procedures for natural phenomena as appropriate for the geographical location of the facility; LBP-06-12, 63 NRC 403 (2006)

HYDRAULIC ZONE OF INFLUENCE

direct, indirect, and cumulative impingement/entrainment and thermal effluent discharge impacts of a proposed cooling system intake and discharge structures on aquatic resources are discussed; LBP-09-7, 69 NRC 613 (2009)

HYDROFLUORIC ACID

chemical exposure to licensee operators is assessed a civil monetary penalty in the amount of \$32,500 on the basis of a determined Severity Level III violation; LBP-10-18, 72 NRC 519 (2010)

HYDROGEN FLUORIDE

interaction of hot hydrofluoric acid with the aluminum fluoride layer on aluminum storage tubes in the case of significant water vapor intrusion is discussed; LBP-06-17, 63 NRC 747 (2006)

HYDROGEOLOGY

petitioner raises a genuine dispute with the application with respect to the adequacy of information needed to characterize the site and offsite hydrogeology to ensure confinement of the extraction fluids; LBP-10-16, 72 NRC 361 (2010)

IMMEDIATE EFFECTIVENESS

a hearing challenging an immediately effective enforcement order will be conducted expeditiously, giving due consideration to the rights of the parties; CLI-07-6, 65 NRC 112 (2007); LBP-09-24, 70 NRC 676 (2009)

an initial decision directing the issuance or amendment of a limited work authorization or an early site permit is immediately effective upon issuance unless the presiding officer finds that good cause has otherwise been shown by a party; LBP-09-19, 70 NRC 433 (2009)

an NRC Staff decision to grant a power uprate license amendment does not leave intervenors without effective redress because the license amendment can be revoked or conditioned after a full hearing if the board determines the license amendment should not have been granted; CLI-06-8, 63 NRC 235 (2006)

an unexplained lapse of several years between the Staff's completion of a thorough investigation and its initiation of an immediately effective enforcement order may jeopardize both public confidence in government decisionmaking and public protection from asserted safety threats, and may require an explanation if the immediate effectiveness of the order were to be challenged; LBP-06-26, 64 NRC 431 (2006)

immediately effective deprivation of the legally acknowledged right to pursue one's livelihood should not be imposed without the Staff having substantial reason to do so and explaining its reasons in advance and in some detail; LBP-09-24, 70 NRC 676 (2009)

SUBJECT INDEX

- Staff is to issue its approval or denial of an application promptly once it completes its own review of the application, notwithstanding the pendency of any hearing; CLI-06-8, 63 NRC 235 (2006)
- Staff may make an enforcement order immediately effect on the basis of public health and safety or a willful violation; LBP-06-26, 64 NRC 431 (2006)
- the subject of an immediately effective enforcement order has the right to challenge the immediate effectiveness and the promise of an expedited hearing; LBP-09-24, 70 NRC 676 (2009)
- to succeed in imposing pretrial detention because the accused is a danger to the community, the government must, among other things, prove in an adversary hearing by clear and convincing evidence that no conditions of release can reasonably assure the community's safety; LBP-09-24, 70 NRC 676 (2009)
- IMMEDIATE EFFECTIVENESS REVIEW**
- before an early site permit can be made effective, the Commission must review and approve the licensing board's initial decision authorizing its issuance; CLI-07-7, 65 NRC 122 (2007)
- to successfully challenge an enforcement order, the target must show that the order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error; LBP-09-24, 70 NRC 676 (2009)
- IMPARTIALITY**
- generalized challenge to the impartiality of the NRC regulatory process associated with hearings is inadmissible; LBP-08-16, 68 NRC 361 (2008)
- the standard for disqualification of a judge under 28 U.S.C. §455 is whether a reasonable person who knows all the circumstances would harbor doubts about the judge's impartiality; CLI-10-22, 72 NRC 202 (2010)
- IMPINGEMENT**
- adequacy of the final environmental impact statement discussion and analysis of direct, indirect, and cumulative impingement/entrainment and thermal effluent discharge impacts of a proposed cooling system intake and discharge structures on aquatic resources is decided; LBP-09-7, 69 NRC 613 (2009)
- IMPORT LICENSES**
- application for license to import low-level radioactive waste from Italy for processing and ultimate disposal in Utah is held in abeyance; CLI-08-24, 68 NRC 491 (2008)
- criteria for NRC issuance of a low-level radioactive waste import license are described; CLI-08-24, 68 NRC 491 (2008)
- NRC will not grant an import license for waste intended for disposal unless it is clear that a disposal facility, host state, and compact (where applicable) will accept the waste; CLI-08-24, 68 NRC 491 (2008)
- IN CAMERA PROCEEDINGS**
- review ought to occur only in the exceptional case after the government has submitted as detailed public affidavits as possible; LBP-08-7, 67 NRC 361 (2008)
- when the agency has submitted detailed public affidavits that permit resolution of FOIA issues, in camera review of redacted information or sealed documents is not necessary; LBP-08-7, 67 NRC 361 (2008)
- IN SITU LEACH MINING**
- a showing that anyone who uses a substantial quantity of water personally or for livestock from a source that is reasonably contiguous to either an injection or processing site is sufficient to demonstrate an injury in fact for standing; LBP-08-6, 67 NRC 241 (2008)
- although further analysis may show that there is no way for the radioactive materials and byproducts from ISL mining operations to cause harm to persons living nearby, a board cannot decide, when making a standing determination, that there is no reasonable possibility that such harm could occur; LBP-08-6, 67 NRC 241 (2008)
- although Part 40 generally applies to in situ leach mining, Appendix A to Part 40, including Criterion 1, was designed to address the problems related to mill tailings and not problems related to injection mining; LBP-10-16, 72 NRC 361 (2010)
- applicant must establish a surety arrangement that ensures sufficient funds will be available for decommissioning and decontamination of an NRC-licensed source materials site; LBP-10-16, 72 NRC 361 (2010)
- application of the proximity presumption to determinations of standing are largely dependent on the size and other characteristics of underground aquifers; LBP-08-6, 67 NRC 241 (2008)

SUBJECT INDEX

burden is on petitioner to allege a specific and plausible means by which contaminants from mining activities may adversely affect him or her; LBP-10-16, 72 NRC 361 (2010)

byproduct material from in situ extraction operations must be disposed of at existing large mill tailings disposal sites; LBP-10-16, 72 NRC 361 (2010)

contention is rejected as lacking support for the premise that ongoing mining operations will drain or contaminate wetlands, such that their economic benefits will be decreased; LBP-10-16, 72 NRC 361 (2010)

facilities are not required to maintain backup power because if such a facility were to experience a power failure, uranium recovery operations would simply cease; LBP-08-24, 68 NRC 691 (2008)

in cases involving ISL uranium mining and other source materials licensing, petitioner must demonstrate injury, causation, and redressability because proximity to the proposed facility alone is not adequate to demonstrate standing; LBP-10-16, 72 NRC 361 (2010)

ISL mining does not involve fuel rod waste and to the extent such waste is indirectly relevant, the Waste Confidence rule would prohibit its consideration in a license amendment proceeding; LBP-08-6, 67 NRC 241 (2008)

proximity alone is not sufficient to establish standing for a petitioner's proximity to a source materials activity; LBP-08-24, 68 NRC 691 (2008)

the principal regulatory standards for in situ leach applications are 10 C.F.R. 40.32(c) and (d), which mandate protection of public health and safety; LBP-10-16, 72 NRC 361 (2010)

INCORPORATION BY REFERENCE

a board is not to permit incorporation by reference where the effect would be to circumvent NRC-prescribed contention specificity requirements; LBP-08-24, 68 NRC 691 (2008)

a contention asserting that a combined license application is incomplete because it incorporates by reference a standard design certification and a pending application for a revision to that certified design is inadmissible; LBP-09-10, 70 NRC 51 (2009)

an attempt to circumvent page-limit rules by incorporating documents by reference could be grounds for sanctions; CLI-10-9, 71 NRC 245 (2010)

applicant for a combined license is expressly authorized by NRC's regulations to incorporate by reference a certified design in its license application; CLI-09-8, 69 NRC 317 (2009); LBP-09-2, 69 NRC 87 (2009); LBP-09-8, 69 NRC 736 (2009)

applicant for a combined license may, at its own risk, reference in its application a design for which a design certification application has been docketed but not granted; LBP-09-10, 70 NRC 51 (2009); LBP-09-17, 70 NRC 311 (2009); LBP-09-18, 70 NRC 385 (2009)

applicant would be permitted to incorporate information from its original construction permit application in a new application; CLI-10-6, 71 NRC 113 (2010)

in conducting its environmental review, an agency has discretion to rely on data, analyses, or reports prepared by persons or entities other than agency staff, including competent and responsible state authorities; LBP-06-8, 63 NRC 241 (2006)

in preparing an EIS, Staff can rely upon the environmental analyses in another agency's EIS regarding environmental impacts; LBP-06-9, 63 NRC 289 (2006)

no-action alternative discussions can be brief and can incorporate by reference other sections of an environmental report discussing the project's adverse consequences; LBP-07-3, 65 NRC 237 (2007)

NRC would not accept incorporation by reference of another petitioner's issues in an instance where the petitioner has not submitted at least one admissible issue of its own; LBP-10-11, 71 NRC 609 (2010)

petitioner may not simply incorporate massive documents by reference as the basis for a statement of his contentions; LBP-08-21, 68 NRC 554 (2008)

the Commission disapproves of incorporation by reference in petitions for review, where it has the effect of bypassing the page limits set forth in NRC regulations; CLI-10-17, 72 NRC 1 (2010)

the record of decision may in fact incorporate by reference any material contained in the relevant final environmental impact statement; LBP-06-8, 63 NRC 241 (2006)

this practice is contrary to Commission case law and will result in denial of contentions on the basis on the dearth of information; LBP-10-16, 72 NRC 361 (2010)

INDEPENDENT SPENT FUEL STORAGE INSTALLATION

a license renewal applicant has no obligation to discuss in its environmental report the impacts of a potential expansion of the ISFSI; LBP-08-26, 68 NRC 905 (2008)

SUBJECT INDEX

- a more detailed environmental impact statement is not required unless the contemplated action is a major federal action significantly affecting the quality of the human environment; CLI-08-26, 68 NRC 509 (2008)
- applicant does not need an NRC license for construction activity, but proceeds with construction at its own risk; CLI-06-23, 64 NRC 107 (2006); LBP-06-27, 64 NRC 399 (2006)
- potential radiological risks associated with an ISFSI license transfer are lower than those for an operating facility, because an ISFSI is essentially a passive structure, and there therefore is less chance of widespread radioactive release; CLI-07-19, 65 NRC 423 (2007); LBP-09-20, 70 NRC 565 (2009)
- the Commission declined to adopt a proximity presumption in an ISFSI license transfer proceeding, where the petitioner had not demonstrated that the mere transfer of the ISFSI somehow increases his risk of radiological harm; LBP-09-20, 70 NRC 565 (2009)
- the Commission has issued a general license for the storage of spent fuel at an onsite ISFSI to all persons authorized to possess or operate nuclear power reactors under 10 C.F.R. Part 50 or Part 52; LBP-09-20, 70 NRC 565 (2009)
- the stability of ISFSI concrete pads holding dry spent fuel storage casks during earthquakes is addressed; DD-07-2, 65 NRC 365 (2007)
- there is no obvious potential for offsite consequences from an ISFSI transfer sufficient to justify applying a presumption of standing based on proximity; CLI-07-19, 65 NRC 423 (2007)
- INDEPENDENT SPENT FUEL STORAGE INSTALLATION PROCEEDINGS**
- the Commission's rules in 10 C.F.R. § 2.1113 do not provide for supplementing Subpart K presentations; CLI-08-26, 68 NRC 509 (2008)
- the presiding officer is allowed to resolve factual and legal disputes in spent fuel storage controversies, including disagreements between experts, on the basis of a brief discovery period and written submissions and oral argument without a full trial-type evidentiary hearing; CLI-08-26, 68 NRC 509 (2008)
- under Subpart K and the Nuclear Waste Policy Act, the Commission resorts to full evidentiary hearings on spent fuel storage controversies only when necessary for accuracy; CLI-08-26, 68 NRC 509 (2008)
- INDIAN TRIBES**
- See Native Americans
- INFORMAL HEARINGS**
- as NRC hearings have moved away from the traditional trial-type adversarial format and toward a more informal model, the inquisitorial role of the presiding officer necessarily has increased; CLI-10-17, 72 NRC 1 (2010)
- in conducting Subpart L hearings, board members pose questions to the parties' witnesses in those areas that, in the Board's judgment, require additional clarification and development; LBP-08-22, 68 NRC 590 (2008)
- the informal procedural rules of Part 2, Subpart L place greater emphasis and responsibility on the presiding officer to oversee the development of a full and complete record; CLI-10-17, 72 NRC 1 (2010)
- INFORMAL PROCEEDINGS**
- once a hearing is granted under Subpart L, an informal oral hearing on the merits is required except in limited circumstances; CLI-10-18, 72 NRC 56 (2010)
- parties provide proposed written questions prior to, and during the course of, a Subpart L hearing; LBP-07-17, 66 NRC 327 (2007)
- pleadings submitted by a petitioner acting pro se are not always expected to meet the same standards as pleadings drafted by lawyers, but late filing of documents is not condoned; LBP-06-14, 63 NRC 568 (2006)
- summary disposition may be entered with respect to all or any part of the matters involved in the proceeding if the motion, along with any appropriate supporting materials, shows that there is no genuine issue as to any material fact and that the moving party is entitled to a decision as a matter of law; LBP-10-8, 71 NRC 433 (2010)
- summary disposition motions are to be resolved in accord with the standards for dispositive motions for formal hearings, as set forth in Part 2, Subpart G; LBP-08-2, 67 NRC 54 (2008); LBP-08-3, 67 NRC 85 (2008); LBP-10-8, 71 NRC 433 (2010)
- See also Subpart L Proceedings

SUBJECT INDEX

INHALATION PATHWAY

petitioner's argument that high-explosive munitions could fall onto depleted uranium, pulverizing and igniting the DU and generating aerosols that might travel through the air, providing an inhalation pathway for offsite exposure was contradicted by the Army's statement that it does not use high-impact explosives in the area where DU is present; CLI-10-20, 72 NRC 185 (2010)

INITIAL DECISIONS

a licensing board decision directing issuance or amendment of a limited work authorization or an early site permit is immediately effective upon issuance unless the presiding officer finds that good cause has otherwise been shown by a party; LBP-09-19, 70 NRC 433 (2009)

before an early site permit can be made effective, the Commission must review and approve the Atomic Safety and Licensing Board's initial decision authorizing its issuance; CLI-07-4, 65 NRC 24 (2007); LBP-07-9, 65 NRC 539 (2007)

before an early site permit can be made effective, the Commission must review and approve the licensing board's initial decision authorizing its issuance; CLI-07-23, 66 NRC 35 (2007)

licensing board decisions are not effective until they are reviewed by the Commission; LBP-09-19, 70 NRC 433 (2009)

the Commission has discretion to grant a petition for review, giving due weight to the existence of a substantial question with respect to any of the grounds listed in the Commission's regulations as potential justification; LBP-06-11, 63 NRC 483 (2006)

the Commission may take discretionary review of a licensing board's initial decision; CLI-10-23, 72 NRC 210 (2010)

See also Partial Initial Decisions

INJUNCTIVE RELIEF

although technically not applicable to a request for a stay of NRC Staff action, the 10 C.F.R. 2.342(e) standards simply restate commonplace principles of equity universally followed when judicial (or quasi-judicial) bodies consider stays or other forms of temporary injunctive relief; CLI-10-8, 71 NRC 142 (2010)

an injunction is an equitable remedy, not a remedy that issues as of course; LBP-06-27, 64 NRC 399 (2006)

as litigation moves forward or terminates, the equities that traditionally govern stays or injunctive relief may change; CLI-06-23, 64 NRC 107 (2006)

even if injury sufficient to show an existing case or controversy is established, this does not confer standing with regard to injunctive relief; LBP-09-1, 69 NRC 11 (2009)

the bases are irreparable injury and inadequacy of legal remedies, and in each case, a court must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief; LBP-06-27, 64 NRC 399 (2006)

where, in weighing the balance of harms, injury to the environment is not at all probable, an injunction is not appropriate; LBP-06-27, 64 NRC 399 (2006)

INJURY IN FACT

a broadly stated interest in a problem is not sufficient by itself to render the organization so adversely affected or aggrieved that standing will be granted; LBP-09-13, 70 NRC 168 (2009)

a determination that an injury is fairly traceable to the challenged action is not dependent on whether the cause of the injury flows directly from the challenged action, but whether the chain of causation is plausible; LBP-08-6, 67 NRC 241 (2008); LBP-08-24, 68 NRC 691 (2008); LBP-09-13, 70 NRC 168 (2009); LBP-10-4, 71 NRC 216 (2010)

a nexus between the injury and the relief is required rather than a nexus between the claimed injury and the contention; LBP-09-16, 70 NRC 227 (2009)

a showing that anyone who uses a substantial quantity of water personally or for livestock from a source that is reasonably contiguous to either an injection or processing site is sufficient to demonstrate an injury in fact for standing; LBP-08-6, 67 NRC 241 (2008)

a small or minor unwanted exposure, even one well within regulatory limits, is sufficient to establish an injury in fact; LBP-06-4, 63 NRC 99 (2006); LBP-08-6, 67 NRC 241 (2008)

although further analysis may show that there is no way for the radioactive materials and byproducts from ISL mining operations to cause harm to persons living nearby, a board cannot decide, when

SUBJECT INDEX

making a standing determination, that there is no reasonable possibility that such harm could occur; LBP-08-6, 67 NRC 241 (2008)

an alleged injury to health and safety, shared equally by many, can form the basis for standing; LBP-09-18, 70 NRC 385 (2009)

an independent spent fuel storage installation is essentially a passive structure rather than an operating facility, and there therefore is less chance of widespread radioactive release; LBP-09-20, 70 NRC 565 (2009)

an injury in fact must go beyond generalized grievances to affect a petitioner in a personal and individual way; LBP-09-13, 70 NRC 168 (2009); LBP-10-16, 72 NRC 361 (2010)

an injury may be either actual or threatened, but must lie arguably within the zone of interests protected by the statutes governing the proceeding; LBP-06-10, 63 NRC 314 (2006)

an injury that establishes standing must be fairly traceable to the challenged action and likely to be redressed by a favorable decision; LBP-07-3, 65 NRC 237 (2007); LBP-07-4, 65 NRC 281 (2007)

an organization seeking representational standing on behalf of its members may meet the injury-in-fact requirement by demonstrating that at least one of its members, who has authorized the organization to represent his or her interest, will be injured by the possible outcome of the proceeding; LBP-09-16, 70 NRC 227 (2009); LBP-09-20, 70 NRC 565 (2009)

asserted harm need not be great to establish an injury in fact for standing; LBP-08-6, 67 NRC 241 (2008)

because NEPA is a procedural statute, petitioners need not show that favorable rulings on their NEPA contentions will require denial of the license, but rather that procedures intended for protection of their members' concrete interests will be observed; LBP-09-16, 70 NRC 227 (2009)

damage to a nuclear power facility's reputation does not constitute a threatened injury to the interests of the Local's members who work at the facility; CLI-08-19, 68 NRC 251 (2008)

even if a party seeking standing has some intent to return to an area, when such intentions are not supported by concrete plans or a specification of when future visits would take place, they do not support a finding of injury in the standing context; LBP-10-1, 71 NRC 165 (2010)

even if injury sufficient to show an existing case or controversy is established, this does not confer standing with regard to injunctive relief; LBP-09-1, 69 NRC 11 (2009)

in a license transfer case, a petitioner cannot successfully claim injury based on the financial qualifications and assurances of the transferor; CLI-07-22, 65 NRC 525 (2007)

in an enforcement proceeding, standing is determined by reviewing the alleged injury stemming from the regulatory action, not that asserted to arise generally from operation of the facility or the actions of the licensee involved in the proceeding; LBP-07-16, 66 NRC 277 (2007)

in demonstrating that a proposed action involves a significant source of radioactivity producing an obvious potential for offsite consequences, petitioner cannot rely on conclusory allegations about potential radiological harm, but must show how these various harms might result from the proposed action; LBP-09-20, 70 NRC 565 (2009)

in nonreactor cases, the potential for offsite consequences is not always clear, and thus the burden falls on petitioner to demonstrate that the proposed action involves a significant source of radioactivity producing an obvious potential for offsite consequences; LBP-09-20, 70 NRC 565 (2009)

injury in fact is defined as an invasion of a legally protected interest that is concrete and particularized and actual or imminent rather than conjectural or hypothetical; LBP-10-16, 72 NRC 361 (2010)

injury may be either actual or threatened to establish standing, but must arguably lie within the zone of interests protected by the statutes governing the proceeding; LBP-08-6, 67 NRC 241 (2008); LBP-10-16, 72 NRC 361 (2010)

injury-in-fact to establish standing requires more than a general interest in preserving of the environment; LBP-09-28, 70 NRC 1019 (2009)

intervention petitioner must be able to show how it would have personally suffered or will suffer a distinct and palpable harm that constitutes injury in fact; LBP-09-18, 70 NRC 385 (2009)

intervention petitioner must establish a concrete and particularized injury that is fairly traceable to the challenged action, is likely to be redressed by a favorable decision, and is arguably within the zone of interests protected by the governing statute; CLI-09-20, 70 NRC 911 (2009); LBP-09-28, 70 NRC 1019 (2009)

SUBJECT INDEX

intervention petitioners are not required to demonstrate their asserted injury with certainty or to provide extensive technical studies in support of their standing argument; LBP-08-24, 68 NRC 691 (2008)

intervention petitioner's claimed injury must be arguably within the zone of interests protected by the governing statute; LBP-08-24, 68 NRC 691 (2008)

licensing boards are to look to judicial concepts of standing to determine whether a petitioner has established the necessary interest for intervention; LBP-07-11, 66 NRC 41 (2007)

once a party demonstrates that it has standing to intervene on its own accord, that party may then raise any contention that, if proved, will afford the party relief from the injury it relies upon for standing; LBP-09-16, 70 NRC 227 (2009)

parties taking appeals on purely procedural points are expected to explain precisely what injury to them was occasioned by the asserted error; CLI-10-23, 72 NRC 210 (2010)

petitioner may not establish standing by alleging injury on behalf of another entity, but rather, petitioner must be the object of the actual or threatened injury; LBP-10-4, 71 NRC 216 (2010)

petitioners are not required to demonstrate their asserted injury with certainty or to provide extensive technical studies in support of their standing argument; LBP-07-14, 66 NRC 169 (2007)

plaintiffs have been found to have a right to apply for preventive relief where copper mining tailings were carried 25 miles to plaintiff's farm; LBP-08-6, 67 NRC 241 (2008)

plaintiffs have prevailed against a motion for summary judgment where chloride spillage was allegedly carried 100 miles to plaintiff's farm; LBP-08-6, 67 NRC 241 (2008)

procedural violations of the National Historic Preservation Act have resulted in a grant of standing to tribes; LBP-08-24, 68 NRC 691 (2008)

redressability requires petitioner to show that its alleged injury-in-fact could be cured or alleviated by some action of the tribunal; LBP-09-13, 70 NRC 168 (2009)

showing that estimated dose consequences associated with operation under extended power uprate conditions can be expected to increase by the 20% power-level change establishes that the proposed EPU creates an obvious potential for offsite consequences; LBP-07-10, 66 NRC 1 (2007)

standing generally has been denied when the threat of injury is not concrete and particularized; LBP-09-13, 70 NRC 168 (2009); LBP-10-16, 72 NRC 361 (2010)

the Commission declined to adopt a proximity presumption in an independent spent fuel storage installation license transfer proceeding, where the petitioner had not demonstrated that the mere transfer of the ISFSI somehow increased his risk of radiological harm; LBP-09-20, 70 NRC 565 (2009)

the increased risk of living within 50 miles of a nuclear power plant constitutes injury-in-fact, is traceable to the challenged action, and is likely to be redressed by a favorable decision that either denies a license or mandates compliance with legal requirements that protect the interests of the petitioners; CLI-09-20, 70 NRC 911 (2009); LBP-09-4, 69 NRC 170 (2009); LBP-09-16, 70 NRC 227 (2009)

the injury in fact necessary to establish organizational standing must be more than a mere interest in a problem, no matter how longstanding the interest and no matter how qualified the organization is in evaluating the problem; LBP-10-16, 72 NRC 361 (2010)

the plausible-chain-of-causation standard requires not that the potential harm to petitioner flow directly from the proposed action, but that the petitioner show that the chain of causation is plausible; CLI-09-12, 69 NRC 535 (2009)

the requirement that an injury or threat of injury be concrete and particularized perforce means that the injury must not be conjectural or hypothetical; LBP-10-4, 71 NRC 216 (2010)

the requirement to show actual injury derives ultimately from the doctrine of standing, a constitutional principle that prevents courts of law from undertaking tasks assigned to the political branches; LBP-09-1, 69 NRC 11 (2009)

the requisite injury to establish standing may be either actual or threatened but must nonetheless be concrete and particularized, not conjectural or hypothetical; LBP-09-28, 70 NRC 1019 (2009)

the standing requirement for showing injury in fact has always been significantly less than for demonstrating an acceptable contention; LBP-08-6, 67 NRC 241 (2008)

the Supreme Court has defined "injury in fact" as an invasion of a legally protected interest that is concrete and particularized and actual or imminent; LBP-09-13, 70 NRC 168 (2009)

to assert an appropriate injury for organizational standing, an organization must demonstrate a palpable injury in fact to its organizational interests; LBP-09-13, 70 NRC 168 (2009); LBP-10-16, 72 NRC 361 (2010)

SUBJECT INDEX

to demonstrate standing, a petitioner must show that it has suffered or will suffer a distinct and palpable harm that is within the zone of interests arguably protected by the governing statute and that this injury can fairly be traced to the challenged action; CLI-06-2, 63 NRC 9 (2006); LBP-06-23, 64 NRC 257 (2006); LBP-07-4, 65 NRC 281 (2007); LBP-07-11, 66 NRC 41 (2007)

to determine whether an interest is in the zone of interests of a statute, it is necessary first to discern the interests arguably to be protected by the statutory provision at issue, and then to inquire whether petitioner's interests affected by the agency action are among them; LBP-09-13, 70 NRC 168 (2009)

to establish an injury in fact, a party merely has to show some threatened concrete interest personal to the party; LBP-08-24, 68 NRC 691 (2008)

to establish an injury in fact, a party merely has to show some threatened concrete interest personal to the party that the National Historic Preservation Act was designed to protect; LBP-08-24, 68 NRC 691 (2008); LBP-10-16, 72 NRC 361 (2010)

to establish organizational standing, the injury must be more than a mere interest in a problem, no matter how longstanding the interest and no matter how qualified the organization is in evaluating the problem; LBP-09-13, 70 NRC 168 (2009)

to establish standing, petitioner must show (among other things) that its potential injury is fairly traceable to a grant of the application; CLI-06-21, 64 NRC 30 (2006)

to the extent contaminants can plausibly migrate from leach mining operations to the aquifer from which a petitioner obtains his or her water, a petitioner would have a claim of a cognizable injury and could be accorded standing; LBP-08-24, 68 NRC 691 (2008)

when denial of a license would alleviate a petitioner's asserted potential injury, any admissible contention with such a result can be prosecuted by a petitioner, regardless of whether that contention is directly related to that petitioner's articulated injury; LBP-09-16, 70 NRC 227 (2009)

See also Economic Injury; Irreparable Injury

INSPECTION

for construction permits issued prior to January 1, 1971, licensee is required to implement an in-service inspection program that complies with section 50.55a(g)(4)-(5); LBP-08-22, 68 NRC 590 (2008)

intervenor are precluded from challenging ASME inspection requirements in a combined license proceeding because NRC regulations directly incorporate ASME inspection requirements by reference; LBP-10-21, 72 NRC 616 (2010)

motion to reopen the record to admit new contention regarding adequacy of applicant's containment/coating inspection program for two new proposed units is denied; LBP-10-21, 72 NRC 616 (2010)

Part 54 does not require a comprehensive preapplication baseline inspection for license renewal; LBP-08-13, 68 NRC 43 (2008)

the containment vessel is identified as an ASME Code Class MC component in both the inservice inspection subsection of section 50.55a as well as the inspection requirements subsection of the AP1000 DCD; LBP-10-21, 72 NRC 616 (2010)

where the application provides a commitment that, should inspection requirements be changed, the applicant will implement those new inspection requirements, it is the responsibility of NRC Staff and the applicant to ensure that this commitment is fulfilled; LBP-08-26, 68 NRC 905 (2008)

See also NRC Inspection

INSPECTION REPORTS

Green inspection finding indicates that the deficiency in licensee performance has a very low-risk significance and has little or no impact on safety, but White, Yellow, and Red findings indicate increasingly serious safety problems; CLI-10-27, 72 NRC 481 (2010)

INTEGRATED PLANT ASSESSMENT

aging management review for operating license renewal addresses activities identified in 10 C.F.R. 54.21(a)(3) and (c)(1); CLI-10-17, 72 NRC 1 (2010)

each license renewal application must contain an IPA; LBP-08-13, 68 NRC 43 (2008)

from among the three general categories of structures, systems, and components that fall within the initial focus of the license renewal safety review, applicants must identify and list those structures and components subject to an aging management review; CLI-10-14, 71 NRC 449 (2010)

SUBJECT INDEX

INTEGRATED SAFETY ANALYSIS

although not legally binding, Staff guidance documents provide further information about the content of the ISA summary and how an applicant can comply with criticality safety regulations; LBP-06-17, 63 NRC 747 (2006)
applicant must evaluate its compliance with performance requirements regarding nuclear criticality safety; LBP-06-17, 63 NRC 747 (2006)

INTEREST

in a materials licensing proceeding, petitioners have the burden to show a specific and plausible means whereby the licensing decision may harm them; CLI-09-9, 69 NRC 331 (2009)
intervention petitioners must allege a concrete and particularized injury that is fairly traceable to, and may be affected by, the challenged action and is likely to be redressed by a favorable decision, and lies arguably within the zone of interests protected by the governing statutes; CLI-08-19, 68 NRC 251 (2008); LBP-08-15, 68 NRC 294 (2008)
petitioners need not show a nexus between interest upon which standing is based and the substance of their proposed contentions; CLI-09-9, 69 NRC 331 (2009)
the interests of an organization's member seeking representation must be germane to the organization's purpose; CLI-08-19, 68 NRC 251 (2008)

INTERESTED GOVERNMENTAL ENTITY

a state, county, municipality, federally recognized Indian tribe, or agencies thereof may also seek to participate in a hearing as a nonparty; CLI-10-4, 71 NRC 56 (2010)
although interested governmental entities would not have a formal role in a proceeding absent the admission of parties and contentions, boards expect that such entities would be kept appropriately apprised of the other participants' settlement efforts; LBP-09-23, 70 NRC 659 (2009)
although interested governmental participants are afforded many rights and responsibilities with respect to participation in a proceeding, they are limited to participation on admitted contentions; LBP-09-6, 69 NRC 367 (2009)
an advisory body that lacks executive or legislative responsibilities is so far removed from having the representative authority to speak and act for the public that it does not qualify as a governmental entity; CLI-07-18, 65 NRC 399 (2007)
an interested local governmental body may introduce evidence, interrogate witnesses in circumstances where cross-examination by the parties is allowed, advise the Commission without being required to take a position on any issue, file proposed findings where such are allowed, and seek Commission review on admitted contentions; LBP-08-24, 68 NRC 691 (2008)
an interested local governmental body that is not a party to the proceeding must be accorded a reasonable opportunity to participate, through a single representative, in the hearing of one or more of the admitted contentions; LBP-07-5, 65 NRC 341 (2007); LBP-08-24, 68 NRC 691 (2008)
an interested state or local governmental body which has not been admitted as a party under 10 C.F.R. 2.309 shall be afforded a reasonable opportunity to participate in a hearing; LBP-08-21, 68 NRC 554 (2008); LBP-09-2, 69 NRC 87 (2009)
local governmental bodies within whose boundaries a facility is located do not need to make any further demonstration of standing; CLI-07-18, 65 NRC 399 (2007)
not all organizations with governmental ties are entitled to participate in NRC proceedings as a local governmental body (county, municipality, or other subdivision); CLI-07-18, 65 NRC 399 (2007)
one does not acquire standing as a consequence of being a member of a legislative tribunal; LBP-07-5, 65 NRC 341 (2007)
only a party to a proceeding, or an interested governmental entity participating under section 2.315, may file a request to stay proceedings pending a rulemaking; CLI-07-13, 65 NRC 211 (2007)
states do not need to address standing requirements if the facility is located within their boundaries; CLI-09-15, 70 NRC 1 (2009)
the representative of an interested local governmental body must identify those contentions on which it will participate in advance of any hearing held; LBP-08-24, 68 NRC 691 (2008)
See also Local Governmental Bodies

SUBJECT INDEX

INTERESTED STATE

a stay of the close of hearings in both license renewal proceedings for 14 days following the date of issuance of mandate is ordered to afford a state the opportunity to request participant status under this section; CLI-08-9, 67 NRC 353 (2008)

an interested state may petition to suspend proceedings; CLI-08-9, 67 NRC 353 (2008)

INTERESTED STATE PARTICIPATION

a state could seek to have licensing proceedings suspended pending an NRC decision on its rulemaking petition if it participated in the proceedings as an interested state; CLI-09-10, 69 NRC 521 (2009)

an interested state that has not been admitted as a party under section 2.309 must be provided a reasonable opportunity to participate in a hearing; LBP-08-15, 68 NRC 294 (2008)

licensing boards have granted state agencies the right to participate in NRC proceedings as the state's representative; LBP-09-16, 70 NRC 227 (2009)

nonparty interested state status has been granted to state utility commissions; LBP-09-16, 70 NRC 227 (2009)

state agencies may participate as nonparty interested states; LBP-08-15, 68 NRC 294 (2008)

the Commission has long recognized the benefits of participation in NRC proceedings by representatives of interested states; LBP-09-16, 70 NRC 227 (2009)

the representative of an interested governmental entity participating under section 2.315(c) shall identify those contentions on which it will participate in advance of any hearing held; LBP-06-20, 64 NRC 131 (2006)

INTERLOCUTORY RULINGS

if necessary, rulings may be reviewed on appeals from partial initial decisions or other final appealable orders; CLI-09-6, 69 NRC 128 (2009)

the possibility that an interlocutory ruling may be wrong does not in itself justify interlocutory review; CLI-09-6, 69 NRC 128 (2009)

when a board has not made even a threshold ruling on petitioner's standing and contentions, the Commission considers a petition under its usual standard for review of an interlocutory Board order; CLI-08-7, 67 NRC 187 (2008)

INTERPRETATION

if a contention header uses a particular phrase, but the statement of the contention does not refer to the phrase or regulation, then the board may interpret the contention in accordance with the express statement of the contention; LBP-10-15, 72 NRC 257 (2010)

the word "significantly" as used in the NEPA process describes the significance of environmental impacts in several contexts, including the locality; CLI-06-29, 64 NRC 417 (2006)

See also Construction of Meaning; Definitions; Regulations, Interpretation

INTERSTATE COMPACTS

no facility located in any party state may accept low-level waste generated outside the region comprised of the party states, except under a specific procedure requiring approval of the member states; CLI-08-24, 68 NRC 491 (2008)

when authorized by Congress, interstate compacts are allowed to restrict the use of regional disposal facilities under the compact to the disposal of low-level radioactive waste generated within the compact region; CLI-08-24, 68 NRC 491 (2008)

INTERVENORS

although an intervenor may have fewer resources and less ability than other participants, all share the same burden of uncovering relevant information that is publicly available; LBP-08-12, 68 NRC 5 (2008)

boards may reprimand, censure, or suspend intervenors for contemptuous conduct; CLI-07-28, 66 NRC 275 (2007)

NRC appropriations shall not be used to pay the expenses of, or otherwise compensate, parties intervening in regulatory or adjudicatory proceedings; LBP-09-1, 69 NRC 11 (2009)

NRC is explicitly prohibited by law from paying the expenses of or otherwise compensating intervenors, and thus cannot grant petitioners funds to prepare requests for access to safeguards information or sensitive unclassified nonsafeguards information; CLI-09-4, 69 NRC 80 (2009)

SUBJECT INDEX

the ultimate burden of proof on the question of whether a permit or license should be issued is on the applicant, but the party contending that the permit or license should be denied has the burden of going forward with evidence to buttress that contention; CLI-09-7, 69 NRC 235 (2009)
there is an ironclad obligation to regularly and diligently search publicly available NRC or applicant documents for information relevant to intervenor's contentions; CLI-09-2, 69 NRC 55 (2009)

INTERVENTION

a licensing board will grant a request for a hearing if it determines that the requestor has standing and has proposed at least one admissible contention; LBP-10-4, 71 NRC 216 (2010); LBP-10-11, 71 NRC 609 (2010)
a person denied party or interested governmental participant status may request such status upon a showing of subsequent compliance with the requirements of 10 C.F.R. 2.1003; CLI-08-25, 68 NRC 497 (2008)
a petitioner must, in addition to demonstrating standing, submit at least one contention meeting the pleading requirements of 10 C.F.R. § 2.309(f)(1); LBP-06-10, 63 NRC 314 (2006); LBP-06-23, 64 NRC 257 (2006); LBP-07-4, 65 NRC 281 (2007)
a state, county, municipality, federally recognized Indian tribe, or agencies thereof, may submit a petition to the Commission to participate as a party in a materials license proceeding; CLI-09-15, 70 NRC 1 (2009)
although complying with Commission regulations may be especially difficult for pro se petitioners, it has long been a basic principle that a person who invokes the right to participate in an NRC proceeding also voluntarily accepts the obligations attendant upon such participation; LBP-10-4, 71 NRC 216 (2010)
although petitioner has established the requisite standing, the hearing request must be denied because of a failure to proffer one admissible contention; LBP-10-1, 71 NRC 165 (2010)
any individual, group, business, or governmental entity that wishes to intervene as a party in an adjudicatory proceeding addressing a proposed licensing action must establish that it has standing and offer at least one admissible contention meeting the requirements of 10 C.F.R. 2.309(f)(1); LBP-08-6, 67 NRC 241 (2008); LBP-08-9, 67 NRC 421 (2008)
any person whose interest may be affected by the high-level waste proceeding and who desires to participate as a party must file a written petition for leave to intervene; CLI-08-25, 68 NRC 497 (2008)
before petitioner can be granted party status in the high-level waste proceeding, it must be able to demonstrate substantial and timely compliance with the Licensing Support Network requirements; LBP-10-11, 71 NRC 609 (2010)
for a petitioner to be admitted as a party in a materials license amendment proceeding, it must propose at least one admissible contention that meets the requirements of 10 C.F.R. 2.309(f)(1); LBP-06-6, 63 NRC 167 (2006)
if petitioner fails to demonstrate substantial and timely compliance with the Licensing Support Network requirements, it may later request party status upon a showing of subsequent compliance; LBP-10-11, 71 NRC 609 (2010)
intervention petitioners who think an order modifying a license should not be sustained, but might want further corrective measures, are precluded from intervention; LBP-09-20, 70 NRC 565 (2009)
it is unlikely that petitioners will often obtain hearings on confirmatory enforcement orders because such orders presumably enhance rather than diminish public safety; LBP-09-20, 70 NRC 565 (2009)
NRC intervention rules are strict by design; LBP-09-1, 69 NRC 11 (2009)
NRC must provide a hearing upon the request of any person whose interest may be affected by the proceeding; LBP-06-10, 63 NRC 314 (2006); LBP-06-23, 64 NRC 257 (2006); LBP-09-17, 70 NRC 311 (2009); LBP-10-16, 72 NRC 361 (2010)
once parties demonstrate that they have standing, the parties will then be free to assert any contention, which, if proved, will afford them the relief they seek; LBP-09-10, 70 NRC 51 (2009)
petitioner may not be granted party or interested governmental participant status if petitioner cannot demonstrate substantial and timely compliance with the requirements in 10 C.F.R. 2.1003 at the time of the request for participation in the high-level waste proceeding; CLI-08-25, 68 NRC 497 (2008)
petitioner must establish standing and proffer at least one admissible contention that meets the requirements of 10 C.F.R. 2.309(f)(1); CLI-08-17, 68 NRC 231 (2008); LBP-07-11, 66 NRC 41 (2007);

SUBJECT INDEX

LBP-08-13, 68 NRC 43 (2008); LBP-08-24, 68 NRC 691 (2008); LBP-09-16, 70 NRC 227 (2009); LBP-09-17, 70 NRC 311 (2009); LBP-09-18, 70 NRC 385 (2009); LBP-09-26, 70 NRC 939 (2009)

petitioner must establish that it has standing, be able to demonstrate substantial and timely Licensing Support Network compliance, and proffer at least one admissible contention; LBP-09-6, 69 NRC 367 (2009)

petitioner's right to participate in a licensing proceeding stems from section 189a of the Atomic Energy Act; LBP-08-14, 68 NRC 279 (2008)

petitioners must establish the nature of their right under the governing statutes to be made a party, their interest in the proceeding, and the possible effect of any decision or order on their interests; LBP-08-17, 68 NRC 431 (2008)

the Commission shall permit intervention by the state and local governmental body in which the geologic repository operations area is located, and by any affected federally recognized Indian tribe if the contention requirements in 10 C.F.R. 2.309(f) are satisfied with respect to at least one contention; CLI-08-25, 68 NRC 497 (2008)

the Commission's power to define the scope of a proceeding will lead to the denial of intervention when the Commission amends a license to require additional or better safety measures; LBP-09-20, 70 NRC 565 (2009)

the contention admissibility threshold is less than is required at the summary disposition stage; LBP-07-16, 66 NRC 277 (2007)

threshold admissibility requirements for contentions should not be turned into a fortress to deny intervention; CLI-07-18, 65 NRC 399 (2007)

to be admitted as a party in an NRC proceeding, a petitioner must establish standing by satisfying the requirements set forth in 10 C.F.R. 2.309(d) and proffer an admissible contention; LBP-09-2, 69 NRC 87 (2009)

when deciding whether to grant standing, licensing boards shall consider the nature of petitioner's right under the Atomic Energy Act to be made a party, the nature and extent of petitioner's property, financial, or other interest in the proceeding, and the possible effect of any order that may be entered in the proceeding on petitioner's interest; LBP-09-17, 70 NRC 311 (2009)

where petitioner has established standing to intervene, but has not submitted an admissible contention, its request for an evidentiary hearing is denied; LBP-08-17, 68 NRC 431 (2008)

where the notice of hearing limits the scope to whether the order should be sustained, petitioner's sole remedy is rescission of the order; LBP-09-20, 70 NRC 565 (2009)

See also Standing to Intervene

INTERVENTION, DISCRETIONARY

a contention must meet certain specificity and basis requirements and must fall within the scope of the proceeding; CLI-06-16, 63 NRC 708 (2006)

a petitioner denied discretionary intervention could still participate as amicus curiae or as an expert witness; CLI-06-16, 63 NRC 708 (2006)

although all six factors are examined regardless of the result on the critical first "sound record" factor, no NRC decision allowing discretionary intervention in the face of a negative finding on the "sound record" fact has occurred; CLI-06-16, 63 NRC 708 (2006)

generalized expertise, even scientific eminence, is an insufficient substitute for particularized knowledge of the issues actually in dispute; CLI-06-16, 63 NRC 708 (2006)

if petitioner did not request discretionary intervention in the event that the petitioner is found to lack standing as of right, a licensing board need not consider affording such intervention status; LBP-10-1, 71 NRC 165 (2010)

in balancing the six factors for discretionary hearing, assistance in developing a sound record is the most important; CLI-06-16, 63 NRC 708 (2006)

in justifying such an extraordinary procedure, the board should identify the specific contributions that petitioners could offer; CLI-06-16, 63 NRC 708 (2006)

in ruling on discretionary intervention requests, licensing boards will consider and balance enumerated factors weighing in favor of and against allowing intervention; LBP-09-23, 70 NRC 659 (2009)

in ruling on requests for discretionary intervention, NRC's presiding officers and licensing boards traditionally consider the six factors of 10 C.F.R. 2.309(e)(1)-(2); CLI-06-16, 63 NRC 708 (2006)

SUBJECT INDEX

- intervention is denied where petitioner has filed no contentions of its own, but the contention requirement might be viewed as ordinarily inapplicable to enforcement proceedings; LBP-09-6, 69 NRC 367 (2009)
- intervention is denied where petitioner has not demonstrated how its tangible interests would be affected by the proceeding, is essentially seeking only to support the subject of the enforcement action, and provides what is deemed insufficient information about the contribution its experts could be expected to make; LBP-09-6, 69 NRC 367 (2009)
- intervention is granted where petitioner's interests are within the zone of interests related to the proceeding and its extensive participation in similar proceedings in the past would provide valuable insight in developing a sound record; LBP-09-6, 69 NRC 367 (2009)
- intervention may be granted in circumstances when one petitioner has standing as of right and has proffered at least one admissible contention, but other petitioners have not demonstrated their standing; LBP-10-1, 71 NRC 165 (2010)
- NRC has broad discretion to provide hearings or permit interventions in cases where these avenues of public participation would not be available as a matter of right; CLI-06-16, 63 NRC 708 (2006)
- petitioner must propose at least one admissible contention; CLI-06-16, 63 NRC 708 (2006)
- the bar against corrective redrafting of contentions is particularly compelling in the context of a request for discretionary intervention because rewriting undermines the very basis for granting discretionary intervention, i.e., the petitioner's demonstrated ability to contribute to the record; CLI-06-16, 63 NRC 708 (2006)
- the Commission may allow discretionary intervention to a person who does not meet standing requirements if there is reason to believe the person's participation will make a valuable contribution to the proceeding and if a consideration of the other criteria on discretionary intervention shows that it is warranted; CLI-06-16, 63 NRC 708 (2006)
- the Commission may consider a request for discretionary intervention when at least one requestor/petitioner has established standing and at least one admissible contention has been admitted so that a hearing will be held; CLI-08-19, 68 NRC 251 (2008)
- the Commission routinely accords substantial deference to licensing boards on matters involving standing and credibility determinations, and thus does not lightly set aside a board's grant of discretionary intervention; CLI-06-16, 63 NRC 708 (2006)
- the Commission will reverse a licensing board's determination on discretionary intervention only if the board has abused its discretion; CLI-06-16, 63 NRC 708 (2006)
- the practice of granting or denying discretionary intervention should develop "not through precedent, but through attention to the concrete facts of particular situations; CLI-06-16, 63 NRC 708 (2006)
- the requirement to establish standing does not apply; CLI-06-16, 63 NRC 708 (2006)
- the "sound record" factor is foremost in importance in the balancing of six factors, but other factors, especially inappropriate broadening or delay of the proceeding, could overcome it; CLI-06-16, 63 NRC 708 (2006)
- this practice is meant to ensure a sound adjudicatory record, not simply to provide a second representative to assist (allegedly) ill-represented parties; CLI-06-16, 63 NRC 708 (2006)
- when allowing this extraordinary action, boards are expected to set out specific findings on each of the six factors; CLI-06-16, 63 NRC 708 (2006)
- when balancing the six discretionary intervention factors, licensing boards must keep in mind that discretionary intervention is an extraordinary procedure; CLI-06-16, 63 NRC 708 (2006)
- ### INTERVENTION PETITIONERS
- licensing boards have been lenient in permitting pro se petitioners the opportunity to cure procedural defects in petitions to intervene regarding standing; LBP-09-18, 70 NRC 385 (2009)
- pro se petitioners are held to a less rigorous standard; LBP-09-18, 70 NRC 385 (2009)
- the benefit of the doubt should be given to the potential intervenor in order to prevent the dismissal of a petition due to inarticulate draftsmanship or procedural or pleading defects; LBP-09-18, 70 NRC 385 (2009)
- the Secretary of the Commission is authorized to establish procedures for obtaining access to sensitive unclassified nonsafeguards information prior to granting intervention in a licensing proceeding; LBP-10-2, 71 NRC 190 (2010)

SUBJECT INDEX

INTERVENTION PETITIONS

- a licensing board must assess an intervention petition to determine whether the elements of standing are met even if there are no objections to a petitioner's standing; LBP-09-3, 69 NRC 139 (2009)
- a petition for review and request for hearing must include a showing that the petitioner has standing; LBP-09-13, 70 NRC 168 (2009)
- a petitioner may in instances of exigent or unavoidable circumstances file a request for an extension of time to file an original hearing petition and contentions; LBP-07-4, 65 NRC 281 (2007)
- a state, county, municipality, federally recognized Indian tribe, or agencies thereof may submit a petition to the Commission to participate as a party; CLI-10-4, 71 NRC 56 (2010)
- although a board may view petitioner's supporting information in a light favorable to the petitioner, the petitioner (not the board) is required to supply all of the required elements for a valid intervention petition; CLI-10-20, 72 NRC 185 (2010); LBP-09-10, 70 NRC 51 (2009); LBP-10-16, 72 NRC 361 (2010)
- although boards should afford greater latitude to a pleading submitted by a pro se petitioner, that petitioner ultimately bears the burden to provide facts sufficient to show standing; CLI-10-20, 72 NRC 185 (2010)
- although the pleading requirements of 10 C.F.R. 2.309 are strict by design, a licensing board may permit potential intervenors to cure defects in petitions in order to obviate dismissal of a petition because of inarticulate draftsmanship or procedural or pleading defects; LBP-08-6, 67 NRC 241 (2008)
- an affirmative demonstration of compliance with the Licensing Support Network requirements is not required in an intervention petition; LBP-09-6, 69 NRC 367 (2009)
- an order denying a motion to reopen renders moot a petitioner's request for leave to submit an amended petition to intervene; CLI-06-4, 63 NRC 32 (2006)
- an unopposed motion to withdraw the petition is granted; LBP-10-3, 71 NRC 213 (2010)
- answers in the high-level waste repository proceeding shall be limited to addressing specific alleged deficiencies in petitions; LBP-08-10, 67 NRC 450 (2008)
- at the appropriate point in the overall COLA/DCD process, an interested party will have the opportunity to petition for intervention to raise matters that are material to the licensing decision the NRC must make regarding the proposed nuclear units; LBP-09-2, 69 NRC 87 (2009)
- because petitioner's circumstances may change from one proceeding to the next, it is important that the presiding officer have up-to-date information regarding any claims of standing; LBP-10-21, 72 NRC 616 (2010)
- boards are to construe the intervention petitions in a light most favorable to petitioners; LBP-10-1, 71 NRC 165 (2010)
- difficulties in coordinating action among volunteers and large public interest organizations and the challenge of simultaneously preparing for an environmental scoping meeting while drafting contentions does not constitute good cause necessary to justify an extension of the deadline to file hearing requests or petitions to intervene; CLI-09-4, 69 NRC 80 (2009)
- for a request for hearing and petition to intervene to be granted, petitioner must establish that it has standing and propose at least one admissible contention; LBP-09-18, 70 NRC 385 (2009); LBP-09-10, 70 NRC 51 (2009); LBP-10-1, 71 NRC 165 (2010); LBP-10-15, 72 NRC 257 (2010)
- for an order issued under 10 C.F.R. 2.202, the time for filing a hearing request runs from the date of the order, not the date of publication of the order in the *Federal Register*; LBP-09-20, 70 NRC 565 (2009)
- format of pleadings for high-level waste repository proceeding are specified; LBP-08-10, 67 NRC 450 (2008)
- given the information known about the nature of the facility and the available radioactive and chemical materials at risk and the resulting potential for offsite consequences, there is no need for pro se petitioners to plead these matters more specifically; LBP-07-14, 66 NRC 169 (2007)
- hearing requests must set forth with particularity the contentions sought to be raised; CLI-10-9, 71 NRC 245 (2010)
- in addition to setting forth with particularity petitioner's interest in the proceeding and how that interest may be affected by the results of the proceeding, petitioner must also include at least one contention meeting the requirements of 10 C.F.R. 2.309(f)(1); CLI-09-15, 70 NRC 1 (2009)

SUBJECT INDEX

in assessing a petition to determine whether the requirements for standing are met, boards are to construe petitions in favor of the petitioner; LBP-07-10, 66 NRC 1 (2007); LBP-08-16, 68 NRC 361 (2008); LBP-08-21, 68 NRC 554 (2008); LBP-09-3, 69 NRC 139 (2009)

in evaluating petitions, licensing boards are not free to ignore the contention admissibility requirements of 10 C.F.R. 2.309(f)(1); CLI-09-8, 69 NRC 317 (2009)

in passing upon the question as to whether a petition should be granted, it is not the function of a licensing board to reach the merits of any contention contained therein; LBP-06-6, 63 NRC 167 (2006)

in ruling on a hearing request, a licensing board must determine whether petitioner has an interest potentially affected by the proceeding; LBP-08-15, 68 NRC 294 (2008)

in the high-level waste repository proceeding, except for readily available legal authorities, materials that cannot be attached because of copyright restrictions, and documents available on the LSN, all documents that are referenced in support of one or more contentions shall be electronically attached to the petition; LBP-08-10, 67 NRC 450 (2008)

it is generally not sufficient to seek to establish standing in a proceeding by merely cross-referencing the showing made in another proceeding, rather than making a new presentation or at least providing a submission that updates the factual information that was provided previously; LBP-10-21, 72 NRC 616 (2010)

it might be sufficient to allow petitioner to rely on a prior standing demonstration if that prior demonstration is specifically identified and shown to correctly reflect the current status of the petitioner's standing; LBP-10-21, 72 NRC 616 (2010)

licensing boards will determine whether petitioner has an interest affected by the proceeding; LBP-09-23, 70 NRC 659 (2009)

petitioner bears the burden of establishing its standing to intervene in a proceeding; LBP-07-10, 66 NRC 1 (2007)

petitioner may in instances of exigent or unavoidable circumstances file a request for an extension of time to file an original hearing petition and contentions; LBP-09-17, 70 NRC 311 (2009)

petitioner may not use its reply brief to cure pleading defects in its intervention petition; CLI-10-1, 71 NRC 1 (2010)

petitioner must demonstrate standing and proffer at least one admissible contention; CLI-06-24, 64 NRC 111 (2006)

petitioner must explain and support its contention in the petition to intervene; CLI-08-7, 67 NRC 187 (2008)

petitioner must make a fresh standing demonstration in each individual proceeding in which intervention is sought; LBP-10-21, 72 NRC 616 (2010)

petitioner must state the nature and extent of his/her/its property, financial, or other interest in the proceeding, a concept separate and apart from that of what constitutes a contention; LBP-09-1, 69 NRC 11 (2009)

petitioner must state the nature of its right under the Atomic Energy Act to be made a party to the proceeding, the nature and extent of its property, financial, or other interest in the proceeding, and the possible effect of any decision or order that may be issued in the proceeding on its interest; CLI-10-4, 71 NRC 56 (2010); LBP-09-20, 70 NRC 565 (2009); LBP-10-7, 71 NRC 391 (2010)

petitioner's claimed injury must be arguably within the zone of interests protected by the governing statute; LBP-08-24, 68 NRC 691 (2008)

petitioner's reply must narrowly focus upon the legal and factual arguments first presented in its petition and cannot be used as a vehicle to remedy a very deficient petition to which opposing parties have no opportunity to respond; LBP-09-6, 69 NRC 367 (2009)

petitioner's standing showing can be corrected or supplemented to cure deficiencies by means of its reply pleading; LBP-10-21, 72 NRC 616 (2010)

petitioners have 60 days to file intervention petitions and hearing requests in NRC proceedings other than those for license transfer requests and a construction authorization application for a high-level waste repository; CLI-08-18, 68 NRC 246 (2008)

petitioners must allege a concrete and particularized injury that is fairly traceable to the challenged action and is likely to be redressed by a favorable decision; LBP-08-24, 68 NRC 691 (2008)

petitioners must provide their name, address, and telephone number and specifically explain the reasons why intervention should be permitted; CLI-10-4, 71 NRC 56 (2010); LBP-10-7, 71 NRC 391 (2010)

SUBJECT INDEX

petitioners shall set forth with particularity their interest in the proceeding and how that interest may be affected by the results of the proceeding; CLI-10-4, 71 NRC 56 (2010)

petitioners that are not represented by counsel will be held to less rigid standards for pleading, although a totally deficient petition will not be admitted; LBP-08-15, 68 NRC 294 (2008)

pro se petitioners are not held to the same standard of pleading as those represented by counsel; LBP-07-10, 66 NRC 1 (2007); LBP-08-6, 67 NRC 241 (2008); LBP-10-4, 71 NRC 216 (2010)

requests for hearing or petitions for leave to intervene must set forth with particularity the contentions sought to be raised, addressing six pleading requirements; CLI-10-1, 71 NRC 1 (2010)

state and federally recognized Indian tribes do not need to address standing requirements if the facility is located within their boundaries; CLI-10-4, 71 NRC 56 (2010)

the 30-day hearing petition and contention-filing deadlines have been modified for the high-level waste proceeding; CLI-08-25, 68 NRC 497 (2008)

the Commission seeks wherever possible to avoid the delays, such as an additional round of pleadings, caused by a petitioner's attempt to backstop elemental deficiencies in its original petition to intervene; CLI-08-19, 68 NRC 251 (2008)

the February 2004 revision of NRC procedural rules no longer permits the amendment and supplementation of petitions and the filing of contentions after the original filing of petitions; LBP-06-10, 63 NRC 314 (2006)

the scope of a contention is limited to issues of law and fact pleaded with particularity in the intervention petition, including its stated bases; CLI-10-5, 71 NRC 90 (2010)

to determine whether petitioners have standing, boards accept as true all material allegations of the complaint and construe the complaint in favor of the complaining party; CLI-10-20, 72 NRC 185 (2010)

to interpose a new contention after a proceeding has been terminated requires submission of a fresh intervention petition that fulfills the applicable standards for such filings, including an appropriate standing demonstration; LBP-10-21, 72 NRC 616 (2010)

under the 2004 Part 2 revisions, contentions are now required to be included with, rather than being submitted sometime subsequent to the filing of, the intervention petition; LBP-10-1, 71 NRC 165 (2010)

when a Notice of Hearing is issued before construction is commenced, additional petitions to intervene or statements of contentions may be filed as construction unfolds and reveals potential shortcomings; LBP-07-14, 66 NRC 169 (2007)

where petitioners are not conferred automatic standing in the high-level waste proceeding, they must provide information supporting their claim to standing, including the nature of their right under the governing statutes to be made a party, the nature of their interest in the proceeding, and the possible effect of any decision or order on their interest; LBP-09-6, 69 NRC 367 (2009)

whether a petitioner has met the regulatory requirements for Licensing Support Network compliance is a proper subject for challenge in an answer to an intervention petition; LBP-09-6, 69 NRC 367 (2009)

INTERVENTION PETITIONS, LATE-FILED

a hearing request is timely when the petitioner lacks both actual and constructive notice of its opportunity to request a hearing as of the deadline specified by the agency, and the petitioner files the hearing request promptly upon receipt of actual notice; LBP-09-20, 70 NRC 565 (2009)

a nonparty seeking late intervention after the record has closed must address both the standard for late intervention and the standard for reopening a closed record; CLI-09-5, 69 NRC 115 (2009)

a nontimely petition or contention will not be entertained in the high-level waste proceeding unless the Commission, an Atomic Safety and Licensing Board, or a presiding officer designated to rule on the petition determines that the late petition or contention meets the late-filing requirements; CLI-08-25, 68 NRC 497 (2008)

absent a showing of good cause, a nontimely petition will not be excused unless the petitioner makes a compelling showing on the remaining factors; CLI-10-12, 71 NRC 319 (2010); LBP-09-26, 70 NRC 939 (2009); LBP-10-1, 71 NRC 165 (2010); LBP-10-11, 71 NRC 609 (2010)

boards must balance eight factors in evaluating nontimely intervention petitions, hearing requests, and contentions; LBP-10-24, 72 NRC 720 (2010)

factors (v) and (vi) of 10 C.F.R. 2.309(c)(1) generally are given less weight than factors (vii) and (viii); LBP-10-1, 71 NRC 165 (2010)

SUBJECT INDEX

factors that must be addressed for nontimely intervention petitions, hearing requests, and contentions are set forth; LBP-09-20, 70 NRC 565 (2009)

failure to carefully read the governing procedural regulations does not constitute good cause for accepting a late-filed petition; CLI-06-21, 64 NRC 30 (2006)

failure to comply with Commission pleading requirements for late filings constitutes sufficient grounds for rejecting intervention and hearing requests; LBP-10-4, 71 NRC 216 (2010)

failure to meet the good-cause factor considerably enhances the burden of showing that the other factors justify admission of a late-filed petition; LBP-10-21, 72 NRC 616 (2010)

filings that are nearly 3 months late must satisfy not only the requirements to demonstrate standing and submit at least one admissible contention, but also must satisfy the stringent requirements for untimely filings and late-filed contentions; CLI-06-21, 64 NRC 30 (2006)

good cause is the most significant of the late-filing factors in 10 C.F.R. 2.309(c); CLI-10-12, 71 NRC 319 (2010); LBP-09-6, 69 NRC 367 (2009); LBP-09-20, 70 NRC 565 (2009); LBP-09-26, 70 NRC 939 (2009); LBP-10-1, 71 NRC 165 (2010) LBP-10-11, 71 NRC 609 (2010); LBP-10-21, 72 NRC 616 (2010)

in ruling on a nontimely petition, boards are to consider eight factors of 10 C.F.R. 2.309(c)(1) that will excuse the tardiness of the petition if, on balance, they weigh in favor of the petitioner; CLI-10-4, 71 NRC 56 (2010); CLI-10-12, 71 NRC 319 (2010); LBP-10-1, 71 NRC 165 (2010); LBP-10-4, 71 NRC 216 (2010); LBP-10-9, 71 NRC 493 (2010)

new information may constitute good cause for late intervention if petitioners file promptly thereafter; LBP-10-11, 71 NRC 609 (2010)

nontimely petitions to intervene and contentions, amended petitions, and supplemental petitions will not be entertained absent a determination by the Commission, the licensing board, or a presiding officer that the petition should be granted and/or the contentions should be admitted based upon a balancing of eight factors; CLI-09-15, 70 NRC 1 (2009)

petitioner must provide more than vague assertions that it will be able to assist in developing the record to satisfy a requirement for late filing; CLI-10-12, 71 NRC 319 (2010)

petitioner's failure to carefully read the governing procedural regulations does not constitute good cause for its late filing; CLI-10-12, 71 NRC 319 (2010)

petitioner's tardiness due to its belated realization that it could present its arguments before the NRC did not constitute good cause for its late filing; CLI-10-12, 71 NRC 319 (2010)

petitioner's vague statements that it would rely on its experts and documents from various sources are insufficient to satisfy a requirement for late filing; CLI-10-12, 71 NRC 319 (2010)

petitioners may protect their interests by filing a request for Commission action under 10 C.F.R. 2.206 rather than a late-filed intervention petition; CLI-10-12, 71 NRC 319 (2010)

petitioners may protect their interests by participating, when appropriate, as amici curiae; CLI-10-12, 71 NRC 319 (2010)

petitions and contentions filed after the initial 60-day deadline are admissible only upon a balancing of eight factors of 10 C.F.R. 2.309(c); LBP-09-26, 70 NRC 939 (2009)

under appropriate circumstances, petitions to intervene, requests for hearing, and new and amended contentions may be filed after the initial 30-day deadline; LBP-08-1, 67 NRC 37 (2008)

when a contested proceeding has been terminated following the resolution of all submitted contentions, an individual, group, or governmental entity that wishes to interpose an additional issue must submit a new intervention petition that addresses the standards in section 2.309(c)(1) that govern nontimely intervention petitions; LBP-10-21, 72 NRC 616 (2010)

when petitioner addresses 10 C.F.R. 2.309(c)(1)(viii), it should set out with as much particularity as possible the precise issues it plans to cover, identify its prospective witnesses, and summarize their proposed testimony; CLI-10-12, 71 NRC 319 (2010)

when petitioner seeks to introduce a new contention after the record has been closed, it should address the reopening standards contemporaneously with a late-filed intervention petition, which must satisfy the standards for both contention admissibility and late filing; LBP-10-21, 72 NRC 616 (2010)

where petitioner conceded that information in its addendum was previously available, admitted the lateness of her filing, and made no effort at the time of its submission to justify its lateness or explain why the board should consider it, her request to supplement her submission is denied; LBP-10-4, 71 NRC 216 (2010)

SUBJECT INDEX

INTERVENTION RULINGS

- a board appropriately reviews the materials cited in support of a contention, while making no pronouncements on whether the information contained in the application or the claims made in the petition are valid; CLI-10-9, 71 NRC 245 (2010)
- a board did not act unreasonably in basing standing on potential harm from new operations that would be similar to harm petitioner claims he has suffered from existing operations; CLI-09-12, 69 NRC 535 (2009)
- a board erred in referring a contention to the Staff for consideration in conjunction with the design certification rulemaking without first assessing the contention's admissibility; CLI-10-1, 71 NRC 1 (2010)
- a board may appropriately view petitioners' support for its contention in a light that is favorable to the petitioner; LBP-08-26, 68 NRC 905 (2008)
- a board's decision on one of the admission elements does not necessarily render any discussion of the other superfluous because a decision addressing only one of the two items creates the potential for significant delay if that single determination is later overturned on appeal; LBP-07-10, 66 NRC 1 (2007)
- a licensing board's review of a petition for standing is to avoid the familiar trap of confusing the standing determination with the assessment of a petitioner's case on the merits; LBP-08-24, 68 NRC 691 (2008)
- a nontimely petition or contention will not be entertained in the high-level waste proceeding unless the Commission, an Atomic Safety and Licensing Board, or a presiding officer designated to rule on the petition determines that the late petition or contention meets the late-filing requirements; CLI-08-25, 68 NRC 497 (2008)
- a ruling on standing does not constitute dicta simply because the board also concluded that the petitioner had failed to proffer an admissible contention; LBP-07-10, 66 NRC 1 (2007)
- a standing ruling in one proceeding is not dispositive of a determination in another proceeding with the same petitioner because the ruling was not the subject of appellate review; LBP-09-18, 70 NRC 385 (2009)
- absent a showing of good cause, a nontimely petition will not be excused unless the petitioner makes a compelling showing on the remaining factors; CLI-10-12, 71 NRC 319 (2010)
- although boards generally are to litigate a contention rather than the basis that provides the issue statement's foundational support, the reach of a contention necessarily hinges upon its terms coupled with its stated basis; LBP-08-16, 68 NRC 361 (2008)
- although boards may view petitioner's supporting information in a light favorable to the petitioner, it cannot do so by ignoring contention admissibility rules, which require the petitioner (not the board) to supply all of the required elements for a valid intervention petition; CLI-10-20, 72 NRC 185 (2010)
- although NRC recognizes a difference between contentions of omission and contentions of inadequacy, the board did not err in reading the contention as one of inadequacy despite the contentions' occasional use of terms such as "failed to address"; CLI-10-2, 71 NRC 27 (2010)
- although petitioner bears the burden of demonstrating standing, in ruling on standing a licensing board is to construe the petition in favor of the petitioner; LBP-09-1, 69 NRC 11 (2009); LBP-10-1, 71 NRC 165 (2010); LBP-10-21, 72 NRC 616 (2010)
- although petitioner had shown sufficient business contacts within close proximity to the plant to demonstrate standing, his intervention petition was rejected for failure to propose an admissible contention; CLI-10-7, 71 NRC 133 (2010)
- an appeal as of right from a board's ruling on an intervention petition is permitted upon denial of a petition to intervene and/or request for hearing on the question as to whether it should have been granted or upon the granting of a petition to intervene and/or request for hearing on the question as to whether it should have been wholly denied; CLI-10-16, 71 NRC 486 (2010)
- an automatic right to appeal a board decision denying a petition to intervene exists; CLI-07-25, 66 NRC 101 (2007)
- an exception to the general policy limiting interlocutory review permits an appeal of a board's ruling on contention admissibility when a board grants a petition to intervene following consideration of the full petition; CLI-09-18, 70 NRC 859 (2009)

SUBJECT INDEX

an order denying a petition to intervene and/or request for hearing may be appealed to the Commission on the question of whether the petition and/or request should have been granted; CLI-10-20, 72 NRC 185 (2010)

any appeal by petitioners of the admitted contentions must abide the end of the case, i.e., wait approximately 2 or 3 years until the Staff issues its safety and environmental documents and the final disposition of the evidentiary hearing on the three admitted contentions; LBP-09-10, 70 NRC 51 (2009)

any supporting material provided by petitioner, including those portions of material that are not relied upon, is subject to board scrutiny; LBP-08-16, 68 NRC 361 (2008)

at the contention admissibility stage of a proceeding, a licensing board will not adjudicate merits-related issues; LBP-06-7, 63 NRC 188 (2006)

boards must avoid the familiar trap of confusing the standing determination with the assessment of petitioner's case on the merits; LBP-08-6, 67 NRC 241 (2008)

boards should consider the nature of petitioner's right under the Atomic Energy Act or the National Environmental Policy Act to be made a party to the proceeding, the nature and extent of petitioner's property, financial, or other interest in the proceeding, and the possible effect of any decision or order that may be issued in the proceeding on the petitioner's interest; LBP-09-13, 70 NRC 168 (2009)

challenges to board rulings on late-filed contentions normally fall under the rules for interlocutory review; CLI-09-18, 70 NRC 859 (2009)

determining whether a contention is adequately supported by a concise allegation of the facts or expert opinion is distinct from what is required to support petitioner's case at a hearing on the merits; LBP-07-16, 66 NRC 277 (2007); LBP-08-26, 68 NRC 905 (2008)

even if neither applicant nor NRC Staff challenges petitioner's standing, the board must make its own determination; LBP-08-15, 68 NRC 294 (2008)

good cause is accorded the greatest weight in ruling on a nontimely petition; CLI-10-12, 71 NRC 319 (2010)

if a board rejects an intervention petition in its entirety, then its sponsor may appeal to the Commission at that time; CLI-08-7, 67 NRC 187 (2008)

in assessing intervention petitions, licensing boards must determine whether standing elements are met even though there are no objections to petitioner's standing; LBP-09-23, 70 NRC 659 (2009)

in determining whether a petitioner has established standing, boards are to construe the petition in favor of the petitioner; LBP-07-10, 66 NRC 1 (2007); LBP-09-18, 70 NRC 385 (2009)

in passing on whether a particular contention meets the admissibility test, boards have confined their inquiry to whether, with or without references to particular sources or documents, the supporting expert opinion has offered enough to justify a conclusion that the contention is worthy of further consideration on its merits; LBP-09-6, 69 NRC 367 (2009)

in ruling on a nontimely petition, boards are to consider eight factors that will excuse the tardiness of the petition if, on balance, they weigh in favor of the petitioner; CLI-10-12, 71 NRC 319 (2010)

in ruling on contention admissibility a board is not to look to the merits of the contention; LBP-06-22, 64 NRC 229 (2006); LBP-09-17, 70 NRC 311 (2009)

in ruling on discretionary intervention requests, licensing boards will consider and balance enumerated factors weighing in favor of and against allowing intervention; LBP-09-23, 70 NRC 659 (2009)

in ruling on petitions to intervene in the high-level waste proceeding, boards must consider any failure of the petitioner to participate as a potential party in the pre-license application phase under 10 C.F.R. Part 2, Subpart J; CLI-08-25, 68 NRC 497 (2008); LBP-09-6, 69 NRC 367 (2009)

in ruling on standing, NRC cannot automatically assume that an organization member necessarily considers him- or herself potentially aggrieved by a particular outcome of the proceeding; CLI-08-19, 68 NRC 251 (2008)

in situations in which a board denies a petition to intervene in its entirety or grants a petition to intervene that, according to an opposing litigant, should have been denied in its entirety, the losing litigant has a right to Commission review; CLI-09-6, 69 NRC 128 (2009)

in the high-level waste proceeding, the presiding officer shall consider the factors in 10 C.F.R. 2.309 on standing to intervene; CLI-08-25, 68 NRC 497 (2008)

it is appropriate for a licensing board to defer consideration of all but one contention in some limited and exceptional circumstances; LBP-10-11, 71 NRC 609 (2010)

SUBJECT INDEX

licensing boards must assess intervention petitions to determine whether elements for standing are met even if there are no objections to petitioner's standing; LBP-10-21, 72 NRC 616 (2010)

litigation efforts that a litigant considers unnecessary because they relate to a contention that the litigant considers to have been improperly admitted do not affect the basic structure of a proceeding at all, much less in a pervasive and unusual manner; CLI-09-6, 69 NRC 128 (2009)

material provided in support of a contention will be carefully examined by the board to confirm that on its face it does supply an adequate basis for the contention; LBP-08-16, 68 NRC 361 (2008)

on appeal, the Commission found fault with the board's failure to identify clearly which of the diffuse and, in some cases, unsupported claims were admitted for hearing; CLI-10-2, 71 NRC 27 (2010)

petitioner is not required to prove its case at the contention admission stage; LBP-09-17, 70 NRC 311 (2009)

petitioners have an automatic right to appeal a board decision wholly denying a petition to intervene; CLI-10-1, 71 NRC 1 (2010); CLI-10-9, 71 NRC 245 (2010); CLI-10-12, 71 NRC 319 (2010)

requirement to show distinct new harm from a license amendment application would not preclude standing to contest commencement of new operations at a separate site, where petitioner showed potential for harm to himself from new operation; CLI-09-12, 69 NRC 535 (2009)

the board did not make an impermissible merits ruling by observing that a contention was supported by the affidavit of an expert; CLI-10-2, 71 NRC 27 (2010)

the Commission cannot find clear error in a board's failing to acknowledge an argument that was not brought to its attention and to which the petitioners had no opportunity to respond; CLI-09-12, 69 NRC 535 (2009)

the Commission defers to a board's rulings on standing and contention admissibility unless the appeal points to an error of law or abuse of discretion; CLI-08-17, 68 NRC 231 (2008); CLI-09-7, 69 NRC 235 (2009); CLI-09-8, 69 NRC 317 (2009); CLI-09-9, 69 NRC 331 (2009); CLI-09-12, 69 NRC 535 (2009); CLI-09-14, 69 NRC 580 (2009); CLI-09-20, 70 NRC 911 (2009); CLI-09-22, 70 NRC 932 (2009); CLI-10-1, 71 NRC 1 (2010); CLI-10-2, 71 NRC 27 (2010); CLI-10-3, 71 NRC 49 (2010); CLI-10-7, 71 NRC 133 (2010); CLI-10-9, 71 NRC 245 (2010); CLI-10-12, 71 NRC 319 (2010); CLI-10-20, 72 NRC 185 (2010); CLI-10-21, 72 NRC 197 (2010)

the possibility that an interlocutory ruling may be wrong does not in itself justify interlocutory review; CLI-09-6, 69 NRC 128 (2009)

the presiding officer in the high-level waste proceeding shall resolve disputes concerning adoption of the DOE environmental impact statement by using, to the extent possible, the criteria and procedures that are followed in ruling on motions to reopen; LBP-09-6, 69 NRC 367 (2009)

the process of sifting and weighing participants' factual proffers often calls upon a board to make difficult choices, so that a petitioner who fails to provide specific information regarding the geographic proximity or the timing and duration of its visits only complicates matters for itself; LBP-09-18, 70 NRC 385 (2009)

there is an automatic right to appeal a licensing board standing and contention admissibility decision on the issue of whether the request for hearing or petition to intervene should have been wholly denied; CLI-09-22, 70 NRC 932 (2009)

to be appealable, a disputed order must dispose of the entire petition so that a successful appeal by a nonpetitioner will terminate the proceeding as to the appellee petitioner; CLI-09-18, 70 NRC 859 (2009)

to determine whether an interest is in the zone of interests of a statute, it is necessary first to discern the interests arguably to be protected by the statutory provision at issue, and then to inquire whether the petitioner's interests affected by the agency action are among them; LBP-08-24, 68 NRC 691 (2008)

to determine whether petitioners have standing, boards accept as true all material allegations of the complaint and construe the complaint in favor of the complaining party; CLI-10-20, 72 NRC 185 (2010)

were the Commission to permit litigants to successfully invoke interlocutory review based merely on an assertion that the licensing board erred in admitting or excluding a contention, then the Commission would be opening the floodgates to a potential deluge of interlocutory appeals from any number of participants who lose admissibility rulings; CLI-09-6, 69 NRC 128 (2009)

where intervenors have filed new contentions based on a supplement to a combined license application, in advance of a full board ruling on the original contentions, no appeal lies until the board acts on all contentions, both the original and the newly filed ones; CLI-09-18, 70 NRC 859 (2009)

SUBJECT INDEX

with respect to an applicant's appeal, applicant must contend that, after considering all pending contentions, the board has erroneously granted a hearing to the petitioner; CLI-09-18, 70 NRC 859 (2009)

See also Abeyance of Contention

INVESTIGATION

if a licensee has voluntarily provided information to the NRC, the voluntary nature of the submission is not compromised by the NRC's ability to conduct its own investigation into the same matter; CLI-08-6, 67 NRC 179 (2008)

requests for diagnostic evaluation team examination, safety culture assessment, and the NRC investigation at other licensee facilities are rejected for review because they are not requests for enforcement-type actions; DD-08-1, 67 NRC 347 (2008)

submission of information to a government agency is voluntary even if the company submitting the information feels pressure to do so as a result of its dealings with the federal government; CLI-08-6, 67 NRC 179 (2008)

IRRADIATED FOODS

a decision on the safety of a food additive must give due weight to the anticipated levels and patterns of consumption of the additive; CLI-08-16, 68 NRC 221 (2008)

any food that has been intentionally subjected to irradiation is considered adulterated and unsafe, and therefore cannot be marketed legally unless the FDA Secretary has issued a regulation finding the specific use of the food irradiation safe, and prescribing the conditions under which the irradiation source (the food additive) may be safely used; CLI-08-16, 68 NRC 221 (2008)

for the FDA to determine that a food additive is safe, it must find, after a fair evaluation of the data, that there is a reasonable certainty in the minds of competent scientists that the substance is not harmful under all intended conditions of use; CLI-08-16, 68 NRC 221 (2008)

NEPA does not require the NRC to assess the potential health effects of consuming irradiated food; CLI-08-16, 68 NRC 221 (2008); CLI-10-18, 72 NRC 56 (2010)

whether NEPA requires the NRC to consider potential health effects of consuming irradiated food raises the kind of broad legal question appropriate for Commission interlocutory review; CLI-08-4, 67 NRC 171 (2008); CLI-08-16, 68 NRC 221 (2008)

IRRADIATION

ionizing radiation to treat fresh fruits is safe if the radiation dose does not exceed 1 kGy (100 krad); CLI-08-16, 68 NRC 221 (2008)

sources, including radioactive isotopes, particle accelerators, and X-ray machines, intended for use in processing food are included in the term "food additives"; CLI-08-16, 68 NRC 221 (2008)

IRRADIATOR

a categorical exclusion exists for materials licenses associated with irradiators; CLI-10-18, 72 NRC 56 (2010)

a design-based challenge involving a postulated cask drop on a sealed source is within the scope of, and material to, a licensing proceeding; LBP-06-12, 63 NRC 403 (2006)

an agency must affirmatively provide a reasoned explanation of the applicability of a categorical exclusion when special circumstances are alleged; LBP-06-4, 63 NRC 99 (2006)

at the contention admissibility stage, it is not necessary to establish a general probability threshold for irradiators to assess in qualitative terms the significance and plausibility of particular asserted siting-related threats; CLI-08-3, 67 NRC 151 (2008)

in an exceptional case, NRC may conduct an irradiator facility siting review if a unique threat is involved which may not be addressed by state and local requirements; CLI-08-3, 67 NRC 151 (2008)

irradiators are categorically excluded from the requirement to prepare an environmental analysis; CLI-08-16, 68 NRC 221 (2008)

licensees must have and follow emergency or abnormal event procedures, appropriate for the irradiator type, for a prolonged loss of electrical power; LBP-06-12, 63 NRC 403 (2006)

licensees must satisfy all applicable state and local siting, zoning, land use, and building code requirements; CLI-08-3, 67 NRC 151 (2008)

location of an irradiator may be a circumstance in which the categorical exclusions in 10 C.F.R. 51.22(b) might not apply; LBP-06-4, 63 NRC 99 (2006)

SUBJECT INDEX

NRC Staff is required under NEPA to evaluate reasonable technological and geographical alternatives to the proposed irradiator; CLI-10-18, 72 NRC 56 (2010)

the degree of support necessary for an irradiator siting contention will depend on how obvious a threat the asserted risk is, given the irradiator facility's design and protective features; CLI-08-3, 67 NRC 151 (2008)

the proper scope of an irradiator licensing proceeding, and whether it requires or otherwise encompasses analyses of endemic site-related risks, is questioned; CLI-07-26, 66 NRC 109 (2007)

the Statement of Considerations for Part 36 indicates that in developing those regulations, the NRC considered whether there was a need to impose limits on irradiator siting, but determined that no specific siting limitations were warranted; CLI-08-3, 67 NRC 151 (2008)

there is no evidence that the Commission intended to exempt underwater irradiators from its conclusion that irradiators can be built anywhere that local authorities permit an industrial facility to be located; CLI-08-3, 67 NRC 151 (2008)

IRREPARABLE INJURY

a party opposing a renewed license does not face irreparable harm by the mere issuance of a renewed license; CLI-08-13, 67 NRC 396 (2008)

a showing of a threat of immediate and irreparable harm that will result absent a stay is required for grant of the stay; CLI-10-8, 71 NRC 142 (2010)

a stay pending appeal is granted where the absence of a stay would mean the destruction of the business in its current form; CLI-10-8, 71 NRC 142 (2010)

deferral of review of board denial of rule waiver petition did not cause irreparable injury; CLI-10-29, 72 NRC 556 (2010)

increased litigation delay and expense do not justify interlocutory review of an admissibility decision; CLI-09-6, 69 NRC 128 (2009)

mere injuries, however substantial, in terms of money, time, and energy necessarily expended in the absence of a stay are not enough to establish irreparable injury; CLI-10-8, 71 NRC 142 (2010)

mere speculation concerning a nuclear accident does not satisfy the requirements for grant of a stay of effectiveness of a license amendment; CLI-06-8, 63 NRC 235 (2006)

no instance has occurred in NRC jurisprudence where either the Commission or its boards have ruled that expenses of any kind constituted irreparable injury; CLI-09-6, 69 NRC 128 (2009)

party seeking a stay did not show an overwhelming probability of success on the merits of its appeal sufficient to overcome its lack of showing of irreparable harm; CLI-09-23, 70 NRC 935 (2009)

rejection or admission of a contention, where petitioner has been admitted as a party and has other contentions pending, neither constitutes serious and irreparable impact nor affects the basic structure of the proceeding in a pervasive and unusual manner; CLI-08-7, 67 NRC 187 (2008); CLI-09-9, 69 NRC 331 (2009); CLI-10-16, 71 NRC 486 (2010)

the possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation, weighs heavily against a claim of irreparable harm; CLI-10-8, 71 NRC 142 (2010)

the possibility that the prevailing party would use the board's order in his favor to persuade a District Court to reconsider part of the penalty imposed on him in a parallel criminal proceeding did not constitute immediate, irreparable harm to the NRC Staff; CLI-09-23, 70 NRC 935 (2009)

the potential for litigation expense and delay is the kind of burden that licensees and applicants voluntarily assume when filing applications with the Commission; CLI-09-6, 69 NRC 128 (2009)

there is no presumption that irreparable damage occurs whenever there is a failure to adequately evaluate the environmental impact of a proposed project; LBP-06-27, 64 NRC 399 (2006)

when evaluating a motion for a stay the Commission places the greatest weight on irreparable injury to the moving party unless a stay is granted; CLI-10-8, 71 NRC 142 (2010)

whether the party seeking a stay faces potentially irreparable harm is the most important factor considered in the Commission's determination whether to grant a stay; CLI-09-23, 70 NRC 935 (2009)

without a showing of irreparable harm, the moving party must show that success on the merits is a virtual certainty to warrant issuance of a stay; CLI-10-8, 71 NRC 142 (2010)

See also Injury in Fact

JUDGES

See Licensing Board Judges; Presiding Officer

SUBJECT INDEX

JURISDICTION

- a proceeding commences when a notice of hearing or notice of proposed action is issued; CLI-08-14, 67 NRC 402 (2008)
- concurrent but independent jurisdiction of two federal agencies is addressed; LBP-09-6, 69 NRC 367 (2009)
- EPA is responsible for promulgating standards for environmental protection, and NRC is tasked with promulgating the criteria it will apply in the licensing proceeding; LBP-09-6, 69 NRC 367 (2009)
- the mootness doctrine derives from the Constitution's limitation of federal courts' jurisdiction to cases or controversies; LBP-09-15, 70 NRC 198 (2009)
- when a claim becomes moot in federal court, the court loses jurisdiction to decide the merits of that claim; LBP-09-15, 70 NRC 198 (2009)
- when considering whether to undertake pendent appellate review of otherwise unappealable issues, the Commission has expressed a willingness to take up otherwise unappealable issues that are "inextricably intertwined" with appealable issues; CLI-08-27, 68 NRC 655 (2008)
- See also Licensing Boards, Jurisdiction; Nuclear Regulatory Commission, Jurisdiction

JURY INSTRUCTION

- instruction to juries on deliberate ignorance or willful blindness can relieve the government of its constitutional obligation to prove the defendant's knowledge beyond a reasonable doubt; LBP-09-24, 70 NRC 676 (2009)
- instruction to juries on deliberate ignorance or willful blindness should be used with caution to avoid the possibility that the jury convict on the lesser standard that the defendant should have known his conduct was illegal; LBP-09-24, 70 NRC 676 (2009)
- the danger of instruction to juries on deliberate ignorance or willful blindness in an inappropriate case is that juries will convict on a basis akin to a standard of negligence; LBP-09-24, 70 NRC 676 (2009)
- the deliberate ignorance instruction defines when an individual has sufficient information so that he can be deemed to know something; LBP-09-24, 70 NRC 676 (2009)
- the warning to jurors that the added instruction on deliberate ignorance or willful blindness is not intended to allow them to base guilt on negligence or carelessness is sufficient to legitimize the instruction; LBP-09-24, 70 NRC 676 (2009)

JURY VERDICT

- a fundamental tenet of the jury system assumes that the jury complies with the instructions provided by the trial court; LBP-09-24, 70 NRC 676 (2009)
- a special verdict is one where the jury answers specific questions submitted to it, thus enabling the court to determine the theory underlying the conviction; LBP-09-24, 70 NRC 676 (2009)

LABOR ISSUES

- although the Commission is disinclined to step into the middle of a labor dispute or involve itself in the personnel decisions of licensees, it has recognized that there may be cases where employment-related contentions are closely tied to specific health-and-safety concerns or to potential violations of NRC rules that can be admitted for a hearing; CLI-06-21, 64 NRC 30 (2006)

LABOR UNIONS

- a union in one facility lacks standing to participate in other interrelated license transfer proceedings, given that the union did not represent employees at the other facilities; CLI-08-19, 68 NRC 251 (2008)
- courts' refusal to grant automatic standing to unions may lie in the fact that unions are formed to represent their members in collective bargaining and other employment-related negotiations, not in administrative or judicial litigation; CLI-08-19, 68 NRC 251 (2008)
- damage to a nuclear power facility's reputation does not constitute a threatened injury to the interests of the Local's members who work at the facility; CLI-08-19, 68 NRC 251 (2008)
- requirements for representational standing apply to unions; CLI-08-19, 68 NRC 251 (2008)

LAND USE

- in conducting its analysis of the impact of the license renewal on land use, applicant should consider the impact on real estate values that would be caused by license renewal or nonrenewal; LBP-08-13, 68 NRC 43 (2008)

SUBJECT INDEX

LAW OF THE CASE

- a prior decision should be followed unless it is clearly erroneous and its enforcement would work a manifest injustice, intervening controlling authority makes reconsideration appropriate, or substantially different evidence was adduced at a subsequent trial; LBP-06-11, 63 NRC 483 (2006)
- legal determinations made on appeal in a case are controlling precedent, becoming the law of the case for all later decisions in the same case, with only limited exceptions; LBP-06-11, 63 NRC 483 (2006); LBP-06-19, 64 NRC 53 (2006)
- the decision of an appellate tribunal should ordinarily be followed in all subsequent phases of that case, provided that the particular question in issue was actually decided or decided by necessary implication; LBP-06-1, 63 NRC 41 (2006)
- the statement of purpose and need in the final environmental impact statement is independent of any specific project area, and thus a prior decision of the Commission adjudicating an intervenor's challenge to the statement of purpose and need applies with equal force to all areas of a proposed project; LBP-06-19, 64 NRC 53 (2006)
- this doctrine is grounded in important considerations related to stability in the decisionmaking process, predictability of results, proper working relationships between trial and appellate courts, and judicial economy; LBP-06-11, 63 NRC 483 (2006)

LEAKAGE

- applicant moves for summary disposition of a contention involving whether leak detection through monitoring wells is necessary as part of the plant's aging management program; LBP-07-12, 66 NRC 113 (2007)
- early site permit applicants must submit a safety assessment that includes an analysis of a fission product release from an accident, using the expected demonstrable containment leak rate and any fission product cleanup systems intended to mitigate the consequences of the accidents; LBP-09-19, 70 NRC 433 (2009)

LEGAL AUTHORITIES

- authorities may be binding, adverse, or merely persuasive, but all authorities must possess some legal and precedential/persuasive value; LBP-10-21, 72 NRC 616 (2010)
- "authority" is defined as a legal writing taken as definitive or decisive, especially a judicial or administrative decision cited as a precedent, or a source, such as a statute, case, or treatise, cited in support of a legal argument; LBP-10-21, 72 NRC 616 (2010)
- generally, an additional authorities filing would be a submission that is the functional equivalent of a letter supplementing authorities; LBP-10-21, 72 NRC 616 (2010)

LEGAL STANDARDS

- when an adjudicating agency retroactively applies a new legal standard that significantly alters the rules of the game, the agency is obliged to give litigants proper notice and a meaningful opportunity to adjust; CLI-10-23, 72 NRC 210 (2010)

LIABILITY INSURANCE

- DOE will indemnify a uranium enrichment facility licensee against claims arising from nuclear incidents to the extent that licensee cannot obtain commercial insurance at reasonable rates; LBP-07-6, 65 NRC 429 (2007)
- proof of adequate insurance must be filed with the NRC before a license for the operation of a uranium enrichment facility may be issued; LBP-07-6, 65 NRC 429 (2007)
- the limit of liability for which DOE will indemnify a uranium enrichment facility licensee against claims arising from nuclear incidents is in excess of the liability insurance required under NRC regulations; LBP-07-6, 65 NRC 429 (2007)

LICENSE AMENDMENT PROCEEDINGS

- contentions challenging NRC Staff's significant hazards consideration determination are not appropriate for review; LBP-08-19, 68 NRC 545 (2008); LBP-08-20, 68 NRC 549 (2008)
- failure of a licensee to fulfill responsibilities associated with a license amendment issued by the Staff gives rise to an enforcement issue that does not come within the purview of a license amendment adjudication; LBP-07-7, 65 NRC 507 (2007)
- in proceedings not involving power reactors, proximity alone is not sufficient to establish standing; LBP-08-6, 67 NRC 241 (2008)
- See also Materials License Amendment Proceedings; Operating License Amendment Proceedings

SUBJECT INDEX

LICENSE AMENDMENTS

a licensing board may modify or condition a license amendment; LBP-07-7, 65 NRC 507 (2007)
although the analysis required by 10 C.F.R. 50.59 is not the same as the final safety analysis, it is nevertheless a formal, written analysis involving safety issues (accident probabilities and/or consequences); LBP-10-20, 72 NRC 571 (2010)

an application for an NRC permit must be made under oath or affirmation; CLI-07-12, 65 NRC 203 (2007)

an exemption can be granted if it is authorized by law and will not endanger life or property or the common defense and security, and is otherwise in the public interest; LBP-07-6, 65 NRC 429 (2007)

if, at some point in the future, applicant were to decide to change the ownership structure and to enter into a joint venture with another entity, its license would have to be amended to reflect this change; LBP-09-18, 70 NRC 385 (2009)

in determining whether an amendment will be issued, the Commission is guided by considerations that govern the issuance of initial licenses; LBP-08-9, 67 NRC 421 (2008)

licensee must apply for a license amendment and obtain NRC's approval before it can implement any proposed change; LBP-10-20, 72 NRC 571 (2010)

NRC has broad legal authority under the Atomic Energy Act and has authority to independently verify the facts contained in an application; CLI-07-12, 65 NRC 203 (2007)

NRC may revoke any license for a material false statement in the application; CLI-07-12, 65 NRC 203 (2007)

the function of 10 C.F.R. 50.59 is to deal with changes to a nuclear power plant, and it requires, as a prerequisite to any such change, that the licensee perform safety analyses in addition to those contained in the final safety analysis report; LBP-10-20, 72 NRC 571 (2010)

the standard for the Commission's decision on license renewal applications is whether or not the adverse environmental impacts of license renewal are so great that preserving the option of license renewal for energy planning decisionmakers would be unreasonable; LBP-07-4, 65 NRC 281 (2007)

there is no statutory or regulatory requirement that an applicant demonstrate any benefit from a requested license amendment; LBP-09-1, 69 NRC 11 (2009)

under certain conditions, licensee may implement changes to a nuclear power plant without obtaining a license amendment; LBP-10-20, 72 NRC 571 (2010)

See also Materials License Amendments; Operating License Amendments; Source Materials License Amendment

LICENSE APPLICATIONS

any contention that fails to directly controvert the application or that mistakenly asserts that the application does not address a relevant issue can be dismissed; LBP-09-3, 69 NRC 139 (2009)

applicant's Safety Analysis Report is a required part of its license application and must include a preclosure safety analysis; LBP-08-1, 67 NRC 37 (2008)

contention alleging foreign ownership of applicant, failure to disclose, and various ramifications of such ownership, is admissible; LBP-09-1, 69 NRC 11 (2009)

corporate applicants must provide place of incorporation, citizenship of directors and principal officers, and whether owned, controlled, or dominated by a foreign corporation in their application; LBP-09-1, 69 NRC 11 (2009)

drafts of the license application are not Class 1, Class 2, or Class 3 documentary material under Subpart J, so the regulations do not require making draft license applications available on the Licensing Support Network; CLI-06-5, 63 NRC 143 (2006)

properly formulated contentions must focus on the license application in question, challenging either specific portions of or alleged omissions from the application so as to establish that a genuine dispute exists with the applicant on a material issue of law or fact; LBP-09-3, 69 NRC 139 (2009)

the decision to docket, and the subsequent handling of an application, is within the discretion of the Staff; LBP-10-17, 72 NRC 501 (2010)

withdrawal of an application after the issuance of a notice of hearing shall be on such terms as the presiding officer may prescribe; CLI-10-13, 71 NRC 387 (2010)

See also Combined License Application; Construction Authorization Application; License Renewal Applications; Materials License Applications; Operating License Amendment Applications; Operating License Applications; Uncontested License Applications

SUBJECT INDEX

LICENSE CONDITIONS

- a license renewal may be set aside or appropriately conditioned even after it has been issued, upon subsequent administrative or judicial review; CLI-10-8, 71 NRC 142 (2010)
- challenges to the position of an applicant that is based on a condition in its current license are permissible; LBP-08-6, 67 NRC 241 (2008)
- conditions are proposed that would ensure that DOE's documentary material is appropriately preserved and archived should its request to withdraw its application be granted; LBP-10-11, 71 NRC 609 (2010)
- creditor regulations may be augmented by license conditions as necessary to allow ownership arrangements, such as sale and leaseback, provided it can be found that such arrangements are not inimical to the common defense and security of the United States; CLI-09-15, 70 NRC 1 (2009)
- financial criteria of 10 C.F.R. 70.22(a)(8) and 70.23(a)(5) can be met by conditioning the license to require funding commitments to be in place prior to construction and operation; CLI-09-15, 70 NRC 1 (2009); CLI-10-4, 71 NRC 56 (2010)
- if a board determines after full adjudication that the license amendment should not have been granted, it may be revoked or conditioned; LBP-07-2, 65 NRC 153 (2007)
- if NRC Staff finds any severe accident mitigation alternative conferring a substantial benefit compared to its cost of implementation, it must make such SAMA a license condition for the renewed operating license; LBP-10-13, 71 NRC 673 (2010)
- if the Commission determines that there is a substantial increase in overall protection of public health and safety or common defense and security and that direct and indirect costs of implementation for that facility are justified, it may require backfitting to implement severe accident mitigation alternatives; LBP-10-13, 71 NRC 673 (2010)
- NRC Staff communications concerning the appropriate wording and scope are deliberative and thus may qualify for the deliberative process privilege; LBP-06-3, 63 NRC 85 (2006)
- NRC Staff communications concerning whether a potential license condition should be imposed are deliberative and thus may qualify for the deliberative process privilege; LBP-06-3, 63 NRC 85 (2006)
- NRC Staff could impose license conditions that are necessary to protect the environment under backfit procedures; CLI-10-30, 72 NRC 564 (2010)
- post-hearing resolution of licensing issues must not be employed to obviate the basic findings prerequisite to a license, including a reasonable assurance that the facility can be operated without endangering the health and safety of the public; CLI-06-1, 63 NRC 1 (2006)
- the addition of a condition on a license to operate would constitute a materially different result warranting reopening; LBP-08-12, 68 NRC 5 (2008)
- the Commission has the authority to appropriately condition a license approved by the board; CLI-07-12, 65 NRC 203 (2007)

See also Permit Conditions

LICENSE RENEWAL APPLICATIONS

- a list of time-limited aging analyses together with a demonstration that the analyses have been projected to the end of the period of extended operation must be included in the application; CLI-08-28, 68 NRC 658 (2008)
- a technically accurate projection of the time-limited aging analysis that predicts that the component will fail due to aging during the 20-year period of extended operation will not suffice; LBP-08-25, 68 NRC 763 (2008)
- adequate aging management programs are both a required element of the LRA and a central finding that NRC must make before it can issue a license renewal; LBP-08-25, 68 NRC 763 (2008)
- although "severe accident," "severe accident mitigation alternatives," and "SAMA" are not defined in NRC's NEPA regulations, the NRC policy documents that originated the terms clearly limit them to nuclear reactors and do not include spent fuel pools or storage; LBP-10-15, 72 NRC 257 (2010)
- an integrated plant assessment identifying structures and components subject to aging management review, an evaluation of time-limited aging analyses, and a final safety analysis report supplement describing the plant's aging management programs must be included; CLI-08-23, 68 NRC 461 (2008)
- analysis of metal fatigue that ignores the known and substantial effects of the light-water reactor environment is insufficient, as both a technical and a legal matter; LBP-08-25, 68 NRC 763 (2008)
- applicant demonstrates compliance with the ASME Code by projecting the fatigue analysis for the nozzle through the extended operating period; CLI-08-28, 68 NRC 658 (2008)

SUBJECT INDEX

- applicant is required to address new and significant information for either Category 1 or Category 2 issues in its environmental report for an LRA; LBP-08-13, 68 NRC 43 (2008)
- applicant is required to provide in its environmental report a site-specific analysis of entrainment, impingement, and heat shock/thermal discharge impacts from its once-through cooling systems; LBP-08-13, 68 NRC 43 (2008)
- applicant may demonstrate compliance with 10 C.F.R. 54.21(c)(1)(ii) by showing that the cumulative usage factor calculations have been reevaluated based on an increased number of assumed transients to bound the period of extended operation and that the resulting CUF remains less than or equal to 1.0 for the period of extended operation; CLI-10-17, 72 NRC 1 (2010)
- applicant must include an aging management review for the drywell shell; LBP-06-22, 64 NRC 229 (2006)
- applicant must submit with its application an environmental report, which must describe the proposed action, including the applicant's plans to modify the facility or its administrative control procedures, and the modifications directly affecting the environment or affecting plant effluents that affect the environment; LBP-07-4, 65 NRC 281 (2007)
- applicant seeking to satisfy aging management requirements by reliance upon existing time-limited aging analyses in its current licensing basis would rely on 10 C.F.R. 54.21(c)(1)(i) or (ii); CLI-10-17, 72 NRC 1 (2010)
- applicant who addresses the cumulative usage factor issue via an aging management program may reference Chapter X of the Generic Aging Lessons Learned Report; CLI-10-17, 72 NRC 1 (2010)
- applicant who chooses to rely upon an existing time-limited aging analysis may demonstrate compliance with 10 C.F.R. 54.21(c)(1)(i) by showing that the existing cumulative usage factor calculations remain valid because the number of assumed transients would not be exceeded during the period of extended operation; CLI-10-17, 72 NRC 1 (2010)
- applicant's decision to exclude renewable energy options from its alternatives analysis is reasonable because these sources are not always available and, with the current technology, cannot meet the goals of the LRA; LBP-08-13, 68 NRC 43 (2008)
- applicant's environmental report must include a severe accident mitigation alternatives analysis, outlining the costs and benefits of potential mitigation measures to reduce severe accident risk or consequences; CLI-10-30, 72 NRC 564 (2010); LBP-10-15, 72 NRC 257 (2010)
- applicants may in their site-specific environmental reports refer to and adopt the generic environmental impact findings found in 10 C.F.R. Part 51, Subpart A, Appendix B, Table B-1, for all Category 1 issues; LBP-06-10, 63 NRC 314 (2006)
- contentions that inappropriately focus on Staff's review of the application rather than on the errors and omissions of the application itself are inadmissible; CLI-10-27, 72 NRC 481 (2010)
- defect in an application can give rise to a valid contention of omission and cannot therefore be rejected as unripe; LBP-08-24, 68 NRC 691 (2008)
- each application must contain an evaluation of time-limited aging analyses, a list of TLAAs, a demonstration relating to TLAAs, and the actual TLAAs; LBP-08-25, 68 NRC 763 (2008)
- each application must contain an Integrated Plant Assessment for which specified components will demonstrate that the effects of aging will be adequately managed so that the intended function(s) will be maintained consistent with the current licensing basis for the period of extended operation; LBP-08-13, 68 NRC 43 (2008); LBP-08-25, 68 NRC 763 (2008)
- evaluation of time-limited aging analyses must demonstrate that the analyses will remain valid for the period of extended operation; CLI-10-17, 72 NRC 1 (2010)
- even if the time-limited aging analyses predict that the component will fail during the period of extended operation, a license renewal can still be granted if the applicant demonstrates that the effects of aging will be adequately managed during the period of extended operation; LBP-08-25, 68 NRC 763 (2008)
- from among the three general categories of structures, systems, and components that fall within the initial focus of the license renewal safety review, applicants must identify and list, in an integrated plant assessment, those structures and components subject to an aging management review; CLI-10-14, 71 NRC 449 (2010)
- if applicant can demonstrate by plant operating experience that the initially predicted number of stress cycles would not be exceeded even in the extended 20-year operating period, then 10 C.F.R. 54.21(c)(1)(i) would be satisfied; CLI-10-17, 72 NRC 1 (2010)

SUBJECT INDEX

in addition to information supplied for the technical safety review, a license renewal applicant is required to submit a supplemental environmental report that complies with 10 C.F.R. Part 51; CLI-08-23, 68 NRC 461 (2008)

in making a decision, the Commission shall determine whether or not the adverse environmental impacts are so great that preserving the option of license renewal for energy planning decisionmakers would be unreasonable; LBP-07-11, 66 NRC 41 (2007)

information provided to the Commission by an applicant must be complete and accurate in all material respects; CLI-08-23, 68 NRC 461 (2008)

it is neither possible nor necessary for NRC Staff to verify each and every factual assertion in complex license applications; CLI-08-23, 68 NRC 461 (2008)

licensees and applicants are expected to adjust their aging management programs to reflect lessons learned in the future through individual and industrywide experiences; CLI-08-23, 68 NRC 461 (2008)

NEPA review in the license renewal process is unlike the Commission's Part 54 review because the NEPA review covers all environmental impacts associated with license renewal and is not limited to aging-related issues; LBP-10-15, 72 NRC 257 (2010)

NRC must provide a hearing upon the request of any person whose interest may be affected by the proceeding; LBP-07-11, 66 NRC 41 (2007)

NRC Staff safety review focuses on certain aging effects that would not reveal themselves through performance indicators associated with active functions; CLI-08-23, 68 NRC 461 (2008)

NUREG-1801 identifies generic aging management programs that the Staff has determined to be acceptable, based on the experiences and analyses of existing programs at operating plants during the initial license period; CLI-08-23, 68 NRC 461 (2008)

periodic amendment is required to reflect any changes to the plant's current licensing basis made after the license renewal application was submitted; CLI-08-23, 68 NRC 461 (2008)

petitioner must show why an alleged error or omission is of significance to the result of the proceeding; LBP-08-26, 68 NRC 905 (2008)

potential scope of adjudicatory hearings in license renewal proceedings is the same as the scope of the Staff's review; LBP-10-15, 72 NRC 257 (2010)

section 54.21(c)(1)(i)-(iii) requires that the applicant make its demonstration that the effects of aging will be adequately managed during the period of extended operation in the application, which is necessarily before the license may be granted; LBP-08-25, 68 NRC 763 (2008)

severe accident mitigation alternatives analyses are not required for the spent fuel storage impacts associated with license renewals; LBP-10-15, 72 NRC 257 (2010)

Staff's audit, or sampling, method of verifying a license renewal applicant's aging management programs, together with the other components of its review, enables the Staff to make the safety findings necessary for issuance of the license; CLI-08-23, 68 NRC 461 (2008)

technical accuracy of the time-limited aging analyses is necessary, but not sufficient, to demonstrate that it remains valid because a technically accurate TLAA that shows that the component will fail during the period of extended operation does not satisfy 10 C.F.R. 54.21(c)(1)(i); LBP-08-25, 68 NRC 763 (2008)

technical information that must be included as part of the time-limited aging analyses is described; CLI-08-28, 68 NRC 658 (2008)

the Commission shall determine whether or not the adverse environmental impacts of license renewal are so great that preserving the option of license renewal for energy planning decisionmakers would be unreasonable; LBP-06-10, 63 NRC 314 (2006); LBP-06-23, 64 NRC 257 (2006)

the "demonstrations" mandated by 10 C.F.R. 54.21(c)(1)(i) and (ii) require that the time-limited aging analyses both be performed in a technically accurate manner and produce a prediction that the component will not fail due to aging during the period of extended operation; LBP-08-25, 68 NRC 763 (2008)

the duty under NEPA to consider the environmental impacts of a proposed action incorporates, at least implicitly, considerations of the probability of a particular consequence occurring; LBP-10-15, 72 NRC 257 (2010)

the standard review plan presents one acceptable methodology for calculating the environmentally adjusted cumulative usage factor; CLI-10-17, 72 NRC 1 (2010)

SUBJECT INDEX

- the time frame for filing a license renewal application is no more than 20 years prior to the expiration of the current operating license; LBP-07-4, 65 NRC 281 (2007)
- use of an aging management program identified in the Generic Aging Lessons Learned Report constitutes reasonable assurance that it will manage the targeted aging effect during the renewal period; CLI-10-17, 72 NRC 1 (2010)
- when an application is timely filed, the license is automatically extended by operation of law until final agency action is taken on the renewal request; LBP-09-13, 70 NRC 168 (2009)
- whether a severe accident mitigation alternative must be analyzed in an environmental report hinges on whether it could be cost-beneficial; LBP-08-13, 68 NRC 43 (2008)

See also Operating License Renewal

LICENSE RENEWAL PROCEEDINGS

- a claim that the pads for storing spent fuel are defective is outside the scope of the proceeding; CLI-06-17, 63 NRC 727 (2006)
- a contention alleging that the applicant's proposed monitoring techniques are not adequate because they are based on computer models that were not benchmarked is admissible; LBP-06-20, 64 NRC 131 (2006)
- a contention questioning whether particular bits of information taken from an emergency plan are sufficiently accurate for use in computing the health and safety consequences of a severe accident, as an environmental issue, is admissible; LBP-06-23, 64 NRC 257 (2006)
- a contention that a plant's evacuation plan does not adequately protect the health and safety of public and plant workers must be denied because emergency planning is not within the scope of license renewal as a safety issue; LBP-07-11, 66 NRC 41 (2007)
- a contention that alleges that the applicant's plan to manage metal fatigue is too vague and is really only a "plan to develop a plan" raises an admissible and material issue as to whether the applicant has met its requirement to demonstrate that the effects of aging will be adequately managed; LBP-06-20, 64 NRC 131 (2006)
- a contention that applicant has failed to identify non-safety-related systems, structures, and components in the security area whose failure could prevent satisfactory accomplishment of the functions of safety-related systems, structures, and components is not admissible; LBP-06-20, 64 NRC 131 (2006)
- a contention that applicant's aging management program fails to adequately assure the continued integrity of the drywell liner for the requested license extension is denied; LBP-06-23, 64 NRC 257 (2006)
- a contention that applicant's aging management program is inadequate with regard to aging management of buried pipes and tanks that contain radioactively contaminated water because it does not provide for monitoring wells that would detect leakage is admitted; LBP-06-23, 64 NRC 257 (2006)
- a contention that applicant's severe accident mitigation alternatives analysis is deficient regarding input data on evacuation times, economic consequences, and meteorological patterns, resulting in incorrect conclusions about the costs versus benefits of possible mitigation alternatives, is admitted; LBP-06-23, 64 NRC 257 (2006)
- a contention that new and significant information about cancer rates in communities around a plant shows that another 20 years of operations may result in greater offsite radiological impacts on human health than was previously known is denied; LBP-06-23, 64 NRC 257 (2006)
- a contention that raises the question as to whether an NPDES permit that will expire before the proposed 20-year NRC license renewal would even take effect is admissible and material; LBP-06-20, 64 NRC 131 (2006)
- a contention that raises the question as to whether requirements of 10 C.F.R. 51.53(c)(3)(ii)(B) supplement the more general requirements of 10 C.F.R. 51.45(c) and 51.53(c), or instead displace and supplant the latter requirements, raises an admissible and material issue of interpretation and construction of the regulations; LBP-06-20, 64 NRC 131 (2006)
- a NEPA analysis of the potential impacts of deliberate attacks on a spent fuel pool and analysis of alternatives to mitigate spent fuel pool accidents are beyond the scope of a license renewal proceeding and therefore inadmissible; CLI-09-10, 69 NRC 521 (2009)
- a petitioner who fails to satisfy the contention pleading requirements in its initial contention submission may not use its reply to rectify those inadequacies or to raise new arguments, but may use the reply to flesh out contentions that have already met the pleading requirements; LBP-06-20, 64 NRC 131 (2006)

SUBJECT INDEX

- a proposed new contention challenging the adequacy of applicant's recently issued metal fatigue calculations meets the three-factor test of 10 C.F.R. 2.309(f)(2)(i)-(iii) and the six-factor test of 10 C.F.R. 2.309(f)(1); LBP-07-15, 66 NRC 261 (2007)
- a request that the Commission require licensees to return spent fuel pools to their original low-density storage configuration and to use dry storage for any excess fuel is not appropriate for litigation; CLI-06-26, 64 NRC 225 (2006)
- absent a waiver pursuant to 10 C.F.R. 2.335, Category 1 issues are not subject to challenge in a relicensing proceeding because they involve environmental effects that are essentially similar for all plants and need not be assessed repeatedly on a site-specific basis; LBP-08-13, 68 NRC 43 (2008)
- additional briefing is requested on whether any additional severe accident mitigation alternatives should have been identified as potentially cost-beneficial, not whether further analysis may refine the details in the SAMA NEPA analysis; CLI-09-11, 69 NRC 529 (2009)
- adequacy or inadequacy of applicant's severe accident mitigation alternatives analysis is certainly within the scope of a license renewal proceeding; LBP-10-15, 72 NRC 257 (2010)
- affidavit support for a motion to reopen must provide sufficient information to support a prima facie showing that a deficiency exists in the application and the deficiency presents a significant safety issue; LBP-08-12, 68 NRC 5 (2008)
- an issue can be related to plant aging and still not warrant review at the time of a license renewal application, if the aging-related issue is adequately dealt with by regulatory processes on an ongoing basis; LBP-07-11, 66 NRC 41 (2007)
- any challenge to an NRC Staff decision to grant an exemption from a 1-hour barrier to a 24/30-minute barrier is a direct challenge to the current licensing basis and unrelated to the effects of plant aging and the license renewal application; LBP-08-13, 68 NRC 43 (2008)
- any new and significant information regarding the environmental impacts of license renewal of which the applicant is aware must be included in the environmental report even if this concerns a Category 1 issue; LBP-06-23, 64 NRC 257 (2006)
- applicant moves for summary disposition of a contention involving whether leak detection through monitoring wells is necessary as part of the plant's aging management program; LBP-07-12, 66 NRC 113 (2007)
- Category 1, or generic, issues need not be repeatedly assessed on a plant-by-plant basis, and license renewal applicants may in their ERs refer to and adopt the generic environmental impact findings found in 10 C.F.R. Part 51, Subpart A, Appendix B, Table B-1; LBP-06-23, 64 NRC 257 (2006)
- Category 2 issues are not essentially similar for all plants because they must be reviewed on a site-specific basis and thus challenges relating to these issues are proper; LBP-08-13, 68 NRC 43 (2008)
- Category 2 issues, for which an applicant must make a plant-specific analysis of environmental impacts in its environmental report and the NRC Staff must prepare a supplemental environmental impact statement, ordinarily are deemed to be within the scope of license renewal proceedings; LBP-06-7, 63 NRC 188 (2006); LBP-06-23, 64 NRC 257 (2006); LBP-07-11, 66 NRC 41 (2007)
- challenge to specific input data to the severe accident mitigation alternatives analysis could bring a contention on adequacy of an evacuation plan within the scope of license renewal; LBP-07-11, 66 NRC 41 (2007)
- contention challenging a particular use of a straight-line Gaussian air dispersion model in the applicant's SAMA analysis is admissible; CLI-09-11, 69 NRC 529 (2009)
- contentions pertaining to issues dealing with the current operating license, including the Updated Final Safety Analysis Report, are not within the scope of license renewal review; LBP-08-13, 68 NRC 43 (2008)
- contentions that applicant's ER fails to satisfy NEPA because it does not address the environmental impacts of severe spent fuel pool accidents, and fails to address severe accident mitigation alternatives that would reduce the potential for spent fuel pool water loss and fires, are found inadmissible; LBP-06-23, 64 NRC 257 (2006)
- emergency planning issues are not admissible in the context of license renewal; LBP-06-20, 64 NRC 131 (2006); LBP-06-23, 64 NRC 257 (2006); LBP-08-13, 68 NRC 43 (2008)
- environmental issues identified as "Category 1," or "generic," issues in 10 C.F.R. Part 51, Subpart A, Appendix B, are not within the scope of the proceeding; LBP-07-11, 66 NRC 41 (2007)

SUBJECT INDEX

environmental issues that might otherwise be relevant to license renewal shall be resolved generically for all plants and thus are beyond the scope of a license renewal hearing; LBP-06-7, 63 NRC 188 (2006)

for determining the “likelihood” that a motion to reopen would change the outcome of a license renewal proceeding, the Commission indicated that a “would have been reached” standard is too strict, and a “might have been reached” standard is too lax; LBP-08-12, 68 NRC 5 (2008)

for systems, structures, and components subject to aging management review, discussion of proposed inspection and monitoring details will come before a board only as they are needed to demonstrate that the intended function of relevant SSCs will be maintained for the license renewal period; LBP-08-13, 68 NRC 43 (2008)

if a structure or component is already required to be replaced at mandated, specified time periods, it would fall outside the scope of review; LBP-07-11, 66 NRC 41 (2007)

if petitioner believes that current NRC regulations are inadequate, the venue for raising such a concern is a section 2.802 petition to institute a rulemaking action; LBP-08-13, 68 NRC 43 (2008)

intervenors may not challenge a licensee’s current licensing basis; LBP-07-17, 66 NRC 327 (2007)

intervention petitioners must demonstrate standing and proffer at least one admissible contention; CLI-06-24, 64 NRC 111 (2006)

issues already the focus of ongoing regulatory processes do not come within the NRC’s safety review of a license renewal application; LBP-07-11, 66 NRC 41 (2007)

issues related to the environmental impact of onsite spent fuel storage after the license renewal term are covered by NRC’s Waste Confidence Rule and are outside the scope of a license renewal proceeding because contentions may not challenge a regulation; LBP-06-20, 64 NRC 131 (2006)

issues relating to a plant’s current licensing basis are ordinarily beyond the scope of a license renewal review, because those issues already are monitored, reviewed, and commonly resolved as needed by ongoing regulatory oversight; LBP-06-7, 63 NRC 188 (2006); LBP-06-22, 64 NRC 229 (2006)

metal fatigue is an example of age-related degradation that properly falls within the scope of this proceeding; LBP-07-15, 66 NRC 261 (2007)

motion for summary disposition of contention questioning applicant’s handling of its severe accident mitigation alternatives analysis concerning evacuation times, economic consequences, and meteorological patterns is granted; LBP-07-13, 66 NRC 131 (2007)

NEPA imposes no duty on NRC to consider intentional malevolent acts; LBP-07-11, 66 NRC 41 (2007)

NEPA imposes no legal duty on the NRC to consider intentional malevolent acts on a case-by-case basis in conjunction with commercial power reactor license renewal applications; LBP-08-13, 68 NRC 43 (2008)

NEPA is the only legal grounds for an admissible contention relating to environmental justice; LBP-08-13, 68 NRC 43 (2008)

new and significant information that would normally fall within a Category 1 issue is not a proper subject for a contention, absent a waiver of the rule that Category 1 issues need not be addressed in a license renewal proceeding; LBP-07-11, 66 NRC 41 (2007)

NRC adjudicatory hearings are not environmental impact statement editing sessions; CLI-09-11, 69 NRC 529 (2009)

NRC Staff’s revision of the Final Safety Evaluation Report to account for applicant’s confirmatory analysis would not, standing alone, be a materially different result that justifies reopening the record, because it would neither change the outcome of the renewal proceeding nor impose a different licensing condition on an applicant; LBP-08-12, 68 NRC 5 (2008)

NRC’s public health and safety review ordinarily is limited to a review of the plant structures and components that will require an aging management review for the period of extended operation and the plant’s systems, structures, and components that are subject to an evaluation of time-limited aging analyses; LBP-06-7, 63 NRC 188 (2006)

Part 54 addresses safety-related issues and Part 51 addresses the environmental aspects; LBP-06-23, 64 NRC 257 (2006)

petitioner is not required to redo SAMA analyses in order to raise a material issue; LBP-08-13, 68 NRC 43 (2008)

petitioner need not submit a sensitivity analysis in order to establish that a SAMA-related contention is material; LBP-10-15, 72 NRC 257 (2010)

SUBJECT INDEX

petitioner's assumption that, because it cannot check all SAMA analysis details, the analysis is incomplete or incorrect is mere speculation and is insufficient to support the admissibility of its contention; LBP-08-13, 68 NRC 43 (2008)

petitioners must demonstrate that an issue focuses on the potential impacts of an additional 20 years of nuclear power plant operation, not on everyday operational issues; CLI-06-4, 63 NRC 32 (2006)

proceeding will remain open during the pendency of a remand, during which time, petitioners are free to submit a motion to reopen the record should they seek to address any genuinely new issues related to the license renewal application that previously could not have been raised; CLI-10-17, 72 NRC 1 (2010)

reasonable alternatives for license renewal proceedings are limited to discrete electric generation sources that are technically feasible and commercially available; LBP-08-13, 68 NRC 43 (2008)

resolution of a summary disposition motion is governed by the standards for summary disposition set forth in Subpart G; LBP-07-12, 66 NRC 113 (2007)

safety contentions must focus on topics related to the detrimental effects of aging and related time-limited issues; LBP-07-15, 66 NRC 261 (2007)

safety issues that were reviewed for the initial license and that have been closely monitored by NRC inspection during the license term need not be reviewed again in this context; LBP-08-13, 68 NRC 43 (2008)

scope of a license renewal proceeding is limited to review of plant structures and components requiring an aging management review for the period of extended operation and to the plant's systems, structures, and components that are subject to an evaluation of time-limited aging analyses; LBP-06-22, 64 NRC 229 (2006); LBP-10-21, 72 NRC 616 (2010)

selection of appropriate hearing procedures is a contention-by-contention matter, dependent on the nature of the specific issues involved in the contention; LBP-06-20, 64 NRC 131 (2006); LBP-07-15, 66 NRC 261 (2007)

since a license amendment involves a facility with ongoing operations, a petitioner's challenge must show that the amendment will cause a distinct new harm or threat apart from the activities already licensed; LBP-06-22, 64 NRC 229 (2006)

spent fuel pool fires are Category 1 environmental issues and therefore are addressed generically in the generic environmental impact statement for license renewals; LBP-08-13, 68 NRC 43 (2008)

terrorism contentions are directly related to security and are therefore, under NRC license renewal rules, unrelated to the detrimental effects of aging, and consequently are beyond the scope of, not material to, and inadmissible in, a license renewal proceeding; CLI-07-8, 65 NRC 124 (2007); CLI-07-9, 65 NRC 139 (2007)

the Atomic Energy Act does not give a state an absolute right of cross-examination, but requires only that the Commission shall afford reasonable opportunity for state representatives to interrogate witnesses; LBP-06-20, 64 NRC 131 (2006)

the licensing board finds that petitioners have standing to intervene but have not submitted a contention that is admissible, and the proceeding must therefore be terminated; LBP-07-11, 66 NRC 41 (2007)

the scope of a proceeding is addressed, with regard to safety-related issues, in 10 C.F.R. Part 54, and, with regard to environmental issues, in 10 C.F.R. Part 51; LBP-07-11, 66 NRC 41 (2007)

the scope of the proceeding is limited to the potential detrimental effects of aging that are not routinely addressed by ongoing regulatory oversight programs; LBP-07-17, 66 NRC 327 (2007)

the term "severe accidents" encompasses only reactor accidents and not spent fuel pool accidents, which fall within the analysis of the generic Category 1 issue of onsite storage of spent fuel; LBP-06-23, 64 NRC 257 (2006)

there is no mandatory or automatic default to Subpart L procedures; LBP-07-15, 66 NRC 261 (2007)

to challenge a SAMA analysis, petitioner must, at a minimum, address the approximate relative cost and benefit of the SAMA; LBP-08-13, 68 NRC 43 (2008)

to reopen a closed record to introduce a new issue, movant has the burden of showing that the new information will likely trigger a different result; LBP-08-12, 68 NRC 5 (2008)

whether a plan is necessary to manage the cumulative effects of embrittlement of the reactor pressure vessels and associated internals is within the scope of this proceeding; LBP-08-13, 68 NRC 43 (2008)

SUBJECT INDEX

whether the “reasonable assurance” standard is satisfied is based on sound technical judgment applied on a case-by-case basis not susceptible to formalistic quantification or mechanistic application; LBP-07-17, 66 NRC 327 (2007)

whether the reasonable assurance standard is satisfied is directly linked to an assessment of the adequacy of the aging management program; LBP-07-17, 66 NRC 327 (2007)

See also Operating License Renewal Proceedings

LICENSE RENEWALS

a license renewal may be set aside or appropriately conditioned even after it has been issued, upon subsequent administrative or judicial review; CLI-10-8, 71 NRC 142 (2010)

a Part 51 environmental review has both a generic component and a plant-specific component; CLI-06-24, 64 NRC 111 (2006)

a party opposing a renewed license does not face irreparable harm by the mere issuance of a renewed license; CLI-08-13, 67 NRC 396 (2008)

a petition for review does not automatically prevent issuance of a renewed operating license; CLI-09-7, 69 NRC 235 (2009)

a renewed license takes effect immediately, with a term of up to 20 years plus the number of years remaining on the initial operating license; CLI-08-23, 68 NRC 461 (2008)

a waiver of 10 C.F.R. 2.335 is necessary to litigate an applicant’s failure to include new and significant information concerning a Category 1 issue in its environmental report; LBP-06-20, 64 NRC 131 (2006)
adjudicating Category 1 issues site by site based merely on a claim of new and significant information would defeat the purpose of resolving generic issues in a GEIS; CLI-07-3, 65 NRC 13 (2007)

although a contention regarding the risks of terrorism related to the high-density racking of spent fuel in pools is new and significant information concerning a Category 1 matter, the contention is not admissible; LBP-06-20, 64 NRC 131 (2006)

although the primary duties of NEPA fall on the NRC Staff in NRC proceedings, the initial requirement to analyze the environmental impacts of an action is directed to applicants; LBP-07-11, 66 NRC 41 (2007)

an issue can be related to plant aging and still not warrant safety review if the issue is adequately dealt with by regulatory processes on an ongoing basis; LBP-06-23, 64 NRC 257 (2006)

applicant must demonstrate, by a preponderance of the evidence, that its aging management program provides reasonable assurance that activities authorized by the renewed license will be conducted in a manner consistent with the current licensing basis, and that the effects of aging will be detected and corrected; LBP-07-17, 66 NRC 327 (2007)

applicant must provide additional analysis of even a Category 1 issue if new and significant information has surfaced; LBP-06-20, 64 NRC 131 (2006)

applicant need not discuss severe accident mitigation alternatives for generic, or Category 1, issues; CLI-07-3, 65 NRC 13 (2007)

applicant’s environmental report must contain a description of the proposed action, including plans to modify the facility or its administrative control procedures, and must describe in detail the modifications directly affecting the environment or affecting plant effluents that affect the environment; LBP-06-23, 64 NRC 257 (2006)

applicants must demonstrate how their programs will be effective in managing the effect of aging during the period of extended operations and identify any additional actions that will need to be taken to manage adequately the detrimental effects of aging; LBP-08-22, 68 NRC 590 (2008)

applicants must demonstrate that they will adequately manage the detrimental effects of aging for all important components and structures, with attention, for example, to metal fatigue, erosion, corrosion, thermal and radiation embrittlement, microbiologically induced effects, creep, and shrinkage; CLI-06-24, 64 NRC 111 (2006)

applicants must provide a plant-specific analysis of all Category 2 issues; CLI-09-10, 69 NRC 521 (2009)

as a general matter, NEPA imposes no legal duty on the NRC to consider intentional malevolent acts in conjunction with commercial power reactor license renewal applications; CLI-07-9, 65 NRC 139 (2007)

because Category 1 issues already have been reviewed on a generic basis for all plants, an applicant’s environmental report need not provide a site-specific analysis of these issues; CLI-09-10, 69 NRC 521 (2009)

SUBJECT INDEX

burden is on applicant to show that concrete in containment structures will maintain its integrity during the extended period of operations or to develop an aging management plan that ensures that any indication of degradation is detected and remediated; LBP-08-13, 68 NRC 43 (2008)

condensate storage system buried pipes are outside the scope of a license renewal proceeding with respect to their "safety" functionality, but that does not eliminate the need for consideration of potential leaks from those buried pipes because of their role in fire protection; LBP-08-22, 68 NRC 590 (2008)

effects of heat shock on the protection and propagation of fish and shellfish is a Category 2 environmental issue and must be addressed on a case-by-case basis; CLI-07-16, 65 NRC 371 (2007)

environmental effects of storing spent fuel for an additional 20 years at the site of nuclear reactors would be not significant; CLI-07-3, 65 NRC 13 (2007)

even if a particular system falls within the scope of Part 54, not all structures and components comprising that system will necessarily be subject to Part 54 aging management requirements; LBP-08-22, 68 NRC 590 (2008)

failure of an applicant to include new and significant information concerning a Category 1 issue regarding the dangers of high-density racking of spent fuel in its environmental report does not give rise to an admissible contention; LBP-06-20, 64 NRC 131 (2006)

federal agencies must include in every recommendation or report on major federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on the environmental impact of the proposed action; LBP-06-23, 64 NRC 257 (2006); LBP-07-11, 66 NRC 41 (2007)

generic environmental impacts analyzed in the GEIS for license renewal are designated "Category 1" issues, and the license renewal applicant is generally excused from discussing them; CLI-07-3, 65 NRC 13 (2007)

if a structure or component is already required to be replaced at mandated, specified time periods, it would fall outside the scope of safety review; LBP-08-22, 68 NRC 590 (2008)

if applicant's plant utilizes a once-through cooling system, applicant shall provide a copy of a Clean Water Act § 316a variance or equivalent state permit and supporting documentation; CLI-07-16, 65 NRC 371 (2007)

in conducting its analysis of the impact of the license renewal on land use, applicant should consider the impact on real estate values that would be caused by license renewal or nonrenewal; LBP-08-13, 68 NRC 43 (2008)

in evaluating metal fatigue, a component's cumulative usage factor is the fundamental parameter used to determine whether it will likely develop cracks during the license renewal period and thus is subject to an aging management plan; LBP-08-13, 68 NRC 43 (2008)

in uncontested operating license renewal proceedings, NRC Staff is authorized to issue a renewed license once the Director of the Office of Nuclear Reactor Regulation has made the appropriate findings; CLI-09-7, 69 NRC 235 (2009)

it is unnecessary and inappropriate to throw open the full gamut of provisions in a plant's current licensing basis to reanalysis during the safety review; LBP-08-22, 68 NRC 590 (2008)

monitoring, and the installation of monitoring wells, is a matter for ongoing operation and maintenance, and not within the scope of matters properly considered in a license renewal; LBP-08-22, 68 NRC 590 (2008)

new contention on the adequacy of consideration of the dissolved oxygen factor in the cumulative usage factor environmental analysis and use of inappropriate heat transfer equations was previously litigated and resolved and thus is not admissible; LBP-09-9, 70 NRC 41 (2009)

NRC is barred from imposing or second-guessing effluent limitations or water quality certification requirements imposed by EPA or an authorized state, but it is may address water quality matters in its assessment of environmental impacts; LBP-06-20, 64 NRC 131 (2006)

NRC's safety review is focused upon those potential detrimental effects of aging that are not routinely addressed by ongoing regulatory oversight programs; LBP-06-23, 64 NRC 257 (2006); LBP-07-11, 66 NRC 41 (2007)

one way to challenge a generic finding, or Category 1 issue, in a license proceeding is to apply for a waiver when special circumstances are such that the application of the rule or regulation would not serve the purposes for which the rule or regulation was adopted; CLI-07-3, 65 NRC 13 (2007)

SUBJECT INDEX

only Category 2 environmental issues must be addressed in an environmental report and may therefore be litigated at an adjudicatory hearing; CLI-07-16, 65 NRC 371 (2007)

Part 51 was amended to establish environmental review requirements for license renewals that are both efficient and more effectively focused; LBP-07-11, 66 NRC 41 (2007)

Part 54 does not require a comprehensive preapplication baseline inspection; LBP-08-13, 68 NRC 43 (2008)

quality assurance programs must include written test procedures that incorporate the requirements and acceptance limits contained in applicable design documents, and, as appropriate, proof tests prior to installation, preoperational tests, and operational tests during nuclear power plant operation, of structures, systems, and components; LBP-08-22, 68 NRC 590 (2008)

quality assurance requirements apply to aging management plans; LBP-08-22, 68 NRC 590 (2008)

regulations established under Part 50, including compliance with the ASME Code, must be followed during the period of extended operation; CLI-08-28, 68 NRC 658 (2008)

relevant plant systems, structures, and components are those that are safety-related, or whose failure could affect safety-related functions, or that are relied on to demonstrate compliance with the NRC's regulations for fire protection, environmental qualification, pressurized thermal shock, anticipated transients without scram, and station blackout; CLI-08-23, 68 NRC 461 (2008)

review of a renewal application does not reopen issues relating to a plant's current licensing basis, or any other issues that are subject to routine and ongoing regulatory oversight and enforcement; CLI-06-24, 64 NRC 111 (2006)

site-specific claims relating to the safe ongoing operations of a nuclear reactor are not matters peculiar to plant aging or to the license extension period; CLI-07-8, 65 NRC 124 (2007)

Staff will issue a renewed license in contested proceedings only after notice to and authorization by the Commission; CLI-08-13, 67 NRC 396 (2008)

Staff's final supplemental environmental impact statement must take account of public comments concerning new and significant information on Category 1 findings; LBP-06-20, 64 NRC 131 (2006)

Staff's generic environmental impact statement for license renewal has already performed a discretionary analysis of terrorist acts in connection with license renewal and concluded that the core damage and radiological release from such acts would be no worse than the damage and release to be expected from internally initiated events; CLI-07-8, 65 NRC 124 (2007)

standards defining the findings NRC must make to support a license renewal are set forth in 10 C.F.R. 54.29; LBP-07-11, 66 NRC 41 (2007)

the Commission can legitimately rely on a state permit that expires only 5 years into the 20-year renewal period; CLI-07-16, 65 NRC 371 (2007)

the Commission will issue a renewed license if it determines, among other things, that there is reasonable assurance that the plant will operate in accordance with its current licensing basis during the period of extended operation; CLI-08-23, 68 NRC 461 (2008); LBP-08-22, 68 NRC 590 (2008)

the ER must describe the proposed action, including the applicant's plans to modify the facility or its administrative control procedures, and provide detail on the modifications directly affecting the environment or affecting plant effluents that affect the environment; LBP-07-11, 66 NRC 41 (2007)

the generic environmental impact statement provides data supporting the table of Category 1 and 2 issues in 10 C.F.R. Part 51, Subpart A, Appendix B; LBP-06-23, 64 NRC 257 (2006)

the Part 54 safety review is limited to those potential detrimental effects of aging that are not routinely addressed by ongoing regulatory oversight programs; CLI-06-24, 64 NRC 111 (2006)

the primary duties of NEPA fall on the NRC Staff in NRC proceedings, but the initial requirement to analyze the environmental impacts of an action is directed to applicants; LBP-06-23, 64 NRC 257 (2006)

the renewal may be set aside or appropriately conditioned even after it has been issued, upon subsequent administrative or judicial review; CLI-08-13, 67 NRC 396 (2008)

the statutory requirement that a federal agency contemplating a major action prepare an EIS serves NEPA's action-forcing purpose in two important respects; LBP-06-23, 64 NRC 257 (2006)

to the extent that any analyses performed during the initial licensing process were limited to the initial 40-year license period, applicant must show that it has reassessed these time-limited aging analyses and that these analyses remain valid for the period of extended operation; CLI-06-24, 64 NRC 111 (2006)

SUBJECT INDEX

when a proceeding is contested, the Staff, as a matter of policy, seeks Commission approval to issue the license, even though issuance of the license is not stayed by the petition for review; CLI-09-7, 69 NRC 235 (2009)

when preparing the supplemental environmental impact statement, Staff must consider any significant new information related to Category 1 issues; LBP-06-20, 64 NRC 131 (2006)

where a petitioner argues that new information contradicts assumptions underlying the entire generic analysis for all facilities or a whole class of facilities, the appropriate remedy is a rulemaking petition; CLI-07-3, 65 NRC 13 (2007)

See also Materials License Renewal; Materials License Renewal Proceedings; Operating License Renewal

LICENSE TERMINATION PLANS

if licensee wishes to challenge the compatibility category that is assigned to a particular regulation, including the license termination rule, it may do so at any time through submission of a petition for rulemaking; CLI-10-8, 71 NRC 142 (2010)

LICENSE TRANSFER PROCEEDINGS

a petitioner cannot, for purposes of standing, successfully claim injury based on the financial qualifications and assurances of the transferor; CLI-07-22, 65 NRC 525 (2007)

a union in one facility lacks standing to participate in other interrelated license transfer proceedings, given that the union did not represent employees at the other facilities; CLI-08-19, 68 NRC 251 (2008)

although the Commission is disinclined to step into the middle of a labor dispute or involve itself in the personnel decisions of licensees, it has recognized that there may be cases where employment-related contentions are closely tied to specific health-and-safety concerns or to potential violations of NRC rules that can be admitted for a hearing; CLI-06-21, 64 NRC 30 (2006)

how the Commission determines proximity-based standing is described; CLI-08-19, 68 NRC 251 (2008)

if petitioners cannot show that their new or revised contentions could not have been submitted without the requested access to redacted information in the application, then they will have to meet not only the contention pleading requirements, but also the late-filing requirements; CLI-07-18, 65 NRC 399 (2007)

“issues” constitute “contentions” under 10 C.F.R. 2.309(f) and must therefore meet the standards for admissibility set forth in that regulation; CLI-07-18, 65 NRC 399 (2007)

NRC Staff ordinarily does not participate as a party in the adjudicatory portion of these proceedings; CLI-07-18, 65 NRC 399 (2007)

petitioners in direct license transfer cases who qualified for proximity-based standing lived within a 5-1/2-mile radius of their plant; CLI-08-19, 68 NRC 251 (2008)

proximity standing has been recognized at close distances where a petitioner frequently engages in substantial business and related activities in the vicinity of the facility, engages in normal, everyday activities in the vicinity, has regular and frequent contacts in an area near a licensed facility, or otherwise has visits of a length and nature showing an ongoing connection and presence; CLI-07-21, 65 NRC 519 (2007)

proximity-based standing has been denied where contact has been limited to mere occasional trips to areas located close to reactors; CLI-07-21, 65 NRC 519 (2007)

proximity-based standing in license transfer proceedings had been denied to petitioners within 5-10 miles, 12 miles, and 40 miles from licensed facilities; CLI-07-21, 65 NRC 519 (2007)

the Commission determines on a case-by-case basis whether the proximity presumption should apply, considering the obvious potential for offsite radiological consequences, or lack thereof, from the application at issue, and specifically taking into account the nature of the proposed action and the significance of the radioactive source; CLI-07-19, 65 NRC 423 (2007)

the longest specific distance for which the Commission has granted proximity-based standing in a post-Vogtle license transfer case is 6 to 6-1/2 miles; CLI-07-21, 65 NRC 519 (2007)

“transmission services” is a concept central to the determination of standing; CLI-06-2, 63 NRC 9 (2006)

LICENSE TRANSFERS

direct transfers entail a change to operating and/or possession authority; CLI-08-19, 68 NRC 251 (2008)

if Staff approves a license transfer application prior to the Commission completing its adjudication, the application will lack the agency’s final approval until and unless the Commission concludes the adjudication in applicant’s favor; CLI-08-19, 68 NRC 251 (2008)

SUBJECT INDEX

indirect transfers involve corporate restructuring or reorganizations that leave the licensee itself intact as a corporate entity and therefore involve no application for a new operating license; CLI-08-19, 68 NRC 251 (2008)

license transfer applicants who have received Staff approval but are still awaiting the results of a Commission adjudication are free to act in reliance on the Staff's order; CLI-08-19, 68 NRC 251 (2008)

prospective new owner and operator of facilities are not electric utilities and must therefore demonstrate financial qualifications to own and/or operate the plant; CLI-07-18, 65 NRC 399 (2007)

Staff approval of a license transfer could be rescinded if the Commission later determines that intervenors have raised valid objections to the license transfer application; CLI-08-19, 68 NRC 251 (2008)

the Commission declined to adopt a proximity presumption in an independent spent fuel storage installation license transfer proceeding, where the petitioner had not demonstrated that the mere transfer of the ISFSI somehow increased his risk of radiological harm; LBP-09-20, 70 NRC 565 (2009)

LICENSEE CHARACTER

a genuine dispute exists despite the fact that character or integrity is not required by regulation to be addressed in the license application; LBP-09-6, 69 NRC 367 (2009)

a single, past violation of licensee's state permit could not demonstrate an ongoing pattern of violations or disregard for regulations that might be expected to recur in the future; CLI-09-9, 69 NRC 331 (2009)

allegations of several serious safety problems that had persisted with respect to the reactor over a period of years are a legitimate attack on management quality and integrity; CLI-09-9, 69 NRC 331 (2009)

an investigation into applicant's character should also include a review of the applicant's good character; LBP-09-6, 69 NRC 367 (2009)

as long as petitioner alleges, with sufficient support, that applicant's bad character or lack of integrity has direct and obvious relevance to the licensing action at issue in the proceeding, a character-based contention is admissible; LBP-09-6, 69 NRC 367 (2009)

contentions that DOE lacks management integrity to operate a high-level waste geologic repository are impermissible challenges to the Nuclear Waste Policy Act and are therefore beyond the scope of the proceeding; CLI-09-14, 69 NRC 580 (2009)

historical actions by an applicant are not relevant to its current fitness unless there is some direct and obvious relationship between the asserted character issues and the licensing action in dispute; CLI-09-14, 69 NRC 580 (2009); CLI-10-20, 72 NRC 185 (2010)

in making determinations about integrity or character, the Commission may consider evidence bearing upon the licensee's candor, truthfulness, willingness to abide by regulatory requirements, and acceptance of responsibility to protect public health and safety; LBP-09-6, 69 NRC 367 (2009)

in the absence of evidence to the contrary, NRC does not presume that a licensee will violate agency regulations wherever the opportunity arises; CLI-10-20, 72 NRC 185 (2010); LBP-06-7, 63 NRC 188 (2006); LBP-06-12, 63 NRC 403 (2006); LBP-10-20, 72 NRC 571 (2010)

lack of either technical competence or character qualifications on the part of licensee or applicant is sufficient grounds for the revocation of a license or the denial of a license application; LBP-09-6, 69 NRC 367 (2009)

license renewal is an appropriate occasion for appraising the entire past performance of the licensee; CLI-09-9, 69 NRC 331 (2009)

NRC is not barred from considering licensee's past and continuing managerial and performance problems when it determines whether licensee has demonstrated that actions will be taken to manage the effects of aging during the period of extended operation; LBP-10-15, 72 NRC 257 (2010)

petitioner cannot base standing or a contention on the possibility that the licensee will violate the terms of its license; CLI-10-20, 72 NRC 185 (2010)

potential scope of adjudicatory hearings in license renewal proceedings is the same as the scope of the Staff's review; LBP-10-15, 72 NRC 257 (2010)

the character or integrity of an applicant is a proper consideration in a licensing proceeding; LBP-09-6, 69 NRC 367 (2009)

the Commission's decision not to entertain a state intervenor's integrity and competence contentions in the high-level waste repository proceeding is consistent with its practice of extending comity to other governmental entities; CLI-09-14, 69 NRC 580 (2009)

SUBJECT INDEX

to be litigable, there must be some direct and obvious relationship between licensee character issues and the licensing action in dispute; CLI-06-22, 64 NRC 37 (2006)
to raise an admissible issue, allegations of management improprieties must be of more than historical interest; CLI-09-9, 69 NRC 331 (2009)
when DOE is before the Commission, a heightened standard applies for the admissibility of integrity contentions beyond what is imposed by 10 C.F.R. 2.309(f)(1); LBP-09-6, 69 NRC 367 (2009)

LICENSEE EMPLOYEES

although not required by regulation, settlement agreements that contain language reinforcing employees' rights to raise safety concerns and communicate with the NRC avoid the possibility of being construed in a way that could be a violation; DD-10-1, 72 NRC 149 (2010)
an employee who contributes to submission of information to the NRC that the employee knows is not complete or accurate in some material respect places the licensee in violation; LBP-09-24, 70 NRC 676 (2009)
deliberate submission to the NRC of information that an employee knows to be incomplete or inaccurate in some respect material to the NRC is a violation; CLI-10-23, 72 NRC 210 (2010); LBP-09-24, 70 NRC 676 (2009)
nondisparagement clauses in retention bonus agreements are common in employment agreements and NRC should not interfere with these agreements unless it finds such a clause violates 10 C.F.R. 50.7(f) or is applied in a fashion that prevents or retaliates against an employee for engaging in protected activities such as communicating with NRC; DD-10-1, 72 NRC 149 (2010)
operating reactor licensees are not required to implement an employee concerns program, but are required to establish and implement an effective corrective action program; DD-10-1, 72 NRC 149 (2010)
petitioner's request for action concerning deficiencies in licensee's employee concerns program is denied; DD-10-1, 72 NRC 149 (2010)
the purpose of 10 C.F.R. 50.7(f) is to ensure that licensees do not enter into employment agreements that would prohibit, restrict, or otherwise discourage an employee or former employee from providing the NRC with information of regulatory significance; DD-10-1, 72 NRC 149 (2010)

LICENSEES

a license renewal proceeding is an appropriate occasion for appraising the entire past performance of the licensee; LBP-08-24, 68 NRC 691 (2008)
a licensee employee who contributes to submission of information to the NRC that the employee knows is not complete or accurate in some material respect places the licensee in violation; LBP-09-24, 70 NRC 676 (2009)
a licensee need not be an electric utility, but a non-electric utility license applicant must meet heightened financial qualifications; LBP-07-4, 65 NRC 281 (2007)
after completion of decommissioning, neither licensee nor the NRC retains any continuing obligation or jurisdiction, respectively, with respect to a site, unless new information shows that the Part 20 criteria were not met and the residual radioactivity remaining on the site could result in a significant threat to public health and safety; CLI-09-1, 69 NRC 1 (2009)
compliance with the current licensing basis is mandatory unless the licensing basis is properly changed or the licensee is formally excused by the NRC from compliance; LBP-06-16, 63 NRC 737 (2006)
if a licensee has voluntarily provided information to the NRC, the voluntary nature of the submission is not compromised by the NRC's ability to conduct its own investigation into the same matter; CLI-08-6, 67 NRC 179 (2008)
licensee remains authorized to own and possess the facility even after the operating license expires; LBP-09-17, 70 NRC 311 (2009)
neither a uranium enrichment facility nor a nuclear power plant may be owned, controlled, or dominated by a foreign entity; CLI-09-9, 69 NRC 331 (2009)
written commitments that are docketed and in effect constitute part of the current licensing basis, which is the set of NRC requirements applicable to a specific plant; LBP-06-16, 63 NRC 737 (2006)
See also Applicants

LICENSES

an NRC license is unnecessary for construction activity on an independent spent fuel storage installation; CLI-06-23, 64 NRC 107 (2006)

SUBJECT INDEX

See Combined Licenses; General Licenses; Materials Licenses; Operating Licenses; Senior Reactor Operator License

LICENSING, PERFORMANCE-BASED

NRC uses performance-based licensing as an additional way to decrease the administrative burden of regulation while ensuring the continued protection of public health and safety; LBP-06-19, 64 NRC 53 (2006)

LICENSING BASIS

during the renewal term, this consists of the current licensing basis together with new commitments to monitor, manage, and correct age-related degradation unique to license renewal; LBP-08-25, 68 NRC 763 (2008)

LICENSING BOARD DECISIONS

a board has a duty not only to resolve contested issues, but to articulate in reasonable detail the basis for the course of action chosen; CLI-09-14, 69 NRC 580 (2009)

a board is free to decide an issue on a theory different from those argued by the litigants, but only if it explains the specific basis of its ruling and gives the litigants a chance to present arguments and, where appropriate, evidence regarding the board's new theory; CLI-09-3, 69 NRC 68 (2009)

a board's decision on one of the admission elements does not necessarily render any discussion of the other superfluous because a decision addressing only one of the two items creates the potential for significant delay if that single determination is later overturned on appeal; LBP-07-10, 66 NRC 1 (2007)

a board's ultimate NEPA judgments can be made on the basis of the entire adjudicatory record in addition to the Staff's final environmental impact statement; LBP-09-7, 69 NRC 613 (2009)

a licensing board need not formally reopen the record in order to assess the relative worth of the parties' competing evidence; LBP-08-12, 68 NRC 5 (2008)

a ruling on standing does not constitute dicta simply because the board also concluded that the petitioner had failed to proffer an admissible contention; LBP-07-10, 66 NRC 1 (2007)

although a board is free to view intervenors' support for its contention in the light most favorable to intervenors, the board may not ignore the contention admissibility requirements of 10 C.F.R. 2.309(f)(1); CLI-09-3, 69 NRC 68 (2009)

although the Commission has authority to make de novo findings of fact, it does not do so where a licensing board has issued a plausible decision that rests on carefully rendered findings of fact; CLI-09-7, 69 NRC 235 (2009)

any licensing board merits litigation-based findings have the effect of amending or supplementing the final environmental impact statement; LBP-07-3, 65 NRC 237 (2007)

boards must decide whether the final environmental impact statement alternatives discussion is sufficiently complete to aid the Commission in developing and exploring appropriate alternatives to recommended courses of action in any proposal that involves unresolved conflicts concerning alternative uses of available resources; LBP-09-7, 69 NRC 613 (2009)

by its terms, 10 C.F.R. 2.342(a) applies to a stay of a decision or action of a presiding officer or licensing board and therefore does not apply to NRC's approval of a state's application to become an Agreement State; CLI-10-8, 71 NRC 142 (2010)

decisions have no precedential effect beyond the immediate proceeding in which they were issued; LBP-09-15, 70 NRC 198 (2009)

decisions on evidentiary questions fall within boards' authority to regulate hearing procedures; CLI-10-5, 71 NRC 90 (2010)

even if an environmental impact statement prepared by the Staff is found to be inadequate in certain respects, the board's findings, as well as the adjudicatory record, become, in effect, part of the final EIS; LBP-09-7, 69 NRC 613 (2009)

factual material that has not been introduced into evidence cannot serve as the basis for a decision because it deprives opposing parties of an opportunity to impeach it by cross-examination or to rebut it with other evidence; LBP-08-12, 68 NRC 5 (2008)

if a board does not explain how it has arrived at its findings of fact, it would fail to comply with its responsibilities under the Administrative Procedure Act to issue a reasoned decision; CLI-10-23, 72 NRC 210 (2010)

SUBJECT INDEX

if the presiding officer determines that any of the admitted contentions constitute pure issues of law, those contentions must be decided on the basis of briefs or oral argument according to a schedule determined by the presiding officer; LBP-09-6, 69 NRC 367 (2009)

in evaluating a motion to reopen the record, a board properly considers the movant's new allegations and the nonmovant's contrary evidence in determining whether there is a real issue at stake warranting a reopened hearing; LBP-08-12, 68 NRC 5 (2008)

in uncontested cases, boards are expected to issue their final initial decisions generally within 4 to 6 months of the Staff's safety evaluation report and final environmental impact statement issuances; CLI-06-20, 64 NRC 15 (2006)

licensing board rulings are not precedential; CLI-10-2, 71 NRC 27 (2010)

on appeal, the Commission usually defers to boards' fact-based findings; CLI-06-12, 63 NRC 495 (2006); CLI-06-19, 64 NRC 9 (2006); CLI-06-29, 64 NRC 417 (2006)

the adjudicatory record and board decision and any Commission appellate decisions become, in effect, part of the final environmental impact statement; LBP-06-19, 64 NRC 53 (2006)

the admissibility of proposed contentions may be determined after the Staff has issued the materials license amendment; CLI-07-20, 65 NRC 499 (2007)

the Commission defers to a board's factual findings and generally steps in only to correct clearly erroneous findings, i.e., findings not even plausible in light of the record viewed in its entirety; CLI-10-5, 71 NRC 90 (2010)

the Commission does not exercise its authority to make de novo findings of fact where a licensing board has issued a plausible decision that rests on carefully rendered findings of fact; CLI-10-5, 71 NRC 90 (2010); CLI-10-18, 72 NRC 56 (2010)

the Commission generally defers to board decisions regarding standing and contention admissibility in the absence of clear error or an abuse of discretion; CLI-06-24, 64 NRC 111 (2006); CLI-08-17, 68 NRC 231 (2008); CLI-10-7, 71 NRC 133 (2010)

the Commission may take discretionary review of a licensing board's initial decision; CLI-10-23, 72 NRC 210 (2010)

the Commission will not overturn a hearing judge's findings simply because the Commission might have reached a different result; CLI-10-23, 72 NRC 210 (2010)

the Commission will review decisions on evidentiary questions under an abuse of discretion standard; CLI-10-5, 71 NRC 90 (2010)

the Commission will review legal questions de novo, and will reverse a licensing board's legal rulings if they are a departure from or contrary to established law; CLI-09-7, 69 NRC 235 (2009)

the Commission's standard of clear error for overturning a board's factual finding is quite high, and the Commission defers to its boards' findings unless clearly erroneous, i.e., not even plausible in light of the record viewed in its entirety; CLI-09-7, 69 NRC 235 (2009)

the fact that the board accorded greater weight to one party's evidence than to the other's is not a basis for overturning the initial decision; CLI-10-23, 72 NRC 210 (2010)

the precedential value of a decision that is not affirmed by the Commission is limited to its power to persuade; LBP-06-1, 63 NRC 41 (2006)

the standard of clear error for overturning a board's factual finding is quite high; CLI-10-5, 71 NRC 90 (2010)

unless there is a strong reason to believe that in a particular case a board has overlooked or misunderstood important evidence, the Commission will defer to its findings of fact; CLI-09-7, 69 NRC 235 (2009)

unreviewed board decisions have no binding effect on a later board; CLI-10-7, 71 NRC 133 (2010)

unreviewed board rulings have no precedential effect; CLI-10-23, 72 NRC 210 (2010); CLI-10-29, 72 NRC 556 (2010); CLI-10-30, 72 NRC 564 (2010)

when a board decision supplements or differs from the findings of the Staff as set forth in its final environmental impact statement, the FEIS is deemed modified by the board's decision to that extent; LBP-06-8, 63 NRC 241 (2006)

when a hearing is held on a proposed action, the licensing board's initial decision on that action constitutes the record of decision; LBP-06-8, 63 NRC 241 (2006)

SUBJECT INDEX

where a board's decision rests in part on facts officially noticed, any party wishing to controvert the facts officially noticed may do so by filing a motion for reconsideration or an appeal from the decision; LBP-08-25, 68 NRC 763 (2008)

where a party merely complains that the board improperly weighed the evidence and identifies no clear board factual or legal error requiring further Commission consideration on appellate review, the Commission is disinclined to second-guess the board's assessment of the party's affidavits; CLI-08-28, 68 NRC 658 (2008)

within 45 days after the filing of answers and replies the presiding officer must issue a decision on each request for hearing/petition to intervene, absent an extension from the Commission; CLI-07-20, 65 NRC 499 (2007)

See also Initial Decisions; Intervention Rulings; Referral of Ruling

LICENSING BOARD JUDGES

a judge should disqualify himself if he has personal knowledge of disputed evidentiary facts concerning the proceeding; CLI-10-22, 72 NRC 202 (2010)

boards include two judges with technical expertise; CLI-10-17, 72 NRC 1 (2010)

if a licensing board member declines to grant a party's recusal motion, the motion is referred to the Commission to determine the sufficiency of the grounds alleged; CLI-10-22, 72 NRC 202 (2010)

issues may arise about which the presiding judges lack specific expertise, but they use their training, experience, knowledge, and judgment to ask the right questions and reach sound decisions; CLI-10-17, 72 NRC 1 (2010)

mere experience or background in a relevant technical field does not imply knowledge of the specific disputed facts in a case; CLI-10-22, 72 NRC 202 (2010)

the disqualification standard under 28 U.S.C. § 455 is not directed to administrative judges, but the Commission and its adjudicatory boards have applied it in assessing a motion for disqualification under 10 C.F.R. 2.313, and it provides a helpful framework for such an assessment; CLI-10-22, 72 NRC 202 (2010)

the standard for disqualification of a judge under 28 U.S.C. § 455 is whether the reasonable person who knows all the circumstances would harbor doubts about the judge's impartiality; CLI-10-22, 72 NRC 202 (2010)

LICENSING BOARD ORDERS

a board erred in admitting a contention on adverse health effects of exposure to arsenic, where petitioners had not laid a foundation and their arguments were speculative; CLI-09-9, 69 NRC 331 (2009)

a board has a duty not only to resolve contested issues, but to articulate in reasonable detail the basis for the course of action chosen; CLI-09-14, 69 NRC 580 (2009)

a licensing board erred in referring a contention to the NRC Staff without making an appropriate contention admissibility determination; CLI-10-9, 71 NRC 245 (2010)

Commission rules in 10 C.F.R. 2.311(d) set a 10-day limit for appealing the selection of a particular hearing procedure because an appeal cannot wait until a board issues a decision on the merits of a contention; CLI-09-7, 69 NRC 235 (2009)

denial of a petition for rule waiver is interlocutory and not immediately reviewable; CLI-10-29, 72 NRC 556 (2010)

petitioners' contention that NRC Staff has not consulted with an affected Indian tribe is premature because it was filed prior to the time for the Staff to act, and the board erred in admitting it; CLI-09-9, 69 NRC 331 (2009)

the board erred in admitting a contention concerning the economic value of wetlands without requiring petitioners to demonstrate that the proposed licensing action or no-action alternative would have any effect on wetlands; CLI-09-9, 69 NRC 331 (2009)

the Commission gives substantial deference to a board's rulings on contention admissibility in the absence of clear error or abuse of discretion; CLI-09-16, 70 NRC 33 (2009)

the presiding officer may grant extensions of time for individual milestones for the participants' filings, and may delay its own issuances for up to 30 days beyond the date of the milestone set in the hearing schedule; CLI-08-18, 68 NRC 246 (2008)

LICENSING BOARDS

a board's chief function is to carefully review all of the evidence, including testimony and exhibits, and to resolve any factual disputes; CLI-09-7, 69 NRC 235 (2009)

SUBJECT INDEX

a simple sufficiency review of uncontested issues should be conducted by boards; LBP-06-17, 63 NRC 747 (2006); LBP-06-28, 64 NRC 460 (2006)

boards have an obligation to establish a case scheduling order, and to advise the Commission of any significant delay in meeting major activities set forth in the hearing schedule; CLI-09-17, 70 NRC 309 (2009)

boards must perform two types of inquiries with respect to safety matters in uncontested early site permit proceedings; LBP-06-28, 64 NRC 460 (2006)

boards should not second-guess underlying technical or factual findings by the NRC Staff; LBP-06-28, 64 NRC 460 (2006)

Congress considers the Atomic Safety and Licensing Board to be a panel of experts; CLI-10-17, 72 NRC 1 (2010)

contested and uncontested issues should be reviewed differently, with considerably more deference given to NRC Staff on uncontested issues; LBP-06-17, 63 NRC 747 (2006)

even if standing is undisputed, its jurisdictional nature requires independent examination; LBP-07-10, 66 NRC 1 (2007)

extra-record conduct such as stares, glares, and scowls do not constitute evidence of personal bias, nor do occasional outbursts toward counsel; CLI-10-17, 72 NRC 1 (2010)

for a licensing board to review a settlement agreement for compliance with agency regulations, and to evaluate whether the agreement is plainly in the public interest, the wording of the agreement must be clear enough for the board to ascertain unambiguously what its terms signify; LBP-06-26, 64 NRC 431 (2006)

for early site permits, section 52.21, the notice requirements of section 2.104(b)(2), and the Notice of Hearing itself outline a board's review obligation; LBP-06-28, 64 NRC 460 (2006)

friction between the court and counsel, including intemperate and impatient remarks by the judge, does not constitute evidence of personal bias; CLI-10-17, 72 NRC 1 (2010)

in a mandatory hearing, a board's task is to constitute a check on the understanding of the NRC Staff; LBP-06-17, 63 NRC 747 (2006)

in addressing a summary disposition motion and the opposition thereto, boards must examine the substance of the information provided by the parties; LBP-07-13, 66 NRC 131 (2007)

in adjudicating petitioners' appeal from the NRC Staff's denial of their request for access to sensitive unclassified nonsafeguards information, boards consider whether Staff correctly applied the criteria established by the Commission; LBP-09-5, 69 NRC 303 (2009)

in an uncontested early site permit proceeding, the board must narrow its inquiry to those topics or sections in NRC Staff documents that it deems most important and should concentrate on portions of the documents that do not on their face adequately explain the logic, underlying facts, and applicable regulations and guidance; LBP-07-1, 65 NRC 27 (2007)

in mandatory proceedings, boards should inquire whether the NRC Staff performed an adequate review and made findings with reasonable support in logic and fact; LBP-06-17, 63 NRC 747 (2006)

in uncontested hearings, a board's focus should be on areas in which the Staff indicated that its prescriptive process was incomplete or was not followed, or instances when the board's review of the safety evaluation report and other safety-related documents led it to believe further exploration of a particular item was necessary; LBP-06-17, 63 NRC 747 (2006)

it is not the duty of an adjudicative body to dig through the reams of paper that litigants have deposited to construct and develop their arguments; LBP-06-19, 64 NRC 53 (2006)

on NEPA baseline issues in the mandatory hearing on an early site permit application, the board must reach its own independent determination; LBP-07-9, 65 NRC 539 (2007)

on uncontested issues in an early site permit proceeding, the board must independently evaluate the record and the adequacy of the Staff's review and then to decide six fundamental issues that are specified by the law and regulations; LBP-07-9, 65 NRC 539 (2007)

regarding safety issues, boards must determine whether the application and the record of the proceeding contain sufficient information and the review of the application by the NRC Staff has been adequate to support findings pursuant to 10 C.F.R. 30.33, 40.32, and 70.23; LBP-07-6, 65 NRC 429 (2007)

regardless of whether a uranium enrichment facility proceeding is contested or uncontested, a board must consider three baseline NEPA issues; LBP-06-17, 63 NRC 747 (2006)

SUBJECT INDEX

- Staff's underlying technical and factual findings are not open to board reconsideration unless, after a review of the record, the board finds the NRC Staff review inadequate or its findings insufficient; LBP-06-28, 64 NRC 460 (2006)
- the board's judgment at the pleading stage is accorded substantial deference; CLI-09-5, 69 NRC 115 (2009)
- the board's role in mandatory hearings on early site permit applications is analogous to that of an appellate court applying the substantial evidence test; LBP-07-9, 65 NRC 539 (2007)
- the Commission has broad authority to delegate powers to the Atomic Safety and Licensing Boards; CLI-08-14, 67 NRC 402 (2008)
- the scope of the board's environmental review in an uncontested early site permit proceeding is discussed; LBP-07-1, 65 NRC 27 (2007)
- the scope of the licensing board's safety review in an uncontested early site permit proceeding is described; LBP-07-1, 65 NRC 27 (2007)
- the three NEPA-related factors that the board is required to address in uncontested early site permit proceedings are discussed; LBP-06-28, 64 NRC 460 (2006)
- when a proceeding involving an application for a construction permit is uncontested, the board will not conduct a de novo review, but rather will conduct a simple sufficiency review of the uncontested issues; LBP-07-6, 65 NRC 429 (2007)
- when taking the extraordinary action of allowing discretionary intervention, boards are expected to set out specific findings on each of the six factors; CLI-06-16, 63 NRC 708 (2006)
- where the Standard Review Plan had not been followed, no specific Regulatory Guide was applicable, a Regulatory Guide required adaptation, or the Staff's logic was incomplete or unclear, the Board sought a thorough explanation of the Staff's rationale for the process it ultimately adopted along with its conclusions, and examined that process and those conclusions to ensure they were well founded in fact and logic; LBP-06-28, 64 NRC 460 (2006)
- LICENSING BOARDS, AUTHORITY**
- a board abused its discretion in reformulating and admitting contentions; LBP-10-16, 72 NRC 361 (2010)
- a board can only decide whether or not a current funding proposal fulfills NRC requirements; LBP-09-18, 70 NRC 385 (2009)
- a board did not err in reformulating a contention to state that the application failed to comply with 10 C.F.R. Part 51, rather than with the National Environmental Policy Act; CLI-10-2, 71 NRC 27 (2010)
- a board has discretion to allow parties to cross-examine witnesses in Subpart L proceedings if the board deems this practice necessary to establish an adequate record; LBP-08-24, 68 NRC 691 (2008)
- a board is clearly authorized to dismiss a party who obstructs the discovery process, disobeys the board orders, and engages in willful, bad-faith, and prejudicial conduct toward another party; CLI-08-29, 68 NRC 899 (2008); LBP-09-1, 69 NRC 11 (2009)
- a board is free to decide an issue on a theory different from those argued by the litigants, but only if it explains the specific basis of its ruling and gives the litigants a chance to present arguments and, where appropriate, evidence regarding the board's new theory; CLI-09-3, 69 NRC 68 (2009)
- a board is to decide a motion to reopen on the information before it and has no authority to engage in discovery in order to supplement the pleadings before it; CLI-08-28, 68 NRC 658 (2008)
- a board may impose sanctions including dismissal of the specific contentions, dismissal of the adjudication, or dismissal of the application for any continuing unexcused failure to make the required mandatory disclosures; LBP-09-30, 70 NRC 1039 (2009)
- a board may modify or condition a license amendment; LBP-07-7, 65 NRC 507 (2007)
- a board may not simply infer the bases for a contention; CLI-09-7, 69 NRC 235 (2009)
- a board rested its findings regarding a contention, in part, on certain facts that it officially noticed; CLI-10-17, 72 NRC 1 (2010)
- a board, in its sound discretion, must determine the type of hearing procedures most appropriate for the specific contentions before it; LBP-06-20, 64 NRC 131 (2006)
- a board's authority to recast contentions is circumscribed in that it may not, on its own initiative, provide basic, threshold information required for contention admissibility; LBP-08-11, 67 NRC 460 (2008)
- a board's role in an early site permit proceeding is to carefully probe Staff findings by asking appropriate questions and by requiring supplemental information when necessary, but Staff's underlying technical and factual findings are not open to board reconsideration unless, after a review of the record, the

SUBJECT INDEX

- board finds the NRC Staff review inadequate or its findings insufficient; LBP-09-19, 70 NRC 433 (2009)
- a licensing board erred in holding that it lacked authority to consider contentions based on recent revisions to a license application, but the error was harmless because intervenor had never submitted any contentions on the revisions; CLI-10-23, 72 NRC 210 (2010)
- a properly supported request to reply to a summary disposition response would seem to be a reasonable candidate for a favorable board discretionary decision permitting the filing; LBP-08-2, 67 NRC 54 (2008); LBP-08-3, 67 NRC 85 (2008)
- a request for briefs on legal issues is one of the many tools available to a presiding officer generally in the conduct of a proceeding; CLI-09-14, 69 NRC 580 (2009)
- a SUNSI requester may file a challenge to NRC Staff's adverse determination on access to SUNSI with the presiding officer, and the NRC Staff may file a reply to the requester's challenge; LBP-09-5, 69 NRC 303 (2009)
- absent delegated authority, licensing boards lack authority to direct the Staff's nonadjudicatory actions; CLI-09-2, 69 NRC 55 (2009)
- adjudicatory boards have broad discretion to regulate the course of proceedings and the conduct of participants, and the Commission is reluctant to embroil itself in day-to-day case management issues; CLI-08-14, 67 NRC 402 (2008)
- although a board in another materials license renewal proceeding allowed an Indian organization to participate in that proceeding as an interested Indian tribe under 10 C.F.R. 2.315(c), that ruling is not binding on other boards; LBP-09-13, 70 NRC 168 (2009)
- although a board is free to view intervenors' support for its contention in the light most favorable to intervenors, the board may not ignore the contention admissibility requirements of 10 C.F.R. 2.309(f)(1); CLI-09-3, 69 NRC 68 (2009)
- although a board may view petitioner's supporting information in a light favorable to petitioner, petitioner (not the board) is required to supply all of the required elements for a valid intervention petition; CLI-09-7, 69 NRC 235 (2009); LBP-10-15, 72 NRC 257 (2010)
- although boards are not required to narrow contentions to make them acceptable, they may do so; LBP-09-25, 70 NRC 867 (2009)
- although licensing boards frequently hold oral argument on contention admissibility, a board may instead elect to dispense with oral argument; LBP-08-23, 68 NRC 679 (2008)
- although NRC rules do not explicitly authorize amicus briefs at the licensing board level, such briefs might still be granted in appropriate circumstances; LBP-08-6, 67 NRC 241 (2008)
- any supporting material provided by a petitioner, including those portions of the material that are not relied upon, is subject to board scrutiny; LBP-07-10, 66 NRC 1 (2007); LBP-07-16, 66 NRC 277 (2007); LBP-09-26, 70 NRC 939 (2009)
- authority to make findings on limited work authorizations is discussed; LBP-09-19, 70 NRC 433 (2009)
- board's role in considering a petition for waiver under 10 C.F.R. 2.335 is limited to deciding whether petitioner has made a prima facie showing of special circumstances that would support a waiver; LBP-10-15, 72 NRC 257 (2010)
- boards are authorized to hold prehearing conferences to simplify or clarify the issues for hearing, after which they may admit a revised contention, as long as the revised contention does not add material not raised by the intervenor to make it admissible; LBP-10-14, 72 NRC 101 (2010)
- boards are authorized to impose additional requirements as part of a settlement; LBP-06-18, 63 NRC 830 (2006)
- boards are authorized to restrict irrelevant, immaterial, unreliable, duplicative, or cumulative evidence; LBP-09-30, 70 NRC 1039 (2009)
- boards are expected to examine cited materials to verify that they support a contention, but are not expected to search through pleadings or other materials to uncover arguments and support never advanced by the petitioners themselves; CLI-06-10, 63 NRC 451 (2006)
- boards are not bound by NRC Staff's position or by changes in that position; LBP-10-9, 71 NRC 493 (2010)
- boards are not to consider whether enforcement orders need strengthening; LBP-07-16, 66 NRC 277 (2007)

SUBJECT INDEX

boards are obliged to evaluate the timeliness of a proposed contention even if no party raises the issue; LBP-10-17, 72 NRC 501 (2010)

boards are to construe intervention petitions in a light most favorable to petitioners; LBP-10-1, 71 NRC 165 (2010)

boards commonly reformulate, or expressly limit contentions to focus them to the precise matters that are supported; LBP-08-9, 67 NRC 421 (2008)

boards control the schedule for a proceeding to ensure that intervenors have adequate time to prepare new or amended contentions in response to new information; LBP-10-17, 72 NRC 501 (2010)

boards do not direct the Staff in the performance of its administrative functions; LBP-10-17, 72 NRC 501 (2010)

boards do not sit to flyspeck environmental documents or to add details or nuances; LBP-10-10, 71 NRC 529 (2010); LBP-10-14, 72 NRC 101 (2010)

boards have authority to narrow low-level radioactive waste contentions; LBP-09-16, 70 NRC 227 (2009)

boards have authority to set a proceeding's schedule and to ensure compliance with that schedule; LBP-10-21, 72 NRC 616 (2010)

boards have broad discretion to issue procedural orders to regulate the course of proceedings and the conduct of participants, and as a general matter, the Commission declines to interfere with the board's day-to-day case management decisions, unless there has been an abuse of power; LBP-08-23, 68 NRC 679 (2008)

boards have discretion to reframe a contention for purposes of clarity, succinctness, and a more efficient proceeding; LBP-06-22, 64 NRC 229 (2006); LBP-08-12, 68 NRC 5 (2008)

boards have substantial authority to regulate hearing procedures; LBP-10-21, 72 NRC 616 (2010)

boards have the authority to regulate hearing procedure, and decisions on evidentiary questions fall within that authority; CLI-10-18, 72 NRC 56 (2010)

boards have the duty to conduct a fair and impartial hearing according to law, to take appropriate action to control the prehearing and hearing process, to avoid delay, and to maintain order; LBP-09-22, 70 NRC 640 (2009)

boards lack authority to establish prospective sanctions for any failure by the Staff and/or the applicant to comply with the board's notice conditions; CLI-09-2, 69 NRC 55 (2009)

boards lack the authority to require applicant to adopt additional mitigation measures for the protection of endangered or threatened species; LBP-09-16, 70 NRC 227 (2009)

boards may choose the hearing process most suitable for the contentions before it; LBP-08-24, 68 NRC 691 (2008)

boards may disapprove a site for a new reactor only upon one of two findings; LBP-10-24, 72 NRC 720 (2010)

boards may not add material not raised by a petitioner in order to render a contention admissible; CLI-09-12, 69 NRC 535 (2009)

boards may not make factual inferences on a petitioner's behalf; LBP-06-10, 63 NRC 314 (2006)

boards may not order the Staff to cease review of an applicant's revised application or direct the Staff to require an applicant to submit a new application; LBP-10-17, 72 NRC 501 (2010)

boards may not supply information that is missing or make assumptions of fact not provided by the petitioner; CLI-10-14, 71 NRC 449 (2010); LBP-10-6, 71 NRC 350 (2010)

boards may reformulate contentions to eliminate extraneous issues or to consolidate issues for a more efficient proceeding; CLI-06-16, 63 NRC 708 (2006); CLI-09-12, 69 NRC 535 (2009); CLI-10-2, 71 NRC 27 (2010); CLI-10-14, 71 NRC 449 (2010); LBP-09-16, 70 NRC 227 (2009); LBP-10-9, 71 NRC 493 (2010); LBP-10-14, 72 NRC 101 (2010); LBP-10-16, 72 NRC 361 (2010)

boards may reprimand, censure, or suspend intervenors for contemptuous conduct; CLI-07-28, 66 NRC 275 (2007)

boards must not redraft inadmissible contentions to cure deficiencies and thereby render them admissible; CLI-06-16, 63 NRC 708 (2006)

boards review NRC Staff's enforcement order de novo to determine on the basis of the hearing record whether the charges are sustained and the sanction imposed is warranted; LBP-09-24, 70 NRC 676 (2009)

SUBJECT INDEX

boards should refer contention challenging a reactor design certification to the Staff for consideration in the design certification rulemaking, and hold that contention in abeyance, if it is otherwise admissible; CLI-08-15, 68 NRC 1 (2008)

boards' case management decisions, such as determinations of whether to permit additional slide shows or enlarged exhibits, lie well within the discretion of the board; CLI-10-17, 72 NRC 1 (2010)

chief functions are to carefully review all of the evidence, including testimony and exhibits, and to resolve any factual disputes; CLI-09-7, 69 NRC 235 (2009)

common sense is a relevant consideration in determining whether to reformulate contentions; LBP-10-10, 71 NRC 529 (2010)

decisions on evidentiary questions fall within boards' authority to regulate hearing procedure; CLI-10-5, 71 NRC 90 (2010)

determining whether a contention is adequately supported by a concise allegation of the facts or expert opinion is not a hearing on the merits; LBP-07-16, 66 NRC 277 (2007)

dismissal due to counsel's malfeasance is a logical extension of the board's disciplinary authority to reprimand, censure, or suspend from a proceeding any party or representative who refuses to comply with its directions; CLI-08-29, 68 NRC 899 (2008)

disputes arising from NRC Staff's adverse determinations on access to SUNSI are adjudicated regarding likelihood of standing and need; LBP-09-5, 69 NRC 303 (2009)

if a board finds that the use of a more accurate approach than compliance with regulatory guides is needed to provide reasonable assurance that metal fatigue will be adequately managed during the period of extended operation, then the board is authorized and duty bound to impose such a requirement; LBP-08-25, 68 NRC 763 (2008)

if no particular procedure is compelled, the board must exercise its discretion and select the hearing procedure most appropriate for the newly admitted contentions; LBP-10-15, 72 NRC 257 (2010)

if petitioner did not request discretionary intervention in the event that the petitioner was found to lack standing as of right, a licensing board need not consider affording such intervention status; LBP-10-1, 71 NRC 165 (2010)

if petitioner fails to provide the requisite support for its contentions, the board may not make assumptions of fact that favor the petitioner or supply information that is lacking; LBP-07-3, 65 NRC 237 (2007); LBP-07-10, 66 NRC 1 (2007); LBP-08-9, 67 NRC 421 (2008); LBP-08-16, 68 NRC 361 (2008); LBP-08-17, 68 NRC 431 (2008) ; LBP-08-24, 68 NRC 691 (2008); LBP-08-26, 68 NRC 905 (2008); LBP-09-3, 69 NRC 139 (2009); LBP-09-26, 70 NRC 939 (2009); LBP-10-6, 71 NRC 350 (2010); LBP-10-7, 71 NRC 391 (2010)

in a mandatory hearing, a board must narrow its inquiry to those topics or sections in Staff documents that it deems most important and should concentrate on portions of the documents that do not on their face adequately explain the logic, underlying facts, and applicable regulations and guidance; LBP-09-19, 70 NRC 433 (2009)

in an evidentiary hearing, the board may weigh competing evidence and expert opinion and may resolve/decide factual disputes, whereas this is not possible when ruling on motions for summary disposition, which are restricted to situations where there is no genuine issue as to any material fact; LBP-09-22, 70 NRC 640 (2009)

in camera hearings are authorized under 10 C.F.R. 2.390(b)(6); LBP-10-5, 71 NRC 329 (2010)

in conducting Subpart L hearings, board members pose questions to the parties' witnesses in those areas that, in the board's judgment, require additional clarification and development; LBP-07-17, 66 NRC 327 (2007); LBP-08-22, 68 NRC 590 (2008)

in establishing and enforcing schedule deadlines, boards must take care not to compromise the Commission's fundamental commitment to a fair and thorough hearing process; LBP-10-21, 72 NRC 616 (2010)

in evaluating petitions to intervene, boards are not free to ignore the contention admissibility requirements of 10 C.F.R. 2.309(f)(1); CLI-09-8, 69 NRC 317 (2009)

in passing upon the question as to whether an intervention petition should be granted, it is not the function of a licensing board to reach the merits of any contention contained therein; LBP-06-6, 63 NRC 167 (2006); LBP-06-7, 63 NRC 188 (2006)

in reaching its determinations on the baseline National Environmental Policy Act issues, the board will not second-guess the underlying technical or factual findings of the NRC Staff, but if it finds that the

SUBJECT INDEX

Staff review is incomplete or that the Staff findings lack sufficient explanation, it will make its own determination of technical and factual findings; LBP-07-1, 65 NRC 27 (2007)

intervenor's representational status is one factor in determining whether reformulation is appropriate, and pro se status may provide additional cause for reformulation; LBP-10-10, 71 NRC 529 (2010)

it is appropriate for a licensing board to defer consideration of all but one contention in some limited and exceptional circumstances; LBP-10-11, 71 NRC 609 (2010)

it is beyond the authority of a licensing board to require applicant to choose a certain method of decommissioning funding; LBP-09-4, 69 NRC 170 (2009); LBP-09-15, 70 NRC 198 (2009)

licensing boards are bound by Commission and appeal board precedent and therefore are not at liberty to reject the 50-mile proximity presumption; LBP-09-4, 69 NRC 170 (2009)

licensing boards are expected to use applicable techniques to ensure prompt and efficient resolution of contested issues; CLI-10-4, 71 NRC 56 (2010)

licensing boards are not authorized to admit conditionally, for any reason, contentions that fall short of meeting the specificity requirements set forth in NRC procedural rules; CLI-09-2, 69 NRC 55 (2009)

licensing boards are not foreclosed from considering docketed licensing material that has been submitted to the board and that, on its face, appears to be relevant to the disposition of a pending motion; LBP-08-12, 68 NRC 5 (2008)

licensing boards have broad discretion to issue procedural orders to regulate the course of proceedings and the conduct of participants; CLI-08-7, 67 NRC 187 (2008)

licensing boards normally have considerable discretion in making evidentiary rulings; CLI-10-5, 71 NRC 90 (2010)

licensing boards shall not entertain motions for summary disposition, unless the board finds that such motions, if granted, are likely to expedite the proceeding; LBP-09-22, 70 NRC 640 (2009)

licensing boards, though not obligated to reformulate contentions, are permitted to do so in certain circumstances; LBP-08-11, 67 NRC 460 (2008)

material provided in support of a contention will be carefully examined by the board to confirm that on its face it does supply an adequate basis for the contention; LBP-07-10, 66 NRC 1 (2007)

materials cited as the basis for a contention are subject to scrutiny by the board to determine whether they actually support the facts alleged; LBP-10-24, 72 NRC 720 (2010)

neither NRC regulations nor agency policy mandates that the oral argument be conducted in person near the site; LBP-08-23, 68 NRC 679 (2008)

NRC rules of procedure authorize boards to hold prehearing conferences for the purposes of simplifying or clarifying the issues for hearing, after which a board might admit a revised contention; CLI-09-12, 69 NRC 535 (2009)

NRC's contention pleading standards, while strict, are not so strict as to require a board to abandon a commonsense approach to consideration of contentions; LBP-10-10, 71 NRC 529 (2010)

NRC's expanding adjudicatory docket makes it critically important that parties comply with NRC pleading requirements and that the board enforce those requirements; CLI-10-27, 72 NRC 481 (2010)

principal role is to carefully review all of the evidence, including testimony and exhibits, and to resolve any factual disputes; CLI-10-18, 72 NRC 56 (2010)

questions over the equivalence of the "knowledge" standard that governed the jury and the standard applicable in the administrative proceeding can lead a board to exercise its discretion not to apply collateral estoppel; LBP-09-24, 70 NRC 676 (2009)

requests for extension of time to file a petition for review are to be determined by the relevant appellate body, and accordingly must be directed to that body; LBP-07-17, 66 NRC 327 (2007)

section 2.107(a) does not authorize withdrawal of an application but rather clarifies that boards have authority to impose reasonable conditions upon voluntary withdrawals in appropriate circumstances; LBP-10-11, 71 NRC 609 (2010)

settlement shall be subject to approval by a board, which may order such adjudication of the issues as it may deem to be required in the public interest; LBP-06-21, 64 NRC 219 (2006)

the board is prohibited from considering in a combined license proceeding matters that were resolved in an early site permit proceeding when the COL application references the ESP; LBP-08-23, 68 NRC 679 (2008)

the board's principal role in the adjudicatory process is to carefully review all of the evidence, including testimony and exhibits, and to resolve any factual disputes; CLI-10-5, 71 NRC 90 (2010)

SUBJECT INDEX

- the Commission generally defers to the boards on case management decisions; CLI-10-28, 72 NRC 553 (2010)
- the judge's function in ruling on summary disposition motions is not to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for hearing; CLI-10-11, 71 NRC 287 (2010)
- the presiding officer or licensing board has discretion to accelerate the merits hearing on safety issues, but not on environmental issues; CLI-07-17, 65 NRC 392 (2007)
- the role of a board is to decide whether an applicant has supplied the requisite information to the NRC, and whether the petitioners have identified any defect in that information; LBP-09-18, 70 NRC 385 (2009)
- to determine whether there is potential for offsite consequences at specific sites, boards may infer obvious intermediate steps in a chain of causation that could lead to offsite doses; LBP-07-14, 66 NRC 169 (2007)
- to ensure a more efficient proceeding, the board merges two contentions; LBP-10-16, 72 NRC 361 (2010)
- to the extent applicant may be subject to unreasonable or burdensome discovery requests in the future, it is free to seek relief from the board, which has ample authority to prevent or modify unreasonable discovery demands; CLI-09-6, 69 NRC 128 (2009)
- upon admission of a contention in a licensing proceeding, the board must identify the specific hearing procedures to be used to settle the contention; LBP-10-16, 72 NRC 361 (2010)
- use of the permissive term, "may," in 10 C.F.R. 2.310(a) indicates that licensing boards have some discretion in determining whether to hold hearings under Subpart L or Subpart G; LBP-08-6, 67 NRC 241 (2008)
- when an adjudicatory proceeding has been terminated before a licensing board pursuant to a settlement agreement, the board loses its jurisdiction over, and thus its authority to act with respect to, that licensing action; LBP-09-23, 70 NRC 659 (2009)
- where all factors are met, the application of collateral estoppel by the subsequent tribunal is to some degree a discretionary matter; LBP-09-24, 70 NRC 676 (2009)
- where the final environmental impact statement discussion of alternative sites was insufficient, the board independently reviewed the record on greenfield, competitors' brownfield, noncompetitors' brownfield, and applicant's other nuclear sites to conclude that the Staff's underlying alternative site review was adequate; LBP-09-19, 70 NRC 433 (2009)
- LICENSING BOARDS, JURISDICTION**
- a licensing board has no jurisdiction to consider any treaty-related or water-rights questions in an NRC adjudicatory proceeding; LBP-08-6, 67 NRC 241 (2008)
- a notice of hearing having been issued by the Commission in a combined license proceeding, the board has jurisdiction to approve a settlement agreement; LBP-09-23, 70 NRC 659 (2009)
- boards may not oversee or direct NRC Staff in its license reviews; CLI-08-23, 68 NRC 461 (2008)
- compliance with regulations of other federal agencies, such as Environmental Protection Agency drinking water contamination limits, is beyond a board's jurisdiction and outside the scope of a materials license proceeding; LBP-06-8, 63 NRC 241 (2006); LBP-06-15, 63 NRC 591 (2006)
- dismissal of one contention on mootness grounds would not terminate a case where the board had expressly retained jurisdiction to decide whether to admit another contention; LBP-09-27, 70 NRC 992 (2009)
- given that the board recently issued an initial decision resolving all contentions in the case, the Commission can discern no compelling reason to take the extraordinary action of stepping in at this late stage to take up the case, but parties will have the opportunity to petition for review of the board's rulings; CLI-09-19, 70 NRC 864 (2009)
- if a previously terminated contested hearing is subsequently renoticed, a new licensing board would need to be established to preside over the renoticed litigation; LBP-09-23, 70 NRC 659 (2009)
- in an uncontested uranium enrichment proceeding, a licensing board, without conducting a de novo evaluation of the application, will determine whether the application and record of the proceeding contain sufficient information to support licensing and whether the Staff's review of the application has been adequate; LBP-06-17, 63 NRC 747 (2006)

SUBJECT INDEX

once a licensing board has concluded board action on a licensing case, jurisdiction to decide a motion to reopen regarding that proceeding passes to the Commission, which retains jurisdiction until the license in question has been issued; LBP-10-21, 72 NRC 616 (2010)

once there has been an appeal or petition to review a board order ruling on intervention petitions or, where a hearing is granted, following a partial or final initial decision, jurisdiction passes to the Commission; CLI-09-5, 69 NRC 115 (2009)

only the Commission on its own initiative may review Staff's final no significant hazards consideration determination; LBP-08-20, 68 NRC 549 (2008)

regardless of whether there is a challenge to a petitioner's standing, given the jurisdictional nature of standing under the Atomic Energy Act, the board has an independent obligation to make a standing determination; LBP-10-1, 71 NRC 165 (2010)

the Commission's referral of a motion to reopen to the ASLBP and subsequent establishment of the board gives the board jurisdiction over the motion; LBP-10-21, 72 NRC 616 (2010)

the Secretary's referral of petitioner's motion to admit a late-filed contention effectively returns jurisdiction to the licensing board to rule on the motion; CLI-09-5, 69 NRC 115 (2009)

when a case has already been dismissed by a board, it no longer has jurisdiction over a motion to reopen; CLI-06-4, 63 NRC 32 (2006)

when an adjudicatory proceeding has been terminated before a licensing board pursuant to a settlement agreement, the board loses its jurisdiction over, and thus its authority to act with respect to, that licensing action; LBP-09-23, 70 NRC 659 (2009)

LICENSING PROCEEDINGS

although the Commission commonly looks to Article III concepts for guidance, it is not required to automatically follow them in all respects because NRC proceedings are not subject to Article III; LBP-09-15, 70 NRC 198 (2009)

claims about the adequacy of NRC Staff's safety review are not litigable; CLI-08-23, 68 NRC 461 (2008)

FEMA's finding on emergency plans constitutes a rebuttable presumption on questions of adequacy and implementation capability in NRC licensing proceedings; LBP-09-19, 70 NRC 433 (2009)

introduction of issues that are not unique to any given reactor are inappropriate in an individual reactor licensing proceeding absent evidence that the generic issue applies to that particular proceeding; LBP-06-11, 63 NRC 391 (2006)

it is the applicant, not NRC Staff, that has the burden of proof in litigation; CLI-08-23, 68 NRC 461 (2008)

motions must be initially addressed to the presiding officer when a proceeding is pending; CLI-08-23, 68 NRC 461 (2008)

the purpose and scope of a proceeding is to allow interested persons the right to challenge the sufficiency of the application; CLI-08-23, 68 NRC 461 (2008)

the ultimate burden of proof on the question of whether a permit or license should be issued is on the applicant, but the party contending that the permit or license should be denied, has the burden of going forward with evidence to buttress that contention; CLI-09-7, 69 NRC 235 (2009)

See also Combined License Proceedings; Early Site Permit Proceedings; License Renewal Proceedings; License Transfer Proceedings; Materials License Amendment Proceedings; Materials License Proceedings; Materials License Renewal Proceedings; Operating License Amendment Proceedings; Operating License Renewal Proceedings; Subpart J Proceedings; Subpart L Proceedings; Uranium Enrichment Facility Proceedings

LICENSING SUPPORT NETWORK

a document's availability on the Internet does not authorize its exclusion from the LSN; LBP-09-6, 69 NRC 367 (2009)

an affirmative demonstration of compliance with the Licensing Support Network requirements is not required in an intervention petition; LBP-09-6, 69 NRC 367 (2009)

before petitioner can be granted party status in the high-level waste proceeding, it must be able to demonstrate substantial and timely compliance with LSN requirements; LBP-10-11, 71 NRC 609 (2010)

Class 1 documentary material covers information a party intends to rely upon in support of its position; CLI-06-5, 63 NRC 143 (2006)

Class 2 documentary material is material that the party in possession knows does not support its position; CLI-06-5, 63 NRC 143 (2006)

SUBJECT INDEX

Class 3 documentary materials are “reports and studies” prepared on behalf of potential parties to the proceeding that are relevant to the issues listed in the Topical Guidelines contained in Regulatory Guide 3.69 and must be relevant to the license application; CLI-06-5, 63 NRC 143 (2006)

conditions are proposed that would ensure that DOE’s documentary material is appropriately preserved and archived should its request to withdraw its application be granted; LBP-10-11, 71 NRC 609 (2010)

DOE must make all of its documentary material available on the Licensing Support Network, and to so certify to the PAPO board, at least 6 months before it files its application to construct the HLW geologic repository at Yucca Mountain; LBP-08-1, 67 NRC 37 (2008)

DOE’s certification that it had made all of its then extant documentary material available on the NRC’s LSN triggered the obligation of other potential parties to make their documentary material available on the LSN within 90 days; LBP-08-1, 67 NRC 37 (2008); LBP-08-5, 67 NRC 205 (2008)

drafts of the license application are not Class 1, Class 2, or Class 3 documentary material under Subpart J, so the regulations do not require making draft license applications available; CLI-06-5, 63 NRC 143 (2006)

each party or potential party to the high-level waste proceeding must continue to supplement the production of its documentary material on the LSN; LBP-09-6, 69 NRC 367 (2009)

each petitioner must identify all its documentary material required by 10 C.F.R. 2.1003 and designate a responsible LSN official, who can certify that to the best of his or her knowledge all such material has been made electronically available; LBP-10-11, 71 NRC 609 (2010)

each potential party shall continue to supplement its documentary material made available to other participants via the LSN with any additional material created after the time of its initial certification; LBP-08-1, 67 NRC 37 (2008)

if petitioner fails to demonstrate substantial and timely compliance with LSN requirements, it may later request party status upon a showing of subsequent compliance; LBP-10-11, 71 NRC 609 (2010)

material that falls within Class 1 or Class 2 is the underlying independent documentary material used (or not used if nonsupporting) by the Department of Energy in formulating its license application; CLI-06-5, 63 NRC 143 (2006)

participants must make a good-faith effort to have made available all documentary material by the date specified for initial compliance; CLI-08-22, 68 NRC 355 (2008)

petitioner may not be granted party status in the high-level waste proceeding if it cannot demonstrate substantial and timely compliance with the requirements in 10 C.F.R. 2.1003 concerning the availability of documentary material on the LSN; LBP-09-6, 69 NRC 367 (2009)

potential participants are afforded the opportunity to frame focused and meaningful contentions and to avoid the delay potentially associated with document discovery, by requiring parties and potential parties to the proceeding to make all of their Subpart J-defined documentary material available prior to submission of the Department of Energy application; CLI-08-22, 68 NRC 355 (2008)

regarding sufficiency of documentary production, perfection is not required and any production is bound to have some human mistakes; LBP-09-6, 69 NRC 367 (2009)

section 2.1009(b) requires certification to the Pre-License Application Presiding Officer that the party or potential party has complied with the implementation procedures of section 2.1009(a)(2) and that to the best of his or her knowledge, the documentary material specified in section 2.1003 has been identified and made electronically available; LBP-09-6, 69 NRC 367 (2009)

the distinction between “preliminary” and “circulated” drafts is a significant one in the Commission’s Subpart J regulations; CLI-06-5, 63 NRC 143 (2006)

the duty to produce all documentary material generated by, or at the direction of, or acquired by, a potential party pursuant to 10 C.F.R. 2.1003(a)(1) applies to extant documentary material and does not require that the potential party delay its initial certification until all documentary material that it intends to rely on is finished and complete; LBP-08-1, 67 NRC 37 (2008)

the LSN does not have to be frozen at the time of certification; CLI-08-12, 67 NRC 386 (2008)

the LSN functions as a mechanism for early collection of all extant documents that normally would be collected later through traditional discovery; CLI-08-22, 68 NRC 355 (2008)

the regulations are unclear as to whether header searchability is a prerequisite of certification; LBP-08-1, 67 NRC 37 (2008)

whether a call memo was required to address the retention for LSN inclusion purposes of documentary material that does not support a party’s position is decided; LBP-08-5, 67 NRC 205 (2008)

SUBJECT INDEX

LIGHT-WATER REACTORS

the limiting standard for light-water-cooled reactors is 10 C.F.R. 20.1301(e), because a licensee within the uranium fuel cycle could not release the 100-mrem limit permitted by section 20.1301(a) without necessarily violating the 25-mrem limit of section 20.1301(e) that applies to the entire site; CLI-07-27, 66 NRC 215 (2007)

LIMITED APPEARANCE STATEMENTS

any person who does not wish, or is not qualified, to become a party to a materials license proceeding may request permission to make a limited appearance pursuant to the provisions of 10 C.F.R. 2.315(a); CLI-09-15, 70 NRC 1 (2009); CLI-10-4, 71 NRC 56 (2010)

when boards conduct limited appearance sessions, in which members of the general public may make oral statements to the board, such sessions are generally conducted in person near the site; LBP-08-23, 68 NRC 679 (2008)

LIMITED WORK AUTHORIZATION

a site redress plan remains in effect for an early site permit applicant even if the ESP with which the LWA is issued is not referenced in a construction permit or combined license application during the period that the ESP remains valid; LBP-09-19, 70 NRC 433 (2009)

activities constituting construction, and thus requiring an LWA, are the driving of piles, subsurface preparation, placement of backfill, concrete, or permanent retaining walls within an excavation, installation of foundations, or in-place assembly, erection, fabrication, or testing that are for safety-related structures, systems, or component; LBP-09-16, 70 NRC 227 (2009); LBP-09-19, 70 NRC 433 (2009)

although a presiding officer should issue a separate partial initial decision regarding a limited work authorization request, the board finds no practical or logical basis for separating its consideration of the adequacy of the LWA request from its determination regarding the early site permit with which it is associated; LBP-09-19, 70 NRC 433 (2009)

an early site permit applicant may request that an LWA be issued in conjunction with the early site permit; LBP-09-19, 70 NRC 433 (2009)

an initial decision directing the issuance or amendment of a LWA or an early site permit is immediately effective upon issuance unless the presiding officer finds that good cause has otherwise been shown by a party; LBP-09-19, 70 NRC 433 (2009)

an LWA authorizes activities for which either a construction permit or combined license is otherwise required, but the LWA application must include a plan for site redress that provides for restoration if the project is cancelled, the LWA is revoked, or a construction permit or COL is denied; LBP-09-19, 70 NRC 433 (2009)

any activities undertaken under an LWA are entirely at the risk of the applicant; LBP-09-19, 70 NRC 433 (2009)

applicant must submit, as part of the safety analysis report for the LWA, design information related to activities within the scope of the requested LWA; LBP-09-19, 70 NRC 433 (2009)

board authority to make findings on LWAs is discussed; LBP-09-19, 70 NRC 433 (2009)

boards are to determine whether the site redress plan will adequately redress the activities should the activities be terminated by either the holder of the LWA or by Commission denial of any corresponding early site permit or combined license; LBP-09-19, 70 NRC 433 (2009)

construction activities allowed under an LWA are discussed; LBP-09-19, 70 NRC 433 (2009)

construction activities associated with onsite emergency facilities necessary to comply with 10 C.F.R. 50.47 and 10 C.F.R. Part 50, Appendix E are included; LBP-09-19, 70 NRC 433 (2009)

if LWA activities are approved by NRC in conjunction with an early site permit, the ESP as issued shall specify those authorized activities; LBP-09-19, 70 NRC 433 (2009)

preconstruction activities that do not require NRC approval are discussed; LBP-09-19, 70 NRC 433 (2009)

when an early site permit is issued with an associated LWA, the board must find relative to the LWA that any significant adverse environmental impact resulting from activities requested under 10 C.F.R. 52.17(c) can be redressed; LBP-09-19, 70 NRC 433 (2009)

LITIGATION EXPENSES

increased litigation delay and expense do not justify interlocutory review of an admissibility decision; CLI-09-6, 69 NRC 128 (2009)

SUBJECT INDEX

licensing boards have awarded payment of litigation fees and expenses from a licensee to an intervenor if there has been legal harm to the intervenors caused by some activity or action of the licensee; LBP-09-1, 69 NRC 11 (2009)

no instance has occurred in NRC jurisprudence where either the Commission or its boards have ruled that expenses of any kind constituted irreparable injury; CLI-09-6, 69 NRC 128 (2009)

NRC appropriations shall not be used to pay the expenses of, or otherwise compensate, parties intervening in regulatory or adjudicatory proceedings; LBP-09-1, 69 NRC 11 (2009)

the potential for litigation expense and delay is the kind of burden that licensees and applicants voluntarily assume when filing applications with the Commission; CLI-09-6, 69 NRC 128 (2009)

LOCAL GOVERNMENTAL BODIES

an entity wishing to participate as a governmental body must demonstrate that it goes beyond an advisory role and exercises executive or legislative responsibilities; LBP-09-13, 70 NRC 168 (2009)

any affected unit of local government need not address standing in the high-level waste proceeding, but rather shall be considered a party provided that it files at least one admissible contention in accordance with 10 C.F.R. 2.309(f); LBP-09-6, 69 NRC 367 (2009)

if applicant chooses to submit a complete and integrated emergency plan at the early site permit stage, applicant also is required to make a good-faith effort to obtain a certification from federal, state, and local governmental agencies with emergency planning responsibilities; LBP-09-19, 70 NRC 433 (2009)

not all entities with governmental ties are entitled to participate in licensing proceedings as local governmental bodies; LBP-09-13, 70 NRC 168 (2009)

the Commission shall permit intervention by the county, municipality, or other subdivision in which the geologic repository operations area is located if the contention requirements in 10 C.F.R. 2.309(f) are satisfied with respect to at least one contention; CLI-08-25, 68 NRC 497 (2008)

the fact that an ancestor of a member of the Oglala Delegation of the Great Sioux Nation Treaty Council signed several treaties with the United States more than 100 years ago does not establish that the delegation is a current and official successor to the delegation that signed such treaties, or that the delegation is a local governmental entity that currently exercises executive function; LBP-09-13, 70 NRC 168 (2009)

See also Interested Governmental Entity

LOW-INCOME POPULATIONS

in reviewing environmental justice claims, adverse impacts that fall heavily on minority and impoverished citizens call for particularly close scrutiny; LBP-07-3, 65 NRC 237 (2007)

to qualify as an environmental justice contention, the contention must show that the affected local population qualifies as a minority or low-income population; LBP-09-18, 70 NRC 385 (2009)

MAIN STEAM ISOLATION VALVES

applicant normally is required to perform large-transient tests before an extended power uprate can be granted; LBP-07-2, 65 NRC 153 (2007)

these valves serve a safety function in the event of fuel failure by preventing fission products from the fuel inside the reactor from being released into the steam system outside of reactor containment; LBP-07-2, 65 NRC 153 (2007)

MAINTENANCE PROGRAMS

failure to document a falsified work order is a violation of 10 C.F.R. 50.9; LBP-08-14, 68 NRC 279 (2008)

MANAGEMENT CHARACTER AND COMPETENCE

a license renewal proceeding is an appropriate occasion for appraising the entire past performance of the licensee; LBP-08-24, 68 NRC 691 (2008)

a materials license amendment proceeding is not an appropriate forum to throw open an opportunity to engage in a free-ranging inquiry into the character of the licensee; LBP-09-1, 69 NRC 11 (2009)

absence of perfect compliance by licensee does not rebut the presumption of compliance or support admission of a contention that the application does not satisfy 10 C.F.R. 54.29(a), but a consistent, longstanding, and continuing pattern of problems in a specific area that is relevant to managing aging equipment will; LBP-10-15, 72 NRC 257 (2010)

absent evidence to the contrary, it is assumed NRC licensees will not contravene agency regulations; LBP-07-10, 66 NRC 1 (2007)

SUBJECT INDEX

allegation of facts, with supporting documentation, of a longstanding and continuing pattern of noncompliance or management difficulties that are reasonably linked to whether licensee will actually be able to adequately manage aging in accordance with the current licensing basis during the period of extended operation can be an admissible contention; LBP-10-15, 72 NRC 257 (2010)

contentions that DOE lacks management integrity to operate a high-level waste geologic repository are impermissible challenges to the Nuclear Waste Policy Act and are therefore beyond the scope of the proceeding; CLI-09-14, 69 NRC 580 (2009)

NRC is not barred from considering licensee's past and continuing managerial and performance problems when it determines whether licensee has demonstrated that actions will be taken to manage the effects of aging during the period of extended operation; LBP-10-15, 72 NRC 257 (2010)

past performance of management or high-ranking officers, as reflected in deliberate violations of regulations or untruthful reports to the Commission, may indicate whether a licensee will comply with agency standards, and will candidly respond to NRC inquiries; LBP-09-6, 69 NRC 367 (2009)

potential scope of adjudicatory hearings in license renewal proceedings is the same as the scope of the Staff's review; LBP-10-15, 72 NRC 257 (2010)

when character or integrity issues are raised, they are expected to be directly germane to the challenged licensing action; CLI-10-9, 71 NRC 245 (2010)

MANDATORY HEARINGS

a baseline NEPA issue that a board must make in a hearing on an early site permit application is whether the requirements of NEPA § 102(2)(A), (C), and (E) and 10 C.F.R. Part 51 have been met; LBP-07-9, 65 NRC 539 (2007)

a baseline NEPA issue that a board must make in an early site permit proceeding is to independently consider the final balance among conflicting factors contained in the record of the proceeding with a view to determining the appropriate action to be taken; LBP-07-9, 65 NRC 539 (2007)

a baseline NEPA issue that a board must make on an early site permit application is whether a construction permit should be issued, denied, or appropriately conditioned to protect environmental values; LBP-07-9, 65 NRC 539 (2007)

a board may ask Staff to produce ACRS documents that it reviewed in conducting its license application review, but Staff need not obtain additional ACRS documents that it never saw in conducting its review; CLI-06-20, 64 NRC 15 (2006)

a board must determine whether the application and the record of the proceeding contain sufficient information, and the review of the application by the NRC Staff has been adequate, to support a negative finding on the question of whether the issuance of an early site permit will be inimical to the common defense and security or to the health and safety of the public; LBP-07-9, 65 NRC 539 (2007)

a board shall determine whether, taking into consideration the site criteria contained in 10 C.F.R. Part 100, a reactor having characteristics that fall within the parameters for the site, and which meets the terms and conditions proposed by the Staff in the Safety Evaluation Report, can be constructed and operated without undue risk to the health and safety of the public; LBP-06-28, 64 NRC 460 (2006)

a board's focus should be on areas in which the Staff indicated that its prescriptive process was incomplete or was not followed, or instances when the board's review of the safety evaluation report and other safety-related documents led it to believe further exploration of a particular item was necessary; LBP-06-17, 63 NRC 747 (2006)

a board's request for a list of all regulatory guides applicable to the Staff's analysis of a license application, as well as a list of all instances where potentially applicable regulatory guides were not used, is approved; CLI-06-20, 64 NRC 15 (2006)

a board's role in an early site permit proceeding is to carefully probe Staff findings by asking appropriate questions and by requiring supplemental information when necessary, but Staff's underlying technical and factual findings are not open to board reconsideration unless, after a review of the record, the board finds the NRC Staff review inadequate or its findings insufficient; LBP-09-19, 70 NRC 433 (2009)

a decision dismissing the contested adjudication relating to a combined license has no impact on the subsequent need to conduct a mandatory hearing relating to the COL application, over which the Commission would preside; LBP-09-23, 70 NRC 659 (2009)

a hearing for the reinstatement of previously issued construction permits is not required because the hearing already occurred when the permits were initially issued; CLI-10-6, 71 NRC 113 (2010)

SUBJECT INDEX

- a licensing board must narrow its inquiry to those topics or sections in Staff documents that it deems most important and should concentrate on portions of the documents that do not on their face adequately explain the logic, underlying facts, and applicable regulations and guidance; LBP-09-19, 70 NRC 433 (2009)
- a simple sufficiency review of uncontested issues should be conducted by boards; LBP-06-17, 63 NRC 747 (2006)
- because an early site permit is a type of construction permit, a mandatory hearing is required by the Atomic Energy Act and thus the case will continue as an uncontested proceeding; LBP-06-24, 64 NRC 360 (2006)
- because contested and uncontested designations apply issue-by-issue, and not to proceedings-at-large, admission of a single, relatively minor contention would not negate the need to conduct a separate mandatory hearing; LBP-06-17, 63 NRC 747 (2006)
- before a uranium enrichment facility can be licensed, a hearing is required to be held on that license application; LBP-06-17, 63 NRC 747 (2006)
- before an early site permit can be made effective, the Commission must review and approve the licensing board's initial decision authorizing its issuance; CLI-07-23, 66 NRC 35 (2007)
- boards should conduct a simple sufficiency review of uncontested issues; LBP-06-28, 64 NRC 460 (2006)
- boards should not second-guess underlying technical or factual findings by the NRC Staff; LBP-06-28, 64 NRC 460 (2006)
- early site permit applications, as partial construction permit applications, are subject to the Atomic Energy Act hearing requirement, as well as all procedural requirements in 10 C.F.R. Part 2; LBP-09-19, 70 NRC 433 (2009)
- for license applications for uranium enrichment facilities, NRC shall conduct a single adjudicatory hearing on the record with regard to the licensing of the construction and operation of the facility; LBP-07-6, 65 NRC 429 (2007)
- for purposes of the mandatory/uncontested portion of an ESP proceeding, the board takes official notice of publicly available documents associated with the Staff's safety and environmental reviews; LBP-09-19, 70 NRC 433 (2009)
- for uncontested early site permit applications, section 52.21, the notice requirements of section 2.104(b)(2), and the Notice of Hearing itself outline a board's review obligation; LBP-06-28, 64 NRC 460 (2006)
- in an early site permit proceeding, NRC must address six issues; CLI-07-27, 66 NRC 215 (2007)
- in an early site permit proceeding, the board must review the sufficiency of the record and the sufficiency of the NRC Staff's review, and decide if they are adequate to support the Staff's proposed findings; LBP-07-9, 65 NRC 539 (2007)
- in an uncontested early site permit proceeding, the board must narrow its inquiry to those topics or sections in NRC Staff documents that it deems most important and should concentrate on portions of the documents that do not on their face adequately explain the logic, underlying facts, and applicable regulations and guidance; LBP-07-1, 65 NRC 27 (2007)
- in an uncontested uranium enrichment proceeding, a licensing board, without conducting a de novo evaluation of the application, will determine whether the application and record of the proceeding contain sufficient information to support licensing and whether the Staff's review of the application has been adequate; LBP-06-17, 63 NRC 747 (2006)
- in complying with the mandate of the Atomic Energy Act, the board must independently evaluate the record and the adequacy of the Staff's review and then to decide six fundamental issues that are specified by the law and regulations; LBP-07-9, 65 NRC 539 (2007)
- in uncontested cases, boards are expected to issue their final initial decisions generally within 4 to 6 months of the Staff's safety evaluation report and final environmental impact statement issuances; CLI-06-20, 64 NRC 15 (2006)
- in uncontested proceedings, licensing boards do not conduct a de novo review of the application; CLI-09-15, 70 NRC 1 (2009)
- in uranium enrichment facility proceedings, a licensing board must determine in its initial decision whether the requirements of section 102(2)(A), (C), and (E) of the National Environmental Policy Act have been complied with in the proceeding; CLI-09-15, 70 NRC 1 (2009)

SUBJECT INDEX

in uranium enrichment facility proceedings, licensing boards must determine whether the review conducted by the NRC Staff pursuant to 10 C.F.R. Part 51 has been adequate; CLI-09-15, 70 NRC 1 (2009)

licensing boards must determine whether the applicant and record of the proceeding contain sufficient information to support license issuance; CLI-09-15, 70 NRC 1 (2009)

licensing boards must inquire whether the NRC Staff performed an adequate review and made findings with reasonable support in logic and fact; LBP-07-6, 65 NRC 429 (2007)

licensing boards must perform two types of inquiries with respect to safety matters in uncontested early site permit proceedings; LBP-06-28, 64 NRC 460 (2006)

licensing boards should not undertake a de novo review of the NRC Staff's findings, but rather should determine whether the safety and environmental record is sufficient to support license issuance; CLI-07-5, 65 NRC 109 (2007)

matters of fact and law to be considered in a uranium enrichment facility licensing proceeding are whether the application satisfies the applicable standards in 10 C.F.R. Parts 30, 40, and 70, and whether the requirements of the National Environmental Policy Act and the NRC's implementing regulations in 10 C.F.R. Part 51 have been met; CLI-09-15, 70 NRC 1 (2009); LBP-06-17, 63 NRC 747 (2006)

NRC Staff is not required to provide a board with information relevant to instances when the Staff reviewer disagreed with his supervisor with respect to the license application; CLI-06-20, 64 NRC 15 (2006)

off-again/on-again approach to construction of long-delayed units has generated a unique set of circumstances such that Commission should consider holding a new mandatory hearing prior to allowing full-power operation of units; LBP-10-12, 71 NRC 656 (2010)

on NEPA baseline issues in an early site permit proceeding, the board must reach its own independent determination; LBP-07-9, 65 NRC 539 (2007)

regarding safety issues, boards must determine whether the application and the record of the proceeding contain sufficient information and the review of the application by the NRC Staff has been adequate to support findings pursuant to 10 C.F.R. 30.33, 40.32, and 70.23; LBP-07-6, 65 NRC 429 (2007)

regardless of whether a uranium enrichment facility proceeding is contested or uncontested, a licensing board must consider three baseline NEPA issues; LBP-06-17, 63 NRC 747 (2006)

safety findings that a board must make for issuance of an early site permit are clarified; LBP-09-19, 70 NRC 433 (2009)

Staff's underlying technical and factual findings are not open to board reconsideration unless, after a review of the record, the board finds the NRC Staff review inadequate or its findings insufficient; LBP-06-28, 64 NRC 460 (2006)

the board must decide whether, taking into consideration the site criteria contained in 10 C.F.R. Part 100, a reactor or reactors, having the characteristics that fall within the parameters for the site, can be constructed without undue risk to the health and safety of the public; LBP-07-9, 65 NRC 539 (2007)

the board's demand for a complete narrative report summarizing the Staff's review of the license application is vacated and the board is directed to focus on specific issues and Staff is to provide indexes as a means to summarize the documents on which it relied for its review; CLI-06-20, 64 NRC 15 (2006)

the board's role is analogous to that of an appellate court applying the substantial evidence test; LBP-07-9, 65 NRC 539 (2007)

the Commission shall hold a hearing on each application under the Atomic Energy Act, 42 U.S.C. 2133 or 2134(b), for a construction permit for a facility; LBP-07-1, 65 NRC 27 (2007); LBP-09-19, 70 NRC 433 (2009)

the licensing board is directed to revise its mandatory hearing schedule with a goal of issuing a final Commission decision on the pending application within 30 months from the date that the application was received; CLI-07-5, 65 NRC 109 (2007)

the licensing board must narrow its inquiry to those topics or sections in Staff documents that it deems most important and should concentrate on portions of the documents that do not on their face adequately explain the logic, underlying facts, and applicable regulations and guidance; LBP-07-6, 65 NRC 429 (2007)

the licensing board's standard of review on environmental issues in a uncontested proceeding on a uranium enrichment facility application is discussed; LBP-07-6, 65 NRC 429 (2007)

SUBJECT INDEX

- the NRC Staff's underlying technical and factual findings on an early site permit application are not open to board reconsideration unless, after a review of the record, the board finds the NRC Staff review inadequate or its findings insufficient; LBP-07-9, 65 NRC 539 (2007)
- the overriding NEPA issue that a board must determine in a proceeding on an early site permit application is whether the NEPA review conducted by the NRC Staff has been adequate; LBP-07-9, 65 NRC 539 (2007)
- the scope of the licensing board's environmental review in an uncontested early site permit proceeding is discussed; LBP-07-1, 65 NRC 27 (2007)
- the scope of the licensing board's safety review in an uncontested early site permit proceeding is discussed; LBP-07-1, 65 NRC 27 (2007)
- the three NEPA-related factors that the board is required to address in uncontested early site permit proceedings are discussed; LBP-06-28, 64 NRC 460 (2006)
- uncontested early site permit proceedings are still subject to a mandatory hearing; CLI-07-12, 65 NRC 203 (2007)
- under its inherent supervisory power over adjudications, the Commission accepts review because licensing boards are conducting the first mandatory hearings in more than two decades and additional Commission guidance is deemed appropriate; CLI-06-20, 64 NRC 15 (2006)
- when a proceeding involving an application for a construction permit is uncontested the board will not conduct a de novo review, but rather will conduct a simple sufficiency review of the uncontested issues; LBP-07-1, 65 NRC 27 (2007); LBP-07-6, 65 NRC 429 (2007)
- when an early site permit is issued with an associated limited work authorization, the board must find relative to the LWA that any significant adverse environmental impact resulting from activities requested under 10 C.F.R. 52.17(c) can be redressed; LBP-09-19, 70 NRC 433 (2009)
- when reviewing an early site permit application in an uncontested proceeding, licensing boards are to conduct a simple sufficiency review rather than a de novo review on both Atomic Energy Act and National Environmental Policy Act issues; LBP-09-19, 70 NRC 433 (2009)
- where the Standard Review Plan had not been followed, no specific Regulatory Guide was applicable, a Regulatory Guide required adaptation, or the Staff's logic was incomplete or unclear, the board sought a thorough explanation of the Staff's rationale for the process it ultimately adopted along with its conclusions, and examined that process and those conclusions to ensure they were well founded in fact and logic; LBP-06-28, 64 NRC 460 (2006)
- whether NRC Staff should be required to produce four paper copies of relevant documents is a matter best left to a board's discretion; CLI-06-20, 64 NRC 15 (2006)
- with respect to certain NEPA findings, boards in early site permit proceedings are to make independent environmental judgments, though they need not rethink or redo every aspect of the NRC Staff's environmental findings or undertake their own fact-finding activities; LBP-09-19, 70 NRC 433 (2009)
- MATERIAL CONTROL AND ACCOUNTING**
- petitioner alleges release of controlled byproduct nuclear materials in containers not certified for transport of such materials on public roads and not labeled with the required labeling; DD-10-3, 72 NRC 171 (2010)
- MATERIAL FALSE STATEMENTS**
- a false statement charge, like a perjury charge, effectively demands an inquiry into defendant's state of mind and intent to deceive at the time the testimony was given; CLI-10-23, 72 NRC 210 (2010)
- a person is proscribed from deliberately submitting to the NRC information that the person knows to be incomplete or inaccurate in some respect material to the NRC; LBP-09-24, 70 NRC 676 (2009)
- board's finding that "knowledge" does not necessarily follow simply from previous exposure to individual facts, but rather an individual must have a current appreciation of those facts and their meaning in the circumstances presented, is a finding of fact, not of law; CLI-10-23, 72 NRC 210 (2010)
- concerning criminal guilt, the words "knowledge" and "knowingly" are normally associated with awareness, understanding, or consciousness; CLI-10-23, 72 NRC 210 (2010)
- information provided to the Commission by an applicant for a license or required to be maintained by the applicant or the licensee shall be complete and accurate in all material respects; LBP-08-14, 68 NRC 279 (2008); LBP-09-1, 69 NRC 11 (2009)
- knowledge of a fact requires not only an awareness of that fact but also an understanding or recognition of its significance; CLI-10-23, 72 NRC 210 (2010)

SUBJECT INDEX

licensee employees may not deliberately submit to the NRC information that the employee knows to be incomplete or inaccurate in some respect material to the NRC; CLI-10-23, 72 NRC 210 (2010)
materially false, fictitious, or fraudulent statements or representations are prohibited in matters within the federal government's jurisdiction; CLI-10-23, 72 NRC 210 (2010)
materially incorrect responses to the NRC's communications are violations; CLI-10-23, 72 NRC 210 (2010)

NRC may revoke any license for a material false statement in the application; CLI-07-12, 65 NRC 203 (2007)

some circumstances surrounding a person's false statement may be so obvious that knowledge of its character may be fairly attributed to him; CLI-10-23, 72 NRC 210 (2010)

the sole issue under 10 C.F.R. 50.5(a)(2) is whether a person knew the information was materially incomplete and inaccurate at the time it was submitted to the NRC; CLI-10-23, 72 NRC 210 (2010)

to convict a person accused of making a false statement, the government must prove not only that the statement was false, but that the accused knew it to be false; CLI-10-23, 72 NRC 210 (2010)

willfulness means nothing more in the context of a false statement than that the defendant knew that his statement was false when he made it or consciously disregarded or averted his eyes from its likely falsity; CLI-10-23, 72 NRC 210 (2010)

MATERIAL MISREPRESENTATIONS

a licensee employee who contributes to submission of information to the NRC that the employee knows is not complete or accurate in some material respect places the licensee in violation; LBP-09-24, 70 NRC 676 (2009)

engaging in deliberate misconduct that caused inaccurate and incomplete information to be provided to the NRC concerning conditions at a reactor resulted in debarment from licensed activities for 5 years; LBP-09-11, 70 NRC 151 (2009)

ethics rules in most jurisdictions require, and the board expects, that counsel will promptly correct statements of material fact that are no longer true; LBP-09-28, 70 NRC 1019 (2009)

for the decisions of the agency's dedicated regulators to be effective in protecting the public health and safety, there is no room for the submission of falsified information; LBP-09-24, 70 NRC 676 (2009)

information submitted to an NRC inspector that was not complete and accurate in all material respects is a violation; LBP-09-12, 70 NRC 159 (2009)

MATERIALITY

a contention based on another agency's draft environmental assessment that does not apply to the time period in which proposed reactor units would be operational is not material to the findings the licensing board must make; LBP-10-1, 71 NRC 165 (2010)

a dispute is material if its resolution would make a difference in the outcome of the licensing proceeding; LBP-06-10, 63 NRC 314 (2006); LBP-10-6, 71 NRC 350 (2010)

a dispute is not material unless it involves a significant inaccuracy or omission and resolution of the dispute could affect the outcome of the licensing proceeding; LBP-10-14, 72 NRC 101 (2010)

a genuine material dispute is one that could lead to a different conclusion on potential cost-beneficial severe accident mitigation alternatives; LBP-09-26, 70 NRC 939 (2009)

accuracy and reliability of the agency's need-for-power determination, as reflected in the draft EIS, is material to the licensing decision; LBP-10-24, 72 NRC 720 (2010)

adequacy of the draft environmental impact statement's evaluation of alternatives is a material issue in the licensing proceeding; LBP-10-24, 72 NRC 720 (2010)

allegations of deficiencies or errors in an application also indicate some significant link between the claimed deficiency and either the health and safety of the public or the environment; LBP-07-10, 66 NRC 1 (2007); LBP-07-16, 66 NRC 277 (2007)

although one of the central purposes of NEPA is information gathering and disclosure, information immaterial to the proceeding does not necessarily need to be included; LBP-07-3, 65 NRC 237 (2007)

an admissible contention must show that the alleged error or omission is of possible significance to the result of the proceeding; LBP-09-26, 70 NRC 939 (2009)

any fact-based argument in a petition for review must satisfy the materiality requirement; CLI-10-17, 72 NRC 1 (2010)

applicant's change of reactor design constitutes new and materially different information for the purposes of filing a new contention; LBP-10-17, 72 NRC 501 (2010)

SUBJECT INDEX

at the contention admissibility stage, intervenors are not required to run a sensitivity analysis and/or to prove that alleged defects would change the result; LBP-10-14, 72 NRC 101 (2010)

by complying with the six contention requirements, an admissible contention must raise an issue that is both within the scope of the proceeding (normally defined by the hearing notice) and material to the findings the NRC must make to support the action involved; LBP-09-18, 70 NRC 385 (2009)

concerns related to an applicant's ownership are potentially material to the safety and environmental requirements of 10 C.F.R. Part 40; LBP-08-24, 68 NRC 691 (2008)

contentions alleging deficiencies or errors in an application must also indicate some significant link between the claimed deficiency and either the health and safety of the public or the environment; LBP-08-16, 68 NRC 361 (2008); LBP-10-7, 71 NRC 391 (2010)

cost-risk calculations that intervenors propose in their contention as they relate to existing reactors are not material to the findings that NRC must make to license the proposed reactors; LBP-10-14, 72 NRC 101 (2010)

ensuring that NRC Staff meets its consultation obligations under section 106 of the National Historic Preservation Act is an issue material to the findings NRC must make in support of the action involved in a materials license renewal proceeding; LBP-08-24, 68 NRC 691 (2008)

failure to provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact is grounds for dismissal of a contention; CLI-10-9, 71 NRC 245 (2010)

for a fact to be material with regard to the SAMA analysis, it must be a fact that can reasonably be expected to impact the Staff's conclusion that any particular mitigation alternative may or may not be cost-effective; LBP-07-13, 66 NRC 131 (2007)

for contention admissibility, a showing that the alleged error or omission is of possible significance to the result of the proceeding is required; LBP-10-6, 71 NRC 350 (2010)

for contentions to be admissible, the subject matter of the contention must impact the grant or denial of a pending license application; LBP-09-3, 69 NRC 139 (2009)

given that consideration of terrorist attacks is part of the NRC's NEPA obligations in the Ninth Circuit, the issue of whether terrorist attacks have been fully considered in the NEPA analysis for a power plant in that jurisdiction is plainly material to the decision the NRC must make; LBP-10-15, 72 NRC 257 (2010)

if petitioner makes a prima facie allegation that the application omits information required by law, it necessarily presents a genuine dispute with applicant on a material issue in compliance and raises an issue plainly material to an essential finding of regulatory compliance needed for license issuance; LBP-09-16, 70 NRC 227 (2009); LBP-10-16, 72 NRC 361 (2010)

in addressing a summary disposition motion, guidance on determining whether an issue is "material" is taken from procedures for contention admissibility; LBP-07-13, 66 NRC 131 (2007)

intervenors' comments must be significant enough to step over a threshold requirement of materiality, not merely state that a particular mistake was made, but show why the mistake was of possible significance; LBP-10-10, 71 NRC 529 (2010)

NRC regulations teach that a fact cannot be material to a summary disposition ruling unless its consideration could materially affect the decision of the NRC vis-a-vis implementation of any particular severe accident mitigation alternative; LBP-07-13, 66 NRC 131 (2007)

only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment; LBP-07-13, 66 NRC 131 (2007)

petitioner must demonstrate that the issue raised in the contention is material to the findings the NRC must make to support the action that is involved in the proceeding; LBP-07-11, 66 NRC 41 (2007); LBP-09-17, 70 NRC 311 (2009); LBP-09-21, 70 NRC 581 (2009); LBP-09-25, 70 NRC 867 (2009)

petitioner must show that the subject matter of the contention would impact the grant or denial of the license application at issue in the proceeding; CLI-09-15, 70 NRC 1 (2009); LBP-09-26, 70 NRC 939 (2009); LBP-09-27, 70 NRC 992 (2009); LBP-10-6, 71 NRC 350 (2010)

petitioner must show why the alleged error or omission is of possible significance to the result of the proceeding; LBP-07-16, 66 NRC 277 (2007); LBP-08-9, 67 NRC 421 (2008); LBP-09-27, 70 NRC 992 (2009)

petitioner need not submit a sensitivity analysis in order to establish that a SAMA-related contention is material; LBP-10-15, 72 NRC 257 (2010)

SUBJECT INDEX

- properly formulated contentions must focus on the license application in question, challenging either specific portions of or alleged omissions from the application, including the safety analysis report and the environmental report, so as to establish that a genuine dispute exists with the applicant on a material issue of law or fact; LBP-10-7, 71 NRC 391 (2010)
- section 2.309(f)(1)(vi) is not a second hurdle of materiality that an intervenor must meet, but rather requires that intervenor identify the specific parts of the combined license application that it disputes and show that resolution of those disputes is material to the licensing decision; LBP-09-27, 70 NRC 992 (2009)
- the decision as to whether an alleged environmental impact or alternative is significant or reasonable is the merits of a NEPA contention and should not be adjudicated at the contention admissibility stage under the guise of materiality or scope; LBP-09-10, 70 NRC 51 (2009)
- the financial test for a parent company guarantee is a material issue because the Staff must decide whether the test is satisfied in order to grant the combined license; LBP-09-15, 70 NRC 198 (2009)
- the increased risk of living within 50 miles of a nuclear power plant constitutes injury-in-fact, is traceable to the challenged action, and is likely to be redressed by a favorable decision that either denies a license or mandates compliance with legal requirements that protect the interests of the petitioners; LBP-09-4, 69 NRC 170 (2009)
- the meaning of materiality in the context of paragraph (f)(2) differs from materiality in the context of paragraph (f)(1) of 10 C.F.R. 2.309; LBP-10-1, 71 NRC 165 (2010)
- the requirement of materiality often dictates that any contention alleging deficiencies or errors in an application also indicates some significant link between the claimed deficiency and either the health and safety of the public or the environment; LBP-09-3, 69 NRC 139 (2009)
- the subject matter of the contention must impact the grant or denial of a pending license application; LBP-07-10, 66 NRC 1 (2007); LBP-08-16, 68 NRC 361 (2008); LBP-10-17, 72 NRC 501 (2010)
- the underlying purpose of NEPA as an information-gathering and disclosure mechanism requires a different view of the concept of "materiality" under 10 C.F.R. 2.309(f)(1)(iv) than might be applied to a contention seeking to establish a health and safety issue; LBP-08-16, 68 NRC 361 (2008)
- to be admissible, a contention must show that some significant link exists between the claimed deficiency and either the health and safety of the public or the environment; LBP-09-26, 70 NRC 939 (2009); LBP-09-27, 70 NRC 992 (2009); LBP-10-6, 71 NRC 350 (2010)
- to be admissible, contentions must assert an issue of law or fact that is material to the outcome of a licensing proceeding, meaning that the subject matter of the contention must impact the grant or denial of a pending license application; LBP-10-6, 71 NRC 350 (2010); LBP-10-7, 71 NRC 391 (2010)
- where a contention challenges applicant's compliance with the Commission's rules implementing the National Environmental Policy Act, materiality relates not only to the Commission's determination regarding denial, issuance, or conditioning of the requested combined license, but also to the Commission's fulfillment of its obligations under NEPA; LBP-10-6, 71 NRC 350 (2010)
- whether excessive safety design could lead to licensing uncertainty, unnecessary costs, or delays are not issues material to the high-level waste repository construction authorization proceeding; CLI-09-14, 69 NRC 580 (2009)
- MATERIALS LICENSE AMENDMENT APPLICATIONS**
- applicant must provide a list of all approvals and describe the status of those approvals with the applicable environmental standards and requirements; LBP-08-6, 67 NRC 241 (2008)
- applicant must submit an environmental report, which is required to contain the information specified in 10 C.F.R. 51.45; LBP-08-6, 67 NRC 241 (2008)
- MATERIALS LICENSE AMENDMENT PROCEEDINGS**
- a board did not act unreasonably in basing standing on potential harm from new operations that would be similar to harm petitioner claims he has suffered from existing operations; CLI-09-12, 69 NRC 535 (2009)
- for a petitioner to be admitted as a party, it must propose at least one admissible contention that meets the requirements of 10 C.F.R. 2.309(f)(1); LBP-06-6, 63 NRC 167 (2006)
- in proceedings not involving power reactors, proximity alone is not sufficient to establish standing; LBP-08-6, 67 NRC 241 (2008)
- intervenors' nuclear proliferation concern is premised upon future third-party activities that are unrelated to the specific activities authorized by license amendments and is not litigable because it is not a direct

SUBJECT INDEX

- consequence of the proposed license amendments or the Commission's approval thereof; LBP-09-1, 69 NRC 11 (2009)
- issues relating to threats to public health and safety and potential impacts on the environment arising out of water quality issues are within the scope of the proceeding; LBP-08-6, 67 NRC 241 (2008)
- past violations or accidents that have no direct bearing on a proposed amendment may not be litigated; CLI-09-12, 69 NRC 535 (2009)
- petitioners have the burden to show a specific and plausible means whereby the licensing decision may harm them; CLI-09-9, 69 NRC 331 (2009)
- petitioners' claim that a foreign-owned company would be more likely than a U.S.-owned company to export its product overseas falls outside the scope of the proceeding, where the applicant had not applied for a license to export recovered uranium; CLI-09-12, 69 NRC 535 (2009)
- proximity alone is not sufficient to establish standing for a petitioner's proximity to a source materials activity; CLI-09-12, 69 NRC 535 (2009); LBP-08-24, 68 NRC 691 (2008)
- requirement to show distinct new harm from a license amendment application would not preclude standing to contest commencement of new operations at a separate site, where petitioner showed potential for harm to himself from new operation; CLI-09-12, 69 NRC 535 (2009)
- Subpart G hearing procedures do not apply to these proceedings; LBP-09-1, 69 NRC 11 (2009)
- the fact that NRC Staff consultation with interested Indian tribes had not yet taken place at the time a materials license amendment application was filed did not reflect a deficiency in the application and thus a contention alleging a deficiency in the application was inadmissible; CLI-09-12, 69 NRC 535 (2009)
- this is not an appropriate forum to throw open an opportunity to engage in a free-ranging inquiry into the character of the licensee; LBP-09-1, 69 NRC 11 (2009)
- where there is no obvious potential for offsite harm, petitioner must show a specific and plausible means of how the challenged action may harm him or her; CLI-09-9, 69 NRC 331 (2009)
- MATERIALS LICENSE AMENDMENTS**
- issuance of the license must not be inimical to the common defense and security or to the health and safety of the public; LBP-09-1, 69 NRC 11 (2009)
- the admissibility of proposed contentions may be determined after the Staff has issued the amendment; CLI-07-20, 65 NRC 499 (2007)
- MATERIALS LICENSE APPLICATIONS**
- an environmental report and an environmental impact statement must include a statement on the alternatives to the proposed action, including a discussion of the no-action alternative; CLI-09-15, 70 NRC 1 (2009)
- the organization or format of an application is not germane to license issuance because the objection to the application's organization is not an objection to the licensing action at issue in the proceeding; LBP-10-16, 72 NRC 361 (2010)
- MATERIALS LICENSE PROCEEDINGS**
- a design-based challenge involving a postulated cask drop on a sealed source is within the scope of, and material to, an irradiator licensing proceeding; LBP-06-12, 63 NRC 403 (2006)
- a state, county, municipality, federally recognized Indian tribe, or agencies thereof, may submit a petition to the Commission to participate as a party in a uranium enrichment facility proceeding; CLI-09-15, 70 NRC 1 (2009)
- boards apply a proximity-plus test to establish standing in materials cases, where the petitioner must show that the proposed licensing action involves a significant source of radiation that has an obvious potential for offsite consequences; CLI-10-20, 72 NRC 185 (2010)
- challenges to the implementing procedures for a reactor emergency plan are not material; LBP-06-12, 63 NRC 403 (2006)
- compliance with regulations of other federal agencies, such as Environmental Protection Agency drinking water contamination limits, is beyond a board's jurisdiction and outside the scope of NRC proceedings; LBP-06-8, 63 NRC 241 (2006)
- general areas of concern are no longer sufficient to trigger a hearing in a Subpart L proceeding; LBP-06-12, 63 NRC 403 (2006)
- no proximity presumption applies in source materials cases; LBP-10-16, 72 NRC 361 (2010)

SUBJECT INDEX

pursuant to the proximity-plus approach, a presumption based on geographical proximity (albeit at distances much closer than 50 miles) may be applied where there is a determination that the proposed action involves a significant source of radioactivity producing an obvious potential for offsite consequences; LBP-10-4, 71 NRC 216 (2010)

standing was found for an organization representing three members living in close proximity to decommissioning site, who expressed concern that depleted uranium materials could affect a waterway abutting the property of two members; CLI-10-20, 72 NRC 185 (2010)

the proper scope of an irradiator licensing proceeding and whether it requires or otherwise encompasses analyses of endemic site-related risks are questioned; CLI-07-26, 66 NRC 109 (2007)

the scope of a proceeding generally is defined by the Commission's notice of opportunity for hearing; LBP-06-12, 63 NRC 403 (2006)

to establish standing, petitioner must show more than that he lives or works within a certain distance of the site where materials will be located; CLI-10-20, 72 NRC 185 (2010)

whether and at what distance a petitioner can be presumed to be affected must be judged on a case-by-case basis, taking into account the nature of the proposed action and the significance of the radioactive source; LBP-10-4, 71 NRC 216 (2010)

MATERIALS LICENSE RENEWAL

NRC Staff is required to consider whether renewing a license would be inimical to the common defense and security or the public health and safety; LBP-08-24, 68 NRC 691 (2008)

when a renewal application is timely filed, the license is automatically extended by operation of law until final agency action is taken on the renewal request; LBP-09-13, 70 NRC 168 (2009)

MATERIALS LICENSE RENEWAL PROCEEDINGS

a contention that involves an issue of state law is outside the scope of the proceeding; LBP-08-24, 68 NRC 691 (2008)

a license renewal proceeding is an appropriate occasion for appraising the entire past performance of the licensee; LBP-08-24, 68 NRC 691 (2008)

allegations that mining activities may cause harm to public health and safety are within the scope of a materials license renewal proceeding and material to the findings the NRC must make; LBP-08-27, 68 NRC 951 (2008)

although a board in another materials license renewal proceeding allowed an Indian organization to participate in that proceeding as an interested Indian tribe under 10 C.F.R. 2.315(c), that ruling is not binding on other boards; LBP-09-13, 70 NRC 168 (2009)

an unopposed motion to withdraw the sole intervention petition is granted and the proceeding is terminated; LBP-10-3, 71 NRC 213 (2010)

appraisal of the entire past performance of the licensee is an appropriate issue in contentions; CLI-09-9, 69 NRC 331 (2009)

determination of specific hearing procedures to be used for a proceeding is made on a contention-by-contention basis, and selection of the hearing procedure is dependent on what is most appropriate for the specific contentions before it; LBP-08-24, 68 NRC 691 (2008)

ensuring that NRC Staff meets its consultation obligations under section 106 of the National Historic Preservation Act is an issue material to the findings NRC must make in support of the action involved; LBP-08-24, 68 NRC 691 (2008)

in source materials cases, petitioner has the burden to show a specific and plausible means of how proposed license activities may affect him or her; LBP-09-13, 70 NRC 168 (2009)

standing based on proximity does not apply in source materials cases; LBP-09-13, 70 NRC 168 (2009)

to participate as a party in a materials license renewal proceeding, intervention petitioner must not only establish standing, but also proffer at least one admissible contention; LBP-08-24, 68 NRC 691 (2008)

MATERIALS LICENSES

a categorical exclusion exists for materials licenses associated with irradiators; CLI-10-18, 72 NRC 56 (2010)

a license to possess and to use special nuclear materials at a fuel fabrication facility is the functional equivalent of an operating license for more standard facilities; LBP-07-14, 66 NRC 169 (2007)

a source material license may not be issued to a corporation if the Commission determines that the corporation is owned, controlled, or dominated by a foreign corporation; LBP-08-6, 67 NRC 241 (2008)

SUBJECT INDEX

bare ownership of land containing radioactive material is not part of the licensee's licensed operation; CLI-06-14, 63 NRC 510 (2006)

before issuing a license to receive and possess high-level waste at the repository, the Commission must find that construction of any underground storage space required for initial operation has been substantially completed; LBP-10-22, 72 NRC 661 (2010)

creditor regulations may be augmented by license conditions as necessary to allow ownership arrangements, such as sale and leaseback, provided it can be found that such arrangements are not inimical to the common defense and security of the United States; CLI-09-15, 70 NRC 1 (2009)

issuance of a materials license to a licensee wholly owned by a foreign parent is not prohibited; CLI-09-12, 69 NRC 535 (2009)

licensees must satisfy all applicable state and local siting, zoning, land use, and building code requirements for irradiators; CLI-08-3, 67 NRC 151 (2008)

NRC Staff is required under NEPA to evaluate reasonable technological and geographical alternatives to a proposed irradiator; CLI-10-18, 72 NRC 56 (2010)

Part 70 financial criteria can be met by conditioning the license to require funding commitments to be in place prior to construction and operation; CLI-09-15, 70 NRC 1 (2009)

performance-based licensing is fully consistent with sound NEPA practice and does not run counter to any agency mandate contained in the Atomic Energy Act or any established Commission regulation; LBP-06-19, 64 NRC 53 (2006)

project goals are to be determined by the applicant, not the agency; CLI-10-18, 72 NRC 56 (2010)

with respect to possession, a Part 40 license continues in effect after expiration until decommissioning is completed; CLI-09-1, 69 NRC 1 (2009)

MEMORANDUM OF UNDERSTANDING

an MOU is adequate to demonstrate the plausibility of applicant's depleted uranium deconversion strategy; LBP-06-15, 63 NRC 591 (2006)

METAL FATIGUE

a component's cumulative usage factor is the fundamental parameter used to determine whether it will likely develop cracks during the license renewal period and thus is subject to an aging management plan; LBP-08-13, 68 NRC 43 (2008)

a license renewal applicant who addresses the cumulative usage factor issue via an aging management program may reference Chapter X of the Generic Aging Lessons Learned Report; CLI-10-17, 72 NRC 1 (2010)

an aging management program is intended to manage the effects of aging on a particular component by, e.g., ensuring that the fatigue usage factor for the component does not exceed the design code limit; CLI-10-17, 72 NRC 1 (2010)

analysis of metal fatigue that ignores the known and substantial effects of the light-water reactor environment is insufficient, as both a technical and a legal matter; LBP-08-25, 68 NRC 763 (2008)

applicant may demonstrate compliance with 10 C.F.R. 54.21(c)(1)(ii) by showing that the cumulative usage factor calculations have been reevaluated based on an increased number of assumed transients to bound the period of extended operation and that the resulting CUF remains less than or equal to 1.0 for the period of extended operation; CLI-10-17, 72 NRC 1 (2010)

applicant's use of a conservative number of transients in the calculations of the environmentally adjusted cumulative usage factor is adequate to provide the degree of assurance required by 10 C.F.R. 54.29(a); LBP-08-25, 68 NRC 763 (2008)

conservatism in use of Green's function to determine cumulative usage factor for metal fatigue in the recirculation nozzle is discussed; LBP-08-12, 68 NRC 5 (2008)

cumulative use factor is a means of quantifying the fatigue that a particular metal component experiences during plant operation; CLI-10-17, 72 NRC 1 (2010)

for any material, there is a characteristic number of stress cycles that it can withstand at a particular applied stress level before fatigue failure occurs; CLI-10-17, 72 NRC 1 (2010)

for license renewal, feedwater, core spray, and reactor recirculation outlet nozzles, as part of the reactor coolant pressure boundary, must meet the metal-fatigue requirements for Class 1 components in Section III of the ASME Code; CLI-10-17, 72 NRC 1 (2010)

if a board finds that the use of a more accurate approach than compliance with regulatory guides is needed to provide reasonable assurance that metal fatigue will be adequately managed during the period

SUBJECT INDEX

- of extended operation, then the board is authorized and duty bound to impose such a requirement; LBP-08-25, 68 NRC 763 (2008)
- if applicant can demonstrate by plant operating experience that the initially predicted number of stress cycles would not be exceeded even in the extended 20-year operating period, then 10 C.F.R. 54.21(c)(1)(i) would be satisfied; CLI-10-17, 72 NRC 1 (2010)
- if applicant's metal fatigue analyses on Class I components do not comply with the ASME Code and do not provide reasonable assurance as required by 10 C.F.R. 54.21(c)(1) and 54.29(a), then a license renewal cannot be issued; LBP-08-25, 68 NRC 763 (2008)
- if the cumulative usage factor environmental analysis produces a value of greater than unity, then the analysis indicates that the component would be likely to develop metal fatigue cracks that might affect their function during the 20-year license renewal period of extended operation, and thus requires an aging management program; LBP-09-9, 70 NRC 41 (2009)
- license renewal applicant demonstrates compliance with the ASME Code by projecting the fatigue analysis for the nozzle through the extended operating period; CLI-08-28, 68 NRC 658 (2008)
- new contention on the adequacy of consideration of the dissolved oxygen factor in the cumulative usage factor environmental analysis and use of inappropriate heat transfer equations was previously litigated and resolved and thus is not admissible; LBP-09-9, 70 NRC 41 (2009)
- NRC Staff's guidance document NUREG/CR-6909, which prescribes guidance on the calculation of metal fatigue on reactor components in a light water reactor environment, is built upon a larger and more recent database than NUREG/CR-5704 and -6583 but use of the earlier NUREGs is sufficient; LBP-08-25, 68 NRC 763 (2008)
- use of a simplified Green's function methodology for the environmentally adjusted cumulative usage factor metal fatigue analyses for the core spray and reactor recirculation outlet nozzles is inconsistent with the ASME Code and thus cannot serve as the analysis-of-record and does not satisfy the requirements of 10 C.F.R. 54.21(c)(1) or 54.29(a); LBP-08-25, 68 NRC 763 (2008)
- METEOROLOGICAL FACTORS**
- the board rules on a motion for summary disposition of a contention questioning applicant's handling of its severe accident mitigation alternatives analysis; LBP-07-13, 66 NRC 131 (2007)
- the site safety analysis report submitted with an early site permit application must contain the seismic, meteorological, hydrologic, and geologic characteristics of the proposed site; LBP-09-19, 70 NRC 433 (2009)
- MINING ACTIVITIES**
- a contention concerning environmental impacts of offsite mining is rejected because petitioner failed to support the allegations with information indicating that such impacts are even plausibly significant; LBP-09-10, 70 NRC 51 (2009)
- controls other countries may impose on mining and milling, and the impacts of such activities, are outside the scope of a combined license proceeding; LBP-09-17, 70 NRC 311 (2009)
- if the environmental impact of mining activities is potentially significant, then the failure of the environmental report for a combined license application to disclose the location of the offsite mine does not immunize it from being the subject of a legitimate contention; LBP-09-10, 70 NRC 51 (2009)
- MINORITIES**
- in reviewing environmental justice claims, adverse impacts that fall heavily on minority and impoverished citizens call for particularly close scrutiny; LBP-07-3, 65 NRC 237 (2007)
- to qualify as an environmental justice contention, the contention must show that the affected local population qualifies as a minority or low-income population; LBP-09-18, 70 NRC 385 (2009)
- MISCONDUCT**
- a difference of opinion over a scientific question does not constitute fraud or misconduct on the part of the NRC Staff; CLI-06-4, 63 NRC 32 (2006)
- See also Deliberate Misconduct; Material Misrepresentations
- MODIFICATION ORDER**
- an order modifying a license, such as a Staff order, falls well within the Administrative Procedure Act's definition of adjudication, and as such, the Staff order did not trigger the notice-and-comment procedures applicable to rulemakings; CLI-10-3, 71 NRC 49 (2010)
- any challenge to the established terms and conditions of an early site permit can only be raised as a petition to modify a license under section 2.206; CLI-07-12, 65 NRC 203 (2007)

SUBJECT INDEX

intervention petitioners who think an order modifying a license should not be sustained, but might want further corrective measures, are precluded from intervention; LBP-09-20, 70 NRC 565 (2009)

the Commission's power to define the scope of a proceeding will lead to the denial of intervention when the Commission amends a license to require additional or better safety measures; LBP-09-20, 70 NRC 565 (2009)

twenty days in which to request a hearing is the minimum required by the agency's regulations for orders issued under 10 C.F.R. 2.202(a); LBP-09-20, 70 NRC 565 (2009)

when issuing an order modifying a license, the agency is required to inform the licensee or any other person adversely affected by the order of his or her right, within 20 days of the date of the order, or such other time as may be specified in the order, to demand a hearing; LBP-09-20, 70 NRC 565 (2009)

where the notice of hearing limits the scope to whether the order should be sustained, petitioner's sole remedy is rescission of the order; LBP-09-20, 70 NRC 565 (2009)

with respect to orders modifying a license, petitioner must always request a remedy that falls within the scope of the proceeding, as articulated in the notice of hearing; LBP-09-20, 70 NRC 565 (2009)

MONETARY AWARDS

licensing boards have awarded payment of litigation fees and expenses from a licensee to an intervenor if there has been legal harm to the intervenors caused by some activity or action of the licensee; LBP-09-1, 69 NRC 11 (2009)

NRC is explicitly prohibited by law from paying the expenses of or otherwise compensating intervenors, and thus cannot grant petitioners funds to prepare requests for access to safeguards information or sensitive unclassified nonsafeguards information; CLI-09-4, 69 NRC 80 (2009)

MONITORING

a contention alleging that the applicant's proposed monitoring techniques are not adequate because they are based on computer models that were not benchmarked is admissible; LBP-06-20, 64 NRC 131 (2006)

a contention stating that monitoring activities may not be sufficient to identify and control the effects of aging that will occur during the 20-year renewal period falls squarely within the scope of a license renewal proceeding; LBP-06-7, 63 NRC 188 (2006)

NRC continually takes measures to include the monitoring of safety culture in its oversight programs and internal management processes; CLI-10-27, 72 NRC 481 (2010)

preconstruction monitoring and testing to establish background information is exempted from the prohibition on commencement of construction; LBP-10-16, 72 NRC 361 (2010)

See also Radiation Monitoring System

MOOTNESS

a contention alleging that a license application omits material information becomes moot when the applicant cures the omission; CLI-06-9, 63 NRC 433 (2006); CLI-07-8, 65 NRC 124 (2007); CLI-09-8, 69 NRC 317 (2009); LBP-06-16, 63 NRC 737 (2006); LBP-07-2, 65 NRC 153 (2007); LBP-08-12, 68 NRC 5 (2008); LBP-09-15, 70 NRC 198 (2009); LBP-09-16, 70 NRC 227 (2009); LBP-09-21, 70 NRC 581 (2009); LBP-09-27, 70 NRC 992 (2009); LBP-10-16, 72 NRC 361 (2010)

a contention challenging applicant's environmental report can be superseded by the subsequent issuance of licensing-related documents, whether a draft environmental impact statement or an applicant's response to a request for additional information; LBP-10-14, 72 NRC 101 (2010)

a contention that impacts from a severe radiological accident at any one unit on operation of other units at the site had not been, and should be, considered in the application's environmental report is found to be moot; LBP-10-10, 71 NRC 529 (2010)

although the Commission is not strictly bound by the mootness doctrine, the agency's adjudicatory tribunals have generally adhered to the principle; LBP-09-15, 70 NRC 198 (2009)

an appeal is moot where no effective relief can be granted to petitioners even if they were to prevail on their claim; LBP-09-14, 70 NRC 193 (2009)

an order denying a motion to reopen renders moot a petitioner's request for leave to submit an amended petition to intervene; CLI-06-4, 63 NRC 32 (2006)

because NRC is not subject to the jurisdictional limitations placed on the federal courts by the case or controversy provision in Article III of the Constitution, there is no insuperable barrier to its rendition of

SUBJECT INDEX

an advisory opinion on issues that have been indisputably mooted by events occurring subsequent to a licensing board decision; LBP-09-15, 70 NRC 198 (2009)

boards may consider the merits of a contention that has become moot to the extent doing so will promote the fair and expeditious resolution of the case and there are no significant countervailing concerns; LBP-09-15, 70 NRC 198 (2009)

despite not being constitutionally limited by the case or controversy requirement of Article III, common sense counsels against proceeding with an adjudication where no effective relief can be granted; LBP-09-14, 70 NRC 193 (2009)

dismissal of one contention on mootness grounds would not terminate a case where the board had expressly retained jurisdiction to decide whether to admit another contention; LBP-09-27, 70 NRC 992 (2009)

failure to raise any challenge to a Staff EIS correction essentially renders that aspect of an intervenor challenge moot, as the intervenor has failed to raise a litigable challenge to the previously identified error; LBP-06-9, 63 NRC 289 (2006)

imminent mootness of an issue has been cause for taking interlocutory review if the issue sought to be reviewed would have become moot by the time the board issued a final decision; CLI-10-29, 72 NRC 556 (2010)

mootness occurs when a justiciable controversy no longer exists; LBP-10-10, 71 NRC 529 (2010)

on issues of whether a contention has been rendered moot by provision of information by an applicant, the applicant bears the burden of persuasion; LBP-10-10, 71 NRC 529 (2010)

post-contention admission events, such as issuance of a Staff draft environmental impact statement, can render a previously admitted contention of omission subject to dismissal as moot; LBP-08-2, 67 NRC 54 (2008); LBP-08-3, 67 NRC 85 (2008); LBP-08-6, 67 NRC 241 (2008)

the case or controversy jurisdictional limitation restricts the business of federal courts to questions presented in an adversary context and in a form historically viewed as capable of resolution through the judicial process; LBP-09-14, 70 NRC 193 (2009)

the executive branch is not bound by the same constitutional constraints as Article III courts, but it has consistently followed the same principles of declining to consider moot cases, in the interest of administrative economy; LBP-09-14, 70 NRC 193 (2009)

the mere potential that an issue may become moot in the future due to a rulemaking does not affect the finality of a decision resting on current law; CLI-07-13, 65 NRC 211 (2007)

the mootness doctrine derives from the Constitution's limitation of federal courts' jurisdiction to cases or controversies; LBP-09-15, 70 NRC 198 (2009)

the question whether to hold an NRC enforcement proceeding in abeyance pending a related criminal prosecution is generally suitable for interlocutory Commission review because, unlike most interlocutory questions, the abeyance issue cannot await the end of the proceeding because it becomes moot; CLI-10-29, 72 NRC 556 (2010)

under Commission precedent on contentions of omission, once information asserted to have been omitted is supplied, the original contention is moot, and intervenors must timely file a new or amended contention in order to raise specific challenges regarding the new information; LBP-10-5, 71 NRC 329 (2010); LBP-10-10, 71 NRC 529 (2010); LBP-10-14, 72 NRC 101 (2010)

when a claim becomes moot in federal court, the court loses jurisdiction to decide the merits of that claim; LBP-09-15, 70 NRC 198 (2009)

when a claim becomes moot, a decision on the merits may be appropriate if the same basic dispute is likely to recur in the future, unless it seems sufficient to await the event or better to defer to another court; LBP-09-15, 70 NRC 198 (2009)

when a contention is based on a factual underpinning in a document that has been essentially repudiated by the source of that document, the contention may be dismissed unless the intervenor offers another independent source; LBP-10-9, 71 NRC 493 (2010)

when a federal court dismisses a claim as moot and avoids any further consideration of the merits of that claim, it does so because the claim no longer satisfies the case or controversy requirement of Article III; LBP-09-15, 70 NRC 198 (2009)

when an issue is no longer live, such that a party no longer has a legal interest in the issue, then it is moot; LBP-10-10, 71 NRC 529 (2010)

SUBJECT INDEX

where a contention alleges the omission of particular information or an issue from an application, and the information is later supplied by NRC Staff in a draft environmental statement, the contention is moot; LBP-10-10, 71 NRC 529 (2010)

where a contention is superseded by the subsequent issuance of licensing-related documents the contention must be disposed of or modified; LBP-10-17, 72 NRC 501 (2010)

MOTIONS

a party in the high-level waste proceeding who files a motion must certify that he or she has made a reasonable effort to consult with counsel for the other parties in an effort to resolve the matter in advance of filing the motion; CLI-08-25, 68 NRC 497 (2008)

a person who has not been admitted as a party to a proceeding is not entitled to make a motion in an ongoing proceeding; CLI-10-10, 71 NRC 281 (2010)

all motions are required to include a certification that the sponsor of the motion has made a sincere effort to contact the other parties and to resolve the issues raised in the motion; CLI-08-22, 68 NRC 355 (2008)

although NRC regulations do not provide for a motion to suspend a proceeding, the Commission has considered similar requests in the exercise of its inherent supervisory powers over proceedings; CLI-08-23, 68 NRC 461 (2008)

any motion must be filed within 10 days of the occurrence or circumstance from which the motion arises, and any movant must contact other parties prior to filing the motions; LBP-08-6, 67 NRC 241 (2008)

any motion, other than one made orally on the record during a hearing or as otherwise directed by the presiding officer, must contain a certification that the movant has made a sincere effort to contact the other parties and resolve the matter, and that this effort was unsuccessful; LBP-07-4, 65 NRC 281 (2007)

filing deadline is no more than 10 days after the occurrence or circumstance from which the motion arises; CLI-06-2, 63 NRC 9 (2006)

if a board erroneously rejected petitioner's motions, but the record does not suggest that petitioner suffered any prejudicial error, Commission review is not warranted; CLI-10-14, 71 NRC 449 (2010)

if the attorney or representative of a party is contacted pursuant to the consultation requirement, then that person (or his or her alternate) must make a sincere effort to make himself or herself available to listen and to respond to the moving party's explanation, and to resolve the factual and legal issues raised in the motion; LBP-09-22, 70 NRC 640 (2009)

intervenors must move for leave to file a timely new or amended contention under 10 C.F.R. 2.309(c), (f)(2); LBP-10-14, 72 NRC 101 (2010)

it is inconsistent with dispute avoidance/resolution purposes, and thus insufficient, for a contacted attorney or representative to fail or refuse to consider the substance of the consultation attempt, or for the party to respond that it takes no position on the motion (or issues) and that it reserves the right to file a response to the motion when it is filed; LBP-09-22, 70 NRC 640 (2009)

motions are to be filed within 10 days of the event or circumstance from which they arise; LBP-10-23, 72 NRC 692 (2010)

motions will be rejected if they do not include certification by the attorney or representative of the moving party that they have made a sincere effort to contact the other parties in this proceeding, to explain to them the factual and legal issues raised in the motion, and to resolve those issues; LBP-09-22, 70 NRC 640 (2009)

movant has no right to reply except as permitted by the presiding officer; CLI-08-23, 68 NRC 461 (2008) no later than 30 days after service of materials, all parties shall file any motions or requests to permit that party to conduct cross-examination of a specified witness or witnesses, together with the associated cross-examination plans; LBP-09-22, 70 NRC 640 (2009)

parties must make good-faith efforts to resolve with the other parties the subject matter of their motion; CLI-10-10, 71 NRC 281 (2010)

petitioners' requests that do not fit cleanly within any of the procedures described within the rules of practice are treated as general motions brought under the procedural requirements of 10 C.F.R. 2.323; CLI-08-23, 68 NRC 461 (2008)

there is no requirement that information provided to the board by Staff counsel about a telephone call from petitioner's former expert witness be in the form of a motion; LBP-06-10, 63 NRC 314 (2006)

SUBJECT INDEX

to be sincere, movant should contact other parties sufficiently in advance to provide enough time for the possible resolution of the matter or issues in question; LBP-09-22, 70 NRC 640 (2009)

See also Referral of Motion

MOTIONS FOR RECONSIDERATION

a motion may not be filed except with leave of the licensing board, upon a showing of compelling circumstances, such as the existence of a clear and material error in a decision, which could not reasonably have been anticipated, that renders the decision invalid; CLI-07-13, 65 NRC 211 (2007); CLI-07-21, 65 NRC 519 (2007); CLI-07-22, 65 NRC 525 (2007); CLI-10-9, 71 NRC 245 (2010); CLI-10-15, 71 NRC 479 (2010); LBP-08-23, 68 NRC 679 (2008)

arguments on a separate matter, which petitioner adopts in a motion for reconsideration but could have made earlier, do not provide a compelling substantive basis for reconsidering a decision; CLI-09-8, 69 NRC 317 (2009)

because deferral of the consideration of the balance of petitioner's contentions might prejudice parties' legitimate interests, they will be subject to the filing of a timely motion for reconsideration; LBP-07-5, 65 NRC 341 (2007)

motions are appropriately considered under 10 C.F.R. 2.323(e); CLI-10-9, 71 NRC 245 (2010)

motions may not be filed except upon leave of the adjudicatory body that rendered the decision; CLI-10-9, 71 NRC 245 (2010)

motions must be filed within 10 days of the action for which reconsideration is requested; CLI-10-9, 71 NRC 245 (2010)

motions will be denied if they point to no compelling circumstances warranting reconsideration; CLI-10-10, 71 NRC 281 (2010)

movant must show a compelling circumstance, such as the existence of a clear and material error in a decision, which could not have reasonably been anticipated and that renders the decision invalid; LBP-06-27, 64 NRC 399 (2006)

NRC rules do not allow for multiple requests for reconsideration of the same decision; CLI-09-8, 69 NRC 317 (2009); CLI-10-9, 71 NRC 245 (2010)

petitioner cannot satisfy NRC's standing requirement by offering a vague claim of 50-mile proximity in an initial petition and later using a petition for reconsideration to fill in gaps with more specific information that was available all along; CLI-07-21, 65 NRC 519 (2007)

petitioner may not claim standing based on vague assertions, and when that fails, attempt to repair the defective pleading with fresh details offered for the first time in a petition for reconsideration; CLI-08-19, 68 NRC 251 (2008)

petitioners must seek leave to request reconsideration of a decision and set forth compelling circumstances that petitioners could not reasonably have anticipated and that would render the decision invalid; CLI-10-21, 72 NRC 197 (2010)

petitioners seeking reconsideration of a Commission order must demonstrate that the Commission has committed clear error, must do so by raising new arguments, and must not previously have been able to make those arguments; CLI-07-22, 65 NRC 525 (2007)

petitioners should not use this venue merely to re-argue matters that the Commission already has considered but rejected; LBP-06-27, 64 NRC 399 (2006)

petitions are limited to 10 pages; CLI-07-22, 65 NRC 525 (2007)

raising new arguments for the first time is prohibited; LBP-06-27, 64 NRC 399 (2006)

the Commission finds no changed circumstances that could not previously have been brought to it; CLI-10-9, 71 NRC 245 (2010)

where a board's decision rests in part on facts officially noticed, any party wishing to controvert the facts officially noticed may do so by filing a motion for reconsideration or an appeal from the decision; LBP-08-25, 68 NRC 763 (2008)

MOTIONS TO COMPEL

a party seeking to challenge NRC Staff's claim of privilege or protected status may file a motion to compel production of the document; CLI-10-24, 72 NRC 451 (2010)

challenges regarding the adequacy of any mandatory disclosure or hearing file, redactions, or the validity of any claim that a document is privileged or protected shall be filed within 10 days after the occurrence or circumstance from which the motion arises; LBP-09-22, 70 NRC 640 (2009)

SUBJECT INDEX

the board grants intervenors' motion to compel disclosure of certain groundwater modeling information associated with a combined license application; LBP-10-23, 72 NRC 692 (2010)

MOTIONS TO DISMISS

collateral estoppel effect is given to judgments granting a motion to dismiss, when the party against which collateral estoppel is invoked had a full and fair opportunity to oppose the dismissal; LBP-08-23, 68 NRC 679 (2008)

MOTIONS TO REOPEN

a board is to decide the motion on the information before it and has no authority to engage in discovery in order to supplement the pleadings before it; CLI-08-28, 68 NRC 658 (2008)

a mere showing of a possible violation is not enough to reopen a record; CLI-09-7, 69 NRC 235 (2009)

a motion to reopen that does not satisfy the Commission's procedural requirements but which arguably raises a significant safety or environmental issue may be referred to the Staff under 10 C.F.R. 2.206; CLI-06-4, 63 NRC 32 (2006)

a party seeking to reopen a closed record to raise a new matter faces an elevated burden to lay a proper foundation for its claim; CLI-08-28, 68 NRC 658 (2008)

a petitioner seeking to reopen the record does not show the existence of a significant safety issue by showing merely that a plant component performs safety functions and thus has safety significance; LBP-08-12, 68 NRC 5 (2008)

a pleading cannot be timely when petitioner does not explain why the motion was filed 11 months after the NRC terminated the case, 9 months after the petitioner first raised the particular issue in its comments, and 4 months after the Staff issued the final document containing the position the petitioner disputes; CLI-06-4, 63 NRC 32 (2006)

a significant safety or environmental issue must be addressed; CLI-08-23, 68 NRC 461 (2008)

a timely motion may be denied if it raises issues that are not of major significance to plant safety whereas a nontimely motion may be granted if it raises an issue of sufficient gravity; LBP-10-21, 72 NRC 616 (2010)

affidavit support for a motion to reopen must provide a prima facie showing that a deficiency exists in the license renewal application and the deficiency presents a significant safety issue; LBP-08-12, 68 NRC 5 (2008)

affidavit support that sets forth the factual and/or technical basis for the movants' claim that a significant and material safety or environmental issue exists is required; CLI-08-23, 68 NRC 461 (2008); LBP-08-12, 68 NRC 5 (2008)

affidavits must set forth the factual and/or technical bases for the movant's claim that the criteria of 10 C.F.R. 2.326(a) have been satisfied, including addressing each of the reopening criteria separately with a specific explanation of why it has been met; LBP-10-19, 72 NRC 529 (2010); LBP-10-21, 72 NRC 616 (2010)

although the motion must be timely, an exceptionally grave issue may be considered even if the motion is not timely; LBP-10-19, 72 NRC 529 (2010); LBP-10-21, 72 NRC 616 (2010)

an order denying a motion to reopen renders moot a petitioner's request for leave to submit an amended petition to intervene; CLI-06-4, 63 NRC 32 (2006)

bare assertions and speculation do not supply the requisite support and a judge's dissenting opinion cannot substitute for the affidavit required to be submitted to the board; CLI-08-28, 68 NRC 658 (2008)

expert affidavits supporting motions must be presented by competent individuals with knowledge of the facts alleged or by experts in the appropriate disciplines and the evidence must meet admissibility standards; CLI-09-7, 69 NRC 235 (2009)

factors (vii) and (viii) of 10 C.F.R. 2.309(c)(1) are generally considered to have the most significance in the balancing process in instances in which there are no other parties or ongoing related proceedings; LBP-10-21, 72 NRC 616 (2010)

failure by movant to address all reopening requirements in its motion is reason enough to deny the motion; LBP-08-12, 68 NRC 5 (2008)

good cause for late filing is the most important factor, and failure to meet this factor considerably enhances the burden of showing that the other factors justify admission of a late-filed petition; LBP-10-21, 72 NRC 616 (2010)

SUBJECT INDEX

if a motion to reopen and the proposed new contention are based on material information that was not previously available, then it qualifies as timely; LBP-10-19, 72 NRC 529 (2010)

if a motion to reopen relates to a contention not previously in controversy among the parties, movant must meet the late-filing requirements of section 2.309(c); LBP-10-21, 72 NRC 616 (2010)

if a party seeks to reopen a closed record and, in the process, raises an issue that was not an admitted contention in the initial proceeding, it must also satisfy the requirements for a nontimely or late-filed contention; CLI-06-4, 63 NRC 32 (2006)

in addressing the section 2.309(c)(1) factors, failure to provide any specific discussion of most of these items or the weight they should be given in the balance is a potentially fatal omission; LBP-10-21, 72 NRC 616 (2010)

in light of the requirements that any new contention be based on material information that was not previously available, the timeliness determination required under 10 C.F.R. 2.309(f)(2) and the section 2.326(a) reopening standard can be closely equated; LBP-10-21, 72 NRC 616 (2010)

motions are governed by 10 C.F.R. 2.326, which requires satisfaction of three listed criteria and that the motion be accompanied by an affidavit that meets certain specific requirements; CLI-09-7, 69 NRC 235 (2009)

motions must be accompanied by affidavits of qualified experts presenting the factual and/or technical bases for the claim that there is a significant safety issue, together with evidence that satisfies the admissibility standards; CLI-08-28, 68 NRC 658 (2008); CLI-09-5, 69 NRC 115 (2009); CLI-09-7, 69 NRC 235 (2009)

movant must show that a materially different result would have been likely if the new information had been available to the board; CLI-08-23, 68 NRC 461 (2008)

movant must show that it is more probable than not that it would have prevailed on the merits of the proposed new contention; LBP-10-19, 72 NRC 529 (2010)

new contention asserting issues related to aging management of effects of moist or wet environments on buried, below-grade, underground, or hard-to-access safety-related electrical cables is denied; LBP-10-19, 72 NRC 529 (2010)

new information sufficient to reopen a closed hearing record at the last minute must be significant and plausible enough to require reasonable minds to inquire further; CLI-08-28, 68 NRC 658 (2008)

NRC will not consider a last-second reopening of an adjudication and a restart of licensing board proceedings based on a pleading that is defective on its face; CLI-06-4, 63 NRC 32 (2006)

once a licensing board has concluded board action on a licensing case, jurisdiction to decide a motion to reopen regarding that proceeding passes to the Commission, which retains jurisdiction until the license in question has been issued; LBP-10-21, 72 NRC 616 (2010)

once there has been an appeal or petition to review a board order ruling on intervention petitions or, where a hearing is granted, following a partial or final initial decision, jurisdiction passes to the Commission; CLI-09-5, 69 NRC 115 (2009)

only a party to a proceeding may move to reopen a closed record; CLI-09-5, 69 NRC 115 (2009)

proceeding will remain open during the pendency of a remand, during which time, petitioners are free to submit a motion to reopen the record should they seek to address any genuinely new issues related to the license renewal application that previously could not have been raised; CLI-10-17, 72 NRC 1 (2010)

proponent of a motion to reopen must do more than simply raise a safety issue, but must show that the safety issue it raises is significant; LBP-10-19, 72 NRC 529 (2010)

reopening a closed record requires, among other things, a showing that the motion is timely; CLI-08-23, 68 NRC 461 (2008)

summary disposition standards are not applicable to and do not replace the standards applicable to motions to reopen; CLI-08-28, 68 NRC 658 (2008)

the burden of satisfying the reopening requirements is a heavy one, and proponents of a reopening motion bear the burden of meeting all of these requirements; CLI-08-28, 68 NRC 658 (2008); CLI-09-7, 69 NRC 235 (2009)

the Commission's referral of a motion to reopen to the ASLBP and subsequent establishment of the board gives the board jurisdiction over the motion; LBP-10-21, 72 NRC 616 (2010)

the most important of the late-filing factors is good cause for the failure to file on time; CLI-09-5, 69 NRC 115 (2009)

SUBJECT INDEX

the presiding officer in the high-level waste proceeding shall resolve disputes concerning adoption of the DOE environmental impact statement by using, to the extent possible, the criteria and procedures that are followed in ruling on motions to reopen; LBP-09-6, 69 NRC 367 (2009)

the requirements of 10 C.F.R. § 2.326 must be satisfied; CLI-06-4, 63 NRC 32 (2006)

the Secretary's referral of petitioner's motion to admit a late-filed contention effectively returns jurisdiction to the licensing board to rule on the motion; CLI-09-5, 69 NRC 115 (2009)

the significance of the issue being raised by a new contention would be a relevant "good cause" consideration; LBP-10-21, 72 NRC 616 (2010)

timeliness as measured under NRC regulations is from the point at which new information is discovered relevant to the question; LBP-08-12, 68 NRC 5 (2008)

timeliness of a new contention depends primarily on an assessment as to when the proponent of the motion first knew, or should have known, enough information to raise the issues presented in the new contention; LBP-10-19, 72 NRC 529 (2010)

timeliness of the motion depends on what/when was the trigger that provided the footing for the new contention and whether the motion was timely filed after that trigger event; LBP-10-21, 72 NRC 616 (2010)

to interpose a new contention after a proceeding has been terminated requires submission of a fresh intervention petition that fulfills the applicable standards for such filings, including an appropriate standing demonstration; LBP-10-21, 72 NRC 616 (2010)

to introduce an entirely new contention, petitioner must successfully navigate at least nineteen different regulatory factors under 10 C.F.R. 2.326, 2.309(c), and 2.309(f)(1); LBP-10-19, 72 NRC 529 (2010)

until a license has actually been issued, the Commission itself, as opposed to the licensing board, retains jurisdiction to reopen a closed case; CLI-06-4, 63 NRC 32 (2006)

when a contested proceeding has been terminated following the resolution of all submitted contentions, an individual, group, or governmental entity that wishes to interpose an additional issue must submit a new intervention petition that addresses the standards in section 2.309(c)(1) that govern nontimely intervention petitions; LBP-10-21, 72 NRC 616 (2010)

when a licensing board has already dismissed the case, the board no longer has jurisdiction; CLI-06-4, 63 NRC 32 (2006)

when a reopening motion is untimely, the section 3.326(a)(1) "exceptionally grave circumstances" test supplants the "significant issue" standard under section 2.326(a)(2); LBP-10-21, 72 NRC 616 (2010)

when petitioner seeks to introduce a new contention after the record has been closed, it should address the reopening standards contemporaneously with a late-filed intervention petition, which must satisfy the standards for both contention admissibility and late filing; LBP-10-21, 72 NRC 616 (2010)

where a motion to introduce a new contention founded on several of the initial criteria, the board found it unnecessary to analyze all of the other factors; LBP-10-19, 72 NRC 529 (2010)

where a motion to reopen proposes a contention not previously part of the proceeding, the requirements for late-filed contentions set out in 10 C.F.R. 2.309(c) must also be satisfied; CLI-08-28, 68 NRC 658 (2008)

See also Reopening a Record

MOTIONS TO STRIKE

a licensing board will not "strike from the record" any portions of petitioner's reply, because any part of a record, whether or not appropriately considered in making any rulings, may become relevant in an appeal; LBP-07-4, 65 NRC 281 (2007)

a motion to strike is an inappropriate vehicle to address whether arguments in a summary disposition answer raise matters outside the scope of a contention; LBP-08-2, 67 NRC 54 (2008); LBP-08-3, 67 NRC 85 (2008)

answers to a motion to strike are limited to legal or factual issues raised by the motion, and new issues should be raised in a separate motion; LBP-08-1, 67 NRC 37 (2008)

in high-level waste repository proceeding, the burden of proof rests on the movant; LBP-08-5, 67 NRC 205 (2008)

intervenor's appeal 3 days out of time was accepted when applicants' motion to strike failed to even hint at prejudice; LBP-10-21, 72 NRC 616 (2010)

SUBJECT INDEX

it is reasonable to expect that movant will buttress its motion with some concrete evidence, usually in the form of an affidavit or declaration by a person with asserted knowledge of the fact or facts upon which the motion is based; LBP-08-5, 67 NRC 205 (2008)

the board rejected the motion on the grounds that counsel failed to comply with the certification requirements regarding consultation with opposing counsel and also failed to state with particularity the grounds for the motion; CLI-08-29, 68 NRC 899 (2008)

MOTIONS TO WITHDRAW

absent written consent of the party and the prior appearance of another attorney, many courts require that an attorney file a motion to withdraw; LBP-10-21, 72 NRC 616 (2010)

MUNITIONS

application for approval of an alternative schedule for the submission of a decommissioning plan for a site containing expended depleted uranium munitions is approved; LBP-08-4, 67 NRC 105 (2008)

petitioner's argument that high-explosive munitions could fall onto depleted uranium, pulverizing and igniting the DU and generating aerosols that might travel through the air, providing an inhalation pathway for offsite exposure was contradicted by the Army's statement that it does not use high-impact explosives in the area where DU is present; CLI-10-20, 72 NRC 185 (2010)

NATIONAL ENVIRONMENTAL POLICY ACT

a baseline NEPA issue that a board must make in a mandatory hearing on an early site permit application is whether the requirements of NEPA § 102(2)(A), (C), and (E) and 10 C.F.R. Part 51 have been met; LBP-07-9, 65 NRC 539 (2007)

a baseline NEPA issue that a board must make in a mandatory hearing is to independently consider the final balance among conflicting factors contained in the record of the proceeding with a view to determining the appropriate action to be taken; LBP-07-9, 65 NRC 539 (2007)

a baseline NEPA issue that a board must make in a mandatory proceeding on an early site permit application is whether a construction permit should be issued, denied, or appropriately conditioned to protect environmental values; LBP-07-9, 65 NRC 539 (2007)

a board did not err in reformulating a contention to state that the application failed to comply with 10 C.F.R. Part 51, rather than with NEPA; CLI-10-2, 71 NRC 27 (2010)

a board's ultimate NEPA judgments can be made on the basis of the entire adjudicatory record in addition to the Staff's final environmental impact statement; LBP-09-7, 69 NRC 613 (2009)

a conclusion that something is a "connected action" does not necessarily inform the type of impact analysis that is performed, whether direct, indirect, or cumulative; LBP-09-7, 69 NRC 613 (2009)

a contention that raises the question as to whether requirements of 10 C.F.R. 51.53(c)(3)(ii)(B) supplement the more general requirements of 10 C.F.R. 51.45(c) and 51.53(c), or instead displace and supplant the latter requirements, raises an admissible and material issue of interpretation and construction of the regulations; LBP-06-20, 64 NRC 131 (2006)

a cost-benefit analysis among alternatives must consider and weigh the environmental effects of the proposed action and the alternatives available for reducing or avoiding adverse environmental effects; LBP-06-19, 64 NRC 53 (2006)

a decision on whether an environmental impact report is based on the best scientific methodology available is not required, nor is the resolution of disagreements among various scientists as to methodology; CLI-08-26, 68 NRC 509 (2008)

a draft or final environmental impact statement is not considered deficient per se simply because its various NEPA findings do not include an explanation that is sufficient on its face to enable independent verification of any scientific results that underlie those findings; LBP-06-9, 63 NRC 289 (2006)

a federal agency must study, develop, and describe appropriate alternatives to the recommended courses of action in any proposal that involves unresolved conflicts concerning alternative uses of available resources; LBP-06-28, 64 NRC 460 (2006)

a final environmental impact statement is necessarily more concise than the underlying pre-FEIS analysis, as the explanation is intended to summarize the analysis in a manner both concise and understandable to the public; CLI-07-27, 66 NRC 215 (2007)

a license applicant is required to describe and the Staff to consider the potential environmental effects of the proposed agency action; LBP-06-8, 63 NRC 241 (2006)

a mitigation plan need not be legally enforceable, funded, or even in final form to comply with NEPA's procedural requirements; CLI-06-29, 64 NRC 417 (2006)

SUBJECT INDEX

- a more detailed environmental impact statement is not required unless the contemplated action is a major federal action significantly affecting the quality of the human environment; CLI-08-26, 68 NRC 509 (2008)
- a NEPA environmental analysis is not an appropriate vehicle for exploring questions about the potential for a terrorist attack upon a proposed nuclear facility; CLI-09-10, 69 NRC 521 (2009); LBP-08-16, 68 NRC 361 (2008); LBP-09-2, 69 NRC 87 (2009)
- a possible 1-year slip in construction schedule is clearly within the margin of uncertainty and therefore, in the context of relitigating an issue, is unlikely to affect the need for power; LBP-10-6, 71 NRC 350 (2010)
- a practical definition of “reasonable” for use when selecting alternative concepts would be an alternative is reasonable if it is both feasible (possible, viable) and nonspeculative; LBP-10-10, 71 NRC 529 (2010)
- a reasonably close causal relationship between federal agency action and environmental consequences is necessary to trigger NEPA; CLI-07-8, 65 NRC 124 (2007)
- a reasonably close causal relationship must exist between a federal agency action and any environmental consequences of that action in order to trigger a NEPA review, and such a relationship does not exist with terrorism; LBP-08-6, 67 NRC 241 (2008)
- a record of decision must accompany any Commission decision on any action for which a final environmental impact statement has been prepared; LBP-06-8, 63 NRC 241 (2006)
- a reviewing agency determines whether an alternative is appropriate by looking at the objectives (i.e., purpose and need) of a project sponsor; LBP-09-2, 69 NRC 87 (2009)
- a rule of reason is implicit in NEPA’s requirement that an agency consider reasonable alternatives to a proposed action; CLI-10-18, 72 NRC 56 (2010); CLI-10-22, 72 NRC 202 (2010); LBP-09-10, 70 NRC 51 (2009); LBP-09-17, 70 NRC 311 (2009)
- a SAMA analysis contention was found to be inadmissible because it lacked supporting information regarding the relative costs and benefits of that proposed alternative; LBP-10-15, 72 NRC 257 (2010)
- a solely wind- or solar-powered facility could not satisfy the project’s purpose to generate baseload power; LBP-10-6, 71 NRC 350 (2010)
- a Staff determination that certain scenarios, such as Part 61 intruder scenarios, are so unlikely as to fall outside the scope of the Staff’s NEPA review is a proper exercise of NEPA’s rule of reason; LBP-06-8, 63 NRC 241 (2006)
- a Staff environmental analysis is not necessarily insufficient if, in the face of a deficiency on the part of its contractor, a responsible Staff official has “stepped into the breach” and conducted the necessary review and analysis; LBP-06-8, 63 NRC 241 (2006)
- a supplemental EIS is needed where new information raises new concerns of sufficient gravity such that another, formal in-depth look at the environmental consequences of the proposed action is necessary; CLI-06-19, 63 NRC 19 (2006)
- abdicated water quality effects entirely to other agencies’ certifications subverts the special purpose of NEPA; LBP-09-16, 70 NRC 227 (2009)
- absent a waiver pursuant to 10 C.F.R. 2.335, Category 1 issues are not subject to challenge in a relicensing proceeding because they involve environmental effects that are essentially similar for all plants and need not be assessed repeatedly on a site-specific basis; LBP-08-13, 68 NRC 43 (2008)
- accuracy and reliability of the agency’s need-for-power determination, as reflected in the draft EIS, is material to the licensing decision; LBP-10-24, 72 NRC 720 (2010)
- accuracy of an applicant’s cost estimate is not material to the findings the NRC must make under NEPA; LBP-09-16, 70 NRC 227 (2009)
- accuracy of project cost estimates only becomes relevant if an environmentally preferable alternative has been identified; LBP-09-2, 69 NRC 87 (2009)
- adequacy of the NEPA alternatives analysis is judged on the substance of the alternatives rather than the sheer number of alternatives examined; CLI-10-18, 72 NRC 56 (2010)
- adjudications resulting in the disclosure of matters under law considered secret or confidential are not contemplated; CLI-08-8, 67 NRC 193 (2008)
- affidavits supporting environmental contentions in the high-level waste proceeding must set forth factual and/or technical bases for the claim that it is not practicable to adopt the DOE environmental impact statement; LBP-09-6, 69 NRC 367 (2009)

SUBJECT INDEX

agencies are allowed to select their own methodology as long as that methodology is reasonable; CLI-10-11, 71 NRC 287 (2010)

agencies are given broad discretion in determining how thoroughly to analyze a particular subject, and may decline to examine issues that an agency in good faith considers remote and speculative or inconsequentially small; LBP-09-7, 69 NRC 613 (2009)

agencies are not allowed to define objectives of a project so narrowly as to preclude a reasonable consideration of alternatives; CLI-10-18, 72 NRC 56 (2010)

agencies are not required to select the most environmentally benign option or to require an applicant/licensee to do so; LBP-06-15, 63 NRC 591 (2006)

agencies are not required to use technologies and methodologies that are still emerging and under development, or to study phenomena for which there are not yet standard methods of measurement or analysis; CLI-10-11, 71 NRC 287 (2010)

agencies are required to consider measures to mitigate environmental impacts; LBP-09-19, 70 NRC 433 (2009)

agencies are required to exercise a degree of skepticism in dealing with self-serving statements from the prime beneficiary of a project and to look at the general goal of the project, rather than only those alternatives by which a particular applicant can reach its own specific goals; LBP-09-10, 70 NRC 51 (2009); LBP-09-17, 70 NRC 311 (2009)

agencies are required to study, develop, and describe appropriate alternatives to recommended courses of action in any proposal that involves unresolved conflicts concerning alternative uses of available resources and include a detailed statement of the alternatives to the proposed action in its environmental impact statement; LBP-09-10, 70 NRC 51 (2009)

agencies are required to use a systematic, interdisciplinary approach that will ensure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking that may have an impact on man's environment; LBP-07-1, 65 NRC 27 (2007); LBP-07-6, 65 NRC 429 (2007); LBP-07-9, 65 NRC 539 (2007)

agencies may coordinate their NEPA and National Historic Preservation Act reviews, but the reviews remain separate and the regulations associated with each act must be independently satisfied; LBP-06-11, 63 NRC 483 (2006)

agencies may defer certain issues in an environmental impact statement for a multistage project when detailed useful information on a given topic is not meaningfully possible to obtain, and the unavailable information is not essential to determination at the earlier stage; CLI-07-27, 66 NRC 215 (2007)

agencies must consult with and obtain the comments of any federal agency that has jurisdiction by law or special expertise with respect to any environmental impact involved; LBP-06-17, 63 NRC 747 (2006)

agencies must include a detailed statement on the environmental impact of the proposed action, any unavoidable adverse environmental effects, alternatives to the proposed action, the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and irreversible and irretrievable commitments of resources that would be involved in the proposed action should it be implemented; LBP-07-1, 65 NRC 27 (2007)

agencies need not elevate environmental concerns over other appropriate considerations, but rather must only take a hard look at the environmental consequences before taking a major action; LBP-06-19, 64 NRC 53 (2006)

agencies need only discuss those alternatives that are reasonable and will bring about the ends of the proposed action; CLI-06-10, 63 NRC 451 (2006); LBP-10-6, 71 NRC 350 (2010)

all federal agencies must apply a systematic, interdisciplinary approach that will ensure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking that may have an impact on the human environment; LBP-06-17, 63 NRC 747 (2006); LBP-06-28, 64 NRC 460 (2006)

alternative energy sources that will be dependent on future environmental safeguards and technological developments need not be considered in an environmental impact statement; LBP-09-7, 69 NRC 613 (2009)

alternatives analysis is the heart of the environmental impact statement; LBP-10-24, 72 NRC 720 (2010)

alternatives that do not advance the purpose of the project will not be considered reasonable or appropriate; CLI-10-18, 72 NRC 56 (2010)

SUBJECT INDEX

- although all environmental contentions may, in a general sense, ultimately be challenges to the NRC's compliance with NEPA, factual disputes of particular issues can be raised before the draft environmental impact statement is prepared; CLI-10-2, 71 NRC 27 (2010)
- although analysis of aircraft impact is required, reactors whose construction permits were issued prior to July 13, 2009, are excluded, and the rule is not NEPA-based; LBP-09-26, 70 NRC 939 (2009)
- although applicant's goals are given substantial weight, applicant is not allowed to define its goals so narrowly as to unreasonably circumscribe the range of alternatives that must be considered; LBP-09-17, 70 NRC 311 (2009)
- although construction of the provisions of 10 C.F.R. Part 51 mandating the contents of applicant's environmental report may be informed by consideration of general NEPA principles, the Commission must look to the wording of the Part 51 regulations to determine if an ER is satisfactory or deficient; LBP-09-10, 70 NRC 51 (2009)
- although Council on Environmental Quality regulations are not binding on the NRC when the agency has not expressly adopted them, they are entitled to considerable deference; LBP-06-8, 63 NRC 241 (2006)
- although economic benefits are properly considered in an environmental impact statement, NEPA does not transform financial costs and benefits into environmental costs and benefits; CLI-06-19, 63 NRC 19 (2006)
- although federal permits and exemptions must be mentioned in the final environmental impact statement, the absence of such mention does not render the FEIS invalid; LBP-06-19, 64 NRC 53 (2006)
- although NEPA requires that the environmental impact statement identify and address all reasonable alternatives, this does not mean that every conceivable alternative must be included; LBP-10-10, 71 NRC 529 (2010)
- although NRC will consider the fact that an applicant is subject to, and compliant with, other environmental laws and permits, it must still perform an environmental assessment prior to any major federal action significantly affecting the environment; LBP-06-20, 64 NRC 131 (2006)
- although one of the central purposes of NEPA is information gathering and disclosure, information immaterial to the proceeding does not necessarily need to be included; LBP-07-3, 65 NRC 237 (2007)
- although "severe accident," "severe accident mitigation alternatives," and "SAMA" are not defined in NRC's NEPA regulations, the NRC policy documents that originated the terms clearly limit them to nuclear reactors and do not include spent fuel pools or storage; LBP-10-15, 72 NRC 257 (2010)
- although Staff inadvertently omitted information about background radiation from the final environmental impact statement, but the information was made available to the public in the draft environmental impact statement and was taken into account by Staff in its NEPA analysis in the FEIS, intervenors were not prejudiced nor was the correctness of the Staff's analysis undermined; LBP-06-19, 64 NRC 53 (2006)
- although substantial weight is accorded to a license applicant's preferences, if the identified purpose of a proposed project reasonably may be accomplished at locations other than the proposed site, the board may require consideration of those alternative sites; CLI-10-18, 72 NRC 56 (2010)
- although the Commission has complied with the court's ruling for facilities within the Ninth Circuit, that experience is very limited and does not demonstrate that conducting environmental analyses of terrorist scenarios for the licensing of all major facilities would be practicable or lead to meaningful additional information; CLI-10-9, 71 NRC 245 (2010)
- although the discussion of alternatives in the environmental assessment need only be brief, it must be sufficient to fully comply with the requirement to study, develop, and describe appropriate alternatives; CLI-10-18, 72 NRC 56 (2010)
- although the duty to comply with NEPA falls upon the agency and not upon the applicant or licensee, the requirements of Part 51 must be met by the applicant; LBP-10-16, 72 NRC 361 (2010)
- although the methodology is available to provide the required analysis, neither NEPA nor NRC regulations require that the analysis under 10 C.F.R. 51.45(c) be performed using that methodology; LBP-09-26, 70 NRC 939 (2009)
- although the obligations under NEPA fall to the agency and therefore the NRC Staff, petitioners are required to raise environmental objections based on the applicant's environmental report; LBP-10-15, 72 NRC 257 (2010)
- although the primary duties of NEPA fall on the NRC Staff in NRC proceedings, the initial requirement to analyze the environmental impacts of an action, including license renewal, is directed to applicants;

SUBJECT INDEX

LBP-07-11, 66 NRC 41 (2007); LBP-08-6, 67 NRC 241 (2008); LBP-10-10, 71 NRC 529 (2010)

although the U.S. Court of Appeals for the Ninth Circuit has held that the NRC must address certain terrorism-related matters to satisfy its NEPA obligations, the Commission has stated that it does not consider itself bound by that holding outside the Ninth Circuit; LBP-09-2, 69 NRC 87 (2009)

although the ultimate burden with respect to NEPA lies with the NRC Staff, NRC policy with respect to the identification of issues for hearing has long been that such issues must be raised as early as possible; CLI-10-2, 71 NRC 27 (2010)

although there will always be more data that could be gathered, agencies must have some discretion to draw the line and move forward with decisionmaking; CLI-10-11, 71 NRC 287 (2010)

an agency cannot redefine the applicant's goals, and the EIS alternatives analysis should be based around the applicant's goals, including its economic goals; LBP-09-17, 70 NRC 311 (2009)

an agency environmental impact statement must address both direct and indirect, or secondary, effects of an action; LBP-06-8, 63 NRC 241 (2006)

an agency is not required to assess potential psychological impacts due to fear of radiological harm; CLI-10-11, 71 NRC 287 (2010)

an agency is required to address the purpose of the proposed project, reasonable alternatives to the project, and to what extent the agency should explore each particular reasonable alternative; CLI-10-18, 72 NRC 56 (2010)

an agency is to include in every recommendation or report on major federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on the environmental impact of the proposed action; LBP-08-6, 67 NRC 241 (2008)

an agency may be excused from complying with NEPA where it has no discretion to prevent, or to refuse to take, the action involved; LBP-09-6, 69 NRC 367 (2009)

an agency may rely on an environmental impact statement prepared by another federal agency if such reliance will aid in the presentation of issues, eliminate repetition, or reduce the length of an EIS; LBP-09-7, 69 NRC 613 (2009)

an agency must affirmatively provide a reasoned explanation of the applicability of a categorical exclusion when special circumstances are alleged; LBP-06-4, 63 NRC 99 (2006)

an agency must consider all reasonable alternatives but is not required to choose the most environmentally benign site; LBP-07-9, 65 NRC 539 (2007)

an agency must consider alternatives that are appropriate to recommended courses of action; LBP-09-2, 69 NRC 87 (2009)

an agency must consider every significant aspect of the environmental impact of a proposed action and inform the public that it has, in fact, considered environmental concerns in its decisionmaking process; LBP-06-19, 64 NRC 53 (2006)

an agency must consult with and obtain the comments of any federal agency that has jurisdiction by law or special expertise with respect to any environmental impact involved; LBP-06-28, 64 NRC 460 (2006)

an agency's consideration of alternatives is sufficient if it considers an appropriate range of alternatives, even if it does not consider every available alternative; LBP-10-24, 72 NRC 720 (2010)

an agency's environmental review must consider not every possible alternative, but every reasonable alternative; LBP-10-6, 71 NRC 350 (2010)

an early site permit applicant must submit an environmental report containing a description of the proposed action, a statement of its purposes, and a description of the environment affected; LBP-09-7, 69 NRC 613 (2009)

an environmental analysis relating to aquatic impacts must, as a practical matter, have a baseline from which to operate; LBP-07-3, 65 NRC 237 (2007)

an environmental assessment must include a Reference Document List that identifies the sources used; LBP-08-7, 67 NRC 361 (2008)

an environmental assessment, with its accompanying finding of no significant impact, constitutes an agency's evaluation of the environmental effects of a proposed action unless a more detailed statement is required; CLI-08-26, 68 NRC 509 (2008)

an environmental impact statement is not intended to be a research document, reflecting the frontiers of scientific methodology, studies, and data; CLI-10-11, 71 NRC 287 (2010); CLI-10-22, 72 NRC 202 (2010)

SUBJECT INDEX

- an environmental impact statement is required for any agency action that is a major action significantly affecting the environment; LBP-10-7, 71 NRC 391 (2010)
- an environmental impact statement must address alternatives to the proposed action; LBP-09-19, 70 NRC 433 (2009)
- an environmental impact statement must address both direct and indirect effects of an action; LBP-09-7, 69 NRC 613 (2009)
- an environmental impact statement must disclose measures that will mitigate potential adverse environmental impacts; LBP-09-4, 69 NRC 170 (2009)
- an environmental impact statement must include a detailed statement of reasonable alternatives to a proposed action; LBP-10-24, 72 NRC 720 (2010)
- an environmental impact statement must provide a detailed statement concerning the environmental impact of the proposed action, any adverse environmental effects that cannot be avoided should the proposal be implemented, and any irreversible and irretrievable commitments of resources that would be involved in the proposed action should it be implemented; LBP-09-16, 70 NRC 227 (2009)
- an environmental impact statement must rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives that were eliminated from detailed study, briefly discuss the reasons for their having been eliminated; LBP-10-10, 71 NRC 529 (2010)
- an environmental report and an environmental impact statement for a materials license must include a statement on the alternatives to the proposed action, including a discussion of the no-action alternative; CLI-09-15, 70 NRC 1 (2009)
- an environmental report prepared for a license renewal need not discuss economic or technical benefits and costs of the proposed action or alternatives except as they are either essential for determining whether an alternative should be included or relevant to mitigation; LBP-08-13, 68 NRC 43 (2008)
- an organization's promotion of the public interest, environmental protection, and consumer protection are broad interests shared with many others and too general to constitute a protected interest; CLI-07-18, 65 NRC 399 (2007)
- an otherwise reasonable alternative will not be excluded from discussion in an environmental impact statement solely on the ground that it is not within the jurisdiction of NRC; LBP-09-10, 70 NRC 51 (2009); LBP-09-17, 70 NRC 311 (2009); LBP-10-10, 71 NRC 529 (2010)
- analysis of all impacts of connected actions, including direct, indirect, and cumulative impacts, is required for major federal actions; CLI-10-5, 71 NRC 90 (2010)
- analysis of potential terrorist attacks on a proposed nuclear facility is not required; LBP-08-21, 68 NRC 554 (2008)
- analysis of the potential impacts of an increase in the supply of irradiated food is not required; CLI-08-16, 68 NRC 221 (2008)
- any power level selected at the COL stage other than the target value used in the environmental impact statement's alternative energy analysis for the early site permit would constitute new information that, if found to be significant, would have to be evaluated at the construction permit or combined license application stage; CLI-07-14, 65 NRC 216 (2007)
- applicant has no obligation to select the most environmentally benign alternative; LBP-06-19, 64 NRC 53 (2006)
- applicant is only required to provide an analysis that considers and balances alternatives available for reducing or avoiding adverse environmental effects; LBP-09-26, 70 NRC 939 (2009)
- applicant is required to address new and significant information for either Category 1 or Category 2 issues in its environmental report for a license renewal application; LBP-08-13, 68 NRC 43 (2008)
- applicant is required to present a cost-benefit analysis (and therefore provide cost estimates) for nuclear power plants and facilities only where the applicant's alternatives analysis indicates that there is an environmentally preferable alternative; LBP-08-21, 68 NRC 554 (2008)
- applicant is required to provide in its environmental report a site-specific analysis of entrainment, impingement, and heat shock/thermal discharge impacts from its once-through cooling systems; LBP-08-13, 68 NRC 43 (2008)
- applicant may not define the objectives of its action in terms so unreasonably narrow that only one alternative would accomplish the applicant's goals because this would make the agency's EIS alternatives analysis a foreordained formality; LBP-09-10, 70 NRC 51 (2009)

SUBJECT INDEX

applicant must provide enough information and in sufficient detail to allow for an evaluation of important environmental impacts; LBP-07-3, 65 NRC 237 (2007)

applicant need not look at every conceivable alternative, but rather must only consider feasible, nonspeculative, reasonable alternatives; LBP-08-13, 68 NRC 43 (2008)

applicant's comparison of the environmental impacts of nuclear and wind/compressed air energy storage is insufficient to adequately inform decision makers about the competing choices; LBP-10-10, 71 NRC 529 (2010)

applicant's environmental report is required to analyze the alternatives available for reducing or avoiding adverse environmental effects; LBP-09-10, 70 NRC 51 (2009)

applicant's environmental report must, in relevant part, contain a discussion of alternatives sufficiently complete to aid the Commission in developing and exploring, pursuant to section 102(2)(E) of NEPA, appropriate alternatives to recommended courses of action; LBP-10-6, 71 NRC 350 (2010)

applicants are not required to eliminate adverse environmental impacts; LBP-09-16, 70 NRC 227 (2009)

applicants or licensees are not required to consider terrorist attacks as part of their environmental reviews; LBP-09-26, 70 NRC 939 (2009)

applicants' assertion that low-level radioactive waste could be transferred to another licensee or that some other arrangement might be established in the future is not sufficient to erase the requirement that reasonably foreseeable environmental impacts be assessed in an environmental report; CLI-09-20, 70 NRC 911 (2009)

as a general matter, NEPA imposes no legal duty on the NRC to consider intentional malevolent acts in conjunction with commercial power reactor license renewal applications; CLI-07-9, 65 NRC 139 (2007)

as long as all reasonable alternatives have been considered and an appropriate explanation is provided as to why an alternative was eliminated, the regulatory requirement is satisfied; CLI-10-18, 72 NRC 56 (2010)

as long as applicant has not set forth an unreasonably narrow objective of its project, NRC adheres to the principle that when the purpose is to accomplish one thing, it makes no sense to consider alternative ways by which another thing might be accomplished; LBP-09-2, 69 NRC 87 (2009)

as the proponent of the agency action at issue, applicant generally has the burden of proof in a licensing proceeding, but when environmental contentions are involved, the burden shifts to the Staff, because NRC, not an applicant, has the burden of complying with NEPA; LBP-09-7, 69 NRC 613 (2009)

asserted deficiencies in the environmental report intake/discharge impact discussion as it is associated with the baseline discussion of aquatic resources, if properly supported, can be admitted for further litigation; LBP-08-16, 68 NRC 361 (2008)

because blending down highly enriched uranium for reactor fuel would not promote applicant's primary purpose of maintaining the viability of a dwindling domestic uranium industry, it is outside the scope of reasonable alternatives that must be considered; LBP-06-19, 64 NRC 53 (2006)

because demand-side management reduces by a small portion applicant's demand for power, it should be analyzed in this instance as a surrogate for need for power; LBP-10-6, 71 NRC 350 (2010)

because NEPA is a procedural statute, petitioners need not show that favorable rulings on their NEPA contentions will require denial of the license, but rather that procedures intended for protection of their members' concrete interests will be observed; LBP-09-16, 70 NRC 227 (2009)

because Staff relies heavily upon applicant's environmental report in preparing the environmental impact statement, should applicant become a proponent of a particular challenged position set forth in the EIS, applicant, as such a proponent, also has the burden on that matter; LBP-09-7, 69 NRC 613 (2009)

because the environmental report is the only environmental document available when NRC issues its notice of opportunity to request a hearing, all initial contentions necessarily focus on the adequacy of the applicant's ER, but the public will have a new opportunity to file environmental contentions when the NRC Staff issues the environmental impact statement or environmental analysis; LBP-09-10, 70 NRC 51 (2009)

boards must decide whether the final environmental impact statement alternatives discussion is sufficiently complete to aid the Commission in developing and exploring appropriate alternatives to recommended courses of action in any proposal that involves unresolved conflicts concerning alternative uses of available resources; LBP-09-7, 69 NRC 613 (2009)

SUBJECT INDEX

boards should treat as a cognizable new consideration an attack on the Yucca Mountain environmental impact statements based on significant and substantial information that, if true, would render the statements inadequate; LBP-09-6, 69 NRC 367 (2009)

business strategies in the context of need for power and any challenges to them are outside the scope of a licensing proceeding; LBP-10-10, 71 NRC 529 (2010)

by defining significantly different information in the draft EIS as a permissible basis for filing a new contention, the Commission has in effect concluded that such new information is good cause for filing a new contention; LBP-10-24, 72 NRC 720 (2010)

certain actions are designated as categorically excluded from the requirement to prepare an environmental assessment or an environmental impact statement; CLI-10-18, 72 NRC 56 (2010)

challenges to a severe accident mitigation design alternatives analysis are within the scope of a combined license proceeding; LBP-10-14, 72 NRC 101 (2010)

compliance with NEPA requires that, if new and significant information arises after the date of the issuance of the EIS and before the agency decision, then the agency must supplement or revise its EIS and consider such information; LBP-10-15, 72 NRC 257 (2010)

conformity of a proposed action to federal regulations governing other aspects of that action's interrelationship with the environment will buttress a finding of no significant impact; CLI-08-16, 68 NRC 221 (2008)

consideration and evaluation of intruder scenarios and related intruder dose are part of the "hard look" NEPA requires the Staff to take at the environmental impacts associated with a particular licensing action; LBP-06-8, 63 NRC 241 (2006)

consideration of alternatives is an integral part of the application process from the outset, with no preconditions; CLI-06-9, 63 NRC 433 (2006)

consideration of energy efficiency is not a reasonable alternative, where that alternative would not achieve applicant's goal of providing additional power to sell on the open market, and is not possible for an applicant who has no transmission or distribution system of its own, and no link to the ultimate power consumer; CLI-10-21, 72 NRC 197 (2010)

consideration of environmental impacts need not address every impact that could possibly result, but rather only those that are reasonably foreseeable or have some likelihood of occurring; LBP-09-7, 69 NRC 613 (2009)

contention raising question of whether a quantitative as opposed to qualitative analysis of terrorist attacks and the alternatives for mitigation and prevention is necessary is referred to the Commission as a novel issue; LBP-10-15, 72 NRC 257 (2010)

contention that a license renewal application fails to satisfy NEPA because it does not address environmental impacts of an attack by deliberate and malicious crash of aircraft into the plant is denied; LBP-07-11, 66 NRC 41 (2007)

contentions asserting that the risks associated with terrorist attacks require that the agency prepare an environmental assessment or an environmental impact statement are outside the scope of agency NEPA review and are inadmissible; LBP-06-4, 63 NRC 99 (2006)

contentions relating to the conclusions that the NRC Staff reaches in its NEPA analysis with regard to the environmental impacts from radiological releases to groundwater must await future publication of its supplemental environmental impact statement; LBP-08-13, 68 NRC 43 (2008)

contentions that seek compliance with NEPA must be based on applicant's environmental report; CLI-10-2, 71 NRC 27 (2010)

contested proceedings litigate particular contentions that may include arguable NEPA-analysis shortfalls, whereas the Staff's NEPA analysis encompasses the full range of NEPA issues whether a contested proceeding even takes place; CLI-10-5, 71 NRC 90 (2010)

copies of environmental impact statements shall be made available to the President, the Council on Environmental Quality, and the public; CLI-08-1, 67 NRC 1 (2008)

costs for a project are relevant for the determination only if an environmentally preferable option is identified; LBP-09-2, 69 NRC 87 (2009)

Council on Environmental Quality regulations are not binding on NRC when the agency has not expressly adopted them, but are entitled to considerable deference; LBP-09-7, 69 NRC 613 (2009)

Council on Environmental Quality regulations receive substantial deference from federal courts in interpreting the requirements of NEPA; LBP-10-16, 72 NRC 361 (2010)

SUBJECT INDEX

courts have consistently interpreted NEPA as a procedural statute that requires disclosure and analysis of environmental impacts, not one that imposes substantive obligations for the protection of natural resources; LBP-09-16, 70 NRC 227 (2009)

cumulative impacts analysis looks to whether a new impact is significantly enhanced by already existing environmental effects; LBP-06-1, 63 NRC 41 (2006); LBP-06-19, 64 NRC 53 (2006)

cumulative impacts are defined; LBP-09-7, 69 NRC 613 (2009)

cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time; CLI-10-5, 71 NRC 90 (2010)

direct environmental effects are those caused by the federal action, and occurring at the same time and place as that action, while indirect effects are those caused by the action at a later time or more distant place, yet are still reasonably foreseeable; LBP-09-7, 69 NRC 613 (2009)

disclosure of documents under NEPA is expressly governed by the Freedom of Information Act; CLI-08-5, 67 NRC 174 (2008); CLI-08-8, 67 NRC 193 (2008)

discussion of the no-action alternative in a final environmental impact statement is governed by a rule of reason and need not be exhaustive or inordinately detailed; LBP-06-19, 64 NRC 53 (2006)

each factual environmental contention must be accompanied by one or more affidavits, but a purely legal issue contention cannot logically require affidavit support, as by definition such a contention alleges no facts that require support; LBP-09-6, 69 NRC 367 (2009)

economic impact of a proposed action on ratepayers is outside the scope of a NEPA analysis; LBP-10-14, 72 NRC 101 (2010)

energy sales projections are inherently uncertain, and the Commission is clear that it does not impose burdensome attempts to predict future conditions, and that it should be sufficient to reasonably characterize the costs and benefits associated with proposed licensing actions; LBP-10-6, 71 NRC 350 (2010)

environmental contentions are to be filed based on an applicant's environmental report; LBP-10-10, 71 NRC 529 (2010)

environmental issues that might otherwise be relevant to license renewal shall be resolved generically for all plants and thus are beyond the scope of a license renewal hearing; LBP-06-7, 63 NRC 188 (2006)

environmental justice contentions must be based on the specific characteristics of a particular minority community; LBP-07-3, 65 NRC 237 (2007)

environmental reports and environmental impact statements must include an assessment of all environmental impacts and alternatives, even though NRC has no jurisdiction to regulate such impacts or jurisdiction to impose such alternatives; LBP-09-10, 70 NRC 51 (2009)

environmental review in the license renewal process is unlike the Commission's Part 54 review because the NEPA review covers all environmental impacts associated with license renewal and is not limited to aging-related issues; LBP-10-15, 72 NRC 257 (2010)

even if an environmental impact statement prepared by the Staff is found to be inadequate in certain respects, the board's findings, as well as the adjudicatory record, become, in effect, part of the final EIS; LBP-09-7, 69 NRC 613 (2009)

even if offsite construction does not appear to be part of the plan, it does not follow that offsite consequences need not be considered; CLI-10-18, 72 NRC 56 (2010)

events having a less than a one in one million probability of occurring are not credible events; LBP-09-4, 69 NRC 170 (2009)

except for its overall NEPA balancing, the NRC can limit its analysis of aquatic impacts to those determined by the Environmental Protection Agency, when EPA has analyzed an alternative technology extensively and made conclusions as to its suitability; LBP-07-3, 65 NRC 237 (2007)

Executive Order 12898 itself does not establish new substantive or procedural requirements applicable to NRC regulatory or licensing activities; CLI-07-27, 66 NRC 215 (2007)

existence of reasonable but unexamined alternatives renders an environmental impact statement inadequate; LBP-10-24, 72 NRC 720 (2010)

federal agencies are charged with weighing the environmental effects and impacts of the proposed project and its alternatives against each other and balancing those effects against the benefits of each such project; LBP-09-2, 69 NRC 87 (2009)

federal agencies are required to consider the likely environmental impacts of the preferred course of action as well as reasonable alternatives; LBP-10-24, 72 NRC 720 (2010)

SUBJECT INDEX

federal agencies are required to study, develop, and describe appropriate alternatives to recommend courses of action in any proposal that involves unresolved conflicts concerning alternative uses of available resources; CLI-10-18, 72 NRC 56 (2010); LBP-06-17, 63 NRC 747 (2006)

federal agencies are required to take a hard look at the environmental consequences of their actions; LBP-09-7, 69 NRC 613 (2009); LBP-09-16, 70 NRC 227 (2009)

federal agencies are required, to the fullest extent possible, to include in every recommendation or report on proposals for major federal actions significantly affecting the quality of the human environment a detailed statement on the environmental impact of the proposed action; CLI-10-18, 72 NRC 56 (2010); LBP-06-23, 64 NRC 257 (2006)

federal agencies must examine, analyze, and disclose not only direct effects, but also indirect effects that are later in time or farther removed in distance, but are still reasonably foreseeable; LBP-09-6, 69 NRC 367 (2009)

federal courts and the NRC use a rule of reason in identifying alternatives and do not require that unreasonable alternatives be examined; LBP-07-9, 65 NRC 539 (2007)

findings that a board must make to authorize issuance of an early site permit are described; LBP-09-19, 70 NRC 433 (2009)

focus of this statute is on assessment, not regulation; LBP-09-10, 70 NRC 51 (2009)

for a contention regarding environmental impacts of spent fuel storage to be within the scope of an operating license renewal proceeding, petitioner must obtain a waiver under 10 C.F.R. 2.335(d); LBP-10-15, 72 NRC 257 (2010)

for a SAMA analysis, NEPA demands no fully developed plan or detailed examination of specific measures that will be used to mitigate adverse environmental effects; CLI-10-11, 71 NRC 287 (2010)

for an early site permit, NRC is required to provide a detailed statement on alternatives to the proposed action; CLI-07-27, 66 NRC 215 (2007)

for impacts that are reasonably foreseeable, but for which the agency lacks complete information in its analysis, the agency must indicate that such information is lacking; LBP-09-7, 69 NRC 613 (2009)

for licensing decisions involving facilities located within the jurisdictional boundaries of the U.S. Court of Appeals for the Ninth Circuit, the NRC Staff will consider, as part of its NEPA analysis, the potential environmental consequences, if any, of a terrorist attack on the proposed facility; CLI-09-15, 70 NRC 1 (2009)

for purposes of the environmental impact statement, the potential construction and operation of the plant or plants for which the early site permit is being obtained is the proposed action that must be the focus of the board's review; LBP-07-1, 65 NRC 27 (2007)

further review of need for power and alternative energy sources is precluded once a construction permit has been issued; CLI-10-29, 72 NRC 556 (2010)

general statements about possible effects and some risk do not constitute a hard look absent a justification regarding why more definitive information could not be provided; CLI-10-18, 72 NRC 56 (2010)

generic analysis is an appropriate method of meeting the agency's statutory obligations under NEPA; CLI-07-3, 65 NRC 13 (2007)

given that consideration of terrorist attacks is part of the NRC's NEPA obligations in the Ninth Circuit, the issue of whether terrorist attacks have been fully considered in the NEPA analysis for a power plant in that jurisdiction is plainly material to the decision the NRC must make; LBP-10-15, 72 NRC 257 (2010)

given the fact-specific nature of environmental justice issues and inquiries, the methods and form of Staff review, including any decision whether to hold discussions with knowledgeable community and governmental representatives, is best left to the informed discretion of the Staff; CLI-07-27, 66 NRC 215 (2007)

goals of a project's sponsor are given substantial weight in determining whether a NEPA alternative is reasonable; LBP-09-10, 70 NRC 51 (2009); LBP-09-17, 70 NRC 311 (2009)

if a harm does not have a sufficiently close connection to the physical environment, NEPA does not apply, regardless of the gravity of the harm; CLI-08-16, 68 NRC 221 (2008)

if a major federal action significantly affects the quality of the human environment, an environmental impact statement must be prepared; CLI-08-8, 67 NRC 193 (2008)

SUBJECT INDEX

- if a NEPA contention alleges that impacts or alternatives that are patently outside the realm of reason must be considered, then the contention should be denied for failure to demonstrate that the issue raised is within the legitimate scope of NEPA; LBP-09-10, 70 NRC 51 (2009)
- if an alternative to the applicant's proposal is environmentally preferable, then NRC must determine whether the environmental benefits conferred by that alternative are worthwhile enough to outweigh any additional cost needed to achieve them; CLI-10-1, 71 NRC 1 (2010)
- if federal agencies were free to ignore related environmental effects that they do not directly regulate, NEPA would be meaningless; LBP-09-6, 69 NRC 367 (2009)
- if issuing a license involves oversight of a private project rather than a federally sponsored project, the agency is entitled to give the applicant's preferences substantial weight when considering project design alternatives; LBP-10-14, 72 NRC 101 (2010)
- if significant new information becomes available, NRC Staff must explain how it took the new information into account in determining whether the additional generating capacity is required; LBP-10-24, 72 NRC 720 (2010)
- if the accident sought to be considered is sufficiently unlikely that it can be characterized fairly as remote and speculative, then consideration under NEPA is not required as a matter of law; LBP-09-4, 69 NRC 170 (2009); LBP-09-26, 70 NRC 939 (2009)
- if the adverse environmental effects of the proposed action are adequately identified and evaluated, the agency is not constrained by NEPA from deciding that other values outweigh the environmental costs; LBP-07-4, 65 NRC 281 (2007); LBP-09-16, 70 NRC 227 (2009)
- if the proposed siting of a plant slated for an early site permit involves unresolved conflicts concerning alternative uses of available resources, then this discussion must be sufficiently complete to allow the Staff to develop and to explore appropriate alternatives to the ESP pursuant to NEPA § 102(2)(E); LBP-09-19, 70 NRC 433 (2009)
- impacts that are reasonably foreseeable under NEPA must be analyzed publicly, even if their probability of occurrence is low; CLI-10-18, 72 NRC 56 (2010)
- impacts that are remote and speculative or inconsequentially small need not be examined; LBP-10-14, 72 NRC 101 (2010)
- implicit in NEPA is a rule of reason, under which the agency may limit the alternatives discussion where there is no environmental effect or where an effect is simply not significant; LBP-10-10, 71 NRC 529 (2010)
- in accord with the environmental justice executive order, NRC has obligated itself to address only the disproportionate distribution of high and adverse effects in its environmental analysis; LBP-07-3, 65 NRC 237 (2007)
- in an environmental impact statement, federal agencies must address the environmental impact of the proposed action, any adverse environmental effects that cannot be avoided, alternatives to the proposed action, the relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity, and any irreversible and irretrievable commitments of resources that would be involved in the proposed action; LBP-06-17, 63 NRC 747 (2006); LBP-06-28, 64 NRC 460 (2006)
- in conducting its analysis of the impact of the license renewal on land use, applicant should consider the impact on real estate values that would be caused by license renewal or nonrenewal; LBP-08-13, 68 NRC 43 (2008)
- in conducting its environmental review, an agency has discretion to rely on data, analyses, or reports prepared by persons or entities other than agency staff, including competent and responsible state authorities; LBP-06-8, 63 NRC 241 (2006)
- in considering alternatives under NEPA, an agency must take into account the needs and goals of the parties involved in the application; LBP-10-10, 71 NRC 529 (2010)
- in determining whether to prepare an environmental impact statement, the federal agency shall prepare an environmental assessment, which will briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact; LBP-06-27, 64 NRC 438 (2006)
- in implementing NEPA, the NRC uses certain of the definitions provided in Council on Environmental Quality regulations; LBP-09-7, 69 NRC 613 (2009); LBP-09-19, 70 NRC 433 (2009)

SUBJECT INDEX

- in its conclusions regarding the environmental impacts of a proposed action or alternative actions, the Staff uses as guidance a standard scheme to categorize or quantify the impacts; LBP-09-7, 69 NRC 613 (2009)
- in its environmental justice analysis, NRC makes nearby nuclear facility-related harm an appropriate issue to consider cumulatively with any impacts from proposed reactors; LBP-07-3, 65 NRC 237 (2007)
- in its environmental report, applicant must provide enough information and in sufficient detail to allow for an evaluation of important impacts; LBP-08-16, 68 NRC 361 (2008)
- in its environmental review of a private applicant's proposed project, the agency may accord appropriate deference to the applicant's proposed siting and design plans; LBP-06-19, 64 NRC 53 (2006)
- in performing NEPA evaluations, agencies must consider three types of actions, three types of alternatives, and three types of impacts; CLI-10-5, 71 NRC 90 (2010)
- in preparing an environmental impact statement, Staff can rely upon the environmental analyses in another agency's EIS regarding environmental impacts; LBP-06-9, 63 NRC 289 (2006)
- in reaching its determinations on the baseline issues, the board will not second-guess the underlying technical or factual findings of the NRC Staff, but if it finds that the Staff review is incomplete or that the Staff findings lack sufficient explanation, it will make its own determination of technical and factual findings; LBP-07-1, 65 NRC 27 (2007)
- in reviewing an application filed by a private entity, as opposed to a project initiated by the federal government, NRC may accord substantial weight to the applicant's preferences with regard to consideration of alternatives, including site selection and project design; LBP-06-8, 63 NRC 241 (2006)
- in reviewing environmental justice claims, adverse impacts that fall heavily on minority and impoverished citizens call for particularly close scrutiny; LBP-07-3, 65 NRC 237 (2007)
- in ruling on petitioner's standing, boards should consider the nature of petitioner's right under the Atomic Energy Act or NEPA to be made a party to the proceeding, the nature and extent of petitioner's property, financial, or other interest in the proceeding, and the possible effect of any decision or order that may be issued in the proceeding on the petitioner's interest; LBP-09-13, 70 NRC 168 (2009)
- in the context of NEPA, one must examine underlying policies or legislative intent to draw a manageable line between those causal changes that make an agency responsible for an effect and those that do not; CLI-08-16, 68 NRC 221 (2008)
- in the mandatory early site permit proceeding, NRC must address whether the requirements of section 102(2)(A), (C), and (E) of NEPA and the regulations in 10 C.F.R. Part 51, Subpart A have been complied with; CLI-07-27, 66 NRC 215 (2007)
- in the mandatory early site permit proceeding, NRC must address whether the review conducted by the Commission pursuant to NEPA has been adequate; CLI-07-27, 66 NRC 215 (2007)
- in the mandatory early site permit proceeding, NRC must determine, after considering reasonable alternatives, whether the construction permit should be issued, denied, or appropriately conditioned to protect environmental values; CLI-07-27, 66 NRC 215 (2007)
- in the mandatory early site permit proceeding, NRC must independently consider the final balance among the conflicting factors contained in the record of the proceeding with a view to determining the appropriate action to be taken; CLI-07-27, 66 NRC 215 (2007)
- in uranium enrichment facility proceedings, a licensing board must determine in its initial decision, whether the requirements of section 102(2)(A), (C), and (E) have been complied with; CLI-09-15, 70 NRC 1 (2009)
- information in an environment impact statement or environmental assessment that must be considered as part of the NEPA decisionmaking process may be withheld from public disclosure pursuant to FOIA exemptions; CLI-08-1, 67 NRC 1 (2008)
- inherent in any forecast of future electric power demands is a substantial margin of uncertainty; LBP-10-24, 72 NRC 720 (2010)
- interest in the promotion of economic use of energy falls outside the protected zone of interests; CLI-07-18, 65 NRC 399 (2007)
- intervenor that has sufficient information to file a NEPA contention but delays that filing until publication of the environmental impact statement does so at its peril; LBP-10-24, 72 NRC 720 (2010)
- interveners are required to file environmental contentions in the first instance based on the applicant's environmental report; LBP-09-7, 69 NRC 613 (2009)

SUBJECT INDEX

intervenors' preference that the final environmental impact statement contain additional details on any particular issue is not, standing alone, probative of the FEIS's adequacy; LBP-06-19, 64 NRC 53 (2006)

issues related to costs only become relevant if an intervenor identifies an environmentally preferable, reasonable alternative; LBP-10-10, 71 NRC 529 (2010)

it is appropriate to consider reasonably foreseeable environmental impacts of a proposed action, even if they are only indirect effects; CLI-06-15, 63 NRC 687 (2006)

it is appropriate to defer issues concerning the effects of short-term damage to the environment and the irretrievable commitment of resources to the construction permit or combined license stage; CLI-07-14, 65 NRC 216 (2007)

it is inappropriate for the agency to consider economic costs when no environmentally preferable alternative has been identified; CLI-10-1, 71 NRC 1 (2010); CLI-10-9, 71 NRC 245 (2010)

it is not enough to consider only the proposed action and the no-action alternative in an environmental assessment; CLI-10-18, 72 NRC 56 (2010)

it is not necessary to examine every conceivable aspect of federally licensed projects; LBP-07-3, 65 NRC 237 (2007)

it is the NRC Staff, not the intervenors, that has the burden of complying with NEPA; LBP-10-24, 72 NRC 720 (2010)

it would be inconsistent with the rule of reason to require that the cumulative impacts analysis individually analyze the effects of remote facilities absent a demonstration that such additional effort would lead to a different conclusion; LBP-09-4, 69 NRC 170 (2009)

license renewal environmental reports must include a severe accident mitigation alternatives analysis if not previously considered by NRC Staff; LBP-10-15, 72 NRC 257 (2010)

licensing boards are required to apply the Commission's directive that outside the Ninth Circuit, NEPA does not require the evaluation of the impact of terrorist attacks by aircraft or other means; LBP-09-10, 70 NRC 51 (2009); LBP-09-18, 70 NRC 385 (2009)

licensing boards do not sit to flyspeck environmental documents or to add details or nuances; LBP-10-14, 72 NRC 101 (2010)

location of an irradiator may be a circumstance in which the categorical exclusions in 10 C.F.R. 51.22(b) might not apply; LBP-06-4, 63 NRC 99 (2006)

low probability is the key to applying NEPA's rule-of-reason test to contentions that allege that specified accident scenarios present a significant environmental impact that must be evaluated; LBP-09-26, 70 NRC 939 (2009); LBP-10-10, 71 NRC 529 (2010)

merely contemplating a certain action, even if accompanied by research or study, does not necessarily constitute a proposal for a major federal action requiring NEPA review; CLI-09-14, 69 NRC 580 (2009)

neither mitigative action against harmful effects of major federal actions nor in-depth statements of planned actions to be taken to dull such impacts is required; LBP-10-13, 71 NRC 673 (2010)

neither NRC nor applicant has the mission or authority to implement a general societal interest in energy efficiency; LBP-08-13, 68 NRC 43 (2008)

NEPA analyses are subject to a rule of reason, but it is necessary to have a criterion upon which reasonableness may be determined; LBP-09-4, 69 NRC 170 (2009)

NEPA is the only legal grounds for an admissible contention relating to environmental justice issues; LBP-09-18, 70 NRC 385 (2009)

NEPA itself does not mandate particular results, but simply prescribes the necessary process; LBP-09-25, 70 NRC 867 (2009)

new information that might emerge following issuance of an environmental impact statement requires a supplement to the impacts analysis if the new information presents a seriously different picture of the environmental impact of the proposed project from what was previously envisioned; CLI-06-29, 64 NRC 417 (2006)

no terrorism inquiry is required; CLI-10-1, 71 NRC 1 (2010); LBP-10-10, 71 NRC 529 (2010)

no-action alternative discussions can be brief and can incorporate by reference other sections of an environmental report discussing the project's adverse consequences; LBP-07-3, 65 NRC 237 (2007)

nothing in NEPA shall be deemed to authorize any federal agency to review any effluent limitation or other requirement established pursuant to the Clean Water Act or to authorize any such agency to impose any effluent limitation other than those set by the Environmental Protection Agency or a state agency that has been delegated such authority; LBP-09-25, 70 NRC 867 (2009)

SUBJECT INDEX

nothing in the agency's Part 51 NEPA regulations or the Staff's ER preparation guidance in regard to providing a description of the local environment indicates exactly how, as a general matter, a baseline for NEPA analysis is to be established; LBP-07-3, 65 NRC 237 (2007)

notwithstanding TVA's status as a federal entity, it is within NRC's regulatory authority to review TVA's combined license application, including its compliance with the agency's NEPA requirements; LBP-08-16, 68 NRC 361 (2008)

NRC can presume that increases in emissions that still fall within statutory limits will be insignificant; CLI-08-16, 68 NRC 221 (2008)

NRC cannot categorically refuse to consider the consequences of a terrorist attack against a spent fuel storage facility; CLI-10-1, 71 NRC 1 (2010)

NRC cannot either fail to perform an adequate evaluation or evade a NEPA responsibility by deferring to another agency; CLI-10-5, 71 NRC 90 (2010)

NRC cannot generically dispense with the consideration of SAMAs, under NEPA, through a policy statement issued pursuant to its Atomic Energy Act authority; LBP-10-13, 71 NRC 673 (2010)

NRC has broad discretion to determine how thoroughly it needs to analyze a particular subject for NEPA compliance; LBP-10-14, 72 NRC 101 (2010)

NRC has discretion in determining the extent to which a particular subject is analyzed, and may decline to examine remote and speculative or inconsequentially small impacts; LBP-06-8, 63 NRC 241 (2006)

NRC has no legal duty to consider intentional malevolent acts on a case-by-case basis in conjunction with commercial power reactor license renewal applications; LBP-08-13, 68 NRC 43 (2008)

NRC is barred from imposing or second-guessing effluent limitations or water quality certification requirements imposed by EPA or an authorized state, but it may address water quality matters in its assessment of the environmental impact of a license renewal; LBP-06-20, 64 NRC 131 (2006)

NRC is not in the business of regulating the market strategies of licensees and leaves to them the ongoing business decisions that relate to costs and profit; LBP-09-2, 69 NRC 87 (2009)

NRC is not required to assess every impact or effect of its proposed action, only effects on the environment; CLI-08-16, 68 NRC 221 (2008)

NRC is not required to assess the potential health effects of consuming irradiated food; CLI-10-18, 72 NRC 56 (2010)

NRC is not required to consider every imaginable alternative to a proposed action, but rather only reasonable alternatives; LBP-10-14, 72 NRC 101 (2010)

NRC is not required to consider the environmental consequences of hypothetical terrorist attacks on NRC-licensed facilities; CLI-07-8, 65 NRC 124 (2007); CLI-07-9, 65 NRC 139 (2007); CLI-07-10, 65 NRC 144 (2007); CLI-07-11, 65 NRC 148 (2007)

NRC is not required to revisit matters related to high-density spent fuel pool coolant loss or other SFP events in combined license proceedings; LBP-08-21, 68 NRC 554 (2008)

NRC is obligated to study matters that may be far afield of its primary mission, including the environmental impacts related to the permits and licenses issued by other governmental agencies; LBP-09-21, 70 NRC 581 (2009)

NRC is prohibited from using NEPA to impose additional effluent limitations on an applicant's wastewater discharges to surface waters; LBP-10-14, 72 NRC 101 (2010)

NRC is required to consider measures to mitigate the environmental impacts of the project; LBP-09-10, 70 NRC 51 (2009); LBP-09-16, 70 NRC 227 (2009)

NRC is required to provide a reasonable mitigation alternatives analysis, containing reasonable estimates, including full disclosures of any known shortcomings in methodology, incomplete or unavailable information, and significant uncertainties; CLI-10-22, 72 NRC 202 (2010)

NRC may comply with NEPA without requiring that applicant submit an environmental report, but NEPA and Council on Environmental Quality regulations permit agencies to request information from an applicant for a license or permit that will require a NEPA analysis; CLI-10-2, 71 NRC 27 (2010)

NRC may, consistent with NEPA, define baseload power generation as the purpose of and need for a project; LBP-10-24, 72 NRC 720 (2010)

NRC regulations do not impose a numerical floor on alternatives to be considered; CLI-10-18, 72 NRC 56 (2010)

SUBJECT INDEX

NRC regulations require petitioner to raise contentions related to NEPA as challenges to the applicant's environmental report, which acts as a surrogate for the environmental impact statement during the early stages of a relicensing proceeding; LBP-08-26, 68 NRC 905 (2008)

NRC Staff is required to prepare an environmental impact statement in connection with the issuance of an early site permit; LBP-09-7, 69 NRC 613 (2009)

NRC Staff is required under NEPA to evaluate reasonable technological and geographical alternatives to the proposed irradiator; CLI-10-18, 72 NRC 56 (2010)

NRC Staff must balance the benefits of the project against its environmental costs; LBP-10-24, 72 NRC 720 (2010)

NRC Staff must consult with interested Indian tribes as part of its review of the application; CLI-09-12, 69 NRC 535 (2009)

NRC Staff must first prepare a draft environmental impact statement; LBP-09-7, 69 NRC 613 (2009)

NRC's alternatives analysis should be based around the applicant's goals, including the applicant's economic goals; LBP-07-9, 65 NRC 539 (2007)

NRC's categorical refusal to consider the environmental effects of a terrorist attack is found to be unreasonable; CLI-06-23, 64 NRC 107 (2006)

NRC's NEPA responsibilities and, by extension, the applicant's responsibilities under 10 C.F.R. Part 51 are subject to a rule of reason; LBP-10-6, 71 NRC 350 (2010)

NRC's obligations under NEPA focus on the adjective "environmental," and NEPA does not require the agency to assess every impact or effect, but only the impact or effect on the environment; LBP-09-2, 69 NRC 87 (2009)

NRC's process for preparation of an environmental impact statement mandates openness and clarity; CLI-07-27, 66 NRC 215 (2007)

omitting consideration of accident scenarios anticipated under 10 C.F.R. 50.150 and 50.54(hh) is contrary to the requirements of 42 U.S.C. § 2133(d); LBP-10-10, 71 NRC 529 (2010)

on baseline issues in early site permit cases, boards must reach their own independent determination, but should do so without second-guessing underlying technical or factual findings by the NRC Staff; LBP-07-9, 65 NRC 539 (2007); LBP-09-19, 70 NRC 433 (2009)

on issues arising under the National Environmental Policy Act, petitioner shall file contentions based on the applicant's environmental report; LBP-10-24, 72 NRC 720 (2010)

once the adverse environmental effects of a proposed action are adequately identified and evaluated, the agency is not constrained from deciding that other values outweigh the environmental costs; LBP-09-7, 69 NRC 613 (2009)

one in a million per year is the threshold above which accident scenarios should be evaluated for NEPA consideration; LBP-10-10, 71 NRC 529 (2010)

only feasible, nonspeculative alternatives must be considered; LBP-10-10, 71 NRC 529 (2010)

only reasonably foreseeable indirect environmental effects of a proposed licensing action must be considered; CLI-06-15, 63 NRC 687 (2006)

petitioner did not properly challenge applicant's conclusion that no environmentally preferable alternative existed where the only alternative that petitioner mentions on appeal is the no-reactor option, and petitioner neither raised that option before the board nor supported its argument that it would always be environmentally preferable; LBP-10-6, 71 NRC 350 (2010)

petitioner has alleged sufficient new information concerning the seismic situation to raise a prima facie showing that strict application of the generic NEPA analysis of the management of spent fuel in nuclear reactors would not serve the purpose for which Part 51 Appendix B and 10 C.F.R. 51.53(c)(2) were adopted; LBP-10-15, 72 NRC 257 (2010)

petitioner may amend contentions based on the applicant's environmental report or file new contentions if there are data or conclusions in the NRC draft or final environmental impact statement, environmental assessment, or any supplements relating thereto, that differ significantly from the data or conclusions in the applicant's documents; CLI-06-9, 63 NRC 433 (2006); LBP-10-1, 71 NRC 165 (2010); LBP-10-24, 72 NRC 720 (2010)

petitioner need not submit a sensitivity analysis in order to establish that a SAMA-related contention is material; LBP-10-15, 72 NRC 257 (2010)

preparation of an environmental impact statement is required for all major federal actions significantly affecting the quality of the human environment; LBP-06-27, 64 NRC 438 (2006)

SUBJECT INDEX

presentation of an alternative analysis is, without more, insufficient to support a contention alleging that the original analysis failed to meet applicable requirements; LBP-08-13, 68 NRC 43 (2008)

prior NRC precedent is consistent with Supreme Court NEPA doctrine, which requires a reasonably close causal relationship between federal agency action and environmental consequences before NEPA is triggered, a relationship similar to that of proximate cause in tort law; LBP-07-14, 66 NRC 169 (2007)

procedural restraints are imposed on agencies, requiring that they take a “hard look” at the environmental impacts of a proposed action and reasonable alternatives to that action; LBP-06-8, 63 NRC 241 (2006)

project goals are to be determined by the applicant, not the agency; CLI-10-18, 72 NRC 56 (2010)

projects, for the purposes of NEPA, are described as proposed actions, or proposals in which action is imminent; CLI-09-14, 69 NRC 580 (2009)

purpose of the cost-benefit analysis called for by NEPA is to identify each significant environmental cost and to determine whether, all other factors considered, on balance the incurring of that cost is warranted; LBP-10-24, 72 NRC 720 (2010)

pursuant to environmental justice principles, each agency should identify and address, as appropriate, any disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority or low-income populations; LBP-06-19, 64 NRC 53 (2006)

quibbling over the details of an economic analysis amounts to standing NEPA on its head by asking that the license be rejected not due to environmental costs, but because the economic benefits are not as great as estimated; LBP-09-2, 69 NRC 87 (2009)

reasonable alternatives for license renewal proceedings are limited to discrete electric generation sources that are technically feasible and commercially available; LBP-08-13, 68 NRC 43 (2008)

reasonable alternatives under NEPA do not include alternatives that are impractical, that present unique problems, or that cause extraordinary costs; LBP-09-7, 69 NRC 613 (2009); LBP-09-16, 70 NRC 227 (2009)

“reasonably foreseeable” impacts include those that have catastrophic consequences, even if their probability of occurrence is low, provided that the analysis of the impacts is supported by credible scientific evidence, is not based on pure conjecture, and is within the rule of reason; CLI-08-8, 67 NRC 193 (2008)

regarding consideration of specific combination alternatives, the burden rests on petitioner to propose a particular alternative, and bare generalizations will not support an admissible contention; LBP-10-6, 71 NRC 350 (2010)

regarding public disclosure of an agency’s NEPA analysis, Congress has established that the environmental impact statement shall be made available to the public as provided by FOIA; LBP-08-7, 67 NRC 361 (2008)

regardless of whether a uranium enrichment facility proceeding is contested or uncontested, a licensing board must consider three baseline issues; LBP-06-17, 63 NRC 747 (2006)

rejection of even viable and reasonable alternatives, after an appropriate evaluation, is not arbitrary and capricious; LBP-10-10, 71 NRC 529 (2010)

secondary or indirect consequences of disposal of the waste generated by a facility cannot, and need not for the purposes of satisfying the agency’s NEPA obligation, be examined with particularity when a specific disposal site has not yet been identified; LBP-06-8, 63 NRC 241 (2006)

severe accident mitigation alternatives analyses are rooted in a cost-benefit assessment and the purpose of the assessment is to identify plant changes whose costs would be less than their benefit; LBP-10-14, 72 NRC 101 (2010)

severe accident mitigation alternatives analysis must be site specific and given careful consideration in order to comply with environmental requirements; LBP-09-10, 70 NRC 51 (2009)

Staff is obliged to perform a severe accident mitigation alternatives analysis; LBP-07-13, 66 NRC 131 (2007)

Staff must consider measures to mitigate environmental impacts by examining alternatives available for reducing or avoiding adverse effects and must discuss the mitigation measures in sufficient detail to ensure that environmental consequences have been fairly evaluated; LBP-06-19, 64 NRC 53 (2006)

Staff shall supplement an environmental impact statement if there are substantial changes in the proposed action that are relevant to environmental concerns or there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts; LBP-06-19, 64 NRC 53 (2006)

SUBJECT INDEX

Staff's draft and final environmental impact statements are to include a statement that will briefly describe and specify the need for the proposed action; LBP-06-17, 63 NRC 747 (2006)

Staff's failure to disclose data underlying its terrorism analysis in the final environmental assessment failed to meet the NEPA-mandated hard-look standard; CLI-10-18, 72 NRC 56 (2010)

technologically unproven alternatives need not be considered in an environmental impact statement; LBP-09-7, 69 NRC 613 (2009)

terrorist attacks are not to be considered part of the NEPA analysis required for licensing actions; LBP-07-14, 66 NRC 169 (2007)

the Act does not mandate particular results, but simply prescribes the necessary process; LBP-09-6, 69 NRC 367 (2009)

the adjudicatory record and board decision and any Commission appellate decisions become, in effect, part of the final environmental impact statement; LBP-06-19, 64 NRC 53 (2006)

the alternatives analysis is the heart of the environmental impact statement; LBP-09-16, 70 NRC 227 (2009); LBP-09-17, 70 NRC 311 (2009)

the alternatives discussion in the environmental report or environmental impact statement need not include every possible alternative, but every reasonable alternative; LBP-09-16, 70 NRC 227 (2009); LBP-09-21, 70 NRC 581 (2009)

the alternatives provision of section 102(2)(E) applies both when an agency prepares an environmental impact statement and when it prepares an environmental assessment; CLI-10-18, 72 NRC 56 (2010)

the appropriate state or federal regulatory authority, such as an Agreement State, will conduct any necessary site-specific evaluation to confirm that applicable radiological dose limits and standards for disposal of depleted uranium can be met at a particular site; CLI-06-15, 63 NRC 687 (2006)

the board erred in admitting a contention concerning the economic value of wetlands without requiring petitioners to demonstrate that the proposed licensing action or no-action alternative would have any effect on wetlands; CLI-09-9, 69 NRC 331 (2009)

the central purpose of Part 51 rules is to allow NRC to comply with NEPA by identifying and evaluating environmental impacts that are generic to reactor license renewal proceedings and then allowing applicant and NRC to dispense with site-specific evaluations of such environmental impacts in situations covered by the generic analysis; LBP-10-15, 72 NRC 257 (2010)

the claimed impact of a terrorist attack on NRC-licensed facilities is too attenuated to find the proposed federal action to be the proximate cause of that impact; CLI-07-9, 65 NRC 139 (2007); CLI-07-10, 65 NRC 144 (2007)

the Commission is not required to reveal sensitive government security information regarding the agency's environmental analysis; CLI-08-26, 68 NRC 509 (2008)

the Commission is ultimately responsible for analyzing environmental justice issues, but license renewal applicants are required to assist the Commission with that evaluation; LBP-08-26, 68 NRC 905 (2008)

the Commission may find special circumstances warranting a categorical exclusion upon its own initiative, or upon the request of an interested person; CLI-10-18, 72 NRC 56 (2010)

the Commission may have more to offer regarding the need for a NEPA carbon footprint analysis in new reactor licensing proceedings; LBP-09-19, 70 NRC 433 (2009)

the Commission may withhold from public disclosure any information that is exempt under the Freedom of Information Act; CLI-08-26, 68 NRC 509 (2008)

the Commission's discussion of the Staff's underlying review adds necessary additional details and constitutes a supplement to the final environmental impact statement's alternative site review; CLI-07-27, 66 NRC 215 (2007)

the concept of alternatives must be bounded by some notion of feasibility; LBP-09-17, 70 NRC 311 (2009); LBP-10-10, 71 NRC 529 (2010)

the cost-benefit analysis involves the scrutiny of many factors, among them, offsetting benefits, available alternatives, and the possible means (and attendant costs) of reducing the environmental harm; LBP-10-24, 72 NRC 720 (2010)

the decision as to whether an alleged environmental impact or alternative is significant or reasonable is the merits of a NEPA contention and should not be adjudicated at the contention admissibility stage under the guise of materiality or scope; LBP-09-10, 70 NRC 51 (2009)

SUBJECT INDEX

the discussion of alternatives in the final environmental impact statement shall identify reasonable alternatives, present the environmental impacts of the proposal and the alternatives in comparative form, and include a final recommendation on the action to be taken; LBP-06-19, 64 NRC 53 (2006)

the draft EIS is distributed for public comment and, based on the comments received, a review of information provided by the applicant, and supplemental independent information and analysis, the Staff prepares and issues a final EIS; LBP-09-7, 69 NRC 613 (2009)

the draft environmental impact statement may rely in part on the environmental report, but agency regulations require the Staff to independently evaluate and be responsible for the reliability of all information used in the DEIS; LBP-09-7, 69 NRC 613 (2009)

the duty to consider the environmental impacts of a proposed action incorporates, at least implicitly, considerations of the probability of a particular consequence occurring; LBP-10-15, 72 NRC 257 (2010)

the environmental baseline reflects the effects of all currently existing pollution sources in the relevant watershed, including contributions of all nuclear power plants, and petitioners failed to provide information indicating that this aggregate analysis was insufficient; LBP-09-16, 70 NRC 227 (2009)

the environmental effect caused by third-party miscreants is simply too far removed from the natural or expected consequences of agency action to require a study under NEPA; CLI-07-10, 65 NRC 144 (2007); CLI-10-1, 71 NRC 1 (2010)

the environmental report is required to address a list of environmental considerations that correspond to the environmental considerations that NEPA § 102(2)(C)(i)-(v) requires the agency to address in the environmental impact statement; LBP-09-16, 70 NRC 227 (2009)

the environmental report's impact analysis must include sufficient data and the alternatives analysis must be sufficiently complete to aid the Commission in preparing the environmental impact statement; LBP-09-10, 70 NRC 51 (2009)

the final environmental impact statement is required to include a description of the underlying purpose and need of a proposed project; LBP-06-19, 64 NRC 53 (2006)

the general rule applicable to cases involving differences or changes in demand forecasts is not whether applicant will need additional generating capacity but when; LBP-10-24, 72 NRC 720 (2010)

the good cause factor favors petitioners who have filed their petition within 30 days of the availability of the document they contend contains new and significant information so as to form the basis for their contention; LBP-10-1, 71 NRC 165 (2010)

the hard look required by NEPA is subject to a rule of reason, such that it is not necessary to look at every conceivable alternative to the proposed licensing action, but only those that are feasible and reasonably related to the scope and goals of the proposed action; LBP-10-10, 71 NRC 529 (2010)

the hard-look doctrine is subject to a rule of reason that the Commission has interpreted as obligating the agency to consider all reasonable alternatives to the proposed action; LBP-10-14, 72 NRC 101 (2010)

the issue of need for power is a part of NRC's combined license NEPA review process; LBP-08-16, 68 NRC 361 (2008)

the level of risk of a terrorist attack depends upon political, social, and economic factors external to the NRC licensing process, and thus it is not sensible to hold an NRC licensing decision, rather than terrorists themselves, as the proximate cause of an attack on an NRC-licensed facility; CLI-07-8, 65 NRC 124 (2007)

the licensing board's standard of review on environmental issues in a mandatory uncontested proceeding on a uranium enrichment facility application is discussed; LBP-07-6, 65 NRC 429 (2007)

the "major federal action" triggering the environmental impact statement is issuance of the license, not adjudication of the license; CLI-06-19, 63 NRC 19 (2006)

the National Infrastructure Protection Plan is concerned with security issues, not environmental quality standards and requirements, and it is environmental quality standards and requirements that the environmental analysis is obliged to address, not security issues; CLI-08-1, 67 NRC 1 (2008)

the NEPA requirement to prepare an environmental impact statement is a procedural mechanism designed to ensure that agencies give proper consideration to the environmental consequences of their actions; LBP-10-24, 72 NRC 720 (2010)

the NEPA rule of reason does not require applicant to consider energy efficiency in its NEPA analysis, because energy efficiency is not a reasonable alternative for a merchant power producer; CLI-10-1, 71 NRC 1 (2010)

SUBJECT INDEX

- the obligation of agencies to consider alternatives is a lesser one under an environmental assessment than under an environmental impact statement; CLI-10-18, 72 NRC 56 (2010)
- the only alternatives that are relevant to NRC's decision are those alternatives that are environmentally preferable; LBP-10-6, 71 NRC 350 (2010)
- the overriding NEPA issue that a board must determine in a mandatory proceeding on an early site permit application is whether the NEPA review conducted by the NRC Staff has been adequate; LBP-07-9, 65 NRC 539 (2007)
- the permitting agency determines what cooling system a nuclear power facility may use, and NRC factors the impacts resulting from use of that system into the NEPA cost-benefit analysis; CLI-07-16, 65 NRC 371 (2007)
- the proper inquiry for determining the sufficiency of the purpose and need statement is whether the final environmental impact statement, read as a whole, includes a correct and adequate description of the purpose of and need for the proposed action; LBP-06-19, 64 NRC 53 (2006)
- the purpose of an environmental justice review is to ensure that the Commission considers and publicly discloses environmental factors peculiar to minority or low-income populations that may cause them to suffer harm disproportionate to that suffered by the general population; LBP-08-13, 68 NRC 43 (2008)
- the range of alternatives that must be considered need not extend beyond those reasonably related to the purposes of the project and a rule of reason necessarily informs that choice; CLI-10-18, 72 NRC 56 (2010)
- the requirement to discuss alternatives in the environmental report parallels NEPA's requirement that an environmental impact statement provide a detailed statement of reasonable alternatives to a proposed action; LBP-09-16, 70 NRC 227 (2009)
- the requirements of NEPA and, by extension, NRC's regulations implementing NEPA are subject to a rule of reason, and only reasonably foreseeable environmental impacts must be addressed; LBP-09-26, 70 NRC 939 (2009)
- the rule of reason does not demand an analysis of energy efficiency because conservation measures are beyond the ability of an applicant to implement, and are therefore outside the scope required by a NEPA review of reasonable alternatives; LBP-08-13, 68 NRC 43 (2008)
- the rule of reason excludes consideration of demand-side management if the proposed new plant is intended to be a merchant plant, selling power on the open market, because it is not feasible for licensee to engage in demand-side management; CLI-10-21, 72 NRC 197 (2010)
- the statement of purpose and need in the final environmental impact statement is independent of any specific project area, and thus a prior decision of the Commission adjudicating an intervenor's challenge to the statement of purpose and need applies with equal force to all areas of a proposed project; LBP-06-19, 64 NRC 53 (2006)
- the statute applies to agencies of the federal government, not to private parties such as applicants for NRC licenses; LBP-09-10, 70 NRC 51 (2009)
- the statute does not mandate particular results, but simply prescribes the necessary process; LBP-06-19, 64 NRC 53 (2006); LBP-10-24, 72 NRC 720 (2010)
- the statute has only a limited role to play in interpreting 10 C.F.R. Part 51's requirements for the environmental report; LBP-09-16, 70 NRC 227 (2009)
- the statute imposes procedural requirements on the NRC to take a hard look at the environmental impacts of building and operating a nuclear reactor; LBP-10-14, 72 NRC 101 (2010)
- the statute's dual purpose is to ensure that federal officials fully take into account the environmental consequences of a federal action before reaching major decisions and to inform the public, Congress, and other agencies of those consequences; LBP-07-9, 65 NRC 539 (2007)
- the statutory language requires an impact statement only in the event of a proposed action, and thus in the absence of a proposal there is nothing that could be the subject of the analysis envisioned by the statute for an impact statement; CLI-10-5, 71 NRC 90 (2010)
- the ultimate objective of the NEPA requirement to examine alternatives is to ensure that NRC has made an informed decision by examining reasonable alternatives to the proposed action; LBP-10-6, 71 NRC 350 (2010)
- the underlying purpose of NEPA as an information-gathering and disclosure mechanism requires a different view of the concept of "materiality" under 10 C.F.R. 2.309(f)(1)(iv) than might be applied to a contention seeking to establish a health and safety issue; LBP-08-16, 68 NRC 361 (2008)

SUBJECT INDEX

the waste confidence rule applies to the spent fuel discharged from any new generation of reactor designs; LBP-08-21, 68 NRC 554 (2008)

the word "significantly" as used in the NEPA process describes the significance of environmental impacts in several contexts, including the locality; CLI-06-29, 64 NRC 417 (2006)

there is a difference between what NRC must look at to evaluate cumulative impacts under NEPA and the scope of a particular cumulative impacts contention, which may be a subset of the total array of cumulative impacts required to be examined; CLI-10-5, 71 NRC 90 (2010)

there is no proximate-cause link between an NRC licensing action, such as renewing an operating license, and any altered risk of terrorist attack; CLI-07-8, 65 NRC 124 (2007)

there is no requirement to use the best scientific methodology, and NEPA should be construed in the light of reason if it is not to demand virtually infinite study and resources; CLI-10-11, 71 NRC 287 (2010)

there must be a finding that something is remote and speculative to preclude it from further analysis, and there must be support in the agency's record of decision to justify this finding; LBP-10-14, 72 NRC 101 (2010)

throughout the repository development program, the Secretary and other agencies must meet the general requirements and the spirit of NEPA; LBP-09-6, 69 NRC 367 (2009)

to be encompassed by NEPA, there needs to be a reasonably close causal relationship between a change in the physical environment and the effect at issue; CLI-08-16, 68 NRC 221 (2008)

to implicate environmental justice scrutiny, support must be presented regarding the alleged existence of adverse impacts or harm on the physical or human environment, and a supported case must be made that these purported adverse impacts could disproportionately affect poor or minority communities in the vicinity of the facility at issue; LBP-07-3, 65 NRC 237 (2007)

uncertainties are dealt with by inclusion in an environmental impact statement of a summary of existing credible scientific evidence relevant to evaluating the reasonably foreseeable significant adverse impacts regarding those events with potential catastrophic consequences even if their probability is low; LBP-09-26, 70 NRC 939 (2009)

under NEPA the Commission looks to the reasonably foreseeable impacts of simply licensing the facility, not the reasonably foreseeable effects of a successful terrorist attack; LBP-09-26, 70 NRC 939 (2009)

when a board decision supplements or differs from the findings of the Staff as set forth in its final environmental impact statement, the FEIS is deemed modified by the board's decision to that extent; LBP-06-8, 63 NRC 241 (2006)

when a new contention is filed challenging new data or conclusions in NRC's environmental documents, the timeliness of the new contention is based on whether it was filed promptly after the NRC's NEPA document became publicly available, not whether it was filed promptly after the information on which the intervenor bases its challenge became publicly available; LBP-10-24, 72 NRC 720 (2010)

when reviewing a license application filed by a private applicant, as opposed to a federally sponsored project, an agency may give substantial weight to the stated preferences of the applicant with regard to issues such as site selection and facility design; CLI-06-10, 63 NRC 451 (2006); CLI-10-18, 72 NRC 56 (2010); LBP-09-7, 69 NRC 613 (2009)

when the draft or final environmental impact statement for a combined license application has not been issued so as to provide petitioner with a basis for framing its contention, the licensing board must look to the three other factors specified in 10 C.F.R. 2.309(f)(2) in assessing the admissibility of a new NEPA-related issue statement; LBP-10-1, 71 NRC 165 (2010)

when the purpose of a proposed action is to accomplish one thing, it makes no sense to consider the alternative ways by which another thing might be achieved; LBP-06-19, 64 NRC 53 (2006)

when there are substantial changes in a proposed action that are relevant to environmental concerns, NRC Staff will prepare a supplement to a final environmental impact statement; LBP-10-17, 72 NRC 501 (2010)

where a contention challenges applicant's compliance with the Commission's rules implementing NEPA, materiality relates not only to the Commission's determination regarding denial, issuance, or conditioning of the requested combined license, but also to the Commission's fulfillment of its obligations under NEPA; LBP-10-6, 71 NRC 350 (2010)

SUBJECT INDEX

- where petitioner has not shown a reasonably close causal relationship between an aircraft attack and the relicensing proceeding at issue, such an attack does not warrant NEPA evaluation; CLI-10-9, 71 NRC 245 (2010)
- where the agency's action is to approve or deny a proposal by a private party, the agency should ordinarily accord substantial weight to the preferences of the applicant and/or sponsor in the siting and design of the project; LBP-10-6, 71 NRC 350 (2010)
- where there is no proposal for major federal action within the meaning of section 102(C), there is no requirement for a NEPA analysis of dredging; CLI-10-5, 71 NRC 90 (2010)
- whether and how the Staff fulfills its National Historic Preservation Act and NEPA obligations are issues that could form the basis of a new contention; LBP-10-16, 72 NRC 361 (2010)
- whether NEPA requires NRC to consider potential health effects of consuming irradiated food raises the kind of broad legal question appropriate for Commission interlocutory review; CLI-08-4, 67 NRC 171 (2008); CLI-08-16, 68 NRC 221 (2008)
- with respect to certain NEPA findings, boards in early site permit proceedings are to make independent environmental judgments, though they need not rethink or redo every aspect of the NRC Staff's environmental findings or undertake their own fact-finding activities; LBP-09-19, 70 NRC 433 (2009)
- NATIONAL HISTORIC PRESERVATION ACT**
- a federal agency must consult with an Indian tribe concerning a federal action that might affect sites of cultural interest to the tribe; CLI-09-9, 69 NRC 331 (2009)
- a federal agency, prior to the issuance of any license, is required to take into account the effect of the federal action on any area eligible for inclusion in the National Register of Historic Places; LBP-08-6, 67 NRC 241 (2008); LBP-08-24, 68 NRC 691 (2008); LBP-10-16, 72 NRC 361 (2010)
- a form letter is not sufficient to constitute the reasonable effort that section 106 of the National Historic Preservation Act requires; LBP-08-6, 67 NRC 241 (2008)
- a license renewal applicant must assess whether any historic or archaeological properties will be affected by the proposed project; LBP-08-26, 68 NRC 905 (2008)
- a mere request for information is not necessarily sufficient to constitute the reasonable effort that section 106 requires; LBP-08-6, 67 NRC 241 (2008)
- a tribe may become a consulting party when it considers property potentially affected by a federal undertaking to have religious or cultural significance; LBP-08-6, 67 NRC 241 (2008)
- agencies may coordinate their National Environmental Policy Act and NHPA reviews, but the reviews remain separate and the regulations associated with each act must be independently satisfied; LBP-06-11, 63 NRC 483 (2006)
- an Indian tribe claims a procedural interest in identifying, evaluating, and establishing protections for historic and cultural resources; LBP-10-16, 72 NRC 361 (2010)
- any contractual provision that purports to shift NHPA compliance responsibility from a third party to the prospective licensee cannot affect the NRC's statutory obligation to comply with the Act with respect to the licensing of the proposed project; CLI-06-9, 63 NRC 433 (2006)
- consideration of alternatives is required only if the project will have an adverse effect on historic properties, and only after that determination is made; CLI-06-9, 63 NRC 433 (2006)
- ensuring that NRC Staff meets its consultation obligations under section 106 is an issue material to the findings the NRC must make in support of the action involved in a materials license renewal proceeding; LBP-08-24, 68 NRC 691 (2008)
- federal agencies must follow notification and consultation procedures prior to a federal undertaking to consider the undertaking's effect on historic properties; LBP-10-16, 72 NRC 361 (2010)
- federal agencies must notify all consulting parties, including Indian tribes, when a finding of no effect has been made, and to provide those consulting parties with an invitation to inspect the documentation prior to approving the undertaking; LBP-08-6, 67 NRC 241 (2008)
- federal "undertakings," are defined as any project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a federal agency, including those requiring a federal permit, license, or approval; CLI-09-12, 69 NRC 535 (2009)
- in initiating the section 106 process, NRC is required to make a reasonable and good-faith effort to identify Indian tribes who may attach religious and cultural significance to historic properties that may be affected by the proposed undertaking and invite them to participate as consulting parties in the section 106 process; LBP-08-24, 68 NRC 691 (2008)

SUBJECT INDEX

no nomination or formal determination of eligibility is necessary to trigger an NHPA review, but a site must be within the area of potential effects and the project must affect the site to trigger a review of that site; CLI-06-9, 63 NRC 433 (2006)

NRC Staff must consult with interested Indian tribes as part of its review of the application; CLI-09-12, 69 NRC 535 (2009)

only Indian tribes that appear on the Department of the Interior's list of recognized tribes have consultation rights under the National Historic Preservation Act; LBP-09-13, 70 NRC 168 (2009)

petitioners' contention that NRC Staff has not consulted with an affected Indian tribe is premature if it is filed prior to the time for the Staff to act; CLI-09-9, 69 NRC 331 (2009)

procedural violations of the Act have resulted in a grant of standing to tribes; LBP-08-24, 68 NRC 691 (2008)

to establish an injury in fact, a party merely has to show some threatened concrete interest personal to the party that the National Historic Preservation Act was designed to protect; LBP-08-24, 68 NRC 691 (2008); LBP-10-16, 72 NRC 361 (2010)

tribes that have addressed procedural violations of the National Historic Preservation Act have uniformly been granted standing under the relaxed standard and have proceeded directly to the merits of the NHPA claim; LBP-10-16, 72 NRC 361 (2010)

whether and how the Staff fulfills its National Historic Preservation Act and NEPA obligations are issues that could form the basis of a new contention; LBP-10-16, 72 NRC 361 (2010)

NATIONAL INFRASTRUCTURE PROTECTION PLAN

NIPP is concerned with security issues, not environmental quality standards and requirements, and it is environmental quality standards and requirements that the environmental analysis is obliged to address, not security issues; CLI-08-1, 67 NRC 1 (2008)

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

although NRC will consider the fact that an applicant is subject to, and compliant with, other environmental laws and permits, it must still perform an environmental assessment prior to any major federal action significantly affecting the environment; LBP-06-20, 64 NRC 131 (2006)

Congress severely limited NRC's scope of inquiry into Clean Water Act § 316(a) determinations to examining whether the EPA or the state agency considered its permit to be a section 316(a) determination; CLI-07-16, 65 NRC 371 (2007)

for purposes of NPDES permits, effluent is defined as liquid waste that is discharged into a river, lake, or other body of water; CLI-07-16, 65 NRC 371 (2007)

heat shock falls within the parameters of the NPDES provisions of the Clean Water Act's section 402(b); CLI-07-16, 65 NRC 371 (2007)

if applicant's plant utilizes a once-through cooling system, applicant shall provide a copy of a Clean Water Act § 316a variance or equivalent state permit and supporting documentation; CLI-07-16, 65 NRC 371 (2007)

no state may issue an NPDES permit for a period longer than 5 years; CLI-07-16, 65 NRC 371 (2007)

NRC is prohibited from using NEPA to impose additional effluent limitations on an applicant's wastewater discharges to surface waters; LBP-10-14, 72 NRC 101 (2010)

permits may address thermal discharges into bodies of water; CLI-07-16, 65 NRC 371 (2007)

the Commission can legitimately rely on a state permit that expires only 5 years into the 20-year renewal period; CLI-07-16, 65 NRC 371 (2007)

the Commission has previously rejected claims that NRC regulations require discharge permits of their licensees; LBP-09-25, 70 NRC 867 (2009)

the question as to whether an NPDES permit that will expire before the proposed 20-year NRC license renewal would even take effect raises an admissible and material issue of law and fact; LBP-06-20, 64 NRC 131 (2006)

whether applicant has a valid NPDES permit is outside the scope of a power uprate proceeding; LBP-08-9, 67 NRC 421 (2008)

NATIONAL SECURITY INFORMATION

NRC has a statutory obligation to protect national security information; CLI-08-1, 67 NRC 1 (2008)

NRC Staff must file a notice of intent if, at the time of publication of Notice of Hearing, it appears that it will be impracticable for the Staff to avoid the introduction of restricted data or national security information into a proceeding; CLI-10-4, 71 NRC 56 (2010)

SUBJECT INDEX

Staff may withhold some facts underlying its findings and conclusions on terrorism-related risks;
CLI-07-11, 65 NRC 148 (2007)

NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION ACT

notification and inventory procedures are required so that Indian cultural objects and burial remains found on federal lands will be repatriated to the appropriate tribe; LBP-08-24, 68 NRC 691 (2008);
LBP-10-16, 72 NRC 361 (2010)

NATIVE AMERICANS

a board may grant party status only to a single representative for each affected federally recognized Indian tribe; LBP-09-6, 69 NRC 367 (2009)

a consulting tribe is entitled to a reasonable opportunity to identify its concerns about historic properties, to advise on the identification and evaluation of them (including those of traditional religious and cultural importance), to articulate its views on the undertaking's effects on such properties, and to participate in the resolution of adverse effects; LBP-10-16, 72 NRC 361 (2010)

a "federally recognized Indian tribe" is one that is included on the Bureau of Indian Affairs' list of federally recognized Indian Tribes published in the *Federal Register*; LBP-09-13, 70 NRC 168 (2009)

a federally recognized Indian tribe may seek to participate in a proceeding; LBP-10-16, 72 NRC 361 (2010)

a Native American group that has failed to establish that it is a federally recognized Indian tribe is denied standing based on its tribal status; LBP-09-13, 70 NRC 168 (2009)

a Native American nation retains its water rights even after its land rights have been extinguished, but those reserved rights must originate in a treaty in order to survive; LBP-09-6, 69 NRC 367 (2009)

a tribe is free to file a contention later in the proceeding if, after Staff releases its environmental documents, the tribe believes that the Staff has failed to satisfy its obligations under NEPA and the National Historic Preservation Act; LBP-10-16, 72 NRC 361 (2010)

a tribe may become a consulting party if its property, potentially affected by a federal undertaking, has religious or cultural significance; LBP-08-6, 67 NRC 241 (2008); LBP-08-24, 68 NRC 691 (2008);
LBP-10-16, 72 NRC 361 (2010)

although a board in another materials license renewal proceeding allowed an Indian organization to participate in that proceeding as an interested Indian Tribe under 10 C.F.R. 2.315(c), that ruling is not binding on other boards; LBP-09-13, 70 NRC 168 (2009)

an affected federally recognized Indian tribe is automatically entitled to participate in the Yucca Mountain proceeding; LBP-09-6, 69 NRC 367 (2009)

an Indian tribe claims a procedural interest in identifying, evaluating, and establishing protections for historic and cultural resources; LBP-10-16, 72 NRC 361 (2010)

an Indian Tribe whose reservation is adjacent to facilities where spent nuclear fuel is currently stored, the nearest of which resides just 600 yards from an ISFSI, has more than a mere interest in a problem; LBP-10-11, 71 NRC 609 (2010)

an individual member of a Native American tribe may assert his or her rights on behalf of the tribe; LBP-08-24, 68 NRC 691 (2008)

any treaty-based claims to ownership of the land upon which a mining site sits cannot support standing; LBP-08-24, 68 NRC 691 (2008)

as long as counsel is an attorney in good standing and a member of the bar, a Notice of Appearance is sufficient in itself for him or her to represent the tribe in a proceeding; LBP-08-26, 68 NRC 905 (2008)

Congress's plenary power with respect to Native Americans entitles it to abrogate treaties with Native American nations; LBP-09-13, 70 NRC 168 (2009)

continuous and exclusive use of property is sufficient, unless duly extinguished, to establish Indian or aboriginal title; LBP-08-24, 68 NRC 691 (2008)

criteria and procedures pursuant to which a federal land manager may issue excavation permits for federal lands are provided as well as notification to Indian tribes if permits may result in harm to cultural or religious sites; LBP-10-16, 72 NRC 361 (2010)

federal agencies are to consult with a tribe if that tribe ascribes cultural or religious significance to properties not on tribal lands; LBP-08-24, 68 NRC 691 (2008)

federal agencies must follow notification and consultation procedures prior to a federal undertaking to consider the undertaking's effect on historic properties; LBP-10-16, 72 NRC 361 (2010)

SUBJECT INDEX

federal agencies should be sensitive to the special concerns of Indian tribes in historic preservation issues; LBP-08-6, 67 NRC 241 (2008)

federal recognition by the Bureau of Indian Affairs is a formal political act confirming a tribe's existence as a distinct political society, and institutionalizing the government-to-government relationship between the tribe and the federal government; LBP-09-13, 70 NRC 168 (2009)

federally recognized Indian tribes do not need to address standing requirements if the facility is located within their boundaries; CLI-09-15, 70 NRC 1 (2009)

general counsel for an Indian tribe is not required to submit a declaration stating the basis of his or her authority to represent the tribe; LBP-08-26, 68 NRC 905 (2008)

"Indian tribe" is defined as an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994; LBP-09-13, 70 NRC 168 (2009)

it is not the duty of applicant to consult with a tribe regarding cultural resources at a proposed site, but instead is the duty of the agency to initiate and follow through with the consultation process; LBP-10-16, 72 NRC 361 (2010)

licensing boards are required to reject treaty-based claims of ownership; LBP-08-24, 68 NRC 691 (2008)

membership of a petitioning Indian group must be composed principally of persons who are not members of any other acknowledged North American Indian tribe; LBP-09-13, 70 NRC 168 (2009)

Native American historic preservation issues, which often extend beyond Indian lands to other historic properties, and should invite the governing body of the responsible tribe to be a consulting party and to concur in any agreement; LBP-08-24, 68 NRC 691 (2008); LBP-10-16, 72 NRC 361 (2010)

notification and inventory procedures are provided so that Indian cultural objects and burial remains found on federal lands will be repatriated to the appropriate tribe; LBP-08-24, 68 NRC 691 (2008)

NRC must make a reasonable and good-faith effort to identify any Indian tribes that might attach religious and cultural significance to historic properties in the area of potential effects and invite them to be consulting parties; CLI-09-12, 69 NRC 535 (2009)

petitioners' contention that NRC Staff has not consulted with an affected Indian tribe is premature if it is filed prior to the time for the Staff to act; CLI-09-9, 69 NRC 331 (2009)

plenary authority over the tribal relations of the Indians has been exercised by Congress from the beginning, and the power has always been deemed a political one, not subject to be controlled by the judicial department of the government; LBP-08-24, 68 NRC 691 (2008); LBP-09-13, 70 NRC 168 (2009)

preservation of cultural traditions is a protected interest under federal law, and its endangerment or harm qualifies as an injury for the purposes of establishing standing; LBP-08-24, 68 NRC 691 (2008)

preservation of Native American cultural traditions is a protected interest under federal law; LBP-10-16, 72 NRC 361 (2010)

procedural violations of the National Historic Preservation Act have resulted in a grant of standing to tribes; LBP-08-24, 68 NRC 691 (2008)

standing is granted to an Indian tribe based on its interest in cultural artifacts onsite that could be affected by a proposed licensing action; CLI-09-9, 69 NRC 331 (2009)

the Commission shall permit intervention by any affected federally recognized Indian tribe in the area where the geologic repository operations is located if the contention requirements in 10 C.F.R. 2.309(f) are satisfied with respect to at least one contention; CLI-08-25, 68 NRC 497 (2008)

the difference between "aboriginal title" and "aboriginal lands" is distinguished; LBP-08-24, 68 NRC 691 (2008)

the fact that an ancestor of a member of the Oglala Delegation of the Great Sioux Nation Treaty Council signed several treaties with the United States more than 100 years ago does not establish that the delegation is a current and official successor of the delegation that signed such treaties, or that the delegation is a local governmental entity that currently exercises executive or; LBP-09-13, 70 NRC 168 (2009)

the Trust Responsibility requires federal agencies to take actions or refrain from taking actions in fulfillment of Congress's duty to protect the Indians; LBP-09-13, 70 NRC 168 (2009)

the United States is no longer bound by the terms of the 1868 Fort Laramie Treaty; LBP-09-13, 70 NRC 168 (2009)

SUBJECT INDEX

- to establish an injury in fact, a party merely has to show some threatened concrete interest personal to the party that the National Historic Preservation Act was designed to protect; LBP-08-24, 68 NRC 691 (2008)
- to qualify for recognition on the Bureau of Indian Affairs' list as an Indian tribe, a petitioning group must establish that it has historically been recognized as an American Indian entity since 1900, that it is composed of a cohesive group of individuals that share a distinct community and an autonomous government, and that its members are descended from a historic Indian tribe or tribes; LBP-09-13, 70 NRC 168 (2009)
- treaties granting ownership of the Black Hills to the Sioux Nation had been abrogated by act of Congress and are no longer in effect; CLI-09-9, 69 NRC 331 (2009)
- tribes are entitled to a reasonable opportunity to participate in NRC proceedings; LBP-08-6, 67 NRC 241 (2008)
- tribes that have addressed procedural violations of the National Historic Preservation Act have uniformly been granted standing under the relaxed standard and have proceeded directly to the merits of the NHPA claim; LBP-10-16, 72 NRC 361 (2010)
- trust responsibility imposes a fiduciary duty on NRC, as a federal agency, to the tribe and its members; LBP-08-24, 68 NRC 691 (2008)
- where a facility will not be located within an Indian tribe's boundaries, the tribe must meet the standing requirements imposed by 10 C.F.R. 2.309(d)(1); LBP-10-16, 72 NRC 361 (2010)
- where an abrogated treaty was the only grounds supporting an Indian group's claim of standing, the board correctly found that the Indian group did not have standing as a party to the proceeding; CLI-09-9, 69 NRC 331 (2009)
- without consultation with a tribe, culturally significant resources will go unidentified and unprotected, resulting in development or use of the land that might cause damage to these cultural resources, thereby injuring the protected interests of the tribe; LBP-08-24, 68 NRC 691 (2008)
- NATURALLY OCCURRING RADIOACTIVE MATERIAL**
- allegation that the environmental report's analysis of cancer deaths and illnesses relative to natural radiation source exposures is inadequate is inadmissible; LBP-08-16, 68 NRC 361 (2008)
- emissions from NORM are background radiation; CLI-06-14, 63 NRC 510 (2006)
- examples of industrial wastes that are not regulated by the Commission include uranium mining overburden, phosphate waste, water treatment waste, petroleum production waste, mineral processing waste, and geothermal energy production waste; LBP-06-1, 63 NRC 41 (2006)
- NORM includes radioactive materials that are undisturbed in nature, as well as radioactive materials that, as a result of human activities, are no longer in their natural state; LBP-06-1, 63 NRC 41 (2006)
- NEED FOR POWER**
- a possible 1-year slip in construction schedule is clearly within the margin of uncertainty and therefore, in the context of relitigating an issue, is unlikely to affect the need for power; LBP-10-6, 71 NRC 350 (2010)
- accuracy and reliability of the agency's need-for-power determination, as reflected in the draft EIS, is material to the licensing decision; LBP-10-24, 72 NRC 720 (2010)
- at the operating license stage, licensing boards will not admit contentions concerning the need for power or alternative energy sources; LBP-10-12, 71 NRC 656 (2010)
- because demand-side management reduces by a small portion applicant's demand for power, it should be analyzed in this instance as a surrogate for need for power; LBP-10-6, 71 NRC 350 (2010)
- business strategies in the context of need for power and any challenges to them are outside the scope of a licensing proceeding; LBP-10-10, 71 NRC 529 (2010)
- contention that calls for a more detailed analysis than NRC requires is inadmissible; LBP-10-24, 72 NRC 720 (2010)
- energy sales projections are inherently uncertain, and the Commission does not impose burdensome attempts to predict future conditions, and thus it should be sufficient to reasonably characterize the costs and benefits associated with proposed licensing actions; LBP-10-6, 71 NRC 350 (2010)
- fluctuations in demand that may occur over a period of several years, such as changes brought about by an economic recession, are not a legally sufficient ground for challenging the need for power analysis; LBP-10-24, 72 NRC 720 (2010)

SUBJECT INDEX

- further review of need for power and alternative energy sources are precluded once a construction permit has been issued; CLI-10-29, 72 NRC 556 (2010)
- if significant new information becomes available, NRC Staff must explain how it took the new information into account in determining whether the additional generating capacity is required; LBP-10-24, 72 NRC 720 (2010)
- inherent in any forecast of future electric power demands is a substantial margin of uncertainty; LBP-10-24, 72 NRC 720 (2010)
- notwithstanding TVA's status as a federal entity, it is within NRC's regulatory authority to review TVA's combined license application, including its compliance with the agency's NEPA requirements; LBP-08-16, 68 NRC 361 (2008)
- NRC must analyze the need for additional power when it relies upon a benefit in performing the balancing of benefits and costs; LBP-09-16, 70 NRC 227 (2009)
- NRC Staff's final environmental impact statement need not include a discussion of the need for power or alternative energy sources; LBP-10-12, 71 NRC 656 (2010)
- NRC's longstanding approach to electric power demand forecasting has emphasized historical, conservative planning to ensure that electricity generating capacity will be available to meet reasonably expected needs; LBP-08-16, 68 NRC 361 (2008)
- petition for waiver of regulation excluding consideration of alternatives and the need for power from the operating license phase must establish that all of applicant's fossil fuel baseload generation that is less efficient than the facility under consideration has been accounted for; LBP-10-12, 71 NRC 656 (2010)
- request for waiver of application of 10 C.F.R. 51.53(b), 51.95(b), and 51.106(c) precluding consideration of need for power and alternative energy sources from a Part 50 operating license proceeding fails to provide the prima facie showing required; LBP-10-12, 71 NRC 656 (2010)
- the general rule applicable to cases involving differences or changes in demand forecasts is not whether applicant will need additional generating capacity but when; LBP-10-24, 72 NRC 720 (2010)
- the issue of need for power is a part of the NRC's combined license NEPA review process; LBP-08-16, 68 NRC 361 (2008)
- to meet its burden to justify certification of its request to waive 10 C.F.R. 51.53(b), 51.95(b), and 51.106(c), petitioner must make a prima facie showing that the proposed facility would not be needed to meet increased energy needs or to replace older, less economical operating capacity, and that there are viable alternatives likely to exist that could tip the NEPA cost-benefit balance against issuance of the operating license; LBP-10-12, 71 NRC 656 (2010)
- NEED TO KNOW**
- content of a statement that explains an individual's "need to know" safeguards information is described; CLI-09-15, 70 NRC 1 (2009)
- NEGLIGENCE**
- a "negligent defendant" is one who should have had suspicions but, in fact, did not; LBP-09-24, 70 NRC 676 (2009)
- the danger of instruction to juries on deliberate ignorance or willful blindness in an inappropriate case is that juries will convict on a basis akin to a standard of negligence; LBP-09-24, 70 NRC 676 (2009)
- NO SIGNIFICANT HAZARDS DETERMINATION**
- after publishing its proposed findings for public comment, the Staff made a no significant hazards consideration finding and issued a power uprate amendment; CLI-06-8, 63 NRC 235 (2006)
- an agency can presume that increases in emissions that still fall within statutory limits will be insignificant; CLI-08-16, 68 NRC 221 (2008)
- conformity of a proposed action to federal regulations governing other aspects of that action's interrelationship with the environment will buttress a finding of no significant impact; CLI-08-16, 68 NRC 221 (2008)
- contentions challenging Staff's determination are not appropriate for review in a license amendment proceeding; LBP-08-18, 68 NRC 533 (2008); LBP-08-19, 68 NRC 545 (2008); LBP-08-20, 68 NRC 549 (2008)
- licensing boards have no jurisdiction to consider an intervention petition seeking to challenge Staff's final determination; LBP-08-20, 68 NRC 549 (2008)
- no petition on or other request for review of the Staff's significant hazards consideration determination will be entertained by the Commission; LBP-07-10, 66 NRC 1 (2007)

SUBJECT INDEX

only the Commission on its own initiative may review Staff's final no significant hazards consideration determination; LBP-08-18, 68 NRC 533 (2008); LBP-08-20, 68 NRC 549 (2008)
Staff is permitted to issue an amendment to a reactor operating license notwithstanding the pendency of an adjudicatory hearing if it determines that the licensing action involves no significant hazards consideration; CLI-09-5, 69 NRC 115 (2009)
Staff's no significant hazards consideration determination is final, subject only to the Commission's discretion, on its own initiative, to review the determination; LBP-07-2, 65 NRC 153 (2007); LBP-07-10, 66 NRC 1 (2007)

NO-ACTION ALTERNATIVE

discussions can be brief and can incorporate by reference other sections of an environmental report discussing the project's adverse consequences; LBP-07-3, 65 NRC 237 (2007)
the board erred in admitting a contention concerning the economic value of wetlands without requiring petitioners to demonstrate that the proposed licensing action or no-action alternative would have any effect on wetlands; CLI-09-9, 69 NRC 331 (2009)
the generic environmental impact statement addresses the need to consider energy conservation for the no-action alternative; LBP-08-13, 68 NRC 43 (2008)

NONCOMPLIANCES

despite lack of compliance with various agency NUREGs, a decommissioning plan is lawful because it acknowledges the fiscal realities of the licensee's bankruptcy and is consistent with the mandate that the plan be completed as soon as practicable and adequately protect the health and safety of workers and the public; LBP-08-4, 67 NRC 105 (2008)
licensee is not required to submit docketed information on the resolution of each fire protection noncompliance during its transition to a risk-informed and performance-based fire protection program, but it is required to implement and maintain compensatory measures for remaining noncompliances; DD-07-3, 65 NRC 643 (2007)

NONDISCLOSURE AGREEMENTS

a sample agreement is provided; CLI-07-18, 65 NRC 399 (2007)
if applicants and petitioners cannot agree on the terms of a confidentiality and nondisclosure agreement, then they shall inform the presiding officer, indicate specifically the areas where they disagree, and then move the presiding officer for issuance of a protective order; CLI-07-18, 65 NRC 399 (2007)

NONSAFETY-RELATED

all non-safety-related structures, systems, and components whose failure could prevent satisfactory accomplishment of any of the safety functions identified in 10 C.F.R. 54.4(a)(1), including auxiliary systems necessary for the function of safety-related systems, are subject to aging management review for license renewal; CLI-10-14, 71 NRC 449 (2010)
cracking of a nonsafety-related steam dryer could cause a release of loose parts that could have an adverse impact on safety-related equipment and thus it is within the scope of aging management review in a license renewal proceeding; LBP-08-25, 68 NRC 763 (2008)

NOTICE AND COMMENT PROCEDURES

an order modifying a license, such as a Staff order, falls well within the Administrative Procedure Act's definition of adjudication, and as such, the Staff order did not trigger the notice-and-comment procedures applicable to rulemakings; CLI-10-3, 71 NRC 49 (2010)
when an adjudicating agency retroactively applies a new legal standard that significantly alters the rules of the game, the agency is obliged to give litigants proper notice and a meaningful opportunity to adjust; CLI-10-23, 72 NRC 210 (2010)

NOTICE OF APPEARANCE

as long as counsel is an attorney in good standing and a member of the bar, a Notice of Appearance is sufficient in itself for him or her to represent an Indian tribe in a proceeding; LBP-08-26, 68 NRC 905 (2008)
exactly when a notice of appearance must be filed, or a notice of withdrawal submitted when an attorney or representative is no longer acting as a participant representative, is not specified in the agency's rules of practice; LBP-10-7, 71 NRC 391 (2010)
failure of an organizational participant to have a representative provide an appearance notice in accord with section 2.314(b) might provide cause for an appropriate sanction for failure properly to prosecute the litigation; LBP-10-7, 71 NRC 391 (2010)

SUBJECT INDEX

identifying the individual or individuals authorized to act on behalf of each participant should provide the means whereby any participant needing to reach another participant's authorized representatives to serve a filing or have a discussion about any litigation-related matters will be able to do so; LBP-10-7, 71 NRC 391 (2010)

NOTICE OF HEARING

a party filing a response to a notice of hearing must state in its answer its intent to introduce classified information into the proceeding, if it appears to the party that it will be impracticable to avoid such introduction; CLI-08-21, 68 NRC 351 (2008)

agency notices must provide at least 15 days before the opportunity for a hearing is forfeited unless a shorter period is reasonable; LBP-09-20, 70 NRC 565 (2009)

an opportunity for hearing will be provided in the *Federal Register* notice of fuel loading, regarding whether inspections, tests, or analyses that have not been found to have been met under 10 C.F.R. 52.97(a)(2) prior to issuance of the combined license; LBP-09-19, 70 NRC 433 (2009)

any ambiguity relative to the filing date for hearing requests arising from the language of the agency's hearing opportunity notice should be construed in favor of a participant who was seeking to comply with the notice; LBP-08-16, 68 NRC 361 (2008)

before a participant may be precluded from litigating an issue because it failed to raise the issue in an earlier proceeding, it must have had reasonable notice that such an opportunity existed; LBP-08-15, 68 NRC 294 (2008)

given that the *Federal Register* notice defines the scope of the issues that may properly be raised in a request for a hearing, it also defines the scope of the issues that could reasonably be deemed resolved during an early site permit proceeding; LBP-08-15, 68 NRC 294 (2008)

if applicant requests a Commission finding on the completion of inspections, tests, analyses, and acceptance criteria needed for issuance of a combined license, the Commission is required to identify these ITAAC in the notice of hearing published in the *Federal Register* for the COL proceeding; LBP-09-19, 70 NRC 433 (2009)

if safety contentions filed before construction begins would be considered premature and/or speculative, NRC hearing opportunities could soon come to be viewed as chimerical; LBP-07-14, 66 NRC 169 (2007)

NRC Staff must include a notice of intent to introduce classified information in the notice of hearing, if it would be impracticable to avoid such introduction; CLI-08-21, 68 NRC 351 (2008)

the fundamental purpose of the notice is to provide facility opponents a fair opportunity to be heard; LBP-07-14, 66 NRC 169 (2007)

the scope of a proceeding is defined in the Commission's initial hearing notice and order referring the proceeding to the licensing board; LBP-09-25, 70 NRC 867 (2009); LBP-09-26, 70 NRC 939 (2009)

when a hearing notice has been issued, withdrawal of an application would be subject to such terms as the presiding officer may prescribe; LBP-09-23, 70 NRC 659 (2009)

when issuing an order modifying a license, the agency is required to inform the licensee or any other person adversely affected by the order of his or her right, within 20 days of the date of the order, or such other time as may be specified in the order, to demand a hearing; LBP-09-20, 70 NRC 565 (2009)

where the notice of hearing limits the scope to whether the order should be sustained, petitioner's sole remedy is rescission of the order; LBP-09-20, 70 NRC 565 (2009)

with respect to orders modifying a license, petitioner must always request a remedy that falls within the scope of the proceeding, as articulated in the notice of hearing; LBP-09-20, 70 NRC 565 (2009)

withdrawal of an application after the issuance of a notice of hearing shall be on such terms as the presiding officer may prescribe; CLI-10-13, 71 NRC 387 (2010)

NOTICE OF INTENT

NRC Staff must file a notice of intent if, at the time of publication of the Notice of Hearing, it appears that it will be impracticable for the Staff to avoid the introduction of restricted data or national security information into a proceeding; CLI-10-4, 71 NRC 56 (2010)

NOTIFICATION

a hearing request is timely when the petitioner lacks both actual and constructive notice of its opportunity to request a hearing as of the deadline specified by the agency, and the petitioner files the hearing request promptly upon receipt of actual notice; LBP-09-20, 70 NRC 565 (2009)

SUBJECT INDEX

at appropriate intervals during the time between issuance of a combined license and the last date for submission of requests for hearing under 10 C.F.R. 52.103(a), NRC shall publish notices in the *Federal Register* of NRC Staff's determination of the successful completion of inspections, tests, and analyses; LBP-09-19, 70 NRC 433 (2009)

criteria and procedures pursuant to which a federal land manager may issue excavation permits for federal lands are provided as well as notification to Indian tribes if permits may result in harm to cultural or religious sites; LBP-10-16, 72 NRC 361 (2010)

emergency action levels are the criteria used to determine the notifications that need to be made to federal, state, and local authorities and to determine the appropriate protective responses to a particular set of emergency conditions; LBP-09-19, 70 NRC 433 (2009)

even in the absence of constructive notice, the possibility remains that a petitioner had actual notice of the right to request a hearing; LBP-09-20, 70 NRC 565 (2009)

federal agencies must follow notification and consultation procedures prior to a federal undertaking to consider the undertaking's effect on historic properties; LBP-10-16, 72 NRC 361 (2010)

licensee must provide written notification to NRC Staff within 60 days and either begin decommissioning of the site or submit a decommissioning plan to the Staff within 12 months of the notification; LBP-08-8, 67 NRC 409 (2008)

prior to operation under a combined license, a notice of intended operation will be published in the *Federal Register* not less than 180 days before the date scheduled for initial loading of fuel; LBP-09-19, 70 NRC 433 (2009)

publication in the *Federal Register* is legally sufficient notice to all interested or affected persons regardless of actual knowledge or hardship resulting from ignorance, except those who are legally entitled to personal notice; LBP-09-20, 70 NRC 565 (2009)

See also Emergency Notification System

NRC GUIDANCE DOCUMENTS

although the severe accident mitigation alternatives methodology is available to provide the required analysis, neither NEPA nor NRC regulations require that the analysis under 10 C.F.R. 51.45(c) be performed using that methodology; LBP-09-26, 70 NRC 939 (2009)

because of the security-related SUNSI categorization of a Staff guidance document used to assess an application's compliance with NRC rules, the Staff would not have to produce the document but would be required to identify the document as part of its continuing duty of disclosure; CLI-10-24, 72 NRC 451 (2010)

despite lack of compliance with various agency NUREGs, a decommissioning plan is lawful because it acknowledges the fiscal realities of the licensee's bankruptcy and is consistent with the mandate that the plan be completed as soon as practicable and adequately protect the health and safety of workers and the public; LBP-08-4, 67 NRC 105 (2008)

in proffering contentions that challenge an application, petitioner or intervenor must provide support, including references to sources and documents on which it intends to rely, and a guidance document could be one of those sources; CLI-10-24, 72 NRC 451 (2010)

in the absence of documentary or expert support, reliance on a guidance document to form the basis of a proposed contention does not, by itself, demonstrate a dispute with applicant; LBP-10-5, 71 NRC 329 (2010)

litigant opposing a licensing action is entitled to challenge the sufficiency of any guidance document on which a licensee or applicant relies, but it must do so with substantive support; CLI-10-17, 72 NRC 1 (2010)

NRC provides detailed guidance for Staff personnel reviewing the safety aspects of early site permit applications; LBP-09-19, 70 NRC 433 (2009)

NUREGs are guidance documents, with no binding effect, but are entitled to special weight, such that they are appropriate to consider in evaluating contentions; LBP-09-17, 70 NRC 311 (2009)

Staff guidance documents are not legally binding, but can be useful in instances where legal authority is lacking; CLI-10-24, 72 NRC 451 (2010); LBP-10-5, 71 NRC 329 (2010); LBP-10-16, 72 NRC 361 (2010)

such documents do not have the binding force of law but are entitled to some level of deference; LBP-10-10, 71 NRC 529 (2010)

SUBJECT INDEX

the standard review plan provides guidance but does not impose requirements on license renewal applicants; CLI-10-17, 72 NRC 1 (2010)

NRC INSPECTION

based on results of its problem identification and resolution biennial team inspections with annual followup of selected issues at licensed facilities, NRC takes any appropriate enforcement action to ensure compliance with 10 C.F.R. Part 50, Appendix B, Criterion XVI; DD-10-1, 72 NRC 149 (2010) if a uranium enrichment facility is licensed, prior to commencement of operations NRC will verify through an inspection that the facility meets the construction and operation requirements of the license; CLI-10-4, 71 NRC 56 (2010)

NRC INSPECTORS

prior to providing safeguards information to a requestor, NRC Staff will conduct an inspection to confirm that recipient's information protection system is sufficient to satisfy the requirements of 10 C.F.R. 73.22; CLI-10-4, 71 NRC 56 (2010)

NRC POLICY

although the ultimate burden with respect to NEPA lies with the NRC Staff, NRC policy with respect to the identification of issues for hearing has long been that such issues must be raised as early as possible; CLI-10-2, 71 NRC 27 (2010)

because it disfavors piecemeal appeals, the Commission will grant interlocutory review only in extraordinary circumstances; CLI-10-29, 72 NRC 556 (2010)

Commission policy of permitting the conduct of an adjudicatory proceeding on a combined license that references a design certification that the Commission has not approved does not violate the Atomic Energy Act of 1954, 10 C.F.R. Part 52, or judicial decisions; CLI-09-4, 69 NRC 80 (2009)

contentions that simply state petitioner's views about what regulatory policy should be do not present a litigable issue; CLI-08-17, 68 NRC 231 (2008); LBP-07-11, 66 NRC 41 (2007); LBP-08-9, 67 NRC 421 (2008); LBP-08-26, 68 NRC 905 (2008); LBP-10-7, 71 NRC 391 (2010); LBP-10-21, 72 NRC 616 (2010)

issues concerning a reactor design certification application should be resolved in the design certification rulemaking and not in an individual combined license proceeding; CLI-08-15, 68 NRC 1 (2008)

it is NRC stated policy to take into account Council on Environmental Quality regulations voluntarily, subject to some conditions; CLI-10-18, 72 NRC 56 (2010)

licensing boards should not accept in individual license proceedings contentions that are or are about to become the subject of general rulemaking by the Commission; CLI-10-19, 72 NRC 98 (2010)

NRC generally defers to the Department of Justice when it seeks a delay in NRC enforcement proceedings pending the conclusion of DOJ's own criminal investigations or proceedings; CLI-06-12, 63 NRC 495 (2006)

NRC has a longstanding policy of encouraging the fair and reasonable settlement of contested licensing proceedings; CLI-06-18, 64 NRC 1 (2006); LBP-06-18, 63 NRC 830 (2006)

questions of law and policy call for a Commission determination; LBP-06-28, 64 NRC 404 (2006)

the Commission has long endorsed a balanced approach to hearings that both expedites the hearing process and ensures fairness in order to produce a record that leads to high-quality decisions that adequately protect the public health and safety, the common defense and security, and the environment; LBP-10-21, 72 NRC 616 (2010)

NRC PROCEEDINGS

because federal agencies are neither constrained by Article III nor governed by judicially created standing doctrines, the criteria for establishing administrative standing therefore may permissibly be less demanding than the criteria for judicial standing; LBP-08-24, 68 NRC 691 (2008)

before a licensing board will close future proceedings, the party seeking closure must demonstrate that the need to close the hearing outweighs the strong presumption that all licensing board proceedings will be open to the public; LBP-10-2, 71 NRC 190 (2010)

collateral estoppel doctrine has long been recognized as part of NRC adjudicatory practice; CLI-10-23, 72 NRC 210 (2010); LBP-08-15, 68 NRC 294 (2008)

parties are generally entitled to obtain, through discovery and other pretrial activities, the fullest possible knowledge of the issues and facts before trial; LBP-06-25, 64 NRC 367 (2006)

water use issues that are under the jurisdiction of another agency, and which are not affected by any NRC regulation, are outside the scope; CLI-07-25, 66 NRC 101 (2007)

SUBJECT INDEX

- with certain very limited exceptions, all NRC hearings will be public; LBP-10-2, 71 NRC 190 (2010)
- NRC REVIEW**
- an environmental assessment must include a Reference Document List that identifies the sources used; LBP-08-7, 67 NRC 361 (2008)
 - neither the number nor location of public meetings required to satisfy an agency's public review process for its environmental document is specified; LBP-09-6, 69 NRC 367 (2009)
 - NRC must undertake its own assessment of DOE's environmental documents to determine whether it is practicable to adopt them; LBP-09-6, 69 NRC 367 (2009)
 - the agency's environmental review need only account for those impacts that have some likelihood of occurring or are reasonably foreseeable; LBP-09-26, 70 NRC 939 (2009)
- NRC STAFF**
- a difference of opinion over a scientific question does not constitute fraud or misconduct on the part of the Staff; CLI-06-4, 63 NRC 32 (2006)
 - a request to an applicant for more information does not make an application incomplete; CLI-08-15, 68 NRC 1 (2008)
 - a SUNSI requester may file a challenge to NRC Staff's adverse determination on access to SUNSI with the presiding officer, and the NRC Staff may file a reply to the requester's challenge; LBP-09-5, 69 NRC 303 (2009)
 - absent delegated authority, licensing boards lack authority to direct the Staff's nonadjudicatory actions; CLI-09-2, 69 NRC 55 (2009)
 - although the primary duties of NEPA fall on the NRC Staff in NRC proceedings, the initial requirement to analyze the environmental impacts of an action, including license renewal, is directed to applicants; LBP-07-11, 66 NRC 41 (2007); LBP-10-16, 72 NRC 361 (2010)
 - although the ultimate burden with respect to NEPA lies with the NRC Staff, NRC policy with respect to the identification of issues for hearing has long been that such issues must be raised as early as possible; CLI-10-2, 71 NRC 27 (2010)
 - an appeal as of right by the NRC Staff is permitted on the question of whether a request for access to sensitive unclassified nonsafeguards information should have been denied in whole or in part; CLI-10-24, 72 NRC 451 (2010)
 - an environmental impact statement must be prepared in connection with the issuance of an early site permit; LBP-09-7, 69 NRC 613 (2009)
 - as the proponent of the agency action at issue, applicant generally has the burden of proof in a licensing proceeding, but when NEPA contentions are involved, the burden shifts to the Staff, because NRC, not an applicant, has the burden of complying with NEPA; LBP-09-7, 69 NRC 613 (2009)
 - because Staff relies heavily upon applicant's environmental report in preparing the environmental impact statement, should applicant become a proponent of a particular challenged position set forth in the EIS, applicant also has the burden on that matter; LBP-09-7, 69 NRC 613 (2009)
 - boards lack authority to establish prospective sanctions for any failure by the Staff and/or the applicant to comply with the board's notice conditions; CLI-09-2, 69 NRC 55 (2009)
 - if a SUNSI request is denied, Staff shall briefly state the reasons for the denial; LBP-09-5, 69 NRC 303 (2009)
 - if it seeks to withhold a document from a party or the public, or to bar a party or member of the public from attending any adjudicatory proceeding before a licensing board, NRC Staff must carry the burden of proving that the document or situation fits one of FOIA's specifically enumerated exceptions; LBP-10-2, 71 NRC 190 (2010)
 - in Subpart L proceedings, Staff must produce a hearing file and make it available to all parties; LBP-09-22, 70 NRC 640 (2009)
 - it is not the duty of applicant to consult with a tribe regarding cultural resources at a proposed site, but instead is the duty of the agency to initiate and follow through with the consultation process; LBP-10-16, 72 NRC 361 (2010)
 - licensing boards are not bound by NRC Staff's position or by changes in that position; LBP-10-9, 71 NRC 493 (2010)
 - petitioners' contention that NRC Staff has not consulted with an affected Indian tribe is premature if it is filed prior to the time for the Staff to act; CLI-09-9, 69 NRC 331 (2009)
 - Staff has a continuing duty to update the hearing file; LBP-09-22, 70 NRC 640 (2009)

SUBJECT INDEX

Staff has authority to recategorize a violation from a Severity Level III to a violation with no assigned severity level; LBP-10-18, 72 NRC 519 (2010)

Staff is permitted to issue an amendment to a reactor operating license notwithstanding the pendency of an adjudicatory hearing if it determines that the licensing action involves no significant hazards consideration; CLI-09-5, 69 NRC 115 (2009)

Staff ordinarily does not participate as a party in the adjudicatory portion of license transfer proceedings; CLI-07-18, 65 NRC 399 (2007)

Staff's role in an enforcement proceeding is akin to that of a prosecutor, and it has the burden to prove its allegations by a preponderance of the reliable, probative, and substantial evidence; LBP-09-24, 70 NRC 676 (2009)

the decision to docket, and the subsequent handling of an application, is within the discretion of the Staff; LBP-10-17, 72 NRC 501 (2010)

the potential environmental effects of a proposed agency action must be considered; LBP-06-8, 63 NRC 241 (2006)

the Staff elects whether or not to be a party to some or all contentions; CLI-07-20, 65 NRC 499 (2007)

See also Discovery Against NRC Staff

NRC STAFF REVIEW

a board may ask Staff to produce ACRS documents that it reviewed in conducting its license application review, but Staff need not obtain additional ACRS documents that it never saw in conducting its review; CLI-06-20, 64 NRC 15 (2006)

a board's role in an early site permit proceeding is to carefully probe Staff findings by asking appropriate questions and by requiring supplemental information when necessary, but Staff's underlying technical and factual findings are not open to board reconsideration unless, after a review of the record, the board finds the NRC Staff review inadequate or its findings insufficient; LBP-09-19, 70 NRC 433 (2009)

a new contention will necessarily fail if it attacks the quality of the Staff's review rather than identifying a deficiency in the application; CLI-09-5, 69 NRC 115 (2009)

a Staff determination that certain scenarios, such as Part 61 intruder scenarios, are so unlikely as to fall outside the scope of the Staff's NEPA review is a proper exercise of NEPA's rule of reason; LBP-06-8, 63 NRC 241 (2006)

a Staff NEPA analysis is not necessarily insufficient if, in the face of a deficiency on the part of its contractor, a responsible Staff official has "stepped into the breach" and conducted the necessary review and analysis; LBP-06-8, 63 NRC 241 (2006)

agencies are given broad discretion in determining how thoroughly to analyze a particular subject, and may decline to examine issues that an agency in good faith considers remote and speculative or inconsequential small; LBP-09-7, 69 NRC 613 (2009)

agencies need only consider those alternatives that can achieve the purposes of the project; CLI-06-10, 63 NRC 451 (2006)

although Staff inadvertently omitted information about background radiation from the final environmental impact statement, but the information was made available to the public in the draft environmental impact statement and was taken into account by Staff in its NEPA analysis in the FEIS, intervenors were not prejudiced nor was the correctness of the Staff's analysis undermined; LBP-06-19, 64 NRC 53 (2006)

although Staff's explanation of how it reached its conclusions regarding environmental justice is cursory, the Commission believes that the review was sufficient; CLI-07-27, 66 NRC 215 (2007)

although the draft environmental impact statement may rely in part on applicant's environmental report, Staff must independently evaluate and be responsible for the reliability of all information used in the DEIS; LBP-09-19, 70 NRC 433 (2009)

although the requirements of NEPA are directed to federal agencies and thus the primary duties of NEPA fall on the NRC Staff in NRC proceedings, the initial requirement to analyze the environmental impacts of an action is directed to applicants; LBP-07-4, 65 NRC 281 (2007); LBP-08-6, 67 NRC 241 (2008)

an otherwise admissible contention that raises challenges to information in a design certification rulemaking should be referred to the Staff for resolution in the rulemaking; CLI-09-8, 69 NRC 317 (2009)

SUBJECT INDEX

analysis of compliance with section 103d of the Atomic Energy Act is a function performed by the NRC Staff as part of its evaluation of the combined license application; CLI-09-20, 70 NRC 911 (2009)

at appropriate intervals during the time between issuance of a combined license and the last date for submission of requests for hearing under section 52.103(a), NRC shall publish notices in the *Federal Register* of NRC Staff's determination of the successful completion of inspections, tests, and analyses; LBP-09-19, 70 NRC 433 (2009)

availability of Staff review outside the hearing process generally does not constitute adequate protection of a private party's rights when considering 10 C.F.R. 2.309(c)(1)(ii); LBP-08-12, 68 NRC 5 (2008)

boards may not direct the Staff in the performance of its administrative functions; LBP-10-17, 72 NRC 501 (2010)

boards may not order the Staff to cease review of an applicant's revised application or direct the Staff to require an applicant to submit a new application; LBP-10-17, 72 NRC 501 (2010)

boards must decide whether the final environmental impact statement alternatives discussion is sufficiently complete to aid the Commission in developing and exploring appropriate alternatives to recommended courses of action in any proposal that involves unresolved conflicts concerning alternative uses of available resources; LBP-09-7, 69 NRC 613 (2009)

challenges to how the Staff performs its reviews are outside the scope of licensing proceeding; CLI-08-23, 68 NRC 461 (2008); CLI-09-14, 69 NRC 580 (2009); LBP-08-9, 67 NRC 421 (2008); LBP-10-17, 72 NRC 501 (2010)

consideration of environmental impacts need not address every impact that could possibly result, but rather only those that are reasonably foreseeable or have some likelihood of occurring; LBP-09-7, 69 NRC 613 (2009)

contentions that inappropriately focus on Staff's review of the application rather than on the errors and omissions of the application itself are inadmissible; CLI-10-27, 72 NRC 481 (2010)

determination of economic benefits and costs that are tangential to environmental consequences are within a wide area of agency discretion; LBP-10-24, 72 NRC 720 (2010)

ensuring that NRC Staff meets its consultation obligations under section 106 of the National Historic Preservation Act is an issue material to the findings the NRC must make in support of the action involved in a materials license renewal proceeding; LBP-08-24, 68 NRC 691 (2008)

factors important to hydrological radionuclide transport must be obtained from onsite measurements; LBP-09-19, 70 NRC 433 (2009)

federal agencies must take a hard look at the environmental impacts of a proposed action, as well as reasonable alternatives to that action; LBP-09-7, 69 NRC 613 (2009)

generic NRC policies and standards and the nature of the NRC Staff's licensing review are not subject to challenge in an adjudicatory proceeding; CLI-08-17, 68 NRC 231 (2008)

given the fact-specific nature of environmental justice issues and inquiries, the methods and form of Staff review, including any decision whether to hold discussions with knowledgeable community and governmental representatives, is best left to the informed discretion of the Staff; CLI-07-27, 66 NRC 215 (2007)

if a document or study is prepared by a nonfederal party, the agency official is responsible for ensuring that its content meets applicable standards and guidelines; LBP-08-24, 68 NRC 691 (2008)

if applicant submits a complete and integrated emergency plan in conjunction with an early site permit application, NRC Staff must find that the emergency plans provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency; LBP-09-19, 70 NRC 433 (2009)

if issuing a license involves oversight of a private project rather than a federally sponsored project, the agency is entitled to give the applicant's preferences substantial weight when considering project design alternatives; LBP-10-14, 72 NRC 101 (2010)

if significant new information becomes available, NRC Staff must explain how it took the new information into account in determining whether the additional generating capacity is required; LBP-10-24, 72 NRC 720 (2010)

in a license renewal review, Staff is obligated to consider severe accident mitigation alternatives if it has not already done so as part of its NEPA obligations; LBP-10-13, 71 NRC 673 (2010)

in a mandatory hearing, a licensing board must narrow its inquiry to those topics or sections in Staff documents that it deems most important and should concentrate on portions of the documents that do

SUBJECT INDEX

- not on their face adequately explain the logic, underlying facts, and applicable regulations and guidance; LBP-09-19, 70 NRC 433 (2009)
- in a mandatory proceeding, a licensing board is to determine, with respect to safety matters, whether the application and record of the proceeding contain sufficient information and whether the NRC Staff's review of the application has been adequate; LBP-06-17, 63 NRC 747 (2006)
- in adjudicatory proceedings it is the license application, not the NRC Staff review, that is at issue; CLI-08-15, 68 NRC 1 (2008)
- in conducting its acceptance review of the high-level waste repository construction authorization application, Staff only determines whether the license application contains sufficient information for the NRC to begin its safety review; CLI-08-20, 68 NRC 272 (2008)
- in evaluating early site permit applications, where detailed design information is not available, the Commission may defer resolution of severe accident mitigation alternatives until the construction permit or combined license stage; LBP-09-19, 70 NRC 433 (2009)
- in its review of early site permit applications, Staff must consider physical characteristics of the site, specifically noting that factors important to hydrological radionuclide transport must be obtained from onsite measurements; LBP-09-19, 70 NRC 433 (2009)
- in its review of emergency plans, NRC Staff must take into account FEMA's findings; LBP-09-19, 70 NRC 433 (2009)
- in the context of the National Environmental Policy Act, one must examine underlying policies or legislative intent to draw a manageable line between those causal changes that make an agency responsible for an effect and those that do not; CLI-08-16, 68 NRC 221 (2008)
- in the mandatory early site permit proceeding, NRC must address whether the review conducted by Staff pursuant to the National Environmental Policy Act has been adequate; CLI-07-27, 66 NRC 215 (2007)
- it is applicant, not NRC Staff, that has the burden of proof in litigation; CLI-08-23, 68 NRC 461 (2008)
- it is necessary for Staff to take a uniform approach to its review of analyses by license applicants and for performance of its own analyses; LBP-07-13, 66 NRC 131 (2007)
- it is neither possible nor necessary for the Staff to verify each and every factual assertion in complex license applications; CLI-08-23, 68 NRC 461 (2008)
- it is the NRC Staff, not the intervenors, that has the burden of complying with NEPA; LBP-10-24, 72 NRC 720 (2010)
- license applications may be modified or improved during the NRC review process; LBP-10-17, 72 NRC 501 (2010)
- licensing boards should review contested and uncontested issues differently, giving the NRC Staff considerably more deference on uncontested issues; LBP-06-17, 63 NRC 747 (2006)
- NEPA imposes procedural requirements on NRC to take a hard look at the environmental impacts of building and operating a nuclear reactor; LBP-10-14, 72 NRC 101 (2010)
- NEPA requires evaluation of reasonable technological and geographical alternatives to a proposed irradiator; CLI-10-18, 72 NRC 56 (2010)
- no petition or other request for review of the Staff's significant hazards consideration determination will be entertained by the Commission; LBP-07-10, 66 NRC 1 (2007)
- NRC may appropriately accord substantial weight to the preferences of the applicant and/or sponsor in the siting and design of the project and should take into account the needs and goals of the parties involved in the application; CLI-06-10, 63 NRC 451 (2006)
- NRC must make a reasonable and good-faith effort to identify any Indian tribes that might attach religious and cultural significance to historic properties in the area of potential effects and invite them to be consulting parties; CLI-09-12, 69 NRC 535 (2009)
- NRC provides detailed guidance for Staff personnel reviewing the safety aspects of early site permit applications; LBP-09-19, 70 NRC 433 (2009)
- NRC Staff is obliged under NEPA to supplement its environmental review documents if there is new and significant information; CLI-10-29, 72 NRC 556 (2010)
- NRC Staff is required by law to conduct periodic reviews of the adequacy and compatibility of an Agreement State's regulatory program; CLI-10-8, 71 NRC 142 (2010)
- NRC Staff is required to present its position on whether it is practicable to adopt DOE's environmental impact statement for Yucca Mountain without supplementation; LBP-09-6, 69 NRC 367 (2009)

SUBJECT INDEX

NRC Staff may adopt the underlying scientific data and inferences from another agency's analysis without independent review, as long as it exercises independent judgment with respect to conclusions about the environmental impacts of the current proposed agency action; LBP-09-7, 69 NRC 613 (2009)

NRC's NEPA responsibilities and, by extension, the applicant's responsibilities under 10 C.F.R. Part 51 are subject to a rule of reason; LBP-10-6, 71 NRC 350 (2010)

on baseline NEPA issues in early site permit cases, boards must reach their own independent determination, but should do so without second-guessing underlying technical or factual findings by the NRC Staff; LBP-09-19, 70 NRC 433 (2009)

potential scope of adjudicatory hearings in license renewal proceedings is the same as the scope of the Staff's review; LBP-10-15, 72 NRC 257 (2010)

review of an integrated emergency plan focuses primarily on the applicant-prepared onsite provisions of the plans, which include the evacuation time estimate provided by applicant, and the inspections, tests, analyses, and acceptance criteria; LBP-09-19, 70 NRC 433 (2009)

safety review for license renewal applications is governed by 10 C.F.R. Part 54, and principally NUREG-1800 and NUREG-1801; CLI-08-23, 68 NRC 461 (2008)

secondary or indirect consequences of disposal of the waste generated by a facility cannot, and need not for the purposes of satisfying the agency's NEPA obligation, be examined with particularity when a specific disposal site has not yet been identified; LBP-06-8, 63 NRC 241 (2006)

Staff appropriately uses an audit system to prioritize the facts it will independently verify, taking into account whether the issue involves first-of-a-kind analysis, use of new modeling techniques, application of new or revised review guidance, areas of higher significance based upon risk-informed reviews, or where the Staff's independent analysis or technical experience and judgment does not support the analysis results of the applicant; CLI-07-12, 65 NRC 203 (2007)

Staff is not required to provide a board with information relevant to instances when the Staff reviewer disagreed with his supervisor with respect to the license application; CLI-06-20, 64 NRC 15 (2006)

Staff is required to prepare an environmental impact statement in connection with issuance of an early site permit; LBP-09-19, 70 NRC 433 (2009)

Staff is to provide indexes as a means to summarize the documents on which it relied as a means to assist the board in its mandatory hearing on a license application; CLI-06-20, 64 NRC 15 (2006)

Staff is to review early site permit applications according to the applicable standards set out in 10 C.F.R. Part 50 and its appendices and 10 C.F.R. Part 100; LBP-09-19, 70 NRC 433 (2009)

Staff is ultimately responsible for the work undertaken, or not undertaken, by its contractors; LBP-06-8, 63 NRC 241 (2006)

Staff need not replicate the work done by another entity, but rather must independently review and find relevant and scientifically reasonable any outside reports or analyses on which it intends to rely; LBP-06-8, 63 NRC 241 (2006)

Staff's audit, or sampling, method of verifying a license renewal applicant's aging management programs, together with the other components of its review, enables the Staff to make the safety findings necessary for issuance of a renewed license; CLI-08-23, 68 NRC 461 (2008)

Staff's final supplemental environmental impact statement on a license renewal must take account of public comments concerning new and significant information on Category 1 findings; LBP-06-20, 64 NRC 131 (2006)

Staff's significant hazards consideration determination is final, subject only to the Commission's discretion on its own initiative, to review the determination; LBP-07-10, 66 NRC 1 (2007)

Staff's underlying technical and factual findings are not open to board reconsideration unless, after a review of the record, the board finds the NRC Staff review inadequate or its findings insufficient; LBP-06-28, 64 NRC 460 (2006)

the adequacy of the applicant's license application, not the NRC Staff's safety evaluation, is the safety issue in any licensing proceeding, and contentions on the adequacy of the content of the Safety Evaluation Report are not cognizable in a proceeding; LBP-06-27, 64 NRC 438 (2006)

the Council on Environmental Quality has implemented regulations providing guidance on agency compliance with NEPA, which may help to direct the Staff's NEPA review; LBP-06-8, 63 NRC 241 (2006)

SUBJECT INDEX

- the draft environmental impact statement is distributed for public comment and, based on the comments received, a review of information provided by the applicant, and supplemental independent information and analysis, the Staff prepares and issues a final EIS; LBP-09-19, 70 NRC 433 (2009)
- the fact that NRC Staff consultation with interested Indian tribes had not yet taken place at the time a materials license amendment application was filed did not reflect a deficiency in the application and thus a contention alleging a deficiency in the application was inadmissible; CLI-09-12, 69 NRC 535 (2009)
- the issue of need for power is a part of the NRC's combined license NEPA review process; LBP-08-16, 68 NRC 361 (2008)
- the NRC Staff's underlying technical and factual findings on an early site permit application are not open to board reconsideration unless, after a review of the record, the board finds the NRC Staff review inadequate or its findings insufficient; LBP-07-9, 65 NRC 539 (2007)
- the overriding NEPA issue that a board must determine in a mandatory proceeding on an early site permit application is whether the NEPA review conducted by the NRC Staff has been adequate; LBP-07-9, 65 NRC 539 (2007)
- the primary duties of NEPA fall on the NRC Staff in NRC proceedings, but the initial requirement to analyze the environmental impacts of an action, including license renewal, is directed to applicants; LBP-06-23, 64 NRC 257 (2006)
- the safety review must support a conclusion that a proposed irradiator would protect health and minimize danger to life or property; CLI-08-3, 67 NRC 151 (2008)
- the safety review of each license renewal application focuses on the adequacy of the applicant's aging management programs and an evaluation of the applicant's time-limited aging analyses; LBP-08-25, 68 NRC 763 (2008)
- there is no legal requirement that the Staff find that the proposed design is not too conservative or that the associated costs are not excessive as part of its safety review of the high-level waste repository construction authorization application; CLI-09-14, 69 NRC 580 (2009)
- there must be a finding that something is remote and speculative to preclude it from further analysis, and there must be support in the agency's record of decision to justify this finding; LBP-10-14, 72 NRC 101 (2010)
- under the National Environmental Policy Act and the National Historic Preservation Act, NRC Staff must consult with interested Indian tribes as part of its review of the application; CLI-09-12, 69 NRC 535 (2009)
- under the National Environmental Policy Act, Staff is obliged to perform a severe accident mitigation alternatives analysis; LBP-07-13, 66 NRC 131 (2007)
- when applicant is a private entity, as opposed to the federal government, Staff may accord substantial weight to the applicant's preferences with regard to consideration of alternatives, including choices regarding site selection and project design; LBP-06-8, 63 NRC 241 (2006)
- when preparing the supplemental environmental impact statement for a license renewal, Staff must consider any significant new information related to Category 1 issues; LBP-06-20, 64 NRC 131 (2006)
- when reviewing a license application filed by a private applicant, as opposed to a federally sponsored project, an agency may give substantial weight to the stated preferences of the applicant with regard to issues such as site selection and facility design; LBP-09-7, 69 NRC 613 (2009)
- where the final environmental impact statement discussion of alternative sites was insufficient, the board independently reviewed the record on greenfield, competitors' brownfield, noncompetitors' brownfield, and applicant's other nuclear sites to conclude that the Staff's underlying alternative site review was adequate; LBP-09-19, 70 NRC 433 (2009)
- where the Standard Review Plan had not been followed, no specific Regulatory Guide was applicable, a Regulatory Guide required adaptation, or the Staff's logic was incomplete or unclear, the Board sought a thorough explanation of the Staff's rationale for the process it ultimately adopted along with its conclusions, and examined that process and those conclusions to ensure they were well founded in fact and logic; LBP-06-28, 64 NRC 460 (2006)
- whether NRC Staff should be required to produce four paper copies of relevant documents is a matter best left to a board's discretion; CLI-06-20, 64 NRC 15 (2006)

SUBJECT INDEX

with regard to alternative sites for an early site permit, NRC Staff must evaluate both the process (i.e., methodology) used by the applicant and the reasonableness of the product (e.g., potential sites) identified by that process; LBP-09-19, 70 NRC 433 (2009)

NUCLEAR NON-PROLIFERATION

in the absence of unusual circumstances, the Commission need not look beyond the non-proliferation safeguards in determining whether the common defense and security standard is met; LBP-09-1, 69 NRC 11 (2009)

intervenors' nuclear proliferation concern is premised upon future third-party activities that are unrelated to the specific activities authorized by license amendments and is not litigable because it is not a direct consequence of the proposed license amendments or the Commission's approval thereof; LBP-09-1, 69 NRC 11 (2009)

NUCLEAR POWER PLANTS

a request for action regarding leaks or potential leaks of radioactively contaminated water into the ground is granted in part; DD-06-3, 64 NRC 407 (2006)

although "severe accident," "severe accident mitigation alternatives," and "SAMA" are not defined in NRC's NEPA regulations, the NRC policy documents that originated the terms clearly limit them to nuclear reactors and do not include spent fuel pools or storage; LBP-10-15, 72 NRC 257 (2010)

existence of another independent nuclear power plant within the 10-mile-radius emergency planning zone of a proposed new nuclear power plant is a significant factor for purposes of emergency planning for the new reactor; LBP-09-10, 70 NRC 51 (2009)

neither a uranium enrichment facility nor a nuclear power plant may be owned, controlled, or dominated by a foreign entity; CLI-09-9, 69 NRC 331 (2009)

plants must be designed against accidents that are anticipated during the life of the facility; CLI-10-9, 71 NRC 245 (2010)

NUCLEAR REGULATORY COMMISSION

although NRC is not bound by CEQ regulations that it has not expressly adopted, it gives those regulations substantial deference; LBP-06-19, 64 NRC 53 (2006)

an agency or commission must articulate with clarity and precision its findings and the reasons for its decisions; LBP-08-22, 68 NRC 590 (2008)

before entering into an agreement with any state, NRC is required to find the state radiation control program compatible in certain respects with that of the NRC, and adequate to protect the public health and safety with respect to the materials covered by the proposed agreement; LBP-06-8, 63 NRC 241 (2006)

NEPA applies only to NRC and not to the applicant; LBP-09-10, 70 NRC 51 (2009)

NEPA requires that an agency consider every significant aspect of the environmental impact of a proposed action and inform the public that it has, in fact, considered environmental concerns in its decisionmaking process; LBP-06-19, 64 NRC 53 (2006)

NRC has a statutory obligation to protect national security information; CLI-08-1, 67 NRC 1 (2008)
trust responsibility imposes a fiduciary duty on NRC, as a federal agency, to Indian tribes and their members; LBP-08-24, 68 NRC 691 (2008)

when specialists express conflicting views, an agency must have discretion to rely on the reasonable opinions of its own qualified experts; CLI-08-26, 68 NRC 509 (2008)

See also NRC Policy; NRC Staff Review

NUCLEAR REGULATORY COMMISSION, AUTHORITY

a dispute over the Commission's authority to direct the Department of Energy to disclose classified information to cleared state representatives over DOE's objection as the originating agency is deferred until there is an actual controversy over a specific document request; CLI-08-21, 68 NRC 351 (2008)

a petition for review may be granted in the Commission's discretion; CLI-10-11, 71 NRC 287 (2010)

a sensitive unclassified nonsafeguards information access order is issued by the Commission or NRC in its role as supervisor of NRC Staff and does not constitute an adjudicatory ruling by the Commission; LBP-10-2, 71 NRC 190 (2010)

action of the Commission is determined by a majority vote of the members present; CLI-09-1, 69 NRC 1 (2009)

administrative agencies have inherent authority to change and modify their own prior decisions; CLI-10-6, 71 NRC 113 (2010)

SUBJECT INDEX

agencies are given broad discretion in determining how thoroughly to analyze a particular subject, and may decline to examine issues that an agency in good faith considers remote and speculative or inconsequentially small; LBP-09-7, 69 NRC 613 (2009)

although a petition for review does not challenge anything the boards actually decided, the Commission addresses the merits of the request as an exercise of its ultimate supervisory control over NRC proceedings; CLI-09-10, 69 NRC 521 (2009)

although a request for suspension of a proceeding does not fit cleanly into NRC procedural rules for stays, the Commission exercises discretion and consider petitioner's request; CLI-10-17, 72 NRC 1 (2010)

although interlocutory appeal is denied, the Commission exercises its inherent supervisory authority over adjudications to take sua sponte review of a board order; CLI-10-27, 72 NRC 481 (2010)

although NRC regulations do not provide for a motion to suspend a proceeding, the Commission has considered similar requests in the exercise of its inherent supervisory powers over proceedings; CLI-08-23, 68 NRC 461 (2008)

although the Commission has authority to make de novo findings of fact, it does not do so where a licensing board has issued a plausible decision that rests on carefully rendered findings of fact; CLI-09-7, 69 NRC 235 (2009)

although the Commission has discretion to review all underlying factual issues de novo, it is disinclined to do so where a board has weighed arguments presented by experts and rendered reasonable, record-based factual findings; CLI-06-1, 63 NRC 1 (2006); CLI-06-22, 64 NRC 37 (2006); CLI-06-29, 64 NRC 417 (2006); CLI-10-5, 71 NRC 90 (2010)

an administrative agency may establish administrative standing criteria that are less rigorous than those for judicial standing; CLI-09-20, 70 NRC 911 (2009)

an agency cannot redefine the applicant's goals, and the EIS alternatives analysis should be based around the applicant's goals, including its economic goals; LBP-09-17, 70 NRC 311 (2009)

an agency's interpretation of its own regulation is controlling provided it is not plainly erroneous or inconsistent with the regulation; CLI-10-13, 71 NRC 387 (2010)

as an exercise of the Commission's inherent supervisory authority over adjudicatory proceedings, the Commission directs the board to provide the Commission with a status report outlining the board's timetable for resolving all pending matters; CLI-10-18, 72 NRC 56 (2010)

because of an attorney's previous disregard of the NRC's practices and procedures, the Commission orders the Office of the Secretary to screen all filings bearing the offender's signature and not to accept or docket them unless they meet all procedural requirements; CLI-06-4, 63 NRC 32 (2006)

business decisions of licensees or applicants are beyond NRC purview; CLI-10-1, 71 NRC 1 (2010)

challenges to NRC's authority to engage in administrative dispute resolution is beyond the scope of enforcement order proceedings; LBP-08-14, 68 NRC 279 (2008)

Congress severely limited NRC's scope of inquiry into Clean Water Act § 316(a) determinations to examining whether the EPA or the state agency considered its permit to be a section 316(a) determination; CLI-07-16, 65 NRC 371 (2007)

Council on Environmental Quality regulations are not binding on NRC when the agency has not expressly adopted them, but are entitled to considerable deference; LBP-09-7, 69 NRC 613 (2009)

courts generally accord considerable weight to an agency's construction of the statutes it administers; CLI-10-13, 71 NRC 387 (2010)

determination of what constitutes adequate protection under the Atomic Energy Act is a situation in which the Commission should be permitted to have discretion to make case-by-case judgments based on its technical expertise and on all the relevant information; CLI-10-14, 71 NRC 449 (2010)

discretionary Commission review of a presiding officer's initial decision is allowed under 10 C.F.R. 2.341(b)(1); CLI-10-17, 72 NRC 1 (2010)

EPA is responsible for promulgating standards for environmental protection, and NRC is tasked with promulgating the criteria it will apply in the licensing proceeding; LBP-09-6, 69 NRC 367 (2009)

even if NRC's proximity presumption is viewed as more lenient than judicial standing requirements, NRC may choose to retain it; CLI-09-20, 70 NRC 911 (2009)

even if the Commission could waive the application fee for access to safeguards information, the mere fact that petitioners are public interest organizations provides no special reason for departing from well-established NRC practice; CLI-09-4, 69 NRC 80 (2009)

SUBJECT INDEX

federal courts have long recognized the right of agencies to tailor their own standing requirements to fit their specific needs; CLI-08-19, 68 NRC 251 (2008)

given that the board recently issued an initial decision resolving all contentions, the Commission can discern no compelling reason to take the extraordinary action of stepping in at this late stage to take up the case, but parties will have the opportunity to petition for review of the board's rulings; CLI-09-19, 70 NRC 864 (2009)

grant of petitions for review is discretionary, given due weight to the existence of a substantial question with respect to the five considerations listed in 10 C.F.R. 2.341(b)(4); CLI-09-7, 69 NRC 235 (2009); CLI-10-18, 72 NRC 56 (2010)

if a licensee has voluntarily provided information to the NRC, the voluntary nature of the submission is not compromised by the NRC's ability to conduct its own investigation into the same matter; CLI-08-6, 67 NRC 179 (2008)

if the Commission's supervisory authority constituted grounds for a party's own request for appellate review, there would be no limit to the kinds of arguments parties could legitimately present on appeal, a result at odds with the Commission's oft-expressed intent to limit the availability of such appeals; CLI-07-1, 65 NRC 1 (2007)

in its oversight capacity, NRC is required to conduct regular reviews of an Agreement State's radiation control program; LBP-06-8, 63 NRC 241 (2006)

in its supervisory capacity, the Commission provides guidance on the "need for SUNSI" analysis, for use in those instances when an access order applies; CLI-10-24, 72 NRC 451 (2010)

NEPA charges federal agencies with weighing the environmental effects and impacts of the proposed project and its alternatives against each other and balancing those effects against the benefits of each such project; LBP-09-2, 69 NRC 87 (2009)

nothing in the National Environmental Policy Act shall be deemed to authorize any federal agency to review any effluent limitation or other requirement established pursuant to the Clean Water Act or to authorize any such agency to impose any effluent limitation other than those set by the Environmental Protection Agency or a state agency that has been delegated such authority; LBP-09-25, 70 NRC 867 (2009)

notwithstanding the requirement that motions initially be addressed to the presiding officer when a proceeding is pending, the Commission sometimes addresses the motions pursuant to its inherent supervisory authority over agency proceedings; CLI-08-23, 68 NRC 461 (2008)

notwithstanding TVA's status as a federal entity, it is within NRC's regulatory authority to review TVA's combined license application, including its compliance with the agency's NEPA requirements; LBP-08-16, 68 NRC 361 (2008)

NRC appropriations shall not be used to pay the expenses of, or otherwise compensate, parties intervening in regulatory or adjudicatory proceedings; LBP-09-1, 69 NRC 11 (2009)

NRC cannot generically dispense with the consideration of SAMAs, under NEPA, through a policy statement issued pursuant to its Atomic Energy Act authority; LBP-10-13, 71 NRC 673 (2010)

NRC cannot grant petitioners funds to prepare requests for access to safeguards information or sensitive unclassified nonsafeguards information; CLI-09-4, 69 NRC 80 (2009)

NRC does not owe deference to DOE where DOE's interpretation of NRC's own responsibilities is reflected in nothing more formal than a motion before the board and not, for example, in a formal agency adjudication or notice-and-comment rulemaking; LBP-10-11, 71 NRC 609 (2010)

NRC has broad discretion to provide hearings or permit interventions in cases where these avenues of public participation would not be available as a matter of right; CLI-06-16, 63 NRC 708 (2006)

NRC has broad legal authority under the Atomic Energy Act and has authority to independently verify the facts contained in an application; CLI-07-12, 65 NRC 203 (2007)

NRC has discretion to grant a petition for review, giving due weight to the existence of a substantial question with respect to any of the grounds listed in the Commission's regulations as potential justification; LBP-06-11, 63 NRC 483 (2006)

NRC has discretion to review all underlying factual issues de novo, but it is disinclined to do so where a board has weighed arguments presented by experts and rendered reasonable, record-based factual findings; CLI-06-15, 63 NRC 687 (2006)

NRC has maximum procedural leeway in how it addresses the environmental impacts of terrorism; LBP-06-27, 64 NRC 399 (2006)

SUBJECT INDEX

NRC has the authority and responsibility to supplement or to amend conditions to the current licensing basis of an existing operating license at the time of license renewal if such supplements or amendments are deemed necessary to protect the environment; LBP-10-13, 71 NRC 673 (2010)

NRC is not obliged to adhere, in all of its proceedings, to the first court of appeals decision to address a controversial question; CLI-10-1, 71 NRC 1 (2010)

NRC is prohibited from reviewing any effluent limitation or other requirement established pursuant to the Clean Water Act; CLI-07-16, 65 NRC 371 (2007)

NRC may comply with NEPA without requiring that applicant submit an environmental report, but NEPA and Council on Environmental Quality regulations permit agencies to request information from an applicant for a license or permit that will require a NEPA analysis; CLI-10-2, 71 NRC 27 (2010)

NRC may use its broad discretion of authority under the Atomic Energy Act to reinstate expired construction permits that the licensee inadvertently failed to renew; CLI-10-6, 71 NRC 113 (2010)

NRC possesses broad discretion to act under the Atomic Energy Act when the statute is otherwise silent; CLI-10-6, 71 NRC 113 (2010)

NRC retains only oversight authority over the specific activities covered by the agreement, while an Agreement State assumes all active regulatory authority with regard to those specified activities; LBP-06-8, 63 NRC 241 (2006)

NRC retains the power to terminate or suspend an agreement with any state under certain circumstances if it determines that such action is required to ensure public health and safety; LBP-06-8, 63 NRC 241 (2006)

NRC was reasonable in not providing a quantifiable definition for the key regulatory phrase “conservative manner,” given that relevant judgment calls did not lend themselves to rigid statistical definitions; CLI-10-14, 71 NRC 449 (2010)

NRC’s adjudicatory process is not a forum for litigating matters that are primarily the responsibility of other federal or state/local regulatory agencies; LBP-07-10, 66 NRC 1 (2007)

NRC’s criteria must not be inconsistent with EPA’s environmental protection standards; LBP-09-6, 69 NRC 367 (2009)

NRC’s obligations under the National Environmental Policy Act focus on the adjective “environmental,” and NEPA does not require the agency to assess every impact or effect, but only the impact or effect on the environment; LBP-09-2, 69 NRC 87 (2009)

only the Commission on its own initiative may review Staff’s final no significant hazards consideration determination; LBP-08-20, 68 NRC 549 (2008)

parties should not seek interlocutory review by invoking the grounds under which the Commission might exercise its supervisory authority; CLI-10-30, 72 NRC 564 (2010)

permission to file an amicus brief under 10 C.F.R. 2.315(d) is at the discretion of the Commission; CLI-08-22, 68 NRC 355 (2008)

questions of law and policy call for a Commission determination; LBP-06-28, 64 NRC 404 (2006)

routine rulings on contention admissibility are usually not occasions for the Commission to exercise its authority to step into ongoing licensing board proceedings and undertake interlocutory review; CLI-09-3, 69 NRC 68 (2009)

that Congress may have authorized NRC to regulate DOE’s disposal of radioactive waste before it enacted the Nuclear Waste Policy Act hardly negates the fact that in the NWPA, Congress specifically directed NRC to issue requirements and criteria for evaluating repository-related applications and, not insignificantly, how to do so; LBP-10-11, 71 NRC 609 (2010)

the agency has broad discretion to determine how thoroughly it needs to analyze a particular subject for NEPA compliance; LBP-10-14, 72 NRC 101 (2010)

the Atomic Energy Act authorizes the Commission to enter into agreements with the governor of any state to transfer authority to regulate byproduct materials, source materials, and small quantities of special nuclear materials, including the disposal of such materials; LBP-06-8, 63 NRC 241 (2006)

the Atomic Energy Act’s hearing requirement does not unduly limit the Commission’s wide discretion to structure its licensing hearings in the interests of speed and efficiency; CLI-08-28, 68 NRC 658 (2008)

the Commission acts as adjudicator and in that light considers the reinstatement of a construction permit afresh, without regard for its earlier views; CLI-10-6, 71 NRC 113 (2010)

the Commission can issue case-specific orders modifying procedural regulations, including milestone schedules; CLI-08-18, 68 NRC 246 (2008)

SUBJECT INDEX

- the Commission declines to exercise its discretion to allow oral argument because the written record in the case is thorough, effectively sets forth the positions of the participants, and, overall, contains sufficient information on which to base its decision; CLI-10-9, 71 NRC 245 (2010)
- the Commission generally does not entertain requests to invoke its inherent supervisory authority over adjudications; CLI-10-13, 71 NRC 387 (2010)
- the Commission has authority to review board rulings sua sponte, in the exercise of its inherent supervisory authority over NRC adjudications, regardless of whether the Commission accepts the referral; CLI-09-3, 69 NRC 68 (2009)
- the Commission has broad authority to delegate powers to the Atomic Safety and Licensing Boards; CLI-08-14, 67 NRC 402 (2008)
- the Commission has discretion to allow oral argument upon the request of a party made in a petition for review, brief on review, or upon its own initiative; CLI-10-9, 71 NRC 245 (2010)
- the Commission has discretion under the Administrative Procedure Act to impose binding, prospectively applicable legal requirements by either rulemaking or adjudication; CLI-10-3, 71 NRC 49 (2010)
- the Commission has the authority to appropriately condition the license approved by a board; CLI-07-12, 65 NRC 203 (2007)
- the Commission has the authority to enter case-specific procedural orders to facilitate the efficient resolution of issues before a licensing board; LBP-07-3, 65 NRC 237 (2007); CLI-07-17, 65 NRC 392 (2007)
- the Commission is entitled to review the record itself and amplify the board's findings; CLI-09-14, 69 NRC 580 (2009)
- the Commission is not obliged to adhere, in all of its proceedings, to the first court of appeals decision to address a controversial question, and is not prevented from relitigating the issue in future cases; LBP-07-14, 66 NRC 169 (2007)
- the Commission itself may exercise its discretion to review a licensing board's interlocutory order if the Commission wants to address a novel or important issue; CLI-09-6, 69 NRC 128 (2009)
- the Commission may find special circumstances warranting a categorical exclusion upon its own initiative, or upon the request of an interested person; CLI-10-18, 72 NRC 56 (2010)
- the Commission may grant a petition for review at its discretion, giving due weight to the existence of a substantial question with respect to the five considerations listed in 10 C.F.R. 2.341(b)(4); CLI-08-28, 68 NRC 658 (2008)
- the Commission may review a board ruling pursuant to the inherent supervisory powers where a significant issue may affect multiple pending or imminent licensing proceedings; CLI-08-2, 67 NRC 31 (2008)
- the Commission may take discretionary review of a licensing board's initial decision; CLI-10-23, 72 NRC 210 (2010)
- the Commission may, at its discretion, grant a party's request for interlocutory review of a board decision; CLI-10-29, 72 NRC 556 (2010); CLI-10-30, 72 NRC 564 (2010)
- the Commission or presiding officer may extend a time limit upon a showing of good cause; CLI-09-4, 69 NRC 80 (2009)
- the Commission refrains from exercising its authority to make de novo findings of fact in situations where a licensing board has issued a plausible decision that rests on carefully rendered findings of fact; CLI-10-18, 72 NRC 56 (2010)
- the Commission retains its inherent supervisory authority over the uranium enrichment facility proceeding to provide additional guidance to the licensing board and participants and to resolve any matter in controversy itself; CLI-09-15, 70 NRC 1 (2009)
- the Commission will endeavor to identify efficiencies, and provide pertinent resources, to further reduce the time the agency needs to complete reviews and reach decisions in licensing uranium enrichment facilities; CLI-07-17, 65 NRC 392 (2007)
- the Commission, if certain conditions are met, may discontinue its regulatory authority over certain categories of material, which authority then is assumed by the state; CLI-10-8, 71 NRC 142 (2010)
- the Commission, rather than petitioner, holds the authority to define the scope of a proceeding; LBP-09-20, 70 NRC 565 (2009)

SUBJECT INDEX

- the Commission's exercise of its discretion to review a licensing board's interlocutory order stems from its inherent supervisory authority over adjudications and in no way implies that parties have a right to seek interlocutory review on that same ground; CLI-09-6, 69 NRC 128 (2009)
- the Nuclear Waste Policy Act does not diminish any part of the Commission's authority to review license applications and issue licenses under the Atomic Energy Act; LBP-09-6, 69 NRC 367 (2009)
- the permitting agency determines what cooling system a nuclear power facility may use, and NRC factors the impacts resulting from use of that system into the NEPA cost-benefit analysis; CLI-07-16, 65 NRC 371 (2007)
- the Secretary of the Department of Energy does not have the discretion to substitute his policy for the one established by Congress that mandates progress toward a merits decision by NRC on a construction permit for the high-level waste repository; LBP-10-11, 71 NRC 609 (2010)
- under its inherent supervisory power over adjudications, the Commission accepts review because licensing boards are conducting the first mandatory hearings in more than two decades and additional Commission guidance is deemed appropriate; CLI-06-20, 64 NRC 15 (2006)
- under the Atomic Energy Act, broad responsibility is reposed in the administering agency, free of close prescription in its charter as to how it shall proceed in achieving the statutory objective; CLI-10-6, 71 NRC 113 (2010)
- until a license is issued, the Commission still has authority to add license conditions or to supplement an environmental impact statement if intervenors or the NRC Staff uncover significant, previously unconsidered, and newly arising safety concerns or environmental effects; CLI-06-19, 63 NRC 19 (2006)
- when reviewing a license application filed by a private applicant, as opposed to a federally sponsored project, an agency may give substantial weight to the stated preferences of the applicant with regard to issues such as site selection and facility design; LBP-09-7, 69 NRC 613 (2009)
- when water quality decisions have been made by a state pursuant to the Clean Water Act and these decisions are raised in NRC licensing proceedings, the NRC is bound to take the Environmental Protection Agency's considered decisions at face value; LBP-09-25, 70 NRC 867 (2009)
- where the Commission found that the board did not provide clarity on the scope of admitted contentions, it exercised its authority to reformulate the contentions; CLI-10-18, 72 NRC 56 (2010)
- whether NEPA requires the NRC to consider potential health effects of consuming irradiated food raises the kind of broad legal question appropriate for Commission interlocutory review; CLI-08-4, 67 NRC 171 (2008)
- NUCLEAR REGULATORY COMMISSION, JURISDICTION**
- after completion of decommissioning, neither licensee nor the NRC retains any continuing obligation or jurisdiction, respectively, with respect to a site, unless new information shows that the Part 20 criteria were not met and the residual radioactivity remaining on the site could result in a significant threat to public health and safety; CLI-09-1, 69 NRC 1 (2009)
- although the Commission commonly looks to Article III concepts for guidance, it is not required to automatically follow them in all respects because NRC proceedings are not subject to Article III; LBP-09-15, 70 NRC 198 (2009)
- an operating license proceeding that can be reopened remains in existence until a license is issued; CLI-06-19, 63 NRC 19 (2006)
- an otherwise reasonable alternative will not be excluded from discussion in the environmental impact statement solely on the ground that it is not within the jurisdiction of the NRC; LBP-09-10, 70 NRC 51 (2009); LBP-09-17, 70 NRC 311 (2009); LBP-10-10, 71 NRC 529 (2010)
- authority over uranium ore and other source material attaches only after removal from its place of deposit in nature and not when the ore is mined; CLI-06-14, 63 NRC 510 (2006)
- because NRC is not subject to the jurisdictional limitations placed on the federal courts by the case or controversy provision in Article III of the Constitution, there is no insuperable barrier to its rendition of an advisory opinion on issues that have been indisputably mooted by events occurring subsequent to a licensing board decision; LBP-09-15, 70 NRC 198 (2009)
- concurrent but independent jurisdiction of two federal agencies is addressed; LBP-09-6, 69 NRC 367 (2009)

SUBJECT INDEX

environmental reports and environmental impact statements must include an assessment of all environmental impacts and alternatives, even though NRC has no jurisdiction to regulate such impacts or jurisdiction to impose such alternatives; LBP-09-10, 70 NRC 51 (2009)

licensing boards should not entertain collateral attacks on the actions of other federal agencies on matters over which the Commission has no jurisdiction; LBP-06-15, 63 NRC 591 (2006)

NRC has entertained requests for stays of final agency action in anticipation of judicial review; CLI-10-8, 71 NRC 142 (2010)

NRC proceedings are not an appropriate forum to challenge DOE's procurement process, which fall under the jurisdiction of the Government Accountability Office or Court of Federal Claims; CLI-08-11, 67 NRC 379 (2008)

NRC's adjudicatory process is not the proper forum for investigating alleged violations that are primarily the responsibility of other federal, state, or local agencies; CLI-07-25, 66 NRC 101 (2007)

once a licensing board has concluded board action on a licensing case, jurisdiction to decide a motion to reopen regarding that proceeding passes to the Commission, which retains jurisdiction until the license in question has been issued; LBP-10-21, 72 NRC 616 (2010)

once there has been an appeal or petition to review a board order ruling on intervention petitions or, where a hearing is granted, following a partial or final initial decision, jurisdiction passes to the Commission; CLI-09-5, 69 NRC 115 (2009)

submission of the application to construct a high-level waste geologic repository at Yucca Mountain triggered a duty on NRC's part to consider and to render a decision on the application; LBP-10-11, 71 NRC 609 (2010)

the Commission's referral of a motion to reopen to the ASLBP and subsequent establishment of the board gives the board jurisdiction over the motion; LBP-10-21, 72 NRC 616 (2010)

the fact that disposal of dredged or fill material in wetlands is regulated by the Environmental Protection Agency and the U.S. Army Corps of Engineers does not render a contention inadmissible; LBP-09-10, 70 NRC 51 (2009)

the Secretary's referral of petitioner's motion to admit a late-filed contention effectively returns jurisdiction to the licensing board to rule on the motion; CLI-09-5, 69 NRC 115 (2009)

until a license has actually been issued, the Commission itself, as opposed to the licensing board, retains jurisdiction to reopen a closed case; CLI-06-4, 63 NRC 32 (2006)

whether applicant will be able to obtain permits from and comply with regulatory requirements imposed by other agencies is outside NRC's jurisdiction; LBP-08-15, 68 NRC 294 (2008)

NUCLEAR WASTE POLICY ACT

a detailed, specific procedure for site selection and review by the Secretary of Energy, the President, and the Congress, followed by submission of the application for a construction permit, review, and final decision thereon by the NRC was set out; LBP-10-11, 71 NRC 609 (2010)

Congress did not intend that its explicit mandate to the NRC to consider and decide the merits of the high-level waste repository application might be nullified by a nonspecific reference to an obscure NRC procedural regulation as being among the laws to be applied; LBP-10-11, 71 NRC 609 (2010)

Congress enacted this law for the purpose of establishing a definite federal policy for the disposal of high-level radioactive waste and spent nuclear fuel; LBP-10-11, 71 NRC 609 (2010)

contentions that DOE lacks management integrity to operate a high-level waste geologic repository are impermissible challenges to the NWPA and are therefore beyond the scope of the proceeding; CLI-09-14, 69 NRC 580 (2009)

DOE was directed to limit its site selection efforts to Yucca Mountain and to provide for an orderly phase-out of site-specific activities at all other candidate sites; LBP-10-11, 71 NRC 609 (2010)

economic harm itself has been held sufficient to establish standing; LBP-10-11, 71 NRC 609 (2010)

no requirement for a quantitative evaluation of an individual barrier's capabilities appears in the statutory language of the act; LBP-10-22, 72 NRC 661 (2010)

NRC is given flexibility in determining how best to provide for the use of a system of multiple barriers in the design of the high-level waste repository; LBP-10-22, 72 NRC 661 (2010)

NRC's adoption of any environmental impact statement prepared in connection with a repository shall be deemed to also satisfy the responsibilities of NRC under NEPA and no further consideration shall be required except any independent responsibilities of NRC to protect public health under the Atomic Energy Act; LBP-09-6, 69 NRC 367 (2009)

SUBJECT INDEX

NRC's criteria must not be inconsistent with EPA's environmental protection standards; LBP-09-6, 69 NRC 367 (2009)

ratepayers are not third-party beneficiaries of the Standard Contract and therefore cannot sue for breach of contract when DOE fails to dispose of nuclear waste by the statutory deadline; LBP-10-11, 71 NRC 609 (2010)

"repository" is defined as any system licensed by the Commission that is intended to be used for, or may be used for the permanent deep geologic disposal of high-level radioactive waste and spent nuclear fuel; LBP-09-6, 69 NRC 367 (2009)

section 121 does not require that each barrier provide either wholly independent protection or a specifically quantified amount of protection in the high-level waste repository; LBP-10-22, 72 NRC 661 (2010)

submission of the application to construct a high-level waste geologic repository at Yucca Mountain triggered a duty on NRC's part to consider and to render a decision on the application; LBP-10-11, 71 NRC 609 (2010)

Subpart K implements the totally new procedure established for adjudicating spent fuel storage controversies expeditiously; CLI-08-26, 68 NRC 509 (2008)

the court deferred to NRC's interpretation of the NWPA in promulgating regulations to be applied in administering the licensing stage for the high-level waste repository; LBP-10-11, 71 NRC 609 (2010)

the definition of "party" implies that local governments enjoy standing as of right; LBP-08-10, 67 NRC 450 (2008)

the mandate that the environmental impact statement be adopted by NRC to the extent practicable is intended to avoid duplication of the environmental review process but does not permit NRC to premise a construction-authorization or licensing decision upon an EIS that does not meet the substantive requirements of the NEPA or the Council on Environmental Quality's NEPA regulations; LBP-09-6, 69 NRC 367 (2009)

the Secretary of the Department of Energy does not have the discretion to substitute his policy for the one established by Congress that mandates progress toward a merits decision by NRC on a construction permit for the high-level waste repository; LBP-10-11, 71 NRC 609 (2010)

this statute does not diminish any part of the Commission's authority to review license applications and issue licenses under the Atomic Energy Act; LBP-09-6, 69 NRC 367 (2009)

OBJECTIONS

issues not challenged at hearing are deemed waived; CLI-10-14, 71 NRC 449 (2010)

it is not a ground for objection that the information sought will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence; LBP-09-30, 70 NRC 1039 (2009)

unless and until a document or information is proffered into evidence, there is no basis for a party to object that the information it received in a mandatory disclosure was unreliable or otherwise not admissible as evidence; LBP-09-30, 70 NRC 1039 (2009)

See also Waiver of Objection

OFFER OF PROOF

because appellant submitted no offer of proof, its case could be so weak that the denial of a right to reply by the licensing board would have been harmless error; CLI-10-23, 72 NRC 210 (2010)

if appellant had submitted an offer of proof, indicating what rebuttal evidence it would have offered to the board, then the Commission might have some basis for determining whether that evidence would be substantial enough to justify a remand to the Board; CLI-10-23, 72 NRC 210 (2010)

OFFICIAL NOTICE

a board rested its findings regarding a contention, in part, on certain facts that it officially noticed; CLI-10-17, 72 NRC 1 (2010)

a licensing board can take official notice of the locations and the distances to the various locations specified by a petitioner as denominated on Mapquest and an American Automobile Association roadmap; LBP-07-10, 66 NRC 1 (2007)

for purposes of the mandatory/uncontested portion of an ESP proceeding, the board takes official notice of publicly available documents associated with the Staff's safety and environmental reviews; LBP-09-19, 70 NRC 433 (2009)

SUBJECT INDEX

- where a board's decision rests in part on facts officially noticed, any party wishing to controvert the facts officially noticed may do so by filing a motion for reconsideration or an appeal from the decision; LBP-08-25, 68 NRC 763 (2008)
- OPERATING LICENSE AMENDMENT APPLICATIONS**
- mere issuance of requests for additional information does not mean an application is incomplete for docketing; CLI-08-17, 68 NRC 231 (2008)
- OPERATING LICENSE AMENDMENT PROCEEDINGS**
- a contention stating that monitoring activities may not be sufficient to identify and control the effects of aging that will occur during the 20-year renewal period falls squarely within the scope of a license renewal proceeding; LBP-06-7, 63 NRC 188 (2006)
- applicant for a power uprate must comply with all relevant NRC regulations, whether the application meets the requirements for a license amendment; LBP-08-9, 67 NRC 421 (2008)
- challenges to the current operating license are outside the scope of matters challengeable in a power uprate application; LBP-08-9, 67 NRC 421 (2008)
- extended power uprate involves increase in reactor core radioactivity with obvious potential for offsite consequences; LBP-07-10, 66 NRC 1 (2007)
- in the absence of a showing that the proposed amendment obviously entails an increased potential for offsite consequences, petitioner must base its standing upon more than residence or activities within a particular proximity of the plant by making a showing of a plausible chain of events that would result in offsite radiological consequences posing a distinct new harm or threat to the participant; LBP-07-10, 66 NRC 1 (2007)
- licensee requests that operating licenses for both units be amended to change the associated technical specifications to implement uprated power operation; LBP-07-10, 66 NRC 1 (2007)
- petitioner must assert an injury-in-fact associated with the challenged license amendment, not simply a general objection to the facility; LBP-07-10, 66 NRC 1 (2007)
- whether applicant has a valid NPDES permit is outside the scope of a power uprate proceeding; LBP-08-9, 67 NRC 421 (2008)
- OPERATING LICENSE AMENDMENTS**
- a request for a power uprate requires an amendment to the facility's operating license; CLI-08-17, 68 NRC 231 (2008)
- absent evidence to the contrary, it is assumed NRC licensees will not contravene agency regulations; LBP-07-10, 66 NRC 1 (2007)
- applicant normally is required to perform two large-transient tests before an extended power uprate can be granted; LBP-07-2, 65 NRC 153 (2007)
- if a board determines after full adjudication that the license amendment should not have been granted, it may be revoked or conditioned; LBP-07-2, 65 NRC 153 (2007)
- no petition or other request for review on the Staff's significant hazards consideration determination will be entertained by the Commission; LBP-07-10, 66 NRC 1 (2007)
- proceedings on license amendments continue until they are over, even if the amendment is issued in the interim; CLI-09-5, 69 NRC 115 (2009)
- since a license amendment involves a facility with ongoing operations, a petitioner's challenge must show that the amendment will cause a distinct new harm or threat apart from the activities already licensed; LBP-06-22, 64 NRC 229 (2006)
- Staff is permitted to issue an amendment to a reactor operating license notwithstanding the pendency of an adjudicatory hearing if it determines that the licensing action involves no significant hazards consideration; CLI-09-5, 69 NRC 115 (2009)
- Staff is to issue its approval or denial of an application promptly once it completes its own review of the application, notwithstanding the pendency of any hearing; CLI-06-8, 63 NRC 235 (2006)
- technical aspects of an extended power uprate are discussed; LBP-07-10, 66 NRC 1 (2007)
- OPERATING LICENSE APPLICATIONS**
- although analysis of aircraft impact is required, reactors whose construction permits were issued prior to July 13, 2009, are excluded, and the rule is not NEPA-based; LBP-09-26, 70 NRC 939 (2009)
- applicant must list all federal permits, licenses, approvals, and other entitlements that must be obtained in connection with the issuance of an operating license for a second nuclear reactor and adequately discuss the status of its compliance with them; LBP-09-26, 70 NRC 939 (2009)

SUBJECT INDEX

- applicant must submit a supplement to its environmental report at the operating license stage that discusses the same matters described in sections 51.45, 51.51, and 51.52, which would have been initially discussed in the environmental report at the construction permit stage, but only to the extent that those matters differ from those discussed or reflect new information; LBP-09-26, 70 NRC 939 (2009)
- direct transfers entail a change to operating and/or possession authority; CLI-08-19, 68 NRC 251 (2008)
- indirect transfers involve corporate restructuring or reorganizations which leave the licensee itself intact as a corporate entity and therefore involve no application for a new operating license; CLI-08-19, 68 NRC 251 (2008)
- OPERATING LICENSE PROCEEDINGS**
- administrative regularity in the regulatory process is assumed, and review of the operating license application takes place independently of that associated with plant construction; CLI-10-29, 72 NRC 556 (2010)
- further review of need for power and alternative energy sources are precluded once a construction permit has been issued; CLI-10-29, 72 NRC 556 (2010)
- licensing boards will not admit contentions concerning the need for power or alternative energy sources; LBP-10-12, 71 NRC 656 (2010)
- need-for-power contentions are barred in operating license proceedings partly because at the time the OL application is submitted, most of the environmental disruption would have already occurred and an electric utility would use the new nuclear plant to meet increased energy demand or replace older, less economical generation capacity; LBP-10-12, 71 NRC 656 (2010)
- off-again/on-again approach to construction of long-delayed units has generated a unique set of circumstances such that Commission should consider holding a new mandatory hearing prior to allowing full-power operation of units; LBP-10-12, 71 NRC 656 (2010)
- petition for waiver of regulation excluding consideration of alternatives and the need for power from the operating license phase must establish that all of applicant's fossil fuel baseload generation that is less efficient than the facility under consideration has been accounted for; LBP-10-12, 71 NRC 656 (2010)
- proximity within 50 miles of a plant is often enough on its own to demonstrate standing; LBP-08-24, 68 NRC 691 (2008)
- request for waiver of application of 10 C.F.R. 51.53(b), 51.95(b), and 51.106(c) precluding consideration of need for power and alternative energy sources from a Part 50 operating license proceeding fails to provide the prima facie showing required; LBP-10-12, 71 NRC 656 (2010)
- rule waivers are limited to very unusual cases, such as where it appears that an alternative exists that is clearly and substantially environmentally superior; LBP-10-12, 71 NRC 656 (2010)
- OPERATING LICENSE RENEWAL**
- a finding of reasonable assurance that there will be adequate protection to the health and safety of the public is based on judgment, not on the application of a mechanical verbal formula, a set of objective standards, or specific confidence interval; LBP-08-25, 68 NRC 763 (2008)
- a technically accurate projection of the time-limited aging analysis that predicts that the component will fail due to aging during the 20-year period of extended operation will not suffice; LBP-08-25, 68 NRC 763 (2008)
- after issuance of a renewed license, licensee may demonstrate that its use of an aging management program identified in the GALL Report constitutes reasonable assurance that it will manage the targeted aging effect during the renewal period; CLI-10-17, 72 NRC 1 (2010)
- age-related degradation can affect a number of reactor and auxiliary systems, including the reactor vessel, the reactor coolant system pressure boundary, steam generators, electrical cables, the pressurizer, heat exchangers, and the spent fuel pool; LBP-07-4, 65 NRC 281 (2007)
- aging management review addresses activities identified in 10 C.F.R. 54.21(a)(3) and (c)(1) regarding the integrated plant assessment; CLI-10-17, 72 NRC 1 (2010)
- aging management review focuses on structures and components that perform passive functions, with no moving parts or changes in configuration or properties; CLI-10-14, 71 NRC 449 (2010)
- all non-safety-related structures, systems, and components whose failure could prevent satisfactory accomplishment of any of the safety functions identified in 10 C.F.R. 54.4(a)(1), including auxiliary systems necessary for the function of safety-related systems, are subject to aging management review; CLI-10-14, 71 NRC 449 (2010)

SUBJECT INDEX

all structures, systems, and components relied on in safety analyses or plant evaluations to perform a function that demonstrates compliance with the NRC's regulations for fire protection, environmental qualification, pressurized thermal shock, anticipated transients without scram, and station blackout are subject to aging management review for license renewal; CLI-10-14, 71 NRC 449 (2010)

allowing applicant to postpone performance of an analysis-of-record time-limited aging analysis until after the license renewal is issued is inconsistent with the language, structure, and intent of the Part 54 regulations and inconsistent with NRC precedent; LBP-08-25, 68 NRC 763 (2008)

alternatives to mitigate severe accidents must be considered for all plants that have not previously considered such alternatives; LBP-07-4, 65 NRC 281 (2007)

although "severe accident," "severe accident mitigation alternatives," and "SAMA" are not defined in NRC's NEPA regulations, the NRC policy documents that originated the terms clearly limit them to nuclear reactors and do not include spent fuel pools or storage; LBP-10-15, 72 NRC 257 (2010)

an aging management program is intended to manage the effects of aging on a particular component by, e.g., ensuring that the fatigue usage factor for the component does not exceed the design code limit; CLI-10-17, 72 NRC 1 (2010)

an aging management program that consists solely of bald statements does not satisfy the requirement that an applicant demonstrate that it will adequately manage aging; LBP-08-25, 68 NRC 763 (2008)

an applicant seeking to renew or extend the term of an operating license for a power reactor need not submit the financial information that is required in an application for an initial license; LBP-07-4, 65 NRC 281 (2007)

an application may be granted only if the Commission finds that the continued operation of the facility will be in accord with the common defense and security and will provide adequate protection to the health and safety of the public; LBP-08-25, 68 NRC 763 (2008)

an emergency evacuation issue was admitted in a license renewal proceeding because it was in the context of three of the specific input data for the severe accident mitigation alternatives analysis that license renewal applicants are required to perform; LBP-07-4, 65 NRC 281 (2007)

an issue can be related to plant aging and still not warrant review at the time of a license renewal application, if the issue is adequately dealt with by regulatory processes on an ongoing basis; LBP-06-10, 63 NRC 314 (2006)

an issue cannot be identified as Category 1 if NRC has not made a generic determination that additional mitigation measures are unlikely to be warranted, given mitigation practices already in place; CLI-10-14, 71 NRC 449 (2010)

analysis of a component subject to aging may be performed showing that the aging mechanism will not cause failure of the component; LBP-08-26, 68 NRC 905 (2008)

analysis of entrainment and impingement of fish, and heat shock, is required only for plants with once-through cooling or cooling ponds, because it has been determined generically that such impacts are small for plants that use cooling towers; LBP-07-4, 65 NRC 281 (2007)

applicant has no obligation to discuss in its environmental report the impacts of a potential expansion of the independent spent fuel storage installation; LBP-08-26, 68 NRC 905 (2008)

applicant must assess whether any historic or archaeological properties will be affected by the proposed project; LBP-08-26, 68 NRC 905 (2008)

applicant must establish an aging management program that is adequate to provide reasonable assurance that the intended function of the piping subject to flow accelerated corrosion will be maintained in accordance with the current licensing basis for the period of extended operation; LBP-08-25, 68 NRC 763 (2008)

applicant must submit with its application an environmental report, which must describe the proposed action, including plans to modify the facility or its administrative control procedures, and the modifications directly affecting the environment or affecting plant effluents that affect the environment; LBP-07-4, 65 NRC 281 (2007)

applicants are required to consider severe accident mitigation alternatives in the environmental report prepared in connection with the application; CLI-10-11, 71 NRC 287 (2010)

applicants must demonstrate that all important systems, structures, and components will continue to perform their intended function in the period of extended operation and must identify any additional actions that will need to be taken to adequately manage the detrimental effects of aging; LBP-08-22, 68 NRC 590 (2008)

SUBJECT INDEX

applicants need not provide site-specific analyses of environmental impacts of subjects identified as Category 1 issues in Appendix B to 10 C.F.R. Part 51, Subpart A; CLI-10-14, 71 NRC 449 (2010)

because environmentally adjusted cumulative usage factors are not contained in licensee's current licensing basis, they cannot be time-limited aging analyses and thereby a prerequisite to license renewal; CLI-10-17, 72 NRC 1 (2010)

Category 1, or generic, issues in Appendix B to Subpart A of Part 51 are not within the scope of a license renewal proceeding; LBP-06-10, 63 NRC 314 (2006)

Category 2, or plant-specific, issues in 10 C.F.R. Part 51, Subpart A, Appendix B are within the scope of a license renewal proceeding; LBP-06-10, 63 NRC 314 (2006)

Category 2, or plant-specific, issues involve environmental impact severity levels that might differ significantly from one plant to another, or impacts for which additional plant-specific mitigation measures should be considered; LBP-07-4, 65 NRC 281 (2007)

Commission review is in the public interest if the decision could affect pending and future license renewal determinations; CLI-10-17, 72 NRC 1 (2010)

current licensing basis represents an evolving set of requirements and commitments for a specific plant that are modified as necessary over the life of a plant to ensure continuation of an adequate level of safety; LBP-08-25, 68 NRC 763 (2008)

current plant licensing remains in effect pending final outcome of any hearing on renewal; LBP-08-12, 68 NRC 5 (2008)

discharge of chlorine or other biocides is a Category 1, out-of-scope issue; LBP-07-4, 65 NRC 281 (2007)

during the license renewal term, the current licensing basis incorporates the CLB for the current license, including all licensee commitments, plus any new commitments to monitor, manage, and correct age-related degradation unique to license renewal; LBP-08-25, 68 NRC 763 (2008)

each application must contain an evaluation of time-limited aging analyses, a list of TLAAs, a demonstration relating to TLAAs, and the actual TLAAs; LBP-08-25, 68 NRC 763 (2008)

each application must demonstrate that the time-limited aging analyses remain valid for the period of extended operation, have been projected to the end of the period of extended operation, or that the effects of aging on the intended function(s) will be adequately managed for the period of extended operation; LBP-08-25, 68 NRC 763 (2008)

each nuclear power plant has a plant-specific licensing basis that must be maintained during the renewal term in the same manner and to the same extent as during the original licensing term; CLI-10-14, 71 NRC 449 (2010)

emergency planning is excluded from consideration because the issue is not germane to age-related degradation or unique to the period of time covered by the license renewal; LBP-07-4, 65 NRC 281 (2007)

environmental impacts from the spent fuel pool, including potential beyond-design-basis accidents and the need for mitigation measures, are addressed in NRC's generic environmental impact statement for license renewal and do not require a site-specific analysis as part of an individual license renewal environmental review; CLI-10-14, 71 NRC 449 (2010)

feedwater, core spray, and reactor recirculation outlet nozzles, as part of the reactor coolant pressure boundary, must meet the metal-fatigue requirements for Class 1 components in Section III of the ASME Code; CLI-10-17, 72 NRC 1 (2010)

from among the three general categories of structures, systems, and components that fall within the initial focus of the license renewal safety review, applicants must identify and list, in an integrated plant assessment, those structures and components subject to an aging management review; CLI-10-14, 71 NRC 449 (2010)

general categories of structures, systems, and components falling within the initial focus of safety review are outlined; CLI-10-14, 71 NRC 449 (2010)

if a structure or component is already required to be replaced at mandated, specified time periods, it would fall outside the scope of license renewal review; LBP-07-4, 65 NRC 281 (2007)

if aging-related analysis fails, then the application must include a specific aging program to manage the effects of aging on that component; LBP-08-26, 68 NRC 905 (2008)

SUBJECT INDEX

if applicant's metal fatigue analyses on Class I components do not comply with the ASME Code and do not provide reasonable assurance as required by 10 C.F.R. 54.21(c)(1) and 54.29(a), then a license renewal cannot be issued; LBP-08-25, 68 NRC 763 (2008)

if NRC Staff finds any severe accident mitigation alternative conferring a substantial benefit compared to its cost of implementation, it must make such SAMA a license condition for the renewed operating license; LBP-10-13, 71 NRC 673 (2010)

if NRC Staff has not previously considered severe accident mitigation alternatives for the applicant's plant in an environmental impact statement or related supplement or in an environmental assessment, a consideration of alternatives to mitigate severe accidents must be provided; LBP-07-13, 66 NRC 131 (2007)

if the benefit-to-cost ratio is glaringly large for a potentially cost-beneficial SAMA, NRC Staff must, as a prerequisite to extending a license, impose implementation of that SAMA as a license condition or, in the alternative, explain why it is not requiring implementation of that SAMA; LBP-10-13, 71 NRC 673 (2010)

issues and concerns involved in an extended 20 years of operation are not identical to the issues reviewed when a reactor facility is first built and licensed; LBP-07-4, 65 NRC 281 (2007)

licensee must comply with Part 50 regulations, including the provisions requiring compliance with the ASME Code, during the period of extended operation; CLI-10-17, 72 NRC 1 (2010)

NRC has authority and responsibility to supplement or to amend conditions to the current licensing basis of an existing operating license at the time of license renewal if such supplements or amendments are deemed necessary to protect the environment; LBP-10-13, 71 NRC 673 (2010)

NRC is not barred from considering licensee's past and continuing managerial and performance problems when it determines whether licensee has demonstrated that actions will be taken to manage the effects of aging during the period of extended operation; LBP-10-15, 72 NRC 257 (2010)

NRC review is based upon those potential detrimental effects of aging that are not routinely addressed by ongoing regulatory oversight programs; LBP-08-22, 68 NRC 590 (2008)

NRC Staff is obligated to consider severe accident mitigation alternatives if it has not already done so as part of its NEPA obligations in a license renewal review; LBP-10-13, 71 NRC 673 (2010)

NRC Staff's hard look at all potentially cost-beneficial severe accident mitigation alternatives under NEPA and Part 51 ensures that it has given proper consideration to all relevant factors in granting a license renewal; LBP-10-13, 71 NRC 673 (2010)

NRC Staff's review of the safety-related aspects of each license renewal application focuses on the adequacy of the applicant's aging management programs and an evaluation of the applicant's time-limited aging analyses; LBP-08-25, 68 NRC 763 (2008)

offsite radiological impacts are a Category 1 issue, and the Commission has determined such impacts to be "small" for all nuclear power plants seeking a renewed license; LBP-08-26, 68 NRC 905 (2008)

onsite storage of spent fuel during the license renewal term is a Category 1 issue, and as such does not warrant any additional site-specific analysis of mitigation measures; CLI-10-14, 71 NRC 449 (2010)

radiological monitoring is an operational program that is beyond the scope of license renewal; LBP-07-4, 65 NRC 281 (2007)

requiring a full reassessment of safety issues that were thoroughly reviewed when the facility was first licensed and continue to be routinely monitored and assessed by ongoing agency oversight and agency-mandated licensee programs would be both unnecessary and wasteful; LBP-07-4, 65 NRC 281 (2007)

safety issues other than age-related degradation may arise in connection with renewal that are not relevant to safety during the initial operating license term but, because of their plant-specific nature, must be addressed in renewals case by case; LBP-08-25, 68 NRC 763 (2008)

safety review focuses on those systems, structures, and components that are of principal importance to safety; CLI-10-14, 71 NRC 449 (2010)

safety review is focused upon those potential detrimental effects of aging that are not routinely addressed by ongoing regulatory oversight programs; LBP-06-10, 63 NRC 314 (2006)

safety-related structures, systems, and components are those that are relied upon to remain functional during and following design-basis events to ensure the integrity of the reactor coolant pressure boundary, the capability to shut down the reactor and maintain it in a safe shutdown condition, or the

SUBJECT INDEX

capability to prevent or mitigate the consequences of accidents that could result in potential offsite exposures; CLI-10-14, 71 NRC 449 (2010)

technical accuracy of the time-limited aging analyses is necessary, but not sufficient, to demonstrate that it remains valid, because a technically accurate TLAA that shows that the component will fail during the period of extended operation does not satisfy 10 C.F.R. 54.21(c)(1)(i); LBP-08-25, 68 NRC 763 (2008)

the aging management review for license renewal does not focus on all aging-related issues; CLI-10-27, 72 NRC 481 (2010)

the general scope of the license renewal safety review is outlined in 10 C.F.R. 54.4; CLI-10-14, 71 NRC 449 (2010)

the Generic Aging Lessons Learned Report sets forth three ways that a license renewal applicant proposing to use an aging management plan may comply with the requirements of 10 C.F.R. 54.21(c)(1)(iii); CLI-10-17, 72 NRC 1 (2010)

the generic environmental impact statement for license renewal was part of an amendment of the requirements of Part 51 undertaken by the Commission to establish environmental review requirements for license renewals that were both efficient and more effectively focused; LBP-07-4, 65 NRC 281 (2007)

the licensing basis for a nuclear power plant during the renewal term consists of the current licensing basis together with new commitments to monitor, manage, and correct age-related degradation unique to license renewal; LBP-08-25, 68 NRC 763 (2008)

the only safety issue where the regulatory process may not adequately maintain a plant's current licensing basis involves the potential detrimental effects of aging on the functionality of certain systems, structures, and components in the period of extended operations; CLI-10-27, 72 NRC 481 (2010)

the only severe accident mitigation alternatives that applicant must implement as part of a license renewal safety review are those dealing with aging management; LBP-10-13, 71 NRC 673 (2010)

the phrase "reasonable assurance" specified in 10 C.F.R. 54.29 is not defined, but requires, at a minimum, that an applicant demonstrate compliance with all of NRC's safety regulations; LBP-08-25, 68 NRC 763 (2008)

the reasonable assurance determination need not be reduced to a mechanical verbal formula or set of objective standards, but may be given content through case-by-case applications of the Commission's technical judgment, in light of all relevant information; CLI-10-14, 71 NRC 449 (2010)

the safety review focuses on those potential detrimental effects of aging that are not routinely addressed by ongoing regulatory oversight programs; LBP-07-4, 65 NRC 281 (2007)

the scope of license renewal review for a nuclear power reactor is generally restricted to plant structures and components that will require an aging management review for the period of extended operation and the plant's systems, structures, and components that are subject to an evaluation of time-limited aging analysis; LBP-10-13, 71 NRC 673 (2010)

the standard for the Commission's decision on license renewal applications is whether or not the adverse environmental impacts of license renewal are so great that preserving the option of license renewal for energy planning decisionmakers would be unreasonable; LBP-07-4, 65 NRC 281 (2007)

the standard review plan provides guidance but does not impose requirements on license renewal applicants; CLI-10-17, 72 NRC 1 (2010)

the statutory conditions for grant of a license are described; LBP-08-25, 68 NRC 763 (2008)

the ten elements of an effective aging management program must be addressed only when an applicant's AMP differs from the relevant AMP identified in the GALL Report; LBP-08-26, 68 NRC 905 (2008)

under 10 C.F.R. 2.325, applicant has the burden of proving that it has met the reasonable assurance standard of 10 C.F.R. 54.29; LBP-08-25, 68 NRC 763 (2008)

under NEPA, the Commission is ultimately responsible for analyzing environmental justice issues, but license renewal applicants are required to assist the Commission with that evaluation; LBP-08-26, 68 NRC 905 (2008)

when a licensee is applying to extend its operating license, the NRC cannot address requests for enforcement action; DD-07-3, 65 NRC 643 (2007)

where the application provides a commitment that, should inspection requirements be changed, the applicant will implement those new inspection requirements, it is the responsibility of NRC Staff and the applicant to ensure that this commitment is fulfilled; LBP-08-26, 68 NRC 905 (2008)

SUBJECT INDEX

OPERATING LICENSE RENEWAL PROCEEDINGS

- absence of perfect compliance by licensee does not rebut the presumption of compliance or support admission of a contention that the application does not satisfy 10 C.F.R. 54.29(a), but a consistent, longstanding, and continuing pattern of problems in a specific area that is relevant to managing aging equipment will; LBP-10-15, 72 NRC 257 (2010)
- adequacy of emergency planning is outside the scope of license renewal proceedings; LBP-10-13, 71 NRC 673 (2010)
- allegation of facts, with supporting documentation, of a longstanding and continuing pattern of noncompliance or management difficulties that are reasonably linked to whether licensee will actually be able to adequately manage aging in accordance with the current licensing basis during the period of extended operation can be an admissible contention; LBP-10-15, 72 NRC 257 (2010)
- allegations of radiological and nonradiological contamination of drinking water are outside the scope of renewal proceedings because they involve no aging-related issues and are Category 1, or generic, issues; LBP-06-10, 63 NRC 314 (2006)
- broad-based issues akin to safety culture, such as operational history, quality assurance, quality control, management competence, and human factors, are beyond the bounds of a license renewal proceeding; CLI-10-27, 72 NRC 481 (2010)
- Category 1 issues, which are those addressed by NRC's generic environmental impact statement for license renewal, are inadmissible in a license renewal proceeding; LBP-10-13, 71 NRC 673 (2010)
- challenges to the current licensing basis are outside the scope of a license renewal proceeding; LBP-10-15, 72 NRC 257 (2010)
- cracking of a nonsafety-related steam dryer could cause a release of loose parts that could have an adverse impact on safety-related equipment and thus it is within the scope of aging management review; LBP-08-25, 68 NRC 763 (2008)
- embrittlement of the reactor pressure vessel is within the scope of a license renewal proceeding; LBP-06-10, 63 NRC 314 (2006)
- environmental justice issues are inadmissible if no sufficiently specific disproportionate effects with a nexus to the physical environment, falling on low-income and minority communities, are alleged or shown; LBP-06-10, 63 NRC 314 (2006)
- for a contention regarding environmental impacts of spent fuel storage to be within the scope of an operating license renewal proceeding, petitioner must obtain a waiver under 10 C.F.R. 2.335(d); LBP-10-15, 72 NRC 257 (2010)
- if a board finds that the use of a more accurate approach than compliance with regulatory guides is needed to provide reasonable assurance that metal fatigue will be adequately managed during the period of extended operation, then the board is authorized and duty bound to impose such a requirement; LBP-08-25, 68 NRC 763 (2008)
- if NRC Staff has not previously considered severe accident mitigation alternatives for applicant's plant in an environmental impact statement or related supplement or assessment, they must be considered for license renewal; LBP-10-13, 71 NRC 673 (2010)
- license renewal should not include a new, broad-scoped inquiry into compliance that is separate from and parallel to NRC ongoing compliance oversight activity; CLI-10-27, 72 NRC 481 (2010)
- NRC review is limited to plant structures and components that will require an aging management review for the period of extended operation and the plant's systems, structures, and components that are subject to an evaluation of time-limited aging analyses; LBP-08-22, 68 NRC 590 (2008)
- petitioner has presented a prima facie showing for waiver of the NRC regulation covering the environmental impacts of spent fuel pool accidents generically, and has shown that its contention concerning earthquake-induced spent fuel pool accidents is otherwise admissible; LBP-10-15, 72 NRC 257 (2010)
- petitioner's assertion that terrorist-act-originated SAMA analysis is required by Ninth Circuit law satisfies the requirements of 10 C.F.R. 2.309(f)(1)(iii) that the issue be within the scope of a license renewal proceeding; LBP-10-15, 72 NRC 257 (2010)
- potential scope of adjudicatory hearings for license renewal is the same as the scope of the Staff's review; LBP-10-15, 72 NRC 257 (2010)
- spent fuel storage issues are outside the scope of a license renewal proceeding; LBP-06-10, 63 NRC 314 (2006)

SUBJECT INDEX

- the portion of the current licensing basis that can be affected by the detrimental effects of aging is limited to the design bases aspects of the CLB; LBP-10-15, 72 NRC 257 (2010)
- the proximity presumption has been found to arise if the petitioner lives within a specific distance from the power reactor; LBP-08-26, 68 NRC 905 (2008)
- the radioactive source posing the danger in a reactor license renewal case is the identical source giving rise to the 50-mile proximity presumption rule for standing in reactor construction permit and operating license proceedings; LBP-06-7, 63 NRC 188 (2006)
- the regulatory authority relating to renewal of nuclear power plant operating licenses is found in 10 C.F.R. Parts 51 and 54, which enumerate issues to be addressed; LBP-08-22, 68 NRC 590 (2008)
- the scope of a proceeding under 10 C.F.R. Part 54 encompasses a review of the plant structures and components that will require an aging management review for the period of extended operation and the plant's systems, structures, and components that are subject to an evaluation of time-limited aging analyses; CLI-10-17, 72 NRC 1 (2010)
- the scope of each proceeding encompasses a review of the plant structures and components that will require an aging management review for the period of extended operation and the plant's systems, structures, and components that are subject to an evaluation of time-limited aging analyses; LBP-08-25, 68 NRC 763 (2008)
- the scope of license renewal proceedings is quite limited under Commission rules and case law; LBP-08-22, 68 NRC 590 (2008)
- the scope of the proceeding is defined by the Commission in its initial hearing notice and order referring the proceeding to the licensing board; LBP-08-26, 68 NRC 905 (2008)
- OPERATING LICENSES**
- current plant licensing remains in effect pending final outcome of any hearing on renewal; LBP-08-12, 68 NRC 5 (2008)
- General Design Criteria are not applicable to nuclear power plants with construction permits issued prior to May 21, 1971; LBP-08-13, 68 NRC 43 (2008)
- if any aspect of a facility fails to pass muster at the operating license stage, applicant bears the risk the plant will not be allowed to operate, regardless of the amount of money expended during construction; LBP-10-7, 71 NRC 391 (2010)
- licensee remains authorized to own and possess the facility even after the operating license expires; LBP-09-17, 70 NRC 311 (2009)
- NRC Staff's final environmental impact statement need not include a discussion of the need for power or alternative energy sources; LBP-10-12, 71 NRC 656 (2010)
- the 10 C.F.R. Part 50 licensing process that was formerly applied to commercial nuclear power plants required that an applicant first obtain a construction permit for the facility, followed by an operating license; LBP-10-7, 71 NRC 391 (2010)
- the overriding regulatory precondition to the award of an operating license is that every major aspect of the facility has been completed in accordance with its design; LBP-08-11, 67 NRC 460 (2008)
- OPINIONS**
- See Advisory Opinions
- ORAL ARGUMENT**
- a licensing board order canceling oral argument on the admissibility of petitioner's proposed contention did not cause serious and irreparable harm to petitioner; CLI-08-7, 67 NRC 187 (2008)
- although licensing boards frequently hold oral argument on contention admissibility, a board may instead elect to dispense with oral argument; LBP-08-23, 68 NRC 679 (2008)
- as NRC hearings have moved away from the traditional trial-type adversarial format and toward a more informal model, the inquisitorial role of the presiding officer necessarily has increased; CLI-10-17, 72 NRC 1 (2010)
- diligent, even aggressive, probing for weaknesses in a witness's or counsel's position may be necessary if presiding officers are to fulfill their duty to develop an adequate record that will contribute to informed decisionmaking; CLI-10-17, 72 NRC 1 (2010)
- grant of a request for oral argument requires a showing of how it will assist the Commission in reaching a decision; CLI-10-9, 71 NRC 245 (2010)
- neither NRC regulations nor agency policy mandates that the arguments be conducted in person near the site; LBP-08-23, 68 NRC 679 (2008)

SUBJECT INDEX

once a hearing is granted under Subpart L, an informal oral hearing on the merits is required except in limited circumstances; CLI-10-18, 72 NRC 56 (2010)

the Commission declines to exercise its discretion to allow oral argument because the written record in the case is thorough, effectively sets forth the positions of the participants, and, overall, contains sufficient information on which to base its decision; CLI-10-9, 71 NRC 245 (2010)

the Commission has discretion to allow oral argument upon the request of a party made in a petition for review, brief on review, or upon its own initiative; CLI-10-9, 71 NRC 245 (2010)

to enable presiding officers to fulfill their duty, they have been given broad authority to examine witnesses at evidentiary hearings; CLI-10-17, 72 NRC 1 (2010)

ORDERS

policy statements are neither rules nor orders, and therefore do not establish requirements that bind either the agency or the public; CLI-07-27, 66 NRC 215 (2007)

See also Confirmatory Order; Enforcement Orders; Intervention Rulings; Licensing Board Decisions; Licensing Board Orders; Modification Order

OWNERSHIP

continuous and exclusive use of property is sufficient, unless duly extinguished, to establish Indian or aboriginal title; LBP-08-24, 68 NRC 691 (2008)

licensing boards are required to reject treaty-based claims of ownership by Native American tribes; LBP-08-24, 68 NRC 691 (2008)

the difference between "aboriginal title" and "aboriginal lands" is distinguished; LBP-08-24, 68 NRC 691 (2008)

See also Foreign Ownership; Transfer of Ownership

PARTIAL INITIAL DECISIONS

although a presiding officer should issue a separate partial initial decision regarding a limited work authorization request, the board finds no practical or logical basis for separating its consideration of the adequacy of the LWA request from its determination regarding the early site permit with which it is associated; LBP-09-19, 70 NRC 433 (2009)

the provision expressly permitting immediate review of a partial initial decision is an exception to the Commission's established policy of disfavoring interlocutory appeals; CLI-08-2, 67 NRC 31 (2008)

PARTIES

a person who has not been admitted as a party to a proceeding is not entitled to make a motion in an ongoing proceeding; CLI-10-10, 71 NRC 281 (2010)

a person who invokes the right to participate in an NRC proceeding also voluntarily accepts the obligations attendant upon such participation; CLI-09-8, 69 NRC 317 (2009)

a "potential party" is any person who intends or may intend to participate as a party by demonstrating standing and filing an admissible contention under 10 C.F.R. 2.309; CLI-09-15, 70 NRC 1 (2009); LBP-09-5, 69 NRC 303 (2009)

in the high-level waste repository proceeding, "potential party," means DOE, the NRC Staff, the State of Nevada, and any person or entity that meets the definition of "party," "potential party," or "interested governmental participant"; LBP-08-10, 67 NRC 450 (2008)

NRC Staff ordinarily does not participate as a party in the adjudicatory portion of license transfer proceedings; CLI-07-18, 65 NRC 399 (2007)

obligations include participation within the schedule established for the proceeding despite the burden on a participant's time and resources and despite uncertainties engendered by the potential for new information; CLI-09-8, 69 NRC 317 (2009)

only a party to a proceeding may move to reopen a closed record; CLI-09-5, 69 NRC 115 (2009)

only a party to a proceeding, or an interested governmental entity participating under section 2.315, may file a request to stay proceedings pending a rulemaking; CLI-07-13, 65 NRC 211 (2007)

participant in administrative litigation, having an even greater interest in obtaining access to sensitive unclassified nonsafeguards information than does the general public, is entitled to obtain documents under standards no more restrictive than would be accorded the general public under the Freedom of Information Act; LBP-10-2, 71 NRC 190 (2010)

participants in ongoing adjudicatory proceedings that have filed a rulemaking petition should be provided an opportunity to seek a stay of the adjudication pending a resolution of the rulemaking petition; LBP-08-16, 68 NRC 361 (2008)

SUBJECT INDEX

parties and NRC Staff have a continuing duty to update their mandatory disclosures; LBP-09-22, 70 NRC 640 (2009)

parties and NRC Staff must provide a list of documents otherwise required to be disclosed for which a claim of privilege or protected status is being made, together with sufficient information for assessing the claim of privilege or protected status of the documents; LBP-09-22, 70 NRC 640 (2009)

“potential party” is defined in as any person who has requested, or who may intend to request, a hearing or petition to intervene in a hearing under 10 C.F.R. Part 2, other than hearings conducted under Subparts J and M of 10 C.F.R. Part 2; LBP-10-5, 71 NRC 329 (2010)

the party to be prevented from relitigating an issue must have been a party to the prior action, but the party seeking to prevent relitigation through the application of collateral estoppel need not have been a party; CLI-10-23, 72 NRC 210 (2010)

the Staff elects whether or not to be a party to some or all contentions; CLI-07-20, 65 NRC 499 (2007)
See also Conduct of Parties

PENALTIES

engaging in deliberate misconduct that caused inaccurate and incomplete information to be provided to the NRC concerning conditions at a reactor resulted in debarment from licensed activities for 5 years; LBP-09-11, 70 NRC 151 (2009)

PERFORMANCE ASSESSMENT

a legal issue contention raises a genuine dispute with the application, because it challenges DOE’s performance assessment for the post-10,000-year period; LBP-09-29, 70 NRC 1028 (2009)

a systematic analysis that quantitatively estimates radiological exposures is the definition of performance assessment; LBP-09-6, 69 NRC 367 (2009)

adequate confidence in the assessment for the high-level waste repository is derived from sufficient analyses, data, and the technical basis offered to demonstrate compliance with postclosure performance objectives; LBP-10-22, 72 NRC 661 (2010)

analysis is required of only those features, events, and processes that cannot be excluded on the basis of low probability of occurrence and whose exclusion would result in a significant change in the results of the performance assessment for the high-level waste repository in the first 10,000-year postclosure period; LBP-10-22, 72 NRC 661 (2010)

compliance with limits on radiological exposures, over necessarily long time periods, requires a performance assessment; LBP-09-6, 69 NRC 367 (2009)

contention that the high-level waste application inadequately addresses generalized corrosion because it relies on flawed experimental data raises a genuine, material dispute with the application by pointing to specific sections that allegedly fail to comply with the NRC’s requirements for conducting a post-closure performance assessment; LBP-09-29, 70 NRC 1028 (2009)

demonstration of compliance with 10 C.F.R. 63.113 must consider alternative conceptual models; LBP-09-6, 69 NRC 367 (2009)

if the performance margins analysis for the high-level waste repository is needed to establish adequate confidence in the total system performance assessment, then it is subject to the quality assurance requirements of 10 C.F.R. 63.142; LBP-10-22, 72 NRC 661 (2010)

only features, events, and processes that produce significant changes in releases or doses within the first 10,000 years after disposal in the high-level waste repository must be included in performance assessments; LBP-10-22, 72 NRC 661 (2010)

performance assessment for the high-level waste repository must meet a number of very specific requirements; LBP-09-6, 69 NRC 367 (2009)

the performance margins analysis cannot be used to validate or provide confidence in the total systems performance assessment if its data and models are not qualified under DOE’s quality assurance program; LBP-10-22, 72 NRC 661 (2010)

PERJURY

saying the government needs to demonstrate the potential for the tainting of evidence is not the equivalent of insisting that the government establish that perjury or intimidation would necessarily take place; LBP-06-13, 63 NRC 523 (2006)

the entire focus of a perjury inquiry centers on what the testifier knew and when he knew it, in order to establish beyond a reasonable doubt that he knew his testimony to be false when he gave it; CLI-10-23, 72 NRC 210 (2010)

SUBJECT INDEX

PERMIT CONDITIONS

any imposed conditions that are not met before a combined license referencing the early site permit is issued will attach to the COL; LBP-09-19, 70 NRC 433 (2009)
radioactive waste management systems, structures, and components for a future reactor must include features to preclude accidental releases of radionuclides into potential liquid pathways; CLI-07-14, 65 NRC 216 (2007)

PERMITS

although NRC will consider the fact that an applicant is subject to, and compliant with, other environmental laws and permits, it must still perform an environmental assessment prior to any major federal action significantly affecting the environment; LBP-06-20, 64 NRC 131 (2006)
an operating license application must list all federal permits, licenses, approvals, and other entitlements that must be obtained in connection with the issuance of an operating license for a second nuclear reactor and adequately discuss the status of its compliance with them; LBP-09-26, 70 NRC 939 (2009)
criteria and procedures pursuant to which a federal land manager may issue excavation permits for federal lands are provided as well as notification to Indian tribes if permits may result in harm to cultural or religious sites; LBP-10-16, 72 NRC 361 (2010)
in the context of NEPA, NRC is obligated to study matters that may be far afield of its primary mission, including the environmental impacts related to the permits and licenses issued by other governmental agencies; LBP-09-21, 70 NRC 581 (2009)
whether other permits may be required from other agencies is outside the scope of NRC proceedings, and those concerns are properly raised before those respective permitting authorities; LBP-09-21, 70 NRC 581 (2009)

See also Construction Permits; Early Site Permits

PERSONAL PRIVACY INTEREST

although an initial position of protecting privacy may be founded on mere theoretical constructs, when a fact-based challenge is made, concrete or specific analysis is needed to effectively counter the challenge and to establish the privacy interests involved; LBP-06-25, 64 NRC 367 (2006)
NRC's regulatory scheme for balancing privacy interests arising in a law enforcement context against the need for party discovery combines elements of both FOIA and the Federal Rules of Civil Procedure; LBP-06-25, 64 NRC 367 (2006)
privacy interest depends on such specific factors as the impact of the information's disclosure upon particular individuals and in particular circumstances; LBP-06-25, 64 NRC 367 (2006)
the interests for which protection is sought can be amply preserved by a protective order that limits the disclosures to those involved in the litigation and thus having a need to know; LBP-06-25, 64 NRC 367 (2006)
the law generally recognizes a personal privacy interest not to have allegations of unlawful activity publicly disseminated after they have been shown to be insubstantial, but a privacy interest does not exist as a generalized theory; LBP-06-25, 64 NRC 367 (2006)
when an investigation is open and notorious, the interview transcripts are not confidential, and the public has constructive knowledge that those interviewed had a sufficient relationship to the root problem to warrant being interviewed, the right of personal privacy being asserted is weak compared to the privacy rights in other circumstances of unsubstantiated allegation; LBP-06-25, 64 NRC 367 (2006)
where a protective order precludes public disclosure, the strength of the privacy interest diminishes because any threatened harm in releasing the information can be virtually eliminated; LBP-06-25, 64 NRC 367 (2006)

PERSONHOOD

the Department of Energy is not a "person" for purposes of AEA § 11s; CLI-09-14, 69 NRC 580 (2009)

PHYSICAL SECURITY PLAN

during closed portions of oral argument, only the board, NRC Staff, applicant, and individuals who signed nondisclosure affidavits pursuant to protective order would be permitted to remain in the hearing room; LBP-10-5, 71 NRC 329 (2010)
legal authority exists for nondisclosure and protection of security-related information concerning the physical protection of nuclear power plants under 10 C.F.R. 2.390(d)(1); LBP-10-5, 71 NRC 329 (2010)
section 2.390(d)(1) of 10 C.F.R. provides legal authority for nondisclosure and protection of security-related information concerning the physical protection of nuclear power plants, and for the

SUBJECT INDEX

closing of portions of hearings and other sessions in which such information will necessarily be discussed; LBP-10-5, 71 NRC 329 (2010)

PIPING

applicant must establish an aging management that is adequate to provide reasonable assurance that the intended function of the piping subject to flow accelerated corrosion will be maintained in accordance with the current licensing basis for the period of extended operation; LBP-08-25, 68 NRC 763 (2008)

condensate storage system buried pipes are outside the scope of a license renewal proceeding with respect to their safety functionality, but that does not eliminate the need for consideration of potential leaks from those buried pipes because of their role in fire protection; LBP-08-22, 68 NRC 590 (2008)

PLEADINGS

a party at risk of filing out of time can request an extension, doing so well before the time specified expires; LBP-10-21, 72 NRC 616 (2010)

a reply is not an opportunity for a petitioner to bolster its original contentions with new supporting facts and arguments; LBP-08-26, 68 NRC 905 (2008)

affidavits must set forth facts that would be admissible in evidence; LBP-07-13, 66 NRC 131 (2007)

although NRC may reasonably accommodate pro se petitioners who are not technically perfect in their pleadings, such parties must still meet the basic requirements of the contention admissibility rules, and if these are not met, boards may not "fill in" any missing support, but rather are legally required to deny the contention; LBP-07-4, 65 NRC 281 (2007)

although the pleading requirements of 10 C.F.R. 2.309 are strict by design, a licensing board may permit potential intervenors to cure defects in petitions in order to obviate dismissal of an intervention petition because of inarticulate draftsmanship or procedural or pleading defects; LBP-08-6, 67 NRC 241 (2008)

an appeal that merely recites earlier arguments without explaining how they demonstrate legal error or abuse of discretion on the board's part does not satisfy NRC pleading standards; CLI-10-21, 72 NRC 197 (2010)

an attempt to circumvent page-limit rules by incorporating documents by reference could be grounds for sanctions; CLI-10-9, 71 NRC 245 (2010)

any material provided by a petitioner in support of its contention, including those portions of the material that are not relied upon, is subject to board scrutiny; LBP-08-26, 68 NRC 905 (2008); LBP-09-3, 69 NRC 139 (2009)

because of an attorney's previous disregard of the NRC's practices and procedures, the Commission orders the Office of the Secretary to screen all filings bearing the offender's signature and not to accept or docket them unless they meet all procedural requirements; CLI-06-4, 63 NRC 32 (2006)

Commission regulations do not contemplate filing a vague, unsupported pleading as a placeholder for a more detailed pleading to follow; CLI-09-5, 69 NRC 115 (2009)

contention admissibility requirements are rigorous and demand a level of discipline and preparedness on the part of petitioners, who must examine the publicly available material and set forth their claims and the support for their claims at the outset; LBP-06-12, 63 NRC 403 (2006)

contention admissibility rules require a concise statement of the alleged facts or expert opinions that support petitioner's position, but does not require the submission of an expert opinion or require that an expert opinion be submitted in the form of admissible evidence; LBP-06-7, 63 NRC 188 (2006)

counsel's alleged unfamiliarity with the agency's rules of practice or counsel's asserted busy schedule are not satisfactory explanations for late filings; LBP-10-21, 72 NRC 616 (2010)

detailed pleadings put other parties in the proceeding on notice of the petitioners' specific grievances, thereby giving them a good idea of the claims they will be either supporting or opposing; LBP-07-11, 66 NRC 41 (2007)

even if petitioners later retain counsel, it would not be appropriate to hold their petition to those standards of clarity and precision to which a lawyer might reasonably be expected to adhere; LBP-08-6, 67 NRC 241 (2008)

every participant in the adjudicative process has an obligation to fully develop its arguments; LBP-06-7, 63 NRC 188 (2006)

intervention petitioner must state the nature and extent of his/her/its property, financial, or other interest in the proceeding, a concept separate and apart from that of what constitutes a contention; LBP-09-1, 69 NRC 11 (2009)

SUBJECT INDEX

it is not the board's duty to forage through a petition in order to find statements or other support that may be located in various portions of the petition but not referenced in the contention; LBP-10-16, 72 NRC 361 (2010)

material provided in support of a contention will be carefully examined by the board to confirm that on its face it does supply adequate support for the contention; LBP-09-3, 69 NRC 139 (2009)

more than mere notice pleading, which is a broad standard requiring only a short and plain statement of the claim, is required for contention admission; LBP-09-17, 70 NRC 311 (2009)

"notice pleading" is a broad standard requiring only a short and plain statement of the claim; LBP-08-26, 68 NRC 905 (2008)

notice pleading is expressly prohibited by the rules of practice; CLI-09-5, 69 NRC 115 (2009)

page limits on briefs are intended to encourage parties to make their strongest arguments as concisely as possible; CLI-06-10, 63 NRC 451 (2006)

participant filing out of time must offer a satisfactory explanation for its lateness, including, if necessary, an account as to why a request for extension could not have been filed beforehand; LBP-10-21, 72 NRC 616 (2010)

petitioner should submit a fully developed showing regarding standing in each proceeding in which it seeks to intervene, regardless of whether it has previously been found to have standing relative to the facility that is the locus of the proceedings; LBP-07-10, 66 NRC 1 (2007)

petitioner's reply must be narrowly focused on the legal or logical arguments presented in the applicant/licensee or NRC Staff answer; LBP-06-12, 63 NRC 403 (2006)

petitioners represented by counsel are held to higher standard of specificity in pleading; CLI-10-20, 72 NRC 185 (2010); LBP-10-10, 71 NRC 529 (2010)

petitioners that are not represented by counsel will be held to less rigid standards for pleading, although a totally deficient petition will not be admitted; CLI-10-1, 71 NRC 1 (2010); LBP-08-6, 67 NRC 241 (2008); LBP-08-11, 67 NRC 460 (2008); LBP-08-15, 68 NRC 294 (2008)

presiding officers have authority to dispose of certain issues on the pleadings; CLI-09-14, 69 NRC 580 (2009)

regulations governing appeals from the denial of intervention provide for a notice of appeal with a supporting brief, and for a brief opposing the appeal, but do not provide for reply briefs; CLI-06-9, 63 NRC 433 (2006)

specificity and support are required for the positions parties take in their filings; LBP-07-13, 66 NRC 131 (2007)

the board's judgment at the pleading stage is accorded substantial deference; CLI-09-5, 69 NRC 115 (2009)

the burden of setting forth a clear and coherent argument rests squarely on the shoulders of the petitioner; LBP-06-12, 63 NRC 403 (2006)

the Commission should not be expected to sift unaided through earlier briefs or other documents filed before the Board to piece together and discern a party's argument and the grounds for its claims; CLI-09-11, 69 NRC 529 (2009)

the contention rule is strict by design and does not permit the filing of a vague, unparticularized contention, unsupported by affidavit, expert, or documentary support; LBP-07-5, 65 NRC 341 (2007)

unlike federal court practice, the Commission does not accept mere notice pleading in support of an admissible contention; LBP-08-24, 68 NRC 691 (2008)

whether a petitioner has met the regulatory requirements for Licensing Support Network compliance is a proper subject for challenge in an answer to an intervention petition; LBP-09-6, 69 NRC 367 (2009)

See also Amicus Pleadings

POLICY

an exception to the application of collateral estoppel occurs when broad public policy considerations or special public interest factors are involved such that an agency's need for flexibility outweighs the reasons underlying this repose doctrine so as to favor relitigation of a particular issue; LBP-09-24, 70 NRC 676 (2009)

NRC's adjudicatory process is not the proper venue for the evaluation of a petitioner's own view regarding the direction that regulatory policy should take; LBP-09-3, 69 NRC 139 (2009); LBP-09-26, 70 NRC 939 (2009)

See also NRC Policy

SUBJECT INDEX

POLICY STATEMENTS

as a general matter, a policy statement announces what the Commission seeks to establish as policy and does not bind either the agency or the public; CLI-10-8, 71 NRC 142 (2010)

if a construction permit holder wishes to discontinue construction activities at a facility but continue to have its 10 C.F.R. Part 50 construction authorization remain effective, it can do so under the terms of the 1987 Commission Policy Statement on Deferred Plants; LBP-10-7, 71 NRC 391 (2010)

issue of whether location of a nuclear plant in a densely populated area allowed adoption of generic risk factors and a severe accident mitigation design alternatives decision supported by a policy statement rather than a rulemaking was confronted; LBP-10-10, 71 NRC 529 (2010)

NRC cannot generically dispense with the consideration of SAMAs, under NEPA, through a policy statement issued pursuant to its Atomic Energy Act authority; LBP-10-13, 71 NRC 673 (2010)

these are neither rules nor orders, and therefore do not establish requirements that bind either the agency or the public; CLI-07-27, 66 NRC 215 (2007)

POPULATION DENSITY

issue of whether location of a nuclear plant in a densely populated area allowed adoption of generic risk factors and a severe accident mitigation design alternatives decision supported by a policy statement rather than a rulemaking was confronted; LBP-10-10, 71 NRC 529 (2010)

POSSESSION-ONLY LICENSES

with respect to possession, a Part 40 license continues in effect after expiration until decommissioning is completed; CLI-09-1, 69 NRC 1 (2009)

POTASSIUM IODIDE

distribution beyond the 10-mile emergency planning zone is not necessary; LBP-09-16, 70 NRC 227 (2009)

POWER UPRATE

a measurement uncertainty recapture power uprate typically involves a power level increase of less than 2%, achieved by enhanced techniques for calculating reactor power; CLI-08-17, 68 NRC 231 (2008)

a stretch power uprate typically results in power level increases up to 7% and generally does not involve major plant modifications; CLI-08-17, 68 NRC 231 (2008)

an amendment to the facility's operating license is required; CLI-08-17, 68 NRC 231 (2008)

an extended power uprate usually requires significant modifications to major plant equipment, and may be for power level increases as high as 20%; CLI-08-17, 68 NRC 231 (2008)

applicant for a power uprate must comply with all relevant NRC regulations, whether the application meets the requirements for a license amendment; LBP-08-9, 67 NRC 421 (2008)

applicant normally is required to perform two large-transient tests before an extended power uprate can be granted; LBP-07-2, 65 NRC 153 (2007)

challenges to the current operating license are outside the scope of matters challengeable in a power uprate application; LBP-08-9, 67 NRC 421 (2008)

demonstrating proximity-based standing requires a determination that the proposed action involves a significant source of radioactivity producing an obvious potential for offsite consequences; LBP-08-9, 67 NRC 421 (2008)

extended power uprate proceeding that has been terminated may not be reopened; CLI-10-17, 72 NRC 1 (2010)

issues concerning alleged violations of state law or regulations are outside the scope of, and not material to, an NRC power uprate proceeding; CLI-07-25, 66 NRC 101 (2007)

licensee requests that operating licenses for both units be amended to change the associated technical specifications to implement uprated power operation; LBP-07-10, 66 NRC 1 (2007)

NRC labels or classifies uprates based on the relative magnitude of the power increase and the methods used to achieve the increase; CLI-08-17, 68 NRC 231 (2008)

relevant NRC regulations, be it a stretch power uprate or an extended power uprate, are set forth in 10 C.F.R. 50.90 to 50.92; LBP-08-9, 67 NRC 421 (2008)

showing that estimated dose consequences associated with operation under extended power uprate conditions can be expected to increase by the 20% power level change establishes that the proposed EPU creates an obvious potential for offsite consequences; LBP-07-10, 66 NRC 1 (2007)

Staff is to issue its approval or denial of an application promptly once it completes its own review of the application, notwithstanding the pendency of any hearing; CLI-06-8, 63 NRC 235 (2006)

SUBJECT INDEX

technical aspects of an extended power uprate are discussed; LBP-07-10, 66 NRC 1 (2007)
whether applicant has a valid NPDES permit is outside the scope of a power uprate proceeding;
LBP-08-9, 67 NRC 421 (2008)

PRECEDENTIAL EFFECT

a board in one proceeding is not constrained to follow the rulings of another board on standing, absent explicit affirmation by the Commission; LBP-07-10, 66 NRC 1 (2007); LBP-09-18, 70 NRC 385 (2009)
although a board in another materials license renewal proceeding allowed an Indian organization to participate in that proceeding as an interested Indian tribe under 10 C.F.R. 2.315(c), that ruling is not binding on other boards; LBP-09-13, 70 NRC 168 (2009)
although the Atomic Safety and Licensing Appeal Board was disbanded in 1991, its decisions still carry precedential value; CLI-08-19, 68 NRC 251 (2008); CLI-09-2, 69 NRC 55 (2009)
legal authorities may be binding, adverse, or merely persuasive, but all authorities must possess some legal and precedential/persuasive value; LBP-10-21, 72 NRC 616 (2010)
legal determinations made on appeal in a case are controlling precedent, becoming the law of the case for all later decisions in the same case, with only limited exceptions; LBP-06-11, 63 NRC 483 (2006)
licensing board decisions have no precedential effect beyond the immediate proceeding in which they were issued; CLI-10-2, 71 NRC 27 (2010); LBP-09-15, 70 NRC 198 (2009)
licensing boards are bound by Commission and appeal board precedent and therefore are not at liberty to reject the 50-mile proximity presumption; LBP-09-4, 69 NRC 170 (2009)
NRC is not obligated to adhere, in all of its proceedings, to the first court of appeals decision to address a controversial question; CLI-07-8, 65 NRC 124 (2007)
petitioner's showing establishing standing in one proceeding need not be repeated to establish standing in another proceeding regarding that same facility; LBP-07-10, 66 NRC 1 (2007); LBP-07-14, 66 NRC 169 (2007)
the Atomic Safety and Licensing Appeal Board was disbanded in 1991, but its decisions still carry precedential value; CLI-07-16, 65 NRC 371 (2007)
the peculiar procedural circumstances and the unusual nature of the equities favoring intervenors may combine to render a decision *sui generis*, and as such, it should not be considered precedential; CLI-09-13, 69 NRC 575 (2009)
the practice of granting or denying discretionary intervention should develop not through precedent, but through attention to the concrete facts of particular situations; CLI-06-16, 63 NRC 708 (2006)
the value of a licensing board decision that is not affirmed by the Commission is limited to its power to persuade; LBP-06-1, 63 NRC 41 (2006)
unreviewed board decisions lack precedential effect; CLI-09-14, 69 NRC 580 (2009); CLI-10-7, 71 NRC 133 (2010); CLI-10-23, 72 NRC 210 (2010); CLI-10-29, 72 NRC 556 (2010); CLI-10-30, 72 NRC 564 (2010)

PRECLUSION DOCTRINES

a court of appeals decision may prevent the government from relitigating the same issue with the same party, but it still leaves the government free to litigate the same issue in the future with other litigants; CLI-07-8, 65 NRC 124 (2007)

PREHEARING CONFERENCES

NRC rules of procedure authorize boards to hold prehearing conferences for the purposes of simplifying or clarifying the issues for hearing, after which a board might admit a revised contention; CLI-09-12, 69 NRC 535 (2009)

PREJUDICE

if a board erroneously rejected petitioner's motions, but the record does not suggest that petitioner suffered any prejudicial error, Commission review is not warranted; CLI-10-14, 71 NRC 449 (2010)
Staff's petition for review is granted on the grounds that Staff has demonstrated substantial questions as to the board's correct application of NEPA jurisprudence, and as to whether certain actions taken by the board constituted prejudicial procedural error; CLI-10-18, 72 NRC 56 (2010)
the prospect of a second lawsuit with its expenses and uncertainties or another application does not provide the requisite quantum of legal harm to warrant dismissal of an application with prejudice; LBP-10-11, 71 NRC 609 (2010)
to prevail on a disqualification motion, petitioner first must demonstrate that the purported instances of bias had a substantial impact on the outcome of the proceeding; CLI-10-17, 72 NRC 1 (2010)

SUBJECT INDEX

- where the impact of delay is a concern, the desirability of avoiding any further delay in reaching a final merits determination can be a key discretionary factor counseling nonreliance upon the collateral estoppel principle even if that doctrine otherwise appears applicable; LBP-09-24, 70 NRC 676 (2009)
- PRESIDING OFFICER**
- a judge's use of strong language toward a party or in expressing his views on matters before him does not constitute evidence of personal bias; CLI-10-17, 72 NRC 1 (2010)
- PRESIDING OFFICER, AUTHORITY**
- a request for briefs on legal issues is one of the many tools available to a presiding officer generally in the conduct of a proceeding; CLI-09-14, 69 NRC 580 (2009)
 - a stipulation or compromise in an enforcement proceeding is subject to approval by the designated presiding officer, who may order such adjudication of the issues as he may deem to be required in the public interest; LBP-06-18, 63 NRC 830 (2006)
 - although a presiding officer should issue a separate partial initial decision regarding a limited work authorization request, the board finds no practical or logical basis for separating its consideration of the adequacy of the LWA request from its determination regarding the early site permit with which it is associated; LBP-09-19, 70 NRC 433 (2009)
 - an exceptionally grave issue may be considered in the discretion of the presiding officer, even if untimely presented; CLI-09-5, 69 NRC 115 (2009); LBP-08-12, 68 NRC 5 (2008)
 - as NRC hearings have moved away from the traditional trial-type adversarial format and toward a more informal model, the inquisitorial role of the presiding officer necessarily has increased; CLI-10-17, 72 NRC 1 (2010)
 - diligent, even aggressive, probing for weaknesses in a witness's or counsel's position may be necessary if presiding officers are to fulfill their duty to develop an adequate record that will contribute to informed decisionmaking; CLI-10-17, 72 NRC 1 (2010)
 - extensions of time may be granted by the presiding officer for individual milestones for the participants' filings, and it may delay its own issuances for up to 30 days beyond the date of the milestone set in the hearing schedule; CLI-08-18, 68 NRC 246 (2008)
 - in procedural and scheduling matters, where first-hand contact with and appreciation for all the circumstances surrounding a case are necessary, maximum reliance on the proper discretion of a presiding officer is essential; CLI-10-17, 72 NRC 1 (2010)
 - motions must be initially addressed to the presiding officer when a proceeding is pending; CLI-08-23, 68 NRC 461 (2008)
 - presiding officers have authority to dispose of certain issues on the pleadings; CLI-09-14, 69 NRC 580 (2009)
 - the Commission or presiding officer may extend a time limit upon a showing of good cause; CLI-09-4, 69 NRC 80 (2009)
 - the informal procedural rules of Part 2, Subpart L place greater emphasis and responsibility on the presiding officer to oversee the development of a full and complete record; CLI-10-17, 72 NRC 1 (2010)
 - the judge's function in ruling on summary disposition motions is not to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for hearing; CLI-10-11, 71 NRC 287 (2010)
 - the presiding officer has no authority or duty to resolve uncontested issues in the high-level waste proceeding; CLI-08-25, 68 NRC 497 (2008)
 - the presiding officer is authorized to hold conferences before or during the hearing for settlement, simplification of contentions, or any other proper purpose; LBP-08-11, 67 NRC 460 (2008)
 - the presiding officer or licensing board has discretion to accelerate the merits hearing on safety issues, but not on environmental issues; CLI-07-17, 65 NRC 392 (2007)
 - the process for determining whether a proposed settlement is in the public interest is left to the discretion of the board; LBP-06-18, 63 NRC 830 (2006)
 - to enable presiding officers to fulfill their duty, they have been given broad authority to examine witnesses at evidentiary hearings; CLI-10-17, 72 NRC 1 (2010)
 - when a hearing notice has been issued, withdrawal of an application would be subject to such terms as the presiding officer may prescribe; LBP-09-23, 70 NRC 659 (2009)

SUBJECT INDEX

PRESSURE VESSEL

See Reactor Pressure Vessel

PRESSURIZED THERMAL SHOCK

all structures, systems, and components relied on in safety analyses or plant evaluations to perform a function that demonstrates compliance with the NRC's regulations are subject to aging management review for license renewal; CLI-10-14, 71 NRC 449 (2010)

PRESUMPTION OF REGULARITY

there is a longstanding presumption, absent strong and concrete evidence otherwise, that government agencies and their employees will do their jobs honestly and properly; CLI-09-14, 69 NRC 580 (2009)

PRIMA FACIE SHOWING

a board's role in considering a petition for waiver under 10 C.F.R. 2.335 is limited to deciding whether petitioner has made a prima facie showing of special circumstances that would support a waiver; LBP-10-15, 72 NRC 257 (2010)

a prima facie showing merely requires the presentation of enough information to allow a board to infer (absent disproof) that special circumstances exist to support a rule waiver; LBP-10-15, 72 NRC 257 (2010)

because petitioner had not made a prima facie case for rule waiver, the board declined to certify the matter to the Commission and found that it was prohibited from considering the matter further; CLI-10-29, 72 NRC 556 (2010)

existence of a prima facie case is determined based on the sufficiency of the movant's assertions and informational/evidentiary support alone; LBP-10-15, 72 NRC 257 (2010)

petitioner has alleged sufficient new information concerning the seismic situation to raise a prima facie showing that strict application of the generic NEPA analysis of the management of spent fuel in nuclear reactors would not serve the purpose for which Part 51 Appendix B and 10 C.F.R. 51.53(c)(2) were adopted; LBP-10-15, 72 NRC 257 (2010)

showing necessary for grant of a petition for interlocutory review is described; CLI-10-29, 72 NRC 556 (2010)

PRIVILEGE

a privilege that is not claimed is waived; LBP-06-25, 64 NRC 367 (2006)

an assertion that material can be withheld must expressly state the specific privilege being claimed; LBP-06-25, 64 NRC 367 (2006)

if insufficient information is provided to support a claim of privilege, the privilege may be denied; LBP-06-25, 64 NRC 367 (2006)

qualified materials may be excluded from discovery, depending on the particular circumstances presented; LBP-06-25, 64 NRC 367 (2006)

sufficient information for assessing the claim of privilege or protected status of documents withheld from discovery must be provided to the requesting party; LBP-06-25, 64 NRC 367 (2006)

the greater the interest protected, the more compelling the need and the other circumstances must be to overcome it; LBP-06-25, 64 NRC 367 (2006)

where the privilege and the need may be equally weak, but the privilege can be protected by other means, adjudicators return to the norms of full and open discovery, so that relevancy, not need, becomes the determinative standard; LBP-06-25, 64 NRC 367 (2006)

See also Attorney-Client Privilege; Deliberative Process Privilege; Qualified Privilege

PRIVILEGE LOG

parties and NRC Staff must provide a list of documents otherwise required to be disclosed for which a claim of privilege or protected status is being made, together with sufficient information for assessing the claim of privilege or protected status of the documents; CLI-10-24, 72 NRC 451 (2010); CLI-10-25, 72 NRC 469 (2010); LBP-09-22, 70 NRC 640 (2009)

PRIVILEGED INFORMATION

although the NRC public website states that SUNSI encompasses a wide variety of categories (e.g., personnel privacy, attorney-client privilege, confidential source), there is no legal basis for sweeping aside the well-established and long-recognized privileges such as the Privacy Act, 5 U.S.C. § 552(a), and the attorney-client privilege; LBP-10-2, 71 NRC 190 (2010)

excessively broad claims of SUNSI in a licensing proceeding impact not just an intervenors' access to documents, but also the public's access to the adjudicatory process; LBP-10-2, 71 NRC 190 (2010)

SUBJECT INDEX

motions to compel or challenges regarding the adequacy of any mandatory disclosure or hearing file, redactions, or the validity of any claim that a document is privileged or protected shall be filed within 10 days after the occurrence or circumstance from which the motion arises; LBP-09-22, 70 NRC 640 (2009)

PRO SE LITIGANTS

although boards are to provide latitude to pro se participants, petitioner's decision to provide an expert affidavit, available when it filed its hearing petition, at the time it submitted its reply runs afoul of the Commission's directive that reply pleadings cannot be used to introduce additional supporting information relative to a contention; LBP-08-16, 68 NRC 361 (2008)

although boards should afford greater latitude to a pleading submitted by a pro se petitioner, that petitioner ultimately bears the burden to provide facts sufficient to show standing; CLI-10-20, 72 NRC 185 (2010)

although complying with Commission regulations may be especially difficult for pro se petitioners, it has long been a basic principle that a person who invokes the right to participate in an NRC proceeding also voluntarily accepts the obligations attendant upon such participation; LBP-10-4, 71 NRC 216 (2010)

although latitude is to be afforded a pro se intervenor in the mechanics of contention pleading and citation, an organization that has appeared several times previously is expected to have a heightened awareness of the agency's pleading rules; LBP-08-16, 68 NRC 361 (2008)

although NRC may reasonably accommodate pro se petitioners who are not technically perfect in their pleading, such parties must still meet the basic requirements of the contention admissibility rules, and if these are not met, boards may not "fill in" any missing support, but, rather, are legally required to deny the contention; LBP-07-4, 65 NRC 281 (2007); LBP-07-5, 65 NRC 341 (2007)

any ambiguity relative to the filing date for hearing requests arising from the language of the agency's hearing opportunity notice should be construed in favor of a participant who was seeking to comply with the notice; LBP-08-16, 68 NRC 361 (2008)

boards hold pro se petitioners to a less rigorous standard; LBP-09-18, 70 NRC 385 (2009)

boards may reprimand, censure, or suspend intervenors for contemptuous conduct; CLI-07-28, 66 NRC 275 (2007)

even if petitioners later retain counsel, it would not be appropriate to hold their petition to those standards of clarity and precision to which a lawyer might reasonably be expected to adhere; LBP-08-6, 67 NRC 241 (2008)

given the information known about the nature of the facility and the available radioactive and chemical materials at risk and the resulting potential for offsite consequences, there is no need for petitioners to plead these matters more specifically; LBP-07-14, 66 NRC 169 (2007)

intervenors' representational status is one factor in determining whether reformulation is appropriate, and pro se status may provide additional cause for reformulation; LBP-10-10, 71 NRC 529 (2010)

licensing boards have been lenient in permitting pro se petitioners the opportunity to cure procedural defects in petitions to intervene regarding standing; LBP-09-18, 70 NRC 385 (2009)

parties represented by counsel are generally held to a higher standard than pro se litigants; CLI-10-20, 72 NRC 185 (2010); LBP-10-10, 71 NRC 529 (2010)

petitioners that are not represented by counsel are held to less rigid pleading standards, so that parties with a clear but imperfectly stated interest in the proceeding are not excluded; CLI-10-20, 72 NRC 185 (2010)

petitioners that are not represented by counsel will be held to less rigid standards for pleading, although a totally deficient petition will not be admitted; LBP-08-15, 68 NRC 294 (2008)

petitioners who act without attorney representation are not held to those standards of clarity and precision to which a lawyer might reasonably be expected to adhere; CLI-10-17, 72 NRC 1 (2010); LBP-08-6, 67 NRC 241 (2008); LBP-08-11, 67 NRC 460 (2008); LBP-10-4, 71 NRC 216 (2010)

pleadings submitted by a petitioner acting pro se are not always expected to meet the same standards as pleadings drafted by lawyers, but late filing of documents is not condoned; LBP-06-14, 63 NRC 568 (2006)

somewhat greater latitude generally is afforded pro se petitioners in drafting their intervention petitions; LBP-07-10, 66 NRC 1 (2007)

SUBJECT INDEX

the Commission generally extends some latitude to pro se litigants, but they still are expected to comply with NRC procedural rules, including contention pleading requirements; CLI-10-1, 71 NRC 1 (2010)

PROBABILISTIC RISK ASSESSMENT

contention asserting that DOE's description of its expert elicitation relating to a probabilistic volcanic hazard analysis update fails to comply with NRC regulations or the NRC guidance document that DOE formally committed to follow is admissible; LBP-09-29, 70 NRC 1028 (2009)

low probability is the key to applying NEPA's rule-of-reason test to contentions that allege that a specified accident scenario presents a significant environmental impact that must be evaluated; LBP-09-26, 70 NRC 939 (2009); LBP-10-10, 71 NRC 529 (2010)

PRA is the Commission's accepted and standard practice in severe accident mitigation alternatives analyses; LBP-10-15, 72 NRC 257 (2010)

the safety analysis report component of an application for a Standard Design Certification must analyze and address the problem of extremely low probability for accidents that could result in the release of significant quantities of radioactive fission products; LBP-09-10, 70 NRC 51 (2009)

the threshold probability that calls for analysis for reactors is generally greater than 1 in 10 million per year; CLI-10-1, 71 NRC 1 (2010)

PROOF

See Burden of Proof

PROPERTY INTERESTS

the subject of an enforcement action has a property interest in his employment-related license sufficient to invoke the procedural protections of the Due Process Clause, the vindication of which invokes a public interest; LBP-06-25, 64 NRC 367 (2006)

PROPRIETARY INFORMATION

although the SUNSI access procedures do not impose a high threshold for demonstrating need, they must be applied consistent with the principle that it is important to prevent unnecessary disclosure of sensitive information; LBP-09-5, 69 NRC 303 (2009)

applicant's claim that computer models should be excused from the mandatory disclosure requirements because they entail proprietary information is rejected; LBP-10-23, 72 NRC 692 (2010)

handling of confidential commercial or financial proprietary information that has been submitted to the agency is governed by 10 C.F.R. 2.390; CLI-10-24, 72 NRC 451 (2010)

if litigation over a contention brings into play financial or other information that has been designated as nonpublic, petitioners must request that the board issue a protective order that permits access; LBP-08-16, 68 NRC 361 (2008)

if petitioners cannot show that their new or revised contentions could not have been submitted without the requested access to redacted information in the license transfer application, then they will have to meet not only the contention pleading requirements, but also the late-filing requirements; CLI-07-18, 65 NRC 399 (2007)

if petitioners offer a reason for needing such information material to the findings a licensing board must make and otherwise explain why publicly available versions of the application would not be sufficient to provide the basis and specificity for a proffered contention, they would satisfied the need criterion; LBP-09-5, 69 NRC 303 (2009)

in licensing proceedings, protective orders provide an effective means for safeguarding proprietary information, where the party seeking discovery is not a competitor; CLI-10-24, 72 NRC 451 (2010)

petitioner's lack of access to SUNSI may hinder it in its ability to demonstrate why publicly available versions of the application would not be sufficient to provide the basis and specificity for a proffered contention, but this does not absolve a petitioner from at least endeavoring to address this criterion; LBP-09-5, 69 NRC 303 (2009)

protective orders and in camera proceedings are the customary and favored means of handling disputes that arise in which one party to a proceeding seeks purportedly proprietary information from another; CLI-10-24, 72 NRC 451 (2010)

the procedure for seeking access to SUNSI does not provide a method for general or topical access, but only access to information necessary to meaningfully participate in an adjudicatory proceeding and to provide the basis and specificity of a proffered contention; LBP-09-5, 69 NRC 303 (2009)

SUBJECT INDEX

the requirement to discuss the basis for a proffered contention to obtain access to SUNSI is not to be equated with the discussion that would be necessary to support an admissible contention; LBP-09-5, 69 NRC 303 (2009)

the use of any proprietary information that is produced is strictly limited to the proceeding for which it is produced, and such information must be promptly returned at the close of this proceeding; LBP-10-23, 72 NRC 692 (2010)

PROTECTIVE ORDERS

a sensitive unclassified nonsafeguards information access order is issued by the Commission or NRC in its role as supervisor of NRC Staff and does not constitute an adjudicatory ruling by the Commission; LBP-10-2, 71 NRC 190 (2010)

DOE's request for Commission approval of a protective order in anticipation of allowing access to the classified information in its application pertaining to naval spent nuclear fuel is referred to the Pre-License Application Presiding Officer Board; CLI-08-21, 68 NRC 351 (2008)

even if a document contains information that is exempt from disclosure, FOIA mandates that any reasonably segregable portion of the record shall be provided to any person requesting such record after deletion of the portions that are exempt; LBP-10-2, 71 NRC 190 (2010)

if applicants and petitioners cannot agree on the terms of a confidentiality and nondisclosure agreement, then they shall inform the presiding officer, indicate specifically the areas where they disagree, and then move the presiding officer for issuance of a protective order; CLI-07-18, 65 NRC 399 (2007)

if it seeks to withhold a document from a party or the public, or to bar a party or member of the public from attending any adjudicatory proceeding before a licensing board, NRC Staff must carry the burden of proving that the document or situation fits one of FOIA's specifically enumerated exceptions; LBP-10-2, 71 NRC 190 (2010)

if litigation over a contention brings into play financial or other information that has been designated as nonpublic, petitioners must request that the board issue a protective order that permits access; LBP-08-16, 68 NRC 361 (2008)

in licensing proceedings, protective orders provide an effective means for safeguarding proprietary information, where the party seeking discovery is not a competitor; CLI-10-24, 72 NRC 451 (2010)

petitioners or intervenors may request and, where appropriate, obtain, under protective order or other measures, information withheld from the general public for proprietary or security reasons; CLI-10-24, 72 NRC 451 (2010)

procedures and schedules set forth in the SUNSI access order are intended only to deal with issues arising before intervention occurs and a board is created; LBP-10-2, 71 NRC 190 (2010)

proponent bears the burden of proof; LBP-10-2, 71 NRC 190 (2010)

the board issued a protective order governing access to and use of protected information in the correspondence from applicant to NRC Staff regarding the requirements under 10 C.F.R. 52.80(d) and any related documents; CLI-10-24, 72 NRC 451 (2010)

the privacy interests for which protection is sought can be amply preserved by a protective order that limits the disclosures to those involved in the litigation and thus having a need to know; LBP-06-25, 64 NRC 367 (2006)

the Secretary of the Commission is authorized to establish procedures for obtaining access to sensitive unclassified nonsafeguards information prior to granting intervention in a licensing proceeding; LBP-10-2, 71 NRC 190 (2010)

the use of any proprietary information that is produced is strictly limited to the proceeding for which it is produced, and such information must be promptly returned at the close of this proceeding; LBP-10-23, 72 NRC 692 (2010)

the weight of privacy interests is tempered by the capability in the discovery process of making limited disclosure to a litigant under a protective order instead of public disclosure; LBP-06-25, 64 NRC 367 (2006)

to counter a board's normal assumption that protective orders will not be breached, the withholding party must show evidence of the likelihood of a breach; LBP-06-25, 64 NRC 367 (2006)

where a protective order precludes public disclosure, the strength of the privacy interest diminishes because any threatened harm in releasing the information can be virtually eliminated; LBP-06-25, 64 NRC 367 (2006)

SUBJECT INDEX

with a confidential protection order in place, weighing the privacy invasion from public disclosure against a party's need for the materials is no longer appropriate; LBP-06-25, 64 NRC 367 (2006)

PROXIMATE CAUSE

a reasonably close causal relationship between federal agency action and environmental consequences is necessary to trigger NEPA; CLI-07-8, 65 NRC 124 (2007)

prior NRC precedent is consistent with Supreme Court NEPA doctrine, which requires a reasonably close causal relationship between federal agency action and environmental consequences before NEPA is triggered, a relationship similar to that of proximate cause in tort law; LBP-07-14, 66 NRC 169 (2007)

the claimed impact of a terrorist attack on NRC-licensed facilities is too attenuated to find the proposed federal action to be the proximate cause of that impact; CLI-07-9, 65 NRC 139 (2007); CLI-07-10, 65 NRC 144 (2007)

the effects that must be considered in an environmental impact statement are those that are caused by the action and there must be a reasonably close causal relationship between the proposed action and an alleged environmental effect or impact, similar to proximate cause in tort law, before that effect need be considered; LBP-07-4, 65 NRC 281 (2007)

the level of risk of a terrorist attack depends upon political, social, and economic factors external to the NRC licensing process, and thus it is not sensible to hold an NRC licensing decision, rather than terrorists themselves, as the proximate cause of an attack on an NRC-licensed facility; CLI-07-8, 65 NRC 124 (2007)

there is no proximate-cause link between an NRC licensing action, such as renewing an operating license, and any altered risk of terrorist attack; CLI-07-8, 65 NRC 124 (2007)

where an agency has no ability to prevent a certain effect due to its limited statutory authority, it cannot be considered a legally relevant cause of the effect; LBP-07-4, 65 NRC 281 (2007)

PROXIMITY PRESUMPTION

a board is not at liberty to abandon the Commission's 50-mile proximity presumption; LBP-09-16, 70 NRC 227 (2009)

a claim of residence within 50 miles of a facility might entitle petitioner to a presumption of standing based on proximity in a reactor construction permit or operating license proceeding; CLI-07-19, 65 NRC 423 (2007)

a declaration in support of petitioner's standing based on geographic proximity must include a specific statement of distance from the licensed facility; CLI-07-18, 65 NRC 399 (2007)

a licensing board can take official notice of the locations and the distances to the various locations specified by a petitioner as denominated on Mapquest and an American Automobile Association roadmap; LBP-07-10, 66 NRC 1 (2007)

a petitioner who fails to provide specific information regarding the geographic proximity or the timing and duration of its visits only complicates matters for itself; LBP-07-10, 66 NRC 1 (2007)

a presumption of standing applies when an individual, an organization, or an individual authorizing an organization to represent his or her interests resides within 50 miles of the proposed facility or has frequent contacts with the area affected by the proposed facility; LBP-10-7, 71 NRC 391 (2010)

a regular commute that takes petitioner past a plant entrance once or twice a week is sufficient to establish standing; LBP-10-1, 71 NRC 165 (2010)

a "same zip code" test for standing is inappropriate, given that the sizes of zip-code areas vary greatly throughout the country; CLI-07-22, 65 NRC 525 (2007)

a showing that anyone who uses a substantial quantity of water personally or for livestock from a source that is reasonably contiguous to either an injection or processing site is sufficient to demonstrate an injury in fact for standing; LBP-08-6, 67 NRC 241 (2008)

a significant pattern of regular contacts within the 50-mile radius around the plant is sufficient to establish proximity-based standing; LBP-09-18, 70 NRC 385 (2009)

although a proximity presumption has been invoked when resolving issues of standing for cases involving reactor licensing, in a case involving an enforcement order, the standing requirement is also based on the confirmatory order itself and the adverse effect of the confirmatory order; LBP-07-16, 66 NRC 277 (2007)

an extended power uprate is directly associated with continuing reactor operation, and thus the potential geographic scope of the consequences of EPU operation can be considered to be similar to that which

SUBJECT INDEX

supported the creation of a 50-mile presumption for construction permit and operating license proceedings; LBP-07-10, 66 NRC 1 (2007)

as long as petitioners reside within an area that could realistically be impacted if an accidental release occurs, it is reasonable and consistent with Atomic Energy Act § 189a to find that they have standing to challenge applicant's safety claims and its environmental analysis under the National Environmental Policy Act; LBP-09-4, 69 NRC 170 (2009)

assertions that a member lives within the service area of the utility that operates a licensed facility or within the same county as the facility is insufficiently specific to justify a finding of standing; CLI-07-18, 65 NRC 399 (2007)

boards apply a proximity-plus test to establish standing in materials cases, where the petitioner must show that the proposed licensing action involves a significant source of radiation that has an obvious potential for offsite consequences; CLI-10-20, 72 NRC 185 (2010)

close proximity to a facility has always been deemed to be enough, standing alone, to establish the requisite interest to confer standing; LBP-07-4, 65 NRC 281 (2007)

daily commute near vicinity of a reactor is sufficient to establish standing; LBP-08-9, 67 NRC 421 (2008)

demonstrating proximity-based standing in a power uprate proceeding requires a determination that the proposed action involves a significant source of radioactivity producing an obvious potential for offsite consequences; LBP-08-9, 67 NRC 421 (2008)

descriptions of activities as being "near," in "close proximity," or "in the vicinity" of the facility in question are insufficient to establish standing; CLI-07-18, 65 NRC 399 (2007)

even if a party seeking standing has some intent to return to an area, when such intentions are not supported by concrete plans or a specification of when future visits would take place, they do not support a finding of injury in the standing context; LBP-10-1, 71 NRC 165 (2010)

even if NRC's proximity presumption is viewed as more lenient than judicial standing requirements, NRC may choose to retain it; CLI-09-20, 70 NRC 911 (2009)

even in nonreactor construction permit/operating license cases involving an increased potential for offsite consequences in which proximity can be the primary basis for establishing standing, the distance at which a petitioner can be presumed to be affected must take into account the nature of the proposed action and the significance of the radioactive source; LBP-07-10, 66 NRC 1 (2007)

for an organization to qualify for the proximity presumption, a bare assertion that a member lives within 50 miles is not sufficient; LBP-07-4, 65 NRC 281 (2007)

for standing, distance from a facility can be verified using the Google Maps distance measurement tool; LBP-10-1, 71 NRC 165 (2010)

if petitioner cannot establish the elements of proximity-based standing, then he must establish standing according to traditional standing principles; CLI-10-20, 72 NRC 185 (2010)

in a case involving an enforcement order, the standing requirement is based on the confirmatory order itself, and petitioner must show that he will be adversely affected by the terms of the order; LBP-08-14, 68 NRC 279 (2008)

in a decommissioning proceeding, where the proximity presumption did not apply, a petitioner who commuted past the entrance of plant once or twice a week was found to have standing; CLI-10-7, 71 NRC 133 (2010)

in a materials licensing case, petitioner must show more than that he lives or works within a certain distance of the site where materials will be located; CLI-10-20, 72 NRC 185 (2010)

in addition to the distance of petitioner from a facility, a link between the confirmatory order and the alleged harm to the petitioner is necessary to establish standing in an enforcement proceeding; LBP-07-16, 66 NRC 277 (2007)

in an indirect license transfer case involving no change in the facility, its operation, licensees, personnel, or financing, petitioners living within 5-10 miles of the plant do not qualify for proximity-based standing; CLI-08-19, 68 NRC 251 (2008)

in cases involving construction or operation of a nuclear power reactor, proximity to the proposed facility has been considered sufficient to establish the requisite standing elements; LBP-08-15, 68 NRC 294 (2008); LBP-08-16, 68 NRC 361 (2008); LBP-08-24, 68 NRC 691 (2008); LBP-09-3, 69 NRC 139 (2009)

SUBJECT INDEX

- in cases involving ISL uranium mining and other source materials licensing, petitioner must demonstrate injury, causation, and redressability because proximity to the proposed facility alone is not adequate to demonstrate standing; LBP-10-16, 72 NRC 361 (2010)
- in cases involving possible construction or operation of a nuclear power reactor, the Commission has created a presumption that residing or regularly conducting activities within a 50-mile proximity of the proposed facility is considered sufficient to establish the requisite injury, causation, and redressability elements; LBP-07-10, 66 NRC 1 (2007)
- in cases other than nuclear power reactor construction and operating licenses, licensing boards must address standing on a case-by-case basis, taking into account the nature of the proposed action and the significance of the radioactive source; LBP-09-28, 70 NRC 1019 (2009)
- in construction permit and operating license proceedings for power reactors, petitioner is presumed to have standing to intervene if petitioner lives within, or otherwise has frequent contacts with, the zone of possible harm; CLI-09-20, 70 NRC 911 (2009)
- in evaluating the specificity of petitioners' standing arguments, a licensing board must take into account the information provided by the applicant and the NRC Staff in the environmental impact statement; LBP-07-14, 66 NRC 169 (2007)
- in in-situ leach mining cases the geographical areas that may be affected by mining operations are largely dependent on the size and other characteristics of underground aquifers; LBP-08-6, 67 NRC 241 (2008)
- in license transfer cases, the Commission determines on a case-by-case basis whether the proximity presumption should apply, considering the obvious potential for offsite radiological consequences, or lack thereof, from the application at issue, and specifically taking into account the nature of the proposed action and the significance of the radioactive source; CLI-07-19, 65 NRC 423 (2007)
- in proceedings for construction permit and operating licenses for nuclear power plants, a proximity presumption is recognized in favor of standing for persons who have frequent contacts within a 50-mile radius of the plant; CLI-10-7, 71 NRC 133 (2010); LBP-10-1, 71 NRC 165 (2010); LBP-10-4, 71 NRC 216 (2010); LBP-10-7, 71 NRC 391 (2010)
- in proceedings involving nuclear power reactors, petitioner is presumed to have standing to intervene without the need to specifically plead injury, causation, and redressability if petitioner lives within 50 miles of the proposed facility; LBP-10-15, 72 NRC 257 (2010); LBP-10-16, 72 NRC 361 (2010)
- in proceedings not involving power reactors, proximity alone is not sufficient to establish standing; LBP-08-6, 67 NRC 241 (2008)
- in proceedings other than for construction permits, operating licenses, or significant amendments thereto, the Commission decides on a case-by-case basis whether the proximity presumption should apply, taking into account any obvious potential for offsite radiological consequences, as well as the nature of the proposed action and the significance of the radioactive source; LBP-09-20, 70 NRC 565 (2009)
- in reactor licensing proceedings, that zone of possible harm for proximity-based standing is generally deemed to constitute the areas within a 50-mile radius of the site; LBP-08-13, 68 NRC 43 (2008); LBP-08-15, 68 NRC 294 (2008); LBP-08-17, 68 NRC 431 (2008); LBP-08-18, 68 NRC 533 (2008)
- in the absence of a showing that the proposed operating license amendment obviously entails an increased potential for offsite consequences, petitioner must base its standing upon more than residence or activities within a particular proximity of the plant by making a showing of a plausible chain of events that would result in offsite radiological consequences posing a distinct new harm or threat to the participant; LBP-07-10, 66 NRC 1 (2007)
- it is petitioner's responsibility to provide enough detail to allow the board to distinguish a casual interest from a substantial one; LBP-10-1, 71 NRC 165 (2010)
- licensing boards are bound by Commission and appeal board precedent and therefore are not at liberty to reject the 50-mile presumption; LBP-09-4, 69 NRC 170 (2009)
- living within 50 miles from the plant is enough to confer standing on an individual or group in proceedings for construction permits, operating licenses, or significant amendments thereto without the need to specifically plead injury, causation, and redressability if the petitioner lives within 50 miles of the nuclear power reactor; LBP-09-10, 70 NRC 51 (2009); LBP-09-13, 70 NRC 168 (2009); LBP-09-16, 70 NRC 227 (2009); LBP-09-17, 70 NRC 311 (2009); LBP-09-18, 70 NRC 385 (2009); LBP-09-20, 70 NRC 565 (2009); LBP-09-21, 70 NRC 581 (2009); LBP-09-26, 70 NRC 939 (2009); LBP-09-28, 70 NRC 1019 (2009)

SUBJECT INDEX

local governmental bodies within whose boundaries a facility is located, do not need to make any further demonstration of standing; CLI-07-18, 65 NRC 399 (2007)

members of intervenor organizations who reside, work, or recreate within 50 miles of the proposed nuclear power plant have proximity-based standing; LBP-10-9, 71 NRC 493 (2010)

no obvious potential for offsite consequences sufficient to establish organizational standing was shown even though the organization's office was a mere 3 miles from the facility; LBP-09-28, 70 NRC 1019 (2009)

no proximity presumption applies in source materials cases; LBP-10-16, 72 NRC 361 (2010)

NRC's proximity presumption does not disregard contemporaneous judicial concepts of standing, but rather the Commission applied its expertise to determine that persons living within a 50-mile radius of a nuclear reactor face a realistic threat of harm if a release of radioactive material were to occur from the facility; LBP-09-16, 70 NRC 227 (2009)

occasional contact with an affected area is not sufficient to establish standing; LBP-07-4, 65 NRC 281 (2007)

occasional trips to areas located close to reactors have been found to be insufficient grounds to demonstrate a risk to the intervenor's health and safety; LBP-08-9, 67 NRC 421 (2008)

one who does something "frequently" does so at frequent or short intervals, "frequent" being defined as often or habitually; LBP-10-1, 71 NRC 165 (2010)

one who performs an act "regularly" does so in a regular, orderly, or methodical way; LBP-10-1, 71 NRC 165 (2010)

persons with no actual or imminent claim of injury are not permitted to obtain a hearing; LBP-09-4, 69 NRC 170 (2009)

petitioner cannot satisfy NRC's standing requirement by offering a vague claim of 50-mile proximity in an initial petition and later using a petition for reconsideration to fill in gaps with more specific information that was available all along; CLI-07-21, 65 NRC 519 (2007)

petitioner has standing to intervene without the need to specifically plead injury, causation, and redressability if the petitioner lives within, or otherwise has frequent contacts with, the zone of possible harm from the nuclear reactor or other source of radioactivity; LBP-08-9, 67 NRC 421 (2008); LBP-08-17, 68 NRC 431 (2008); LBP-08-26, 68 NRC 905 (2008)

petitioner organizations have established standing based on their members' proximity to transportation routes, even where it was not possible to predict with accuracy which of its members were most likely to be harmed or the extent of the damage; LBP-09-6, 69 NRC 367 (2009)

petitioner who frequently visited an area allegedly affected by the proposed action for recreational purposes showed injury in the standing context; LBP-10-1, 71 NRC 165 (2010)

petitioner who seeks to base standing on contacts within a 50-mile radius of a proposed facility must provide enough detail to allow the board to distinguish a casual interest from a substantial one; CLI-10-7, 71 NRC 133 (2010)

petitioner whose daily commute took her within less than one-half mile of a research reactor had standing based on the obvious potential for offsite consequences; CLI-10-7, 71 NRC 133 (2010)

petitioner whose office was located within one-half mile from a research reactor may be presumed to be affected by operation of the facility; CLI-10-7, 71 NRC 133 (2010)

petitioner's claim that he routinely pierces the 50-mile radius around a reactor site is too vague to support standing; LBP-10-1, 71 NRC 165 (2010)

petitioner's residence within a 50-mile radius of the proposed facility has established standing in his own right, and, accordingly, representational standing has been established through him; LBP-09-18, 70 NRC 385 (2009)

petitioners bear the burden of providing sufficient relevant, specific information, whether by good-faith estimate or otherwise, to establish the basis for their standing claims; LBP-10-1, 71 NRC 165 (2010)

petitioners in direct license transfer cases who live within a 5-1/2-mile radius of their plant qualify for proximity-based standing; CLI-08-19, 68 NRC 251 (2008)

petitioners who fail to provide specific information regarding proximity or frequency of contacts that may establish standing only complicate matters for themselves; LBP-10-1, 71 NRC 165 (2010)

presumption of standing applies in proceedings for nuclear power plant construction permits, operating licenses, or significant amendments thereto; LBP-08-13, 68 NRC 43 (2008); LBP-08-15, 68 NRC 294

SUBJECT INDEX

(2008); LBP-09-26, 70 NRC 939 (2009); LBP-10-15, 72 NRC 257 (2010); LBP-10-16, 72 NRC 361 (2010); LBP-10-21, 72 NRC 616 (2010)

proximity alone does not suffice for standing in materials licensing cases; CLI-09-12, 69 NRC 535 (2009); LBP-08-24, 68 NRC 691 (2008)

proximity standing in a license transfer proceeding has been recognized at close distances where a petitioner frequently engages in substantial business and related activities in the vicinity of the facility, engages in normal, everyday activities in the vicinity, has regular and frequent contacts in an area near a licensed facility, or otherwise has visits of a length and nature showing an ongoing connection and presence; CLI-07-21, 65 NRC 519 (2007)

proximity-based standing has been denied where contact has been limited to mere occasional trips to areas located close to reactors; CLI-07-21, 65 NRC 519 (2007)

proximity-based standing in license transfer proceedings had been denied to petitioners within 5-10 miles, 12 miles, and 40 miles from licensed facilities; CLI-07-21, 65 NRC 519 (2007)

proximity-based standing must be based on the factual circumstances presented by the information before the licensing board regarding the petitioner's activities, which may include consideration of the proximity, timing, and duration of those activities; LBP-07-10, 66 NRC 1 (2007)

pursuant to the proximity-plus approach, a presumption based on geographical proximity (albeit at distances much closer than 50 miles) may be applied where there is a determination that the proposed action involves a significant source of radioactivity producing an obvious potential for offsite consequences; LBP-10-4, 71 NRC 216 (2010)

regular but intermittent residence 1 week a month in a house 35 miles from a facility is sufficient for standing purposes; LBP-07-10, 66 NRC 1 (2007)

significant contacts with an affected area can be sufficient to establish standing, even when full-time residence within the 50-mile zone is not shown; LBP-07-4, 65 NRC 281 (2007)

some circumstances exist in which petitioners may be presumed to have standing based on their geographical proximity to a facility or source of radioactivity, without the need to show injury in fact, causation, or redressability; LBP-08-6, 67 NRC 241 (2008)

someone living adjacent to the site for proposed construction of a federally licensed facility has standing to challenge the licensing agency's failure to prepare an environmental impact statement, even though he cannot establish with any certainty that the statement will cause the license to be withheld or altered, and even though the facility will not be completed for many years; LBP-10-24, 72 NRC 720 (2010)

standing based on proximity does not apply in source materials cases; LBP-09-13, 70 NRC 168 (2009)

standing depends on the petitioner's present circumstances or the extent to which activities in the recent past reflect a likely pattern of future conduct; LBP-07-10, 66 NRC 1 (2007)

standing has been denied when petitioner has demonstrated only occasional contact with the zone of possible harm; LBP-10-1, 71 NRC 165 (2010)

standing rests on the presumption that an accident associated with the nuclear facility could adversely affect the health and safety of people working, living, or regularly engaging in activities offsite but within a certain distance of that facility; CLI-08-19, 68 NRC 251 (2008)

standing was found for an organization representing three members living in close proximity to decommissioning site, who expressed concern that depleted uranium materials could affect a waterway abutting the property of two members; CLI-10-20, 72 NRC 185 (2010)

standing will be denied when petitioner fails to supply more specific information regarding the frequency, nature, and length of his contacts within the proximity zone; LBP-10-1, 71 NRC 165 (2010)

the appropriate distance for proximity standing is decided on a case-by-case basis taking into account the nature of the proposed action and the significance of the radioactive source; LBP-07-14, 66 NRC 169 (2007)

the benefits of the proximity presumption are not limited to those who reside within the area in which the presumption applies, but can be extended to those who conduct everyday activities or visit within that area; LBP-07-10, 66 NRC 1 (2007)

the Commission has accepted a proximity presumption granting standing to residents within 50 miles of a reactor, but has not accepted any such presumption in nonreactor cases; LBP-07-14, 66 NRC 169 (2007)

SUBJECT INDEX

- the common thread in decisions applying the 50-mile proximity presumption is a recognition of the potential effects at significant distances from the facility of the accidental release of fissionable materials; LBP-09-4, 69 NRC 170 (2009)
- the distinction between “frequently” and “regularly” highlights the importance of making a more detailed factual showing, rather than relying on conclusory adjectives and adverbs, when a standing claim rests on the nature of petitioner’s activities purportedly near to, or bearing some connection with, the reactor facility at issue; LBP-10-1, 71 NRC 165 (2010)
- the elements of standing will be presumed to be satisfied if an individual lives within the zone of possible harm from a significant source of radioactivity, which has been defined in proceedings involving nuclear power plants as being within a 50-mile radius of such a plant; LBP-07-11, 66 NRC 41 (2007)
- the longest specific distance for which the Commission has granted proximity-based standing in a post-Vogtle license transfer case is 6 to 6-1/2 miles; CLI-07-21, 65 NRC 519 (2007)
- the nontrivial increased risk of living within 50 miles of a proposed reactor constitutes injury-in-fact, is traceable to the challenged action, and is likely to be redressed by a favorable decision that either denies a license or mandates compliance with legal requirements that protect the interests of the petitioners; CLI-09-20, 70 NRC 911 (2009); LBP-09-16, 70 NRC 227 (2009)
- the presumption of standing applies to combined license proceedings; LBP-09-16, 70 NRC 227 (2009)
- the process of sifting and weighing participants’ factual proffers often calls upon a board to make difficult choices, so that a petitioner who fails to provide specific information regarding the geographic proximity or the timing and duration of its visits only complicates matters for itself; LBP-09-18, 70 NRC 385 (2009)
- the rationale for the 50-mile presumption does not depend upon the probability that a proposed reactor is likely to generate an accidental release of radioactive materials, but rather the fact that, if such an accident were to occur, it could realistically impact the geographic area within which the petitioners reside; LBP-09-4, 69 NRC 170 (2009)
- the ultimate test for standing is not whether NRC’s test conforms to that applied by federal courts, but whether NRC’s test represents a reasonable construction of section 189a of the Atomic Energy Act; LBP-09-4, 69 NRC 170 (2009)
- there is no conflict between judicial concepts of standing and the NRC’s 50-mile presumption of standing; CLI-09-22, 70 NRC 932 (2009); LBP-09-4, 69 NRC 170 (2009)
- there is no obvious potential for harm at petitioner’s property 20 miles from a uranium enrichment facility location; LBP-08-6, 67 NRC 241 (2008)
- three conditions must be satisfied for the proximity presumption to afford standing as of right; LBP-07-10, 66 NRC 1 (2007)
- to establish proximity-based standing, it is petitioner’s responsibility to provide enough detail to allow the board to distinguish a casual interest from a substantial one; LBP-10-7, 71 NRC 391 (2010)
- to establish standing based on frequent contacts, petitioner must show that it frequently engages in substantial business and related activities in the vicinity of the facility, engages in normal, everyday activities in the vicinity, has regular and frequent contacts in an area near a licensed facility, or otherwise has visits of a length and nature showing an ongoing connection and presence; LBP-10-1, 71 NRC 165 (2010)
- to establish the requisite proximity for standing, petitioner must clearly indicate where he lives and/or what contact he has with the site; LBP-10-1, 71 NRC 165 (2010); LBP-10-7, 71 NRC 391 (2010)
- when petitioner cannot establish proximity-plus standing, he or she must resort to establishing standing under traditional principles; LBP-10-4, 71 NRC 216 (2010)
- whether and at what distance a petitioner can be presumed to be affected must be judged on a case-by-case basis, taking into account the nature of the proposed action and the significance of the radioactive source; LBP-08-6, 67 NRC 241 (2008); LBP-10-4, 71 NRC 216 (2010)
- PSYCHOLOGICAL EFFECTS**
- the National Environmental Policy Act does not require an agency to assess potential psychological impacts due to fear of radiological harm; CLI-10-11, 71 NRC 287 (2010)
- PUBLIC COMMENTS**
- any member of the public who wishes to comment on the draft environmental assessment outside the adjudicatory process, pursuant to NRC’s normal environmental process, must do so within 30 days after

SUBJECT INDEX

- it is made available (or within 45 days) of the publication of a draft environmental impact statement; CLI-07-11, 65 NRC 148 (2007)
- Staff's final supplemental environmental impact statement on a license renewal must take account of public comments concerning new and significant information on Category 1 findings; LBP-06-20, 64 NRC 131 (2006)
- when preparing an environmental assessment, an agency must provide the public with sufficient environmental information, considered in the totality of circumstances, to permit members of the public to weigh in with their views and thus inform the agency decisionmaking process; CLI-10-18, 72 NRC 56 (2010)
- PUBLIC HEARINGS**
- a First Amendment basis for public access to administrative proceedings is recognized; LBP-10-2, 71 NRC 190 (2010)
- a trial is a public event, and what transpires in the courtroom is public property; LBP-10-2, 71 NRC 190 (2010)
- all NRC hearings are to be public except as requested under section 181 of the Atomic Energy Act or otherwise ordered by the Commission; LBP-10-5, 71 NRC 329 (2010)
- Anglo-American jurisprudence has long ensured that judicial proceedings will be open to the public; LBP-10-2, 71 NRC 190 (2010)
- as long as the administrative proceedings walk, talk, and squawk very much like an Article III judicial proceeding, they should be open to the public; LBP-10-2, 71 NRC 190 (2010)
- public access to courts is grounded in the First Amendment and free speech carries with it some freedom to listen; LBP-10-2, 71 NRC 190 (2010)
- the First Amendment requires a presumption of openness in civil proceedings; LBP-10-2, 71 NRC 190 (2010)
- the First Amendment requires public access to deportation hearings despite government's strenuous objections that open hearings would enable terrorists to obtain information useful to their malevolent goals; LBP-10-2, 71 NRC 190 (2010)
- the principle that justice cannot survive behind walls of silence has long been reflected in the Anglo-American distrust for secret trials; LBP-10-2, 71 NRC 190 (2010)
- PUBLIC INTEREST**
- a stipulation or compromise in an enforcement proceeding is subject to approval by the designated presiding officer, who may order such adjudication of the issues as he may deem to be required in the public interest; LBP-06-18, 63 NRC 830 (2006)
- an exception to the application of collateral estoppel occurs when broad public policy considerations or special public interest factors are involved such that an agency's need for flexibility outweighs the reasons underlying this repose doctrine so as to favor relitigation of a particular issue; LBP-09-24, 70 NRC 676 (2009)
- Commission review is in the public interest if the decision could affect pending and future license renewal determinations; CLI-10-17, 72 NRC 1 (2010)
- given the extended history of the proceeding and the nature of the license amendment sought, it can scarcely be thought that the deferral of a hearing to await the completion of Staff's technical review might of itself have an adverse impact; LBP-06-6, 63 NRC 167 (2006)
- no adjudication is required where a licensing board finds a settlement to be in the public interest; LBP-06-21, 64 NRC 219 (2006)
- the process for determining whether a proposed settlement is in the public interest is left to the discretion of the board; LBP-06-18, 63 NRC 830 (2006)
- the public interest would best be served by leaving the option open to the applicant should changed conditions warrant pursuit of a withdrawn application; LBP-10-11, 71 NRC 609 (2010)
- the subject of an enforcement action has a property interest in his employment-related license sufficient to invoke the procedural protections of the Due Process Clause, the vindication of which invokes a public interest; LBP-06-25, 64 NRC 367 (2006)
- there is an important public interest in the proper resolution of all aspects of what occurred at a nuclear facility when serious safety and communication issues are involved; LBP-06-25, 64 NRC 367 (2006)

SUBJECT INDEX

when determining whether good cause exists for delay of a proceeding, the decisionmaker must consider both the public interest as well as the interests of the person subject to the immediately effective order; CLI-06-12, 63 NRC 495 (2006)

PUBLIC INTEREST ORGANIZATIONS

even if the Commission could waive the application fee for access to safeguards information, the mere fact that petitioners are public interest organizations provides no special reason for departing from well-established NRC practice; CLI-09-4, 69 NRC 80 (2009)

petitioner's status as an anti-nuclear advocate and a source of information for its community is insufficient, without more, to qualify it for organizational standing; CLI-08-19, 68 NRC 251 (2008)

the principle regarding the representational standing of unions is also applicable of public interest groups, who also, in significant part, exist to represent the interests of their members; CLI-08-19, 68 NRC 251 (2008)

PYROCHLORE

this material contains more than 0.05% by weight uranium and thorium, and thus it is subject to NRC regulation as a source material; LBP-07-5, 65 NRC 341 (2007); LBP-08-8, 67 NRC 409 (2008); CLI-10-8, 71 NRC 142 (2010)

QUALIFIED PRIVILEGE

a board has discretion to compel production of a document upon a finding that the need for the evidence outweighs the interests that support the privilege; LBP-06-3, 63 NRC 85 (2006)

in a proceeding involving the safety of a proposed 20% increase in the power of a nuclear power reactor, the seriousness of the litigation and the issues involved weigh in favor of disclosing deliberative process documents; LBP-06-3, 63 NRC 85 (2006)

in ruling on the qualified nature of deliberative process privilege, five factors are relevant in balancing the need for the documents against the government's interest in nondisclosure; LBP-06-3, 63 NRC 85 (2006)

the fact that deliberative process privilege documents contain important new analyses that are relevant to admitted contentions weighs in favor of their disclosure; LBP-06-3, 63 NRC 85 (2006)

the imminent availability of Staff's authoritative position on a subject that is discussed in deliberative process documents constitutes "other evidence" such that the immediate need for the documents does not outweigh the deliberative process privilege; LBP-06-3, 63 NRC 85 (2006)

when NRC Staff is a party in a proceeding and not merely an indifferent bystander to private-party litigation, the role of the government in the litigation weighs in favor of disclosure; LBP-06-3, 63 NRC 85 (2006)

QUALITY ASSURANCE

applicant normally is required to perform two large-transient tests before an extended power uprate can be granted; LBP-07-2, 65 NRC 153 (2007)

each nuclear power plant must implement a program that includes all testing required to demonstrate that the structures, systems, and components will perform satisfactorily in service; LBP-07-2, 65 NRC 153 (2007)

programs must include written test procedures that incorporate the requirements and acceptance limits contained in applicable design documents, and, as appropriate, proof tests prior to installation, preoperational tests, and operational tests during nuclear power plant operation, of structures, systems, and components; LBP-08-22, 68 NRC 590 (2008)

requirements of 10 C.F.R. Part 50, Appendix B apply to license renewal aging management plans; LBP-08-22, 68 NRC 590 (2008)

QUALITY ASSURANCE PROGRAMS

a contention alleging a breakdown of applicant's QA program must provide evidence that there is legitimate doubt as to whether the plant can be operated safely; LBP-10-9, 71 NRC 493 (2010)

applicant for a combined license is required to establish a QA program and to apply that program to its safety-related activities; LBP-10-9, 71 NRC 493 (2010)

because intervenors cannot reasonably be expected to discover the QA issues that gave rise to a notice of violation without the NOV itself as notice, they have plausibly argued that their new contention is based on new and materially different information; LBP-10-9, 71 NRC 493 (2010)

DOE is required to provide adequate confidence that the geologic repository and its structures, systems, or components will perform satisfactorily in service; LBP-10-22, 72 NRC 661 (2010)

SUBJECT INDEX

if the performance margins analysis for the high-level waste repository is needed to establish adequate confidence in the total system performance assessment, then it is subject to the quality assurance requirements of 10 C.F.R. 63.142; LBP-10-22, 72 NRC 661 (2010)

perfection in applicant's QA program is not required, but once a pattern of QA violations has been shown, applicant has the burden of showing that the license may be granted notwithstanding the violations; LBP-10-9, 71 NRC 493 (2010)

perfection in plant construction and the construction quality assurance program is not a precondition for a license, but rather what is required is reasonable assurance that the plant, as built, can and will be operated without endangering the public health and safety; LBP-10-9, 71 NRC 493 (2010)

the effects of the high-level waste repository QA program can be taken into account in determining the probability and consequences of a feature, event, or process; LBP-10-22, 72 NRC 661 (2010)

the performance margins analysis cannot be used to validate or provide confidence in the total systems performance assessment if its data and models are not qualified under DOE's QA program; LBP-10-22, 72 NRC 661 (2010)

the program for the geologic repository must be applied to all structures, systems, and components that are important to waste isolation and to related activities, defined as including analyses of samples and data; LBP-10-22, 72 NRC 661 (2010)

to the extent a new contention will cause delay, it is the price for affording the public the opportunity to litigate questions arising from an applicant's failure to comply with QA requirements; LBP-10-9, 71 NRC 493 (2010)

RADIATION

See Background Radiation

RADIATION CONTROL PROGRAM

a combined license application must explain the kinds and quantities of radioactive materials expected to be produced in the operation and the means for controlling and limiting radioactive effluents and radiation exposures within the limits set forth in 10 C.F.R. Part 20; LBP-09-27, 70 NRC 992 (2009)

applicant is to describe equipment to be installed to maintain control over radioactive materials in gaseous and liquid effluents produced during normal reactor operations, including expected operational occurrences; LBP-09-19, 70 NRC 433 (2009)

COL applications must include information on kinds and quantities of materials expected to be produced during plant operation and the means for controlling and limiting radioactive effluents and radiation exposures to comply with Part 20 limits; CLI-09-16, 70 NRC 33 (2009)

for applications filed after January 2, 1971, applicant must identify design objectives and means to maintain levels of radioactive effluents as low as is reasonably achievable; LBP-09-19, 70 NRC 433 (2009)

licensee must use procedures and controls to reduce occupational doses and doses to members of the public to levels that are as low as reasonably achievable; CLI-09-16, 70 NRC 33 (2009)

the combined license application must describe the means for controlling and limiting the radioactive effluents and radiation exposures from the proposed nuclear reactors; LBP-10-20, 72 NRC 571 (2010)

RADIATION MONITORING SYSTEM

interim protective measures to prevent contamination from slag and baghouse dust piles until final decommissioning is completed are discussed; CLI-09-1, 69 NRC 1 (2009)

monitoring, and the installation of monitoring wells, is a matter for ongoing operation and maintenance, and not within the scope of matters properly considered in a license renewal; LBP-08-22, 68 NRC 590 (2008)

RADIATION PROTECTION PROGRAM

a combined license application must include a description of equipment and measures taken to ensure that any exposures to radioactive materials such as low-level radioactive waste are kept as low as reasonably achievable, including a description of the provisions for storage of solid waste containing radioactive materials; LBP-09-10, 70 NRC 51 (2009)

ALARA means making every reasonable effort to maintain exposure to radiation as far below the dose limits set out in Part 20 as is possible, consistent with the activity for which the licensed activity is undertaken; LBP-07-6, 65 NRC 429 (2007)

SUBJECT INDEX

- applicant must explain how it intends, through its design, operational organization, and procedures, to comply with relevant substantive radiation protection requirements in 10 C.F.R. Part 20, including, but not limited to, low-level radioactive waste handling and storage; LBP-09-27, 70 NRC 992 (2009)
- applicant must have a program to achieve occupational doses and doses to members of the public that are as low as is reasonably achievable; LBP-10-20, 72 NRC 571 (2010)
- applicant's recordkeeping and reporting commitments for occupational exposure to radiation exceeding the dose limits are described; LBP-07-6, 65 NRC 429 (2007)
- containers are exempted from labeling requirements if they are attended by an individual who takes the precautions necessary to prevent the exposure of individuals in excess of the established limits; LBP-07-6, 65 NRC 429 (2007)
- DOE need not weigh ALARA considerations outside the geologic repository operations area for which it is responsible; LBP-10-22, 72 NRC 661 (2010)
- how a COL applicant intends, through its design, operational organization, and procedures, to comply with relevant substantive radiation protection requirements in 10 C.F.R. Part 20 is governed by 10 C.F.R. 52.79(a)(3); LBP-10-20, 72 NRC 571 (2010)
- plans or procedures are a valid means by which radiation exposure may be controlled; LBP-10-20, 72 NRC 571 (2010)
- potassium iodide distribution beyond the 10-mile emergency planning zone is not necessary; LBP-09-16, 70 NRC 227 (2009)
- recordkeeping and reporting commitments for occupational exposure to radiation exceeding the dose limits are described; LBP-07-6, 65 NRC 429 (2007)
- the final safety analysis report must include the kinds and quantities of radioactive materials expected to be produced by low-level radioactive waste in the operation and the means for controlling and limiting radioactive effluents and radiation exposures within the limits set forth in 10 C.F.R. Part 20; LBP-10-20, 72 NRC 571 (2010)
- the occupational radiation protection measures that a uranium enrichment facility must address are discussed; LBP-07-6, 65 NRC 429 (2007)
- use of conspicuously posted signs, in conjunction with the applicant's radiation work permit program, is an acceptable alternative; LBP-07-6, 65 NRC 429 (2007)
- RADIATION PROTECTION STANDARDS**
- a challenge to the pending EPA proposed rule setting standards for offsite releases from radioactive materials that would be stored in the proposed Yucca Mountain high-level waste geologic repository is inadmissible; LBP-08-16, 68 NRC 361 (2008)
- a decommissioning plan for a restricted release site will be judged exclusively upon whether residual radioactivity levels will be as low as is reasonably achievable and the total effective dose equivalent to offsite human beings will be below 25 mrem; LBP-08-4, 67 NRC 105 (2008)
- a substantial regulatory framework governs release limits on radioactive gases and requires calculations or measurements of radioactive releases; CLI-08-17, 68 NRC 231 (2008)
- licensees must use, to the extent practical, procedures and engineering controls based on sound radiation protection principles to achieve occupational doses that are as low as reasonably achievable; CLI-09-14, 69 NRC 580 (2009); LBP-10-22, 72 NRC 661 (2010)
- no protection standard has been promulgated for the high-level waste repository post-closure period beyond 10,000 years following disposal of high-level waste; CLI-08-20, 68 NRC 272 (2008)
- NRC must modify its technical requirements and criteria for the high-level waste repository as necessary to be consistent with final EPA standards; CLI-08-20, 68 NRC 272 (2008)
- Part 63 licensees are required to use, to the extent practical, procedures and engineering controls based upon sound radiation protection principles to achieve occupational doses and doses to members of the public that are as low as is reasonably achievable; LBP-10-22, 72 NRC 661 (2010)
- petitioners' allegation that NRC regulations are insufficient to protect the constitutional right of due process under the law by allowing citizens to be exposed to impermissible levels of radiation is inadmissible; LBP-08-16, 68 NRC 361 (2008)
- the "total effective dose equivalent" is defined as the sum of the deep-dose equivalent (for external exposures) and the committed effective dose equivalent (for internal exposures); LBP-08-4, 67 NRC 105 (2008)

SUBJECT INDEX

the regulatory limit of 25 mrem per year represents the value for the total effective dose equivalent; LBP-08-4, 67 NRC 105 (2008)

See also Dose Limits

RADIATION SAFETY

each licensee must evaluate the extent of radiation hazards that may be present; DD-10-3, 72 NRC 171 (2010)

petitioner alleges that routine unprotected handling of an unshielded neutron source by licensed operators and uncontrolled access by untrained and unlicensed facility visitors to this neutron source violated ALARA requirements; DD-10-3, 72 NRC 171 (2010)

RADIATION SHIELDING

adequacy of applicant's control room and equipment design for radiological protections, in light of the fact that the reactor is proposed to be located within the EPZ of an existing reactor, is an issue that is appropriate in a combined license or standard design certification proceeding; LBP-09-10, 70 NRC 51 (2009)

RADIATION SURVEYS

licensee's actions to survey an abnormal radiological effluent release affecting groundwater conform to regulatory requirements; DD-08-2, 68 NRC 339 (2008)

the field sampling plan's analysis of waterways is intended to identify groundwater, possible cave, and surface water paths and to assess the contents of those waters to determine if depleted uranium is leaching or will leach off the site in quantities significant enough that humans might receive more than 25 mrems of total radioactive exposure from all of the site's pathways; LBP-08-4, 67 NRC 105 (2008)

RADIOACTIVE CONTAMINATION

NRC includes the EPA drinking water standard in the technical specifications that a licensee must meet; LBP-07-9, 65 NRC 539 (2007)

RADIOACTIVE EFFLUENTS

a challenge to applicant's site-specific measurements of adsorption and retention coefficients relative to hydrological radionuclide transport is an admissible contention; LBP-09-16, 70 NRC 227 (2009)

a combined license application must explain the kinds and quantities of radioactive materials expected to be produced in the operation and the means for controlling and limiting radioactive effluents and radiation exposures within the limits set forth in 10 C.F.R. Part 20; CLI-09-16, 70 NRC 33 (2009); LBP-09-27, 70 NRC 992 (2009)

a request for action regarding leaks or potential leaks of radioactively contaminated water into the ground is granted in part regarding power reactors and denied regarding research and test reactors; DD-06-3, 64 NRC 407 (2006)

applicant is to describe equipment to be installed to maintain control over radioactive materials in gaseous and liquid effluents produced during normal reactor operations, including expected operational occurrences; LBP-09-19, 70 NRC 433 (2009)

for applications filed after January 2, 1971, applicant must identify design objectives and means to maintain levels of radioactive effluents as low as is reasonably achievable; LBP-09-19, 70 NRC 433 (2009)

inadequacy of environmental report's reliance on Table S-3 regarding radioactive effluents from the uranium fuel cycle is not litigable in a combined license proceeding; LBP-08-16, 68 NRC 361 (2008)

licensee's efforts to maintain compliance with dose limits for individual members of the public in light of radiological release from cracked spent fuel pool are described; DD-08-2, 68 NRC 339 (2008)

petitioner's concerns regarding underground leakage of contaminated water at Indian Point are addressed; DD-08-2, 68 NRC 339 (2008)

safety regulations in 10 C.F.R. 52.79(a)(3) require applicant to describe the kinds and quantities of radioactive materials that will be produced in operating a proposed new power plant and to describe the means for controlling and limiting the radioactive effluents and radiation exposures; CLI-10-2, 71 NRC 27 (2010)

Staff and applicant must address matters such as the environmental impacts of unregulated seepage into adjacent groundwater in their environmental impact statement and environmental report; LBP-09-25, 70 NRC 867 (2009)

SUBJECT INDEX

Table S-3 assumes that solid, low-level waste from reactors will be disposed of through shallow land burial, and concludes that this kind of disposal will not result in the release of any significant effluent to the environment; LBP-09-16, 70 NRC 227 (2009)

the combined license application must describe the means for controlling and limiting the radioactive effluents and radiation exposures from the proposed nuclear reactors; LBP-10-20, 72 NRC 571 (2010)

the final safety analysis report must include the kinds and quantities of radioactive materials expected to be produced by low-level radioactive waste in the operation and the means for controlling and limiting radioactive effluents and radiation exposures within the limits set forth in 10 C.F.R. Part 20; LBP-10-20, 72 NRC 571 (2010)

RADIOACTIVE MATERIALS

pyrochlore is subject to NRC regulation as a radioactive source material; LBP-08-8, 67 NRC 409 (2008)

RADIOACTIVE RELEASES

a substantial regulatory framework governs release limits on radioactive gases and requires calculations or measurements of radioactive releases; CLI-08-17, 68 NRC 231 (2008)

an early site permit is conditioned to require that radioactive waste management systems, structures, and components for a future reactor must include features to preclude accidental releases of radionuclides into potential liquid pathways; CLI-07-14, 65 NRC 216 (2007)

an independent spent fuel storage installation is essentially a passive structure rather than an operating facility, and there therefore is less chance of widespread radioactive release; LBP-09-20, 70 NRC 565 (2009)

analysis of a fission product release from an accident uses the expected demonstrable containment leak rate and any fission product cleanup systems intended to mitigate the consequences of the accidents; LBP-09-19, 70 NRC 433 (2009)

contentions relating to the conclusions that the NRC Staff reaches in its NEPA analysis with regard to the environmental impacts from radiological releases to groundwater must await future publication of its supplemental environmental impact statement; LBP-08-13, 68 NRC 43 (2008)

early site permit applicants must perform an analysis of the postulated fission product release to evaluate the offsite radiological consequences; LBP-09-19, 70 NRC 433 (2009)

if chelating agents are to be comingled in radioactive waste liquids or used to mitigate an accidental release, then they have to be specifically accounted for in the dose analyses; LBP-09-19, 70 NRC 433 (2009)

in applicant's safety assessment, the fission product releases in question are associated with accidents that have generally been assumed to result in substantial meltdown of the core with subsequent release into the containment of appreciable quantities of fission products; LBP-09-19, 70 NRC 433 (2009)

individuals located at the boundary of the exclusion area cannot be exposed to more than 25 rem total effective dose equivalent in any 2-hour period, and any individual located at the outer boundary of the low population zone cannot be exposed to more than 25 rem TEDE during the entire period of any radioactive release; LBP-09-19, 70 NRC 433 (2009)

only features, events, and processes that produce significant changes in releases or doses within the first 10,000 years after disposal in the high-level waste repository must be included in performance assessments; LBP-10-22, 72 NRC 661 (2010)

potential radiological risks associated with an ISFSI license transfer are lower than those for an operating facility, because an ISFSI is essentially a passive structure, and there therefore is less chance of widespread radioactive release; CLI-07-19, 65 NRC 423 (2007)

releases from the nuclear fuel cycle in general, incidences of childhood cancers near nuclear power plants, and a request for the NRC to address radioactive releases from the burning of coal at fossil fuel plants are outside the scope of a combined license proceeding; LBP-09-16, 70 NRC 227 (2009)

Staff's generic environmental impact statement for license renewal has already performed a discretionary analysis of terrorist acts in connection with license renewal and concluded that the core damage and radiological release from such acts would be no worse than the damage and release to be expected from internally initiated events; CLI-07-8, 65 NRC 124 (2007)

the fission product release assumed for the final safety analysis report is based on a major accident assumed to result in substantial meltdown of the core with subsequent release into the containment of appreciable quantities of fission products; LBP-09-10, 70 NRC 51 (2009)

SUBJECT INDEX

the safety analysis report component of an application for a Standard Design Certification must analyze and address the problem of extremely low probability for accidents that could result in the release of significant quantities of radioactive fission products; LBP-09-10, 70 NRC 51 (2009)

to the extent that petitioners have any basis for claiming that there are current, ongoing excessive radiological releases from a facility, petitioners may seek NRC enforcement action under 10 C.F.R. 2.206; CLI-08-17, 68 NRC 231 (2008)

RADIOACTIVE WASTE

depleted uranium is classified as Class A waste under current agency regulations; LBP-08-16, 68 NRC 361 (2008)

if chelating agents are to be comingled in radioactive waste liquids or used to mitigate an accidental release, then they have to be specifically accounted for in the dose analyses; LBP-09-19, 70 NRC 433 (2009)

waste that does not contain any of the radionuclides listed in 10 C.F.R. 61.55(a)(2)(iv) is, by default, designated Class A waste; LBP-06-8, 63 NRC 241 (2006)

RADIOACTIVE WASTE, HIGH-LEVEL

applicant is required to take Table S-3 as the basis for evaluating the contribution of the environmental effects of management of high-level wastes related to uranium fuel cycle activities; LBP-09-21, 70 NRC 581 (2009)

contentions concerning an applicant's plan for disposal of Greater-Than-Class-C radioactive waste cannot be admitted because disposal of that type of waste is the responsibility of the federal government; LBP-09-4, 69 NRC 170 (2009)

contentions that concern greater-than-Class-C waste, seek to require a change to the decommissioning cost estimate, or constitute a challenge to Table S-3 of 10 C.F.R. 51.51 are inadmissible; LBP-09-16, 70 NRC 227 (2009)

disposal of greater-than-Class-C waste is the responsibility of the federal government; CLI-10-2, 71 NRC 27 (2010); LBP-09-16, 70 NRC 227 (2009)

even assuming arguendo that applicant might someday require a permit under Part 61 for a disposal facility, that issue is too speculative at the combined license stage and is therefore not material to the findings the NRC must make to support the action that is involved in the COL proceeding; LBP-09-27, 70 NRC 992 (2009)

Part 61 is inapplicable in a combined license proceeding because it applies only to land disposal facilities that receive waste from others, not to onsite facilities where licensee intends to store its own low-level radioactive waste; LBP-09-27, 70 NRC 992 (2009)

petitioners' assertion that applicant's environmental report fails to include an analysis of the impacts of a governmental entity managing long-term storage of high-level waste onsite and cost quantifications of such management fails to create a genuine dispute; LBP-09-21, 70 NRC 581 (2009)

recoverability of spent nuclear fuel storage expenses is equally applicable to greater-than-Class-C waste, which is stored onsite in the same manner as spent nuclear fuel; CLI-10-2, 71 NRC 27 (2010)

there is reasonable assurance that a geologic repository will be available by 2025 and that sufficient repository capacity will be available within 30 years beyond the licensed life to dispose of high-level waste and spent fuel generated by any reactor up to that time; LBP-09-18, 70 NRC 385 (2009)

utilities must dispose of greater-than-Class-C waste before they can decommission reactor sites; CLI-10-2, 71 NRC 27 (2010)

RADIOACTIVE WASTE, LOW-LEVEL

a combined license application must include a description of equipment and measures taken to ensure that any exposures to radioactive materials such as LLRW are kept as low as reasonably achievable, including a description of the provisions for storage of solid waste containing radioactive materials; LBP-09-10, 70 NRC 51 (2009)

a combined license application's lack of consideration of any alternative to offsite disposal of LLRW is a material issue for litigation; LBP-09-18, 70 NRC 385 (2009)

a contention is timely to the extent it challenges the adequacy of the new LLRW storage plan, but untimely as to those aspects of the contention that merely reargue issues already decided by the board, without identifying any new information relevant to those issues; LBP-09-27, 70 NRC 992 (2009)

a literal reading of 10 C.F.R. 61.55(a)(6) renders depleted uranium a Class A waste, but the Part 61 rulemaking did not analyze the uranium enrichment waste stream; CLI-06-15, 63 NRC 687 (2006)

SUBJECT INDEX

a waste confidence rulemaking is not the appropriate instrument for resolving LLRW issues, particularly issues of disposal; CLI-09-3, 69 NRC 68 (2009)

a well-pleaded environmental contention concerning the effects of long-term onsite management of low-level radioactive waste is admissible; CLI-10-2, 71 NRC 27 (2010)

an amended contention challenging applicant's final safety analysis report on its LLRW storage plan was admitted based on intervenor's adequately supported challenge to the plan's provisions regarding waste volume reduction; LBP-10-8, 71 NRC 433 (2010)

an application-specific contention concerning the environmental consequences of the need for extended onsite storage of LLRW is admissible if it satisfies the requirements of 10 C.F.R. 2.309(f)(1); LBP-09-4, 69 NRC 170 (2009)

an approach for disposition of depleted tails that is consistent with the USEC Privatization Act, such as transfer to DOE for disposal, constitutes a plausible strategy; CLI-10-4, 71 NRC 56 (2010)

applicant must explain how it intends, through its design, operational organization, and procedures, to comply with relevant substantive radiation protection requirements in 10 C.F.R. Part 20, including, but not limited to, LLRW handling and storage; LBP-09-27, 70 NRC 992 (2009)

applicant seeks an exemption from the disposal site requirements of 10 C.F.R. 30.3 and 70.3 to allow disposal of low-activity radioactive waste from the Hematite facility at a site near Grand View, Idaho, that is not licensed by the NRC; LBP-09-28, 70 NRC 1019 (2009)

applicant's COLA discussion of LLRW management contained no omission where the applicant addressed the closure of the Barnwell LLRW disposal facility, discussed in detail additional waste minimization measures, and committed to build an additional storage facility in accordance with NRC guidelines if further additional storage became necessary; LBP-10-20, 72 NRC 571 (2010)

applicant's COLA fails to address the management of low-level radioactive waste plan for a longer term than envisioned in the COLA; LBP-10-20, 72 NRC 571 (2010)

applicant's contingent long-term onsite LLRW storage facility and the contents of its final safety analysis report with regard to that facility are not governed by 10 C.F.R. 52.79(a)(4) as a part of the reactor facilities to be constructed under the requested combined licenses; LBP-10-8, 71 NRC 433 (2010)

applicant's reliance on a facility for LLRW disposal that will no longer permit out-of-compact entities to import LLRW for disposal at its site could provide the basis for a new contention; LBP-10-8, 71 NRC 433 (2010)

applicants' assertion that LLRW could be transferred to another licensee or that some other arrangement might be established in the future is not sufficient to erase the requirement that reasonably foreseeable environmental impacts be assessed in an environmental report; CLI-09-20, 70 NRC 911 (2009)

application for license to import low-level radioactive waste from Italy for processing and ultimate disposal in Utah is held in abeyance; CLI-08-24, 68 NRC 491 (2008)

arguments premised on the prediction that someday a nuclear plant site will become a permanent storage or disposal facility for low-level radioactive waste are too speculative and therefore not material to the findings the NRC must make to support the action that is involved in a combined license proceeding; LBP-09-16, 70 NRC 227 (2009)

because applicant did not apply for an early site permit, petitioners thus are not precluded from raising an environmental issue relative to failure of applicant's environmental report to assess the onsite impacts associated with the potential long-term storage of low-level waste; LBP-08-16, 68 NRC 361 (2008)

boards have authority to narrow LLRW contentions; LBP-09-16, 70 NRC 227 (2009)

combined license applicants are to consider long-term onsite LLRW storage, but 10 C.F.R. 52.79(a)(3) sets no quantity or time restrictions relative to onsite storage of such waste; CLI-09-16, 70 NRC 33 (2009); LBP-09-27, 70 NRC 992 (2009)

combined license applicants should explain their current plan for management of LLRW, given the lack of an offsite disposal facility, and the potential environmental impact of retaining LLRW at the reactor site for an extended period; LBP-09-16, 70 NRC 227 (2009)

contentions challenging low-level radioactive waste storage may not rely on 10 C.F.R. Part 61, which pertains to land disposal facilities; CLI-10-2, 71 NRC 27 (2010)

contentions may not challenge Table S-3, consistent with NRC policy that regulations may not be the subject of collateral attack in an adjudication; CLI-10-2, 71 NRC 27 (2010)

criteria for NRC issuance of an import license are described; CLI-08-24, 68 NRC 491 (2008)

SUBJECT INDEX

depleted uranium is appropriately classified as a low-level radioactive waste; CLI-09-15, 70 NRC 1 (2009); CLI-10-4, 71 NRC 56 (2010); LBP-07-6, 65 NRC 429 (2007)

detailed design, location, and health impacts information on low-level radioactive waste storage is not required in the combined license application; LBP-10-20, 72 NRC 571 (2010)

from a safety standpoint, the required LLRW storage information is tied to the combined license applicant's particular plans for compliance through design, operational organization, and procedures; CLI-10-2, 71 NRC 27 (2010)

how applicant intends to handle LLRW in the absence of an offsite disposal facility is material to the findings the agency must make on a combined license; LBP-09-3, 69 NRC 139 (2009); LBP-09-4, 69 NRC 170 (2009)

licensee's onsite LLRW storage facility must comply with requirements for security, occupational and public dose limits, survey and monitoring, labeling, and reports and record retention; CLI-09-16, 70 NRC 33 (2009)

LLRW contentions were not admissible because of technical defects in the pleadings such as failure to satisfy 10 C.F.R. 2.309(f)(1)(vi), (i), or (ii); LBP-10-20, 72 NRC 571 (2010)

LLRW storage information required by 10 C.F.R. 52.79(a)(3) is tied to the COL applicant's particular plans for compliance through design, operational organization, and procedures; LBP-10-20, 72 NRC 571 (2010)

Part 61 is inapplicable in a combined license proceeding because it applies only to land disposal facilities that receive waste from others, not to onsite facilities where licensee intends to store its own low-level radioactive waste; LBP-09-10, 70 NRC 51 (2009); CLI-09-3, 69 NRC 68 (2009); LBP-09-27, 70 NRC 992 (2009)

power reactor licensees have safely stored and managed LLRW under NRC oversight for years without the development of immediate safety problems or concerns; LBP-09-16, 70 NRC 227 (2009)

purported failure to provide detailed information regarding design, location, and worker health impacts does not identify a deficiency in final safety analysis report LLRW information that is required to be provided in the COL application; LBP-10-8, 71 NRC 433 (2010)

questions of the safety and environmental impacts of onsite LLRW storage are largely site- and design-specific and appropriately decided in an individual licensing proceeding, provided that litigants proffer properly framed and supported contentions; CLI-09-16, 70 NRC 33 (2009); LBP-09-10, 70 NRC 51 (2009)

regulations do not dictate the duration of onsite low-level radioactive waste storage capacity; LBP-10-20, 72 NRC 571 (2010)

Table S-3 assumes that solid, low-level waste from reactors will be disposed of through shallow land burial, and concludes that this kind of disposal will not result in the release of any significant effluent to the environment; LBP-09-16, 70 NRC 227 (2009)

the board did not create a new regulatory requirement in finding that an application must show how the proposed facility will deal with long-term storage of low-level radioactive waste; CLI-10-2, 71 NRC 27 (2010)

the Commission declines to accept the board's suggestion that the Commission consider instituting a "low-level waste confidence" rulemaking proceeding; CLI-09-3, 69 NRC 68 (2009)

the fact that an extended LLRW storage plan is contingent does not mean that it does not need to comply with 10 C.F.R. 52.79 or that it is subject to a relaxed standard; LBP-10-20, 72 NRC 571 (2010)

the final safety analysis report must include the kinds and quantities of radioactive materials expected to be produced by LLRW in the operation and the means for controlling and limiting radioactive effluents and radiation exposures within the limits set forth in 10 C.F.R. Part 20; LBP-10-20, 72 NRC 571 (2010)

the licensing board did not commit reversible error by admitting a contention based on LLRW storage duration because the NRC Staff itself had issued a request for additional information on this very issue and thus this conflicted with Staff's argument that the issue is immaterial to the findings that must be made on the application; LBP-09-27, 70 NRC 992 (2009)

the questions of the safety and environmental impacts of onsite low-level waste storage are, in the Commission's view, largely site- and design-specific, and appropriately decided in an individual

SUBJECT INDEX

- licensing proceeding, provided that litigants proffer properly framed and supported contentions; CLI-09-3, 69 NRC 68 (2009)
- there is no prohibition on an applicant using a plan for compliance with section 52.79(a)(3) that includes contingent plans should future low-level radioactive waste storage become necessary; LBP-10-20, 72 NRC 571 (2010)
- waste disposal contentions have been admitted when that issue was not sufficiently discussed in the applications and there was no mention of the closure of the Barnwell facility; LBP-09-18, 70 NRC 385 (2009)
- ### RADIOACTIVE WASTE DISPOSAL
- a combined license application must explain how applicant intends to manage low level radioactive waste in the absence of an offsite disposal facility; LBP-09-4, 69 NRC 170 (2009)
- a combined license application's lack of consideration of any alternative to offsite disposal of low-level radioactive waste is a material issue for litigation; LBP-09-18, 70 NRC 385 (2009)
- a facility that is licensed to receive only Class A low-level radioactive waste is not pertinent to a contention regarding Class B and C waste; LBP-09-18, 70 NRC 385 (2009)
- a "land disposal facility" includes any land, building and structures, and equipment that are intended to be used for the disposal of radioactive wastes, but does not include a geologic repository; LBP-06-8, 63 NRC 241 (2006)
- a "near-surface disposal facility" is a land disposal facility in which radioactive waste is disposed of in or within the upper 30 meters of the earth's surface; LBP-06-8, 63 NRC 241 (2006)
- a waste confidence rulemaking is not the appropriate instrument for resolving low-level radioactive waste issues, particularly issues of disposal; CLI-09-3, 69 NRC 68 (2009)
- a well-pleaded environmental contention concerning the effects of long-term onsite management of low-level radioactive waste is admissible; CLI-10-2, 71 NRC 27 (2010)
- an approach for disposition of depleted tails that is consistent with the USEC Privatization Act, such as transfer to DOE for disposal, constitutes a plausible strategy; CLI-10-4, 71 NRC 56 (2010)
- an approach that is consistent with the USEC Privatization Act, such as transfer to DOE for disposal, constitutes a plausible strategy for disposition of depleted tails; CLI-09-15, 70 NRC 1 (2009)
- applicant seeks an exemption from the disposal site requirements of 10 C.F.R. 30.3 and 70.3 to allow disposal of low-activity radioactive waste from the Hematite facility at a site near Grand View, Idaho, that is not licensed by the NRC; LBP-09-28, 70 NRC 1019 (2009)
- applicants' assertion that low-level radioactive waste could be transferred to another licensee or that some other arrangement might be established in the future is not sufficient to erase the requirement that reasonably foreseeable environmental impacts be assessed in an environmental report; CLI-09-20, 70 NRC 911 (2009)
- Class A, B, and C wastes are generally appropriate for near-surface disposal, whereas wastes having a greater radioactivity than Class C waste typically are not appropriate for near-surface disposal; LBP-06-8, 63 NRC 241 (2006)
- combined license applicants are to consider long-term onsite low-level radioactive waste storage, but 10 C.F.R. 52.79(a)(3) sets no quantity or time restrictions relative to onsite storage of such waste; CLI-09-16, 70 NRC 33 (2009)
- contention in combined license proceeding focusing exclusively on regulations governing waste disposal is inadmissible; CLI-09-16, 70 NRC 33 (2009)
- contentions challenging low-level radioactive waste storage may not rely on 10 C.F.R. Part 61, which pertains to land disposal facilities; CLI-10-2, 71 NRC 27 (2010)
- contentions concerning an applicant's plan for disposal of Greater-Than-Class-C radioactive waste cannot be admitted because disposal of that type of waste is the responsibility of the federal government; LBP-09-4, 69 NRC 170 (2009)
- disposal of greater-than-Class-C waste is the responsibility of the federal government; CLI-10-2, 71 NRC 27 (2010); LBP-09-16, 70 NRC 227 (2009)
- DOE must accept for disposition depleted uranium from a private uranium enrichment facility upon request of the facility operator or appropriate third party; LBP-06-15, 63 NRC 591 (2006)
- from a safety standpoint, the required low-level radioactive waste storage information is tied to the combined license applicant's particular plans for compliance through design, operational organization, and procedures; CLI-10-2, 71 NRC 27 (2010)

SUBJECT INDEX

if new information becomes available in the course of waste confidence rulemaking proceedings that contravenes a combined license application, petitioner may file a motion to admit a new or amended contention; LBP-09-18, 70 NRC 385 (2009)

in a future combined license proceeding, petitioner could proffer an application-specific contention suitable for litigation on the subject of onsite storage of low-level radioactive waste; CLI-09-3, 69 NRC 68 (2009)

low-level radioactive waste disposal contentions have been admitted when that issue was not sufficiently discussed in the applications and there was no mention of the closure of the Barnwell facility; LBP-09-18, 70 NRC 385 (2009)

low-level radioactive waste disposal contentions may not challenge Table S-3, consistent with NRC policy that regulations may not be the subject of collateral attack in an adjudication; CLI-10-2, 71 NRC 27 (2010)

neither an intervenor nor an applicant/licensee nor the NRC has the authority to challenge or direct DOE's estimates of the fees it will charge to a uranium enrichment facility that requests DOE to disposition its depleted uranium waste; LBP-06-15, 63 NRC 591 (2006)

no facility located in any party state may accept low-level waste generated outside the region comprised of the party states, except under a specific procedure requiring approval of the member states; CLI-08-24, 68 NRC 491 (2008)

Part 61 of Title 10 applies only to land disposal facilities that receive waste from others, not to onsite facilities where the licensee intends to store its own low-level radioactive waste; CLI-09-3, 69 NRC 68 (2009); LBP-09-27, 70 NRC 992 (2009)

ratepayers are not third-party beneficiaries of the Standard Contract and therefore cannot sue for breach of contract when DOE fails to dispose of nuclear waste by the statutory deadline; LBP-10-11, 71 NRC 609 (2010)

some near-surface disposal facilities may not be capable of accepting large quantities of depleted uranium from enrichment operations, and dose pathway analyses should be performed on a site-specific basis to ensure compliance with Part 61, Subpart C; LBP-06-8, 63 NRC 241 (2006)

Table S-3 assumes that solid, low-level waste from reactors will be disposed of through shallow land burial, and concludes that this kind of disposal will not result in the release of any significant effluent to the environment; LBP-09-16, 70 NRC 227 (2009)

the appropriate state or federal regulatory authority, such as an Agreement State, will conduct any necessary site-specific evaluation to confirm that applicable radiological dose limits and standards for disposal of depleted uranium can be met at a particular site; CLI-06-15, 63 NRC 687 (2006)

the questions of the safety and environmental impacts of onsite low-level waste storage are, in the Commission's view, largely site- and design-specific, and appropriately decided in an individual licensing proceeding, provided that litigants proffer properly framed and supported contentions; CLI-09-3, 69 NRC 68 (2009)

there is reasonable assurance that a geologic repository will be available by 2025 and that sufficient repository capacity will be available within 30 years beyond the licensed life to dispose of high-level waste and spent fuel generated by any reactor up to that time; LBP-09-18, 70 NRC 385 (2009)

transfer of depleted uranium from enrichment operations to DOE for deconversion and disposal constitutes a plausible strategy for disposition; LBP-06-15, 63 NRC 591 (2006); LBP-07-6, 65 NRC 429 (2007)

utilities must dispose of greater-than-Class-C waste before they can decommission reactor sites; CLI-10-2, 71 NRC 27 (2010)

whether near-surface disposal is appropriate for a particular type of radioactive waste turns in large part on how that waste is classified; LBP-06-8, 63 NRC 241 (2006)

See also Waste Confidence Rule

RADIOACTIVE WASTE MANAGEMENT

an integral aspect of the Commission's determination of a facility's appropriateness for disposal of imported waste is whether the facility can actually accept that waste for disposal; CLI-08-24, 68 NRC 491 (2008)

applicant is required to take Table S-3 as the basis for evaluating the contribution of the environmental effects of management of high-level wastes related to uranium fuel cycle activities; LBP-09-21, 70 NRC 581 (2009)

SUBJECT INDEX

applicant must explain how it intends, through its design, operational organization, and procedures, to comply with relevant substantive radiation protection requirements in 10 C.F.R. Part 20, including, but not limited to, low-level radioactive waste handling and storage; LBP-09-27, 70 NRC 992 (2009)

application for license to import low-level radioactive waste from Italy for processing and ultimate disposal in Utah is held in abeyance; CLI-08-24, 68 NRC 491 (2008)

combined license applicants should explain their current plan for management of low-level radioactive waste, given the lack of an offsite disposal facility, and the potential environmental impact of retaining LLRW at the reactor site for an extended period; LBP-09-16, 70 NRC 227 (2009)

creation of interstate compacts is authorized as may be necessary to provide for the establishment and operation of regional disposal facilities for low-level radioactive waste; CLI-08-24, 68 NRC 491 (2008)

only the management of Class B and Class C wastes is properly the subject of a contention in a combined license proceeding; LBP-09-16, 70 NRC 227 (2009)

petitioners' assertion that applicant's environmental report fails to include an analysis of the impacts of a governmental entity managing long-term storage of high-level waste onsite and cost quantifications of such management fails to create a genuine dispute; LBP-09-21, 70 NRC 581 (2009)

when authorized by Congress, interstate compacts are allowed to restrict the use of regional disposal facilities under the compact to the disposal of low-level radioactive waste generated within the compact region; CLI-08-24, 68 NRC 491 (2008)

RADIOACTIVE WASTE STORAGE

a contention is timely to the extent it challenges the adequacy of the new low-level radioactive waste storage plan, but untimely as to those aspects of the contention that merely reargue issues already decided by the board, without identifying any new information relevant to those issues; LBP-09-27, 70 NRC 992 (2009)

an agency is not authorized to grant conditional approval to plans that do nothing more than promise to do tomorrow what the statute requires today; LBP-10-20, 72 NRC 571 (2010)

an amended contention challenging applicant's final safety analysis report on its low-level radioactive waste storage plan was admitted based on intervenor's adequately supported challenge to the plan's provisions regarding waste volume reduction; LBP-10-8, 71 NRC 433 (2010)

an application-specific contention concerning the environmental consequences of the need for extended onsite storage of low-level radioactive waste is admissible if it satisfies the requirements of 10 C.F.R. 2.309(f)(1); LBP-09-4, 69 NRC 170 (2009)

applicant's COLA discussion of LLRW management contained no omission where the applicant addressed the closure of the Barnwell LLRW disposal facility, discussed in detail additional waste minimization measures, and committed to build an additional storage facility in accordance with NRC guidelines if further additional storage became necessary; LBP-10-20, 72 NRC 571 (2010)

applicant's combined license application fails to address the management of low-level radioactive waste plan for a longer term than envisioned in the COLA; LBP-10-20, 72 NRC 571 (2010)

applicant's contingent long-term onsite low-level radioactive waste storage facility and the contents of its final safety analysis report with regard to that facility are not governed by 10 C.F.R. 52.79(a)(4) as a part of the reactor facilities to be constructed under the requested combined licenses; LBP-10-8, 71 NRC 433 (2010)

applicant's environmental report must address the environmental costs of management of low-level wastes and high-level wastes related to uranium fuel cycle activities; LBP-08-15, 68 NRC 294 (2008)

applicant's plan for storage of low-level radioactive waste is a litigable issue because it is material to the findings NRC must make to support the action that is involved in a combined license proceeding; LBP-08-15, 68 NRC 294 (2008)

applicant's reliance on a facility for low-level radioactive waste disposal that will no longer permit out-of-compact entities to import LLRW for disposal at its site could provide the basis for a new contention; LBP-10-8, 71 NRC 433 (2010)

arguments premised on the prediction that someday a nuclear plant site will become a permanent storage or disposal facility for low-level radioactive waste are too speculative and therefore not material to the findings the NRC must make to support the action that is involved in a combined license proceeding; LBP-09-16, 70 NRC 227 (2009)

SUBJECT INDEX

because applicant did not apply for an early site permit, petitioners thus are not precluded from raising an environmental issue relative to failure of applicant's environmental report to assess the onsite impacts of potential long-term storage of low-level waste; LBP-08-16, 68 NRC 361 (2008)

contentions on information a combined license applicant should supply in order to satisfy NRC regulations regarding the safety of long-term storage of low-level radioactive waste are application-specific and thus would benefit from further development by the board and the parties; CLI-09-16, 70 NRC 33 (2009)

detailed design, location, and health impacts information on low-level radioactive waste storage is not required in the combined license application; LBP-10-20, 72 NRC 571 (2010)

even assuming arguendo that applicant might someday require a permit under Part 61 for a disposal facility, that issue is too speculative at the combined license stage and is therefore not material to the findings the NRC must make to support the action that is involved in the COL proceeding; LBP-09-27, 70 NRC 992 (2009)

how applicant intends to handle LLRW in the absence of an offsite disposal facility is material to the findings the agency must make on a combined license; LBP-09-3, 69 NRC 139 (2009)

licensee's onsite low-level radioactive waste storage facility must comply with requirements for security, occupational and public dose limits, survey and monitoring, labeling, and reports and record retention; CLI-09-16, 70 NRC 33 (2009)

low-level radioactive waste contentions were not admissible because of technical defects in the pleadings such as failure to satisfy 10 C.F.R. 2.309(f)(1)(vi), (i), or (ii); LBP-10-20, 72 NRC 571 (2010)

low-level radioactive waste storage information required by 10 C.F.R. 52.79(a)(3) is tied to the COL applicant's particular plans for compliance through design, operational organization, and procedures; LBP-10-20, 72 NRC 571 (2010)

NRC regulations set no quantity or time restrictions relative to onsite storage of low-level radioactive waste; LBP-09-27, 70 NRC 992 (2009); LBP-10-20, 72 NRC 571 (2010)

Part 61 only applies to the land disposal of radioactive waste received from other persons and is therefore inapplicable to the issue of low-level waste generated and managed onsite at the nuclear power plant; LBP-09-10, 70 NRC 51 (2009)

petitioner failed to establish materiality of its contention related to management of low-level radioactive waste by referring to 10 C.F.R. Part 61 because applicant was not seeking a license under Part 61, and it was speculative whether such a license would ever be necessary; LBP-08-15, 68 NRC 294 (2008)

power reactor licensees have safely stored and managed low-level radioactive waste under NRC oversight for years without the development of immediate safety problems or concerns; LBP-09-16, 70 NRC 227 (2009)

purported failures to provide detailed information regarding design, location, and worker health impacts do not identify a deficiency in final safety analysis report low-level radioactive waste information that is required to be provided in the COL application; LBP-10-8, 71 NRC 433 (2010)

questions of the safety and environmental impacts of onsite low-level waste storage are largely site- and design-specific and appropriately decided in an individual licensing proceeding, provided that litigants proffer properly framed and supported contentions; LBP-09-10, 70 NRC 51 (2009); LBP-09-16, 70 NRC 227 (2009)

spent fuel can be stored safely onsite for at least 30 years beyond a plant's licensed life for operation; LBP-09-17, 70 NRC 311 (2009)

the board did not create a new regulatory requirement in finding that an application must show how the proposed facility will deal with long-term storage of low-level radioactive waste; CLI-10-2, 71 NRC 27 (2010)

the fact that an extended low-level radioactive waste storage plan is contingent does not mean that it does not need to comply with 10 C.F.R. 52.79 or that it is subject to a relaxed standard; LBP-10-20, 72 NRC 571 (2010)

the FSAR was configured to accommodate at least 10 years of onsite storage; LBP-10-20, 72 NRC 571 (2010)

the licensing board did not commit reversible error by admitting a contention based on low-level radioactive waste storage duration because the NRC Staff itself had issued a request for additional information on this very issue and thus this conflicted with Staff's argument that the issue is immaterial to the findings that must be made on the application; LBP-09-27, 70 NRC 992 (2009)

SUBJECT INDEX

there is no prohibition on an applicant using a plan for compliance with section 52.79(a)(3) that includes contingent plans should future low-level radioactive waste storage become necessary; LBP-10-20, 72 NRC 571 (2010)

there is no requirement in section 52.79(a)(3) for applicant's FSAR to include details regarding building materials and high-integrity containers, exact location, or health impacts on employees for the contingent onsite long-term LLRW storage facility; LBP-10-20, 72 NRC 571 (2010)

See also Dry Cask Storage; High-Level Waste Repository

RADIOACTIVE WASTE SYSTEMS

an early site permit is conditioned to require that radioactive waste management systems, structures, and components for a future reactor must include features to preclude accidental releases of radionuclides into potential liquid pathways; CLI-07-14, 65 NRC 216 (2007)

RADIOLOGICAL CONTAMINATION

a general assessment of radioactivity within waters of the Great Lakes Basin does not address specific issues with regard to the proposed reactor, and it does not provide any support for petitioners' assertions needed to advance an admissible contention; LBP-09-16, 70 NRC 227 (2009)

a request for action regarding leaks or potential leaks of radioactively contaminated water into the ground is granted in part regarding power reactors and denied regarding research and test reactors; DD-06-3, 64 NRC 407 (2006)

a site characterization plan should provide sufficient information to allow the NRC to determine the extent and range of expected radioactive contamination; LBP-08-4, 67 NRC 105 (2008)

a site will be considered for restricted release if further reductions in residual radioactivity necessary to comply with the provisions of 10 C.F.R. 20.1402 would result in net public or environmental harm or need not be made because residual levels associated with the restricted conditions are as low as reasonably achievable; CLI-09-1, 69 NRC 1 (2009)

after completion of decommissioning, neither licensee nor the NRC retains any continuing obligation or jurisdiction, respectively, with respect to a site, unless new information shows that the Part 20 criteria were not met and the residual radioactivity remaining on the site could result in a significant threat to public health and safety; CLI-09-1, 69 NRC 1 (2009)

allegations of contamination of drinking water are outside the scope of license renewal proceeding because they involve no aging-related issues and are Category 1, or generic, issues; LBP-06-10, 63 NRC 314 (2006)

offsite radiological impacts are a Category 1 issue, and the Commission has determined such impacts to be "small" for all nuclear power plants seeking a renewed license; LBP-08-26, 68 NRC 905 (2008)

the potential for tritium contamination of water is primarily a NEPA issue because it involves the environmental impacts of the proposed early site permit and possible mitigation measures, but also has a safety element because safety regulations require that exposure to radiation be as low as reasonably achievable; LBP-07-9, 65 NRC 539 (2007)

See also Groundwater Contamination

RADIOLOGICAL EXPOSURE

a contention that new and significant information about cancer rates in communities around a plant shows that another 20 years of operations may result in greater offsite radiological impacts on human health than was previously known is denied; LBP-06-23, 64 NRC 257 (2006)

a small or minor unwanted exposure, even one well within regulatory limits, is sufficient to establish an injury in fact; LBP-08-6, 67 NRC 241 (2008)

allegation that NRC has inadequately characterized human health impacts of radiation exposure from the high-level waste repository is inadmissible in a combined license proceeding; LBP-08-16, 68 NRC 361 (2008)

applicant shall conduct operations so that the total effective dose equivalent to individual members of the public does not exceed 100 millirems per year; LBP-10-20, 72 NRC 571 (2010)

applicant shall provide reasonable assurance that the annual dose equivalent to members of the public from planned discharges not exceed 25 millirems to the whole body; LBP-10-20, 72 NRC 571 (2010)

combined license applications must include information on kinds and quantities of materials expected to be produced during plant operation and the means for controlling and limiting radioactive effluents and radiation exposures to comply with Part 20 limits; CLI-09-16, 70 NRC 33 (2009)

SUBJECT INDEX

- compliance with limits on radiological exposures, over necessarily long time periods, requires a performance assessment; LBP-09-6, 69 NRC 367 (2009)
- individuals located at the boundary of the exclusion area cannot be exposed to more than 25 rem total effective dose equivalent in any 2-hour period, and any individual located at the outer boundary of the low population zone cannot be exposed to more than 25 rem TEDE during the entire period of any radioactive release; LBP-09-19, 70 NRC 433 (2009)
- licensees must use, to the extent practical, procedures and engineering controls based on sound radiation protection principles to achieve occupational doses that are as low as reasonably achievable; CLI-09-14, 69 NRC 580 (2009)
- licensees subject to the Environmental Protection Agency's generally applicable environmental radiation standards in 40 C.F.R. Part 190 shall comply with those standards; LBP-09-19, 70 NRC 433 (2009)
- numerical limits for radiation exposure, including occupational dose limits and radiation dose limits for members of the public, are provided; LBP-09-19, 70 NRC 433 (2009)
- petitioner's argument that high-explosive munitions could fall onto depleted uranium, pulverizing and igniting the DU and generating aerosols that might travel through the air, providing an inhalation pathway for offsite exposure was contradicted by the Army's statement that it does not use high-impact explosives in the area where DU is present; CLI-10-20, 72 NRC 185 (2010)
- petitioners' assertion that no exposure levels are safe is an impermissible challenge to the exposure limits set forth in the NRC's regulations; LBP-09-16, 70 NRC 227 (2009)
- safety regulations in 10 C.F.R. 52.79(a)(3) require applicant to describe the kinds and quantities of radioactive materials that will be produced in operating a proposed new power plant and to describe the means for controlling and limiting the radioactive effluents and radiation exposures; CLI-10-2, 71 NRC 27 (2010)
- the "total effective dose equivalent" is defined as the sum of the deep-dose equivalent (for external exposures) and the committed effective dose equivalent (for internal exposures); LBP-08-4, 67 NRC 105 (2008)
- the combined license application must describe the means for controlling and limiting the radioactive effluents and radiation exposures from the proposed nuclear reactors; LBP-10-20, 72 NRC 571 (2010)
- the Environmental Protection Agency has established radiation exposure standards under 40 C.F.R. Part 190, the applicability of which the Commission has acknowledged; LBP-09-19, 70 NRC 433 (2009)
- the final safety analysis report must include the kinds and quantities of radioactive materials expected to be produced by low-level radioactive waste in the operation and the means for controlling and limiting radioactive effluents and radiation exposures within the limits set forth in 10 C.F.R. Part 20; LBP-10-20, 72 NRC 571 (2010)
- the geologic repository operations area must meet the requirements of 10 C.F.R. Part 20; CLI-09-14, 69 NRC 580 (2009)
- the preclosure safety analysis for the high-level waste repository must demonstrate that in the event of Category 1 or Category 2 event sequences, prescribed dose limits will be met; CLI-09-14, 69 NRC 580 (2009)
- the safety analysis report for the high-level waste repository application must contain information pertaining to evaluation of potential exposures during the post-closure period beyond 10,000 years following disposal; CLI-08-20, 68 NRC 272 (2008)
- See also Dose Limits
- RADIOLOGICAL MONITORING**
- a site characterization must include sufficient information so that it can effectively track pathways for significant offsite contamination and estimate the quantity of those pathways; LBP-08-4, 67 NRC 105 (2008)
- applicant moves for summary disposition of a contention involving whether leak detection through monitoring wells is necessary as part of the plant's aging management program; LBP-07-12, 66 NRC 113 (2007)
- groundwater, surface, and subsurface water monitoring programs must assess whether depleted uranium will reach offsite humans through drinking water or the consumption of animals or plants that have in turn consumed water from the site in quantities significant enough that those offsite humans might receive more than 25 mrem of total radioactive exposure from all pathways per year; LBP-08-4, 67 NRC 105 (2008)

SUBJECT INDEX

the board finds that the biota sampling component of the field sampling plan is sufficient to meet the criteria for a 5-year alternate schedule for submission of a decommissioning plan; LBP-08-4, 67 NRC 105 (2008)

this is an operational program that is beyond the scope of license renewal; LBP-07-4, 65 NRC 281 (2007)

RADIONUCLIDE TRANSPORT

factors important to hydrological radionuclide transport must be obtained from onsite measurements; LBP-09-19, 70 NRC 433 (2009)

in its review of early site permit applications, Staff must consider physical characteristics of the site, specifically noting that factors important to hydrological radionuclide transport must be obtained from onsite measurements; LBP-09-19, 70 NRC 433 (2009)

RATEMAKING PROCESS

ratepayer impacts are outside the scope of a combined license proceeding because the state, not the NRC, is charged with protecting ratepayers' interests; LBP-09-10, 70 NRC 51 (2009)

REACTOR COOLING SYSTEMS

asserted deficiencies in the environmental report intake/discharge impact discussion as it is associated with the baseline discussion of aquatic resources, if properly supported, can be admitted for further litigation; LBP-08-16, 68 NRC 361 (2008)

components such as the recirculation outlet nozzle must meet the requirements for Class 1 components in Section III of the ASME Boiler and Pressure Vessel Code; CLI-08-28, 68 NRC 658 (2008)

for license renewal, feedwater, core spray, and reactor recirculation outlet nozzles, as part of the reactor coolant pressure boundary, must meet the metal-fatigue requirements for Class 1 components in section III of the ASME Code; CLI-10-17, 72 NRC 1 (2010)

REACTOR CORE

in applicant's safety assessment, the fission product releases in question are associated with accidents that have generally been assumed to result in substantial meltdown of the core with subsequent release into the containment of appreciable quantities of fission products; LBP-09-19, 70 NRC 433 (2009)

Staff's generic environmental impact statement for license renewal has already performed a discretionary analysis of terrorist acts in connection with license renewal and concluded that the core damage and radiological release from such acts would be no worse than the damage and release to be expected from internally initiated events; CLI-07-8, 65 NRC 124 (2007)

REACTOR DESIGN

a board erred in referring a contention to the Staff for consideration in conjunction with the design certification rulemaking without first assessing its admissibility; CLI-10-1, 71 NRC 1 (2010)

a contention raised in a combined license hearing challenging information in a design certification rulemaking, if otherwise admissible, should be referred to the Staff for consideration in the rulemaking, and held in abeyance by the licensing board pending the outcome of the rulemaking; CLI-09-4, 69 NRC 80 (2009); CLI-09-8, 69 NRC 317 (2009); LBP-09-3, 69 NRC 139 (2009); LBP-10-21, 72 NRC 616 (2010)

a license application will not be held in abeyance until the design certification rulemaking is completed; LBP-09-16, 70 NRC 227 (2009)

all environmental issues concerning severe accident mitigation design alternatives associated with the information in the NRC's environmental assessment for a certified design are considered resolved; LBP-09-19, 70 NRC 433 (2009)

all nuclear safety and environmental issues concerning severe accident mitigation design alternatives associated with NRC's environmental assessment for the AP1000 design and Appendix 1B of the generic Design Control Document are considered resolved by the Commission; LBP-09-2, 69 NRC 87 (2009)

any contention directed at a design undergoing rulemaking review fails on its face to satisfy the admission requirements because all matters subject of a rulemaking are outside the scope of licensing proceedings; LBP-09-8, 69 NRC 736 (2009)

applicant for a combined license is expressly authorized by NRC's regulations to incorporate by reference a certified design in its license application; LBP-09-2, 69 NRC 87 (2009); LBP-09-8, 69 NRC 736 (2009)

SUBJECT INDEX

applicant for a combined license may, at its own risk, reference in its application a design for which a design certification application has been docketed but not granted; LBP-08-17, 68 NRC 431 (2008); LBP-09-16, 70 NRC 227 (2009); LBP-09-17, 70 NRC 311 (2009); LBP-09-18, 70 NRC 385 (2009); LBP-10-9, 71 NRC 493 (2010); LBP-10-20, 72 NRC 571 (2010)

applicant may, at its own risk, submit a combined license application that does not reference a certified design; CLI-10-1, 71 NRC 1 (2010)

applicant's change of reactor design constitutes new and materially different information for the purposes of filing a new contention; LBP-10-17, 72 NRC 501 (2010)

at the combined license stage, applicant may reference both an early site permit and a standard design certification in its application; LBP-09-16, 70 NRC 227 (2009); LBP-09-19, 70 NRC 433 (2009)

combined license applicants will also have to demonstrate that the site-specific parameters are bounded by the parameters developed for the certified design; LBP-09-2, 69 NRC 87 (2009)

Commission policy of permitting the conduct of an adjudicatory proceeding on a combined license that references a design certification that the Commission has not approved does not violate the Atomic Energy Act of 1954, 10 C.F.R. Part 52, or judicial decisions; CLI-09-4, 69 NRC 80 (2009)

concerns relating specifically to the AP1000 reactor design amendment may be raised by filing comments on the proposed rule when it is issued; LBP-08-17, 68 NRC 431 (2008)

design certification applicants are required to address severe accident mitigation design alternatives; LBP-09-19, 70 NRC 433 (2009)

design certification rulemaking and individual combined license adjudicatory proceedings may proceed simultaneously, and issues raised in an adjudicatory proceeding that are appropriately addressed in the generic design certification rulemaking are to be referred to the rulemaking for resolution; CLI-09-8, 69 NRC 317 (2009)

each combined license applicant will have to determine whether it will adopt in toto the certified design, or whether it will take exemptions thereto and/or departures therefrom; LBP-09-2, 69 NRC 87 (2009)

failure to frame a safety concern arising from the interaction of the proposed design certification document amendment with the existing certified standard design and/or a facility-specific provision of the COLA leaves the contention as an inadmissible challenge to the Part 52 regulatory framework; LBP-09-3, 69 NRC 139 (2009)

generic issues are to be resolved as part of the design certification rulemaking process, and any concerns related to those issues must be addressed in the rulemaking and not within the scope of a combined license proceeding; LBP-09-8, 69 NRC 736 (2009)

if a contention concerning a certification application that has been docketed but not granted is otherwise admissible under 10 C.F.R. 2.309(f)(1), it might be held in abeyance and referred to the Staff; LBP-09-17, 70 NRC 311 (2009)

if applicant proceeds with a site-specific reactor design instead of a certified design, any admissible issues would have to be addressed in the licensing adjudication; CLI-08-15, 68 NRC 1 (2008)

if the combined license application references an early site permit, applicant must demonstrate that the chosen design falls within the parameters specified in the ESP or, on the safety side, request a variance; LBP-09-19, 70 NRC 433 (2009)

in making the findings required for issuance of a combined license, the Commission shall treat as resolved those matters resolved in connection with the issuance or renewal of a design certification rule; LBP-10-21, 72 NRC 616 (2010)

in the absence of a 10 C.F.R. 2.335 waiver petition, any challenge brought to aspects of a referenced certified reactor design is outside the scope of a combined license proceeding; LBP-08-16, 68 NRC 361 (2008)

incorporation by reference in the COL application is consistent with NRC rules when an applicant chooses to reference a standard design; CLI-09-8, 69 NRC 317 (2009)

nuclear reactors are required to be designed to withstand certain postulated events or accidents, which result in negligible offsite consequences because the reactor is designed to handle such events; LBP-09-10, 70 NRC 51 (2009)

"otherwise admissible" has been interpreted to mean a contention that meets the contention admissibility requirements of 10 C.F.R. 2.309(f)(1) but for the fact that it challenges a yet-to-be-certified reactor design; LBP-10-9, 71 NRC 493 (2010)

SUBJECT INDEX

- petitioner failed to identify any statute or NRC regulation to support its theory that applicant may not revise its application to include a different reactor design; LBP-10-17, 72 NRC 501 (2010)
- petitioner's dispute with the combined license application concerning completeness of the AP1000 Design Certification Document is referred to Staff for resolution during the rulemaking on the certification of the AP1000 design and any hearing on the merits is held in abeyance pending the outcome of the rulemaking; LBP-08-21, 68 NRC 554 (2008)
- request that a combined license application be held in abeyance until the design certification is completed must be denied; LBP-09-18, 70 NRC 385 (2009)
- severe accident mitigation alternatives design analysis focuses on severe accident mitigation dealing with reactor design and hardware issues; LBP-09-10, 70 NRC 51 (2009)
- severe accident mitigation design alternative issues are resolved for an application referencing a design control document if the specific site parameters are covered by the site parameters assumed in the DCD SAMDA analysis; LBP-09-19, 70 NRC 433 (2009)
- the appropriate path for any petitioner's challenges to proposed reactor design revisions is through participation in those rulemaking proceedings, not through a combined license proceeding; LBP-09-2, 69 NRC 87 (2009)
- the Commission generally refuses to modify, rescind, or impose new requirements on reactor design certification information, except through rulemaking; LBP-10-21, 72 NRC 616 (2010)
- the EPA standard of 25 mrem only applies to the uranium fuel cycle, which only includes the generation of electricity by a light-water-cooled nuclear power plant; LBP-07-9, 65 NRC 539 (2007)
- the process for taking exemptions and departures from a certified design is set forth in 10 C.F.R. Part 52, App. D, § VIII; LBP-09-2, 69 NRC 87 (2009)
- the SAMDA analysis is part of the design certification application and thus intervenor's contention constitutes an impermissible challenge to a future rulemaking; LBP-10-10, 71 NRC 529 (2010)
- to the degree that the general precept that a rule, including a design certification, cannot be challenged in an adjudication might be seen as placing such matters outside the scope of the proceeding; LBP-10-21, 72 NRC 616 (2010)
- unless and until specific numerical guidelines for maintaining effluent releases ALARA for non-LWRs are implemented, compliance with ALARA requirements will be determined on a case-by-case basis in the context of a future COL or CP application referencing the early site permit; CLI-07-27, 66 NRC 215 (2007)
- until the reactor design is certified and the rulemaking proceeding concluded, the design continues to change, creating potentially new safety and environmental concerns; LBP-09-18, 70 NRC 385 (2009)
- REACTOR DESIGN CERTIFICATION**
- issues concerning a reactor design certification application should be resolved in the design certification rulemaking and not in an individual combined license proceeding; CLI-08-15, 68 NRC 1 (2008)
- REACTOR OPERATOR EXAMINATIONS**
- applicant is exempted from the 6-month waiting period required for a third application for a reactor operator license, contingent upon participation in licensed operator requalification training program; LBP-06-2, 63 NRC 80 (2006)
- REACTOR PRESSURE VESSEL**
- embrittlement of the RPV is within the scope of a license renewal proceeding; LBP-06-10, 63 NRC 314 (2006)
- whether a plan is necessary to manage the cumulative effects of embrittlement of the reactor pressure vessels and associated internals is within the scope of a license renewal proceeding; LBP-08-13, 68 NRC 43 (2008)
- REACTOR TRIP**
- licensee's report to NRC of a manual reactor trip due to main turbine high vibrations included the details of the event, provided an analysis of the event, including estimated change in conditional core damage probability, and provided a list of corrective actions; DD-09-2, 70 NRC 899 (2009)
- REASONABLE ASSURANCE**
- a board's analysis of decommissioning cost estimates should be tailored to the specifics of the proceeding; CLI-06-22, 64 NRC 37 (2006)

SUBJECT INDEX

- a board's examination of licensee's decommissioning cost estimates for reliability is consistent with its obligation to verify whether the estimates provided reasonable assurance for decommissioning funding; CLI-06-22, 64 NRC 37 (2006)
 - a "compelling reasons" standard should not be applied; LBP-08-22, 68 NRC 590 (2008)
 - a finding of reasonable assurance that there will be adequate protection to the health and safety of the public is based on judgment, not on the application of a mechanical verbal formula, a set of objective standards, or specific confidence interval; LBP-08-25, 68 NRC 763 (2008)
 - applicants for license renewal must demonstrate how their programs will be effective in managing the effect of aging during the period of extended operations and identify any additional actions that will need to be taken to adequately manage the detrimental effects of aging; LBP-08-22, 68 NRC 590 (2008)
 - neither the Atomic Energy Act nor the regulations require totally risk-free siting; LBP-08-22, 68 NRC 590 (2008)
 - obtaining an estimate from an experienced third-party vendor is not the only way for an applicant to demonstrate that its cost estimate is documented and reasonable; CLI-06-22, 64 NRC 37 (2006)
 - perfection in plant construction and the construction quality assurance program is not a precondition for a license, but rather what is required is reasonable assurance that the plant, as built, can and will be operated without endangering the public health and safety; LBP-10-9, 71 NRC 493 (2010)
 - the determination need not be reduced to a mechanical verbal formula or set of objective standards, but may be given content through case-by-case applications of the Commission's technical judgment, in light of all relevant information; CLI-10-14, 71 NRC 449 (2010)
 - the license renewal applicant's use of an aging management program identified in the Generic Aging Lessons Learned Report constitutes reasonable assurance that it will manage the targeted aging effect during the renewal period; CLI-10-17, 72 NRC 1 (2010)
 - the phrase as specified in 10 C.F.R. 54.29 is not defined, but requires, at a minimum, that an applicant demonstrate compliance with all of NRC's safety regulations; LBP-08-25, 68 NRC 763 (2008)
 - the standard should not be interpreted to require proof beyond a reasonable doubt; LBP-08-22, 68 NRC 590 (2008)
 - this term is not quantified as equivalent to a 95% (or any other percent) confidence level, but is based on sound technical judgment of the particulars of a case and on compliance with the Commission's regulations; CLI-09-7, 69 NRC 235 (2009)
 - to satisfy the reasonable assurance standard for its aging management program, a license renewal applicant must make a showing that meets the preponderance of the evidence threshold of compliance with the applicable regulations, not a 95% confidence level of compliance; CLI-09-7, 69 NRC 235 (2009)
 - under 10 C.F.R. 2.325, applicant has the burden of proving that it has met the reasonable assurance standard of 10 C.F.R. 54.29; LBP-08-25, 68 NRC 763 (2008)
 - whether the standard is satisfied is based on sound technical judgment applied on a case-by-case basis; LBP-09-6, 69 NRC 367 (2009)
- REBUTTABLE PRESUMPTION**
- absence of perfect compliance by licensee does not rebut the presumption of compliance or support admission of a contention that the application does not satisfy 10 C.F.R. 54.29(a), but a consistent, longstanding, and continuing pattern of problems in a specific area that is relevant to managing aging equipment will; LBP-10-15, 72 NRC 257 (2010)
 - FEMA's finding on emergency plans constitutes a rebuttable presumption on questions of adequacy and implementation capability in NRC licensing proceedings; LBP-09-19, 70 NRC 433 (2009)
 - there is a presumption that governmental officials, acting in their official capacities, have properly discharged their duties, and clear evidence is usually required to rebut this presumption; CLI-06-22, 64 NRC 37 (2006)
- RECIRCULATION SPRAY SYSTEM**
- components that are part of the reactor coolant pressure boundary must meet the requirements of Class 1 components in Section III of the ASME Boiler and Pressure Vessel Code; LBP-08-25, 68 NRC 763 (2008)
 - conservatism in use of Green's function to determine cumulative usage factor for metal fatigue in the recirculation nozzle is discussed; LBP-08-12, 68 NRC 5 (2008)

SUBJECT INDEX

RECONSIDERATION

the Commission does not lightly revisit its own already-issued and well-considered decisions, doing so only if the party seeking reconsideration brings decisive new information to its attention or demonstrates a fundamental Commission misunderstanding of a key point; LBP-06-27, 64 NRC 399 (2006)
See also Motions for Reconsideration

RECORD

the relevant record includes legal issues and necessarily legal arguments; LBP-10-11, 71 NRC 609 (2010)

RECORD OF DECISION

after the board issues its initial decision, it must provide questions proffered by the parties to the Commission's Secretary for inclusion in the official record of the proceeding; LBP-07-17, 66 NRC 327 (2007)
any Commission decision on any action for which an FEIS has been prepared must be accompanied by a record of decision; LBP-06-8, 63 NRC 241 (2006)
documents and information exchanged in the mandatory disclosures enter the adjudicatory record only if and when a party proffers the document or information as evidence for the evidentiary hearing; LBP-09-30, 70 NRC 1039 (2009)
for license renewal applications, the Commission shall determine whether or not the adverse environmental impacts of license renewal are so great that preserving the option of license renewal for energy planning decisionmakers would be unreasonable; LBP-06-10, 63 NRC 314 (2006)
in making a decision on license renewal, the Commission shall determine whether or not the adverse environmental impacts are so great that preserving the option of license renewal for energy planning decisionmakers would be unreasonable; LBP-07-11, 66 NRC 41 (2007)
the Commission declines to exercise its discretion to allow oral argument because the written record in the case is thorough, effectively sets forth the positions of the participants, and, overall, contains sufficient information on which to base its decision; CLI-10-9, 71 NRC 245 (2010)
the Commission shall determine whether or not the adverse environmental impacts of license renewal are so great that preserving the option of license renewal for energy planning decisionmakers would be unreasonable; LBP-06-23, 64 NRC 257 (2006)
there is no per se regulatory bar that precludes the Staff from using the hearing process to clarify the administrative record supporting its final EA, and that record, along with any adjudicatory decision, becomes, in effect, part of the final environmental document; CLI-10-18, 72 NRC 56 (2010)
there must be a finding that something is remote and speculative to preclude it from further analysis, and there must be support in the agency's record of decision to justify this finding; LBP-10-14, 72 NRC 101 (2010)
when a hearing is held on a proposed action, the licensing board's initial decision on that action constitutes the record of decision; LBP-06-8, 63 NRC 241 (2006)

RECORDKEEPING

an agency employee's working file constitutes an "agency record" if it both contains unique information that underlies an agency decision and it was also made available to other agency employees for purposes of helping to reach or support that decision; CLI-08-23, 68 NRC 461 (2008)
applicant's commitments for occupational exposure to radiation exceeding the dose limits are described; LBP-07-6, 65 NRC 429 (2007)
failure to document a falsified work order is a violation of 10 C.F.R. 50.9; LBP-08-14, 68 NRC 279 (2008)
federal agencies have some discretion in determining which documentary materials are appropriate for preservation as an agency "record"; CLI-08-23, 68 NRC 461 (2008)
materials created by an employee for the individual's own use in performing his or her job, and which are not circulated and are not otherwise required by NRC policy to be maintained, may be discarded at the employee's discretion; CLI-08-23, 68 NRC 461 (2008)
See also Documentation

RECUSAL

a judge should disqualify himself if he has personal knowledge of disputed evidentiary facts concerning the proceeding; CLI-10-22, 72 NRC 202 (2010)
if a licensing board member declines to grant a party's recusal motion, the motion is referred to the Commission to determine the sufficiency of the grounds alleged; CLI-10-22, 72 NRC 202 (2010)

SUBJECT INDEX

that an unreasonable person, focusing on only one aspect of the story, might perceive a risk of bias is irrelevant; CLI-10-22, 72 NRC 202 (2010)

the disqualification standard under 28 U.S.C. § 455 is not directed to administrative judges, but the Commission and its adjudicatory boards have applied it in assessing a motion for disqualification under 10 C.F.R. 2.313, and it provides a helpful framework for such an assessment; CLI-10-22, 72 NRC 202 (2010)

the proper inquiry under 28 U.S.C. § 455 is made from the perspective of a reasonable person, knowing all the circumstances; CLI-10-22, 72 NRC 202 (2010)

the standard for disqualification of a judge under 28 U.S.C. § 455 is whether the reasonable person who knows all the circumstances, would harbor doubts about the judge's impartiality; CLI-10-22, 72 NRC 202 (2010)

REDRRESSABILITY

a limited work authorization authorizes activities for which either a construction permit or combined license is otherwise required, but the LWA application must include a plan for site redress that provides for restoration if the project is cancelled, the LWA is revoked, or a construction permit or COL is denied; LBP-09-19, 70 NRC 433 (2009)

a person who has been accorded a procedural right to protect his concrete interests can assert that right without meeting all the normal standards for redressability and immediacy; CLI-09-9, 69 NRC 331 (2009)

a site redress plan remains in effect for an early site permit applicant even if the ESP with which the LWA is issued is not referenced in a construction permit or COL application during the period that the ESP remains valid; LBP-09-19, 70 NRC 433 (2009)

as long as either denial of a license or issuance of a decision mandating compliance with legal requirements would alleviate a petitioner's potential injury, then under longstanding NRC jurisprudence the petitioner may prosecute any admissible contention that could result in the denial or in the compliance decision; CLI-09-20, 70 NRC 911 (2009)

boards are to determine whether the site redress plan will adequately redress the activities performed under a limited work authorization should the activities be terminated by either the holder of the LWA or by Commission denial of any corresponding early site permit or combined license; LBP-09-19, 70 NRC 433 (2009)

if petitioner requests a remedy that is beyond the scope of the hearing, then the hearing request must be denied because redressability is an element of standing; LBP-08-14, 68 NRC 279 (2008)

if there is nothing that can be done by way of judicial review to redress the adverse consequences that petitioners say they are suffering, review will be denied; LBP-10-11, 71 NRC 609 (2010)

intervention petitioner must establish a concrete and particularized injury that is fairly traceable to the challenged action, is likely to be redressed by a favorable decision, and is arguably within the zone of interests protected by the governing statute; CLI-09-20, 70 NRC 911 (2009)

one who asserts a procedural right to protect a concrete interest can assert that right without meeting all the normal standards for redressability and immediacy; LBP-10-11, 71 NRC 609 (2010)

petitioner is required to show that its alleged injury-in-fact could be cured or alleviated by some action of the tribunal; LBP-09-13, 70 NRC 168 (2009)

petitioners need not demonstrate a substantial likelihood of redressability, but rather need only show that redress is likely as opposed to speculative; LBP-10-11, 71 NRC 609 (2010)

the increased risk of living within 50 miles of a nuclear power plant constitutes injury-in-fact, is traceable to the challenged action, and is likely to be redressed by a favorable decision that either denies a license or mandates compliance with legal requirements that protect the interests of the petitioners; LBP-09-4, 69 NRC 170 (2009)

to establish standing, petitioner must show that its alleged injury-in-fact could be cured or alleviated by some action of the tribunal; LBP-10-16, 72 NRC 361 (2010)

REFERRAL OF MOTION

the Secretary of the Commission has authority to refer a motion to the board for any action the board deems appropriate; CLI-09-5, 69 NRC 115 (2009)

the Secretary's referral of petitioner's motion to admit a late-filed contention effectively returns jurisdiction to the licensing board to rule on the motion; CLI-09-5, 69 NRC 115 (2009)

SUBJECT INDEX

REFERRAL OF RULING

- a board may refer a ruling to the Commission if it determines that prompt decision is necessary to prevent detriment to the public interest or unusual delay or expense, or if the ruling involves a novel issue that merits Commission review at the earliest opportunity; CLI-09-6, 69 NRC 128 (2009); CLI-09-13, 69 NRC 575 (2009)
- a board ruling on a contention may be referred to the Commission if it raises significant and novel legal or policy issues or the referral would materially advance the orderly disposition of the proceeding; LBP-09-16, 70 NRC 227 (2009); LBP-09-18, 70 NRC 385 (2009); LBP-09-26, 70 NRC 939 (2009)
- contention raising question of whether a quantitative as opposed to qualitative analysis of terrorist attacks and the alternatives for mitigation and prevention is necessary is referred to the Commission as a novel issue; LBP-10-15, 72 NRC 257 (2010)
- contentions involving possible errors in Table S-3 have been referred to the Commission; LBP-09-21, 70 NRC 581 (2009)
- decisions that involve significant and novel issues, the resolution of which would materially advance the orderly disposition of proceedings, should be referred to the Commission; LBP-10-20, 72 NRC 571 (2010)
- novel issues that the Commission may wish to address generically at the earliest opportunity are appropriately referred to the Commission; LBP-08-16, 68 NRC 361 (2008); LBP-08-17, 68 NRC 431 (2008); LBP-10-15, 72 NRC 257 (2010)
- the board may refer certain rulings to the Commission, and certain participants in the proceeding may request that the presiding officer certify to the Commission rulings not otherwise immediately appealable pursuant to section 2.1015(b); CLI-10-10, 71 NRC 281 (2010)

REFERRED RULINGS

- guidance is provided on declining review of referred rulings; CLI-10-9, 71 NRC 245 (2010)
- outside the context of petitions for interlocutory review, the Commission may take interlocutory review of questions or rulings that a licensing board either refers or certifies to the Commission; CLI-07-1, 65 NRC 1 (2007)
- the Commission addresses a board's additional views when the board refers its decision to the Commission; CLI-10-9, 71 NRC 245 (2010)
- the Commission declined to review licensing board referred rulings because the contentions were rejected by the board due to legal insufficiency; CLI-09-21, 70 NRC 927 (2009)
- the Commission will review a referred ruling only if it raises significant and novel legal or policy issues, and resolution of the issues would materially advance the orderly disposition of the proceeding; CLI-09-3, 69 NRC 68 (2009); CLI-09-13, 69 NRC 575 (2009); CLI-09-21, 70 NRC 927 (2009)

REGULATIONS

- a contention is not an impermissible challenge to agency regulations merely because the applicant and the Staff believe the regulations have been satisfied; LBP-06-12, 63 NRC 403 (2006)
- a contention on spent fuel pool fires is rejected as an impermissible challenge to NRC regulations and the license renewal generic environmental impact statement; CLI-10-11, 71 NRC 287 (2010)
- a contention that attacks a Commission rule, or which seeks to litigate a matter that is, or clearly is about to become, the subject of a rulemaking, is inadmissible; LBP-09-3, 69 NRC 139 (2009); LBP-10-21, 72 NRC 616 (2010)
- a contention that seeks to impose new requirements on applicants and licensees is an impermissible challenge to the agency's regulations; LBP-09-26, 70 NRC 939 (2009)
- a licensing board may not admit a contention that directly or indirectly challenges Table S-3 of 10 C.F.R. 51.51; LBP-09-16, 70 NRC 227 (2009)
- a rule or regulation may be challenged outside the adjudicatory context by filing a petition for rulemaking under 10 C.F.R. 2.802 or requesting that the NRC Staff take enforcement action under 10 C.F.R. 2.206; LBP-07-11, 66 NRC 41 (2007)
- absent a waiver under 10 C.F.R. 2.335(b), contentions challenging applicable statutory requirements or Commission regulations are not admissible in agency adjudications; CLI-07-16, 65 NRC 371 (2007); CLI-08-15, 68 NRC 1 (2008); CLI-08-17, 68 NRC 231 (2008); CLI-09-20, 70 NRC 911 (2009); CLI-10-1, 71 NRC 1 (2010); LBP-07-4, 65 NRC 281 (2007); LBP-08-13, 68 NRC 43 (2008); LBP-08-16, 68 NRC 361 (2008); LBP-08-17, 68 NRC 431 (2008); LBP-09-10, 70 NRC 51 (2009);

SUBJECT INDEX

LBP-09-16, 70 NRC 227 (2009); LBP-09-17, 70 NRC 311 (2009); LBP-09-21, 70 NRC 581 (2009); LBP-09-26, 70 NRC 939 (2009); LBP-10-9, 71 NRC 493 (2010); LBP-10-16, 72 NRC 361 (2010)

adjudication is not the proper forum for challenging applicable statutory requirements or the basic structure of the agency's regulatory process; LBP-07-10, 66 NRC 1 (2007); LBP-10-7, 71 NRC 391 (2010)

all nuclear safety and environmental issues concerning severe accident mitigation design alternatives associated with NRC's environmental assessment for the AP1000 design and Appendix 1B of the generic Design Control Document are considered resolved by the Commission; LBP-09-2, 69 NRC 87 (2009)

allowing applicant to postpone performance of an analysis-of-record time-limited aging analysis until after the license renewal is issued is inconsistent with the language, structure, and intent of the Part 54 regulations and inconsistent with NRC precedent; LBP-08-25, 68 NRC 763 (2008)

although Council on Environmental Quality regulations are not binding on the NRC when the agency has not expressly adopted them, they are entitled to considerable deference; CLI-07-27, 66 NRC 215 (2007); LBP-06-19, 64 NRC 53 (2006); LBP-06-8, 63 NRC 241 (2006); LBP-09-7, 69 NRC 613 (2009); LBP-09-10, 70 NRC 51 (2009); LBP-09-16, 70 NRC 227 (2009); LBP-09-17, 70 NRC 311 (2009); LBP-10-15, 72 NRC 257 (2010)

although Part 40 generally applies to in situ leach mining, Appendix A to Part 40, including Criterion 1, was designed to address the problems related to mill tailings and not problems related to injection mining; LBP-10-16, 72 NRC 361 (2010)

an exemption can be granted if it is authorized by law and will not endanger life or property or the common defense and security, and is otherwise in the public interest; LBP-07-6, 65 NRC 429 (2007)

applicant seeks an exemption from the disposal site requirements of 10 C.F.R. 30.3 and 70.3 to allow disposal of low-activity radioactive waste from the Hematite facility at a site near Grand View, Idaho, that is not licensed by the NRC; LBP-09-28, 70 NRC 1019 (2009)

as Class I components, the feedwater, reactor recirculation, and core spray outlet nozzles on a boiling water reactor must be designed, fabricated, erected, and tested to the highest quality standards practical as specified in Part 50, Appendix A, GDC 30; LBP-08-25, 68 NRC 763 (2008)

because a generic environmental analysis was incorporated into a regulation, the conclusions of that analysis are not subject to attack in an individual adjudication unless the rule is waived or suspended; CLI-07-3, 65 NRC 13 (2007)

challenges to the Commission regulations regarding the design certification process are inadmissible; LBP-09-18, 70 NRC 385 (2009)

compliance with regulations of other federal agencies, such as Environmental Protection Agency drinking water contamination limits, is beyond a board's jurisdiction and outside the scope of a materials license proceeding; LBP-06-8, 63 NRC 241 (2006)

consistency of the generic guidance in NUREG-1757 governing restricted release with the text and intent of the regulations is discussed; CLI-09-1, 69 NRC 1 (2009)

contentions involving possible errors in Table S-3 have been referred to the Commission; LBP-09-21, 70 NRC 581 (2009)

contentions that advocate more stringent requirements than the NRC rules impose or that otherwise seek to litigate a generic determination that the Commission has established by rulemaking, or that raise a matter that is or is about to become the subject of rulemaking are barred; LBP-07-3, 65 NRC 237 (2007); LBP-08-9, 67 NRC 421 (2008); LBP-08-17, 68 NRC 431 (2008)

contentions that directly or indirectly challenge Table S-3 of 10 C.F.R. 51.51 are inadmissible; LBP-09-4, 69 NRC 170 (2009)

Council on Environmental Quality regulations receive substantial deference from federal courts in interpreting the requirements of NEPA; LBP-10-16, 72 NRC 361 (2010); LBP-10-24, 72 NRC 720 (2010)

Council on Environmental Quality regulations state that an environmental impact statement must address both direct and indirect effects of an action; LBP-09-7, 69 NRC 613 (2009)

creditor regulations in 10 C.F.R. 50.81 apply to the creation of creditor interests in equipment, devices, or important parts thereof, capable of separating the isotopes of uranium or enriching uranium in the isotope U-235; CLI-10-4, 71 NRC 56 (2010)

SUBJECT INDEX

creditor regulations in 10 C.F.R. 70.44 apply to the creation of creditor interests in special nuclear material; CLI-10-4, 71 NRC 56 (2010)

creditor regulations may be augmented by license conditions as necessary to allow ownership arrangements, such as sale and leaseback, provided it can be found that such arrangements are not inimical to the common defense and security of the United States; CLI-10-4, 71 NRC 56 (2010)

decommissioning rules are designed to minimize the administrative effort of licensees and the Commission and to provide reasonable assurance that funds will be available to carry out decommissioning in a manner that protects public health and safety; LBP-09-21, 70 NRC 581 (2009)

failure of an applicant to address any guidance topics or deviation from the guidance provided does not rise to the level of failure to comply with NRC regulations; LBP-08-9, 67 NRC 421 (2008)

guidance documents do not create binding legal requirements; CLI-10-24, 72 NRC 451 (2010)

handling of confidential commercial or financial (proprietary) information that has been submitted to the agency is governed by 10 C.F.R. 2.390; CLI-10-24, 72 NRC 451 (2010)

in implementing the National Environmental Policy Act, NRC uses the definitions provided in Council on Environmental Quality regulations; LBP-09-7, 69 NRC 613 (2009); LBP-09-19, 70 NRC 433 (2009)

in the license renewal context, regulations established under Part 50, including compliance with the ASME Code, must be followed during the period of extended operation; CLI-08-28, 68 NRC 658 (2008)

intervenor may petition the Commission for permission to challenge a rule, but must make a showing of special circumstances; LBP-10-9, 71 NRC 493 (2010)

intervention petitioners may not demand an adjudicatory hearing to attack generic NRC requirements or regulations or to express generalized grievances about NRC policies; LBP-07-11, 66 NRC 41 (2007)

it is NRC stated policy to take into account Council on Environmental Quality regulations voluntarily, subject to some conditions; CLI-10-18, 72 NRC 56 (2010)

it may be inferred that an exemption is implicitly authorized by law if all of the conditions for granting the exemption are met and no other provision prohibits, or otherwise restricts, its application; LBP-07-6, 65 NRC 429 (2007)

low-level radioactive waste disposal contentions may not challenge Table S-3, consistent with NRC policy that regulations may not be the subject of collateral attack in an adjudication; CLI-10-2, 71 NRC 27 (2010)

motions to reopen a proceeding to introduce an entirely new contention must successfully navigate at least nineteen different regulatory factors under 10 C.F.R. 2.326, 2.309(c), and 2.309(f)(1); LBP-10-19, 72 NRC 529 (2010)

new regulations cannot be applied retroactively absent clear evidence that Congress authorized, in the statute being implemented, the issuance of retroactive regulations, and that the statute intended the regulations to be applied retroactively; LBP-06-11, 63 NRC 483 (2006)

no rule or regulation of the Commission concerning the licensing of production and utilization facilities is subject to attack by way of discovery, proof, argument, or other means in any adjudicatory proceeding; LBP-10-14, 72 NRC 101 (2010)

NRC may grant an exemption from a particular regulatory provision if it will not threaten the common defense and security or endanger life or property and is otherwise in the public interest; CLI-06-10, 63 NRC 451 (2006)

NRC regulations do not address conflicts of interest as such, but the absence of a specific rule does not interfere with the Commission's inherent supervisory authority over the conduct of adjudicatory proceedings; CLI-08-11, 67 NRC 379 (2008)

NRC regulations may not be attacked in individual NRC adjudicatory proceedings, unless the Commission waives the rule at issue for a particular proceeding, or the rule is changed or suspended due to a rulemaking review; CLI-09-3, 69 NRC 68 (2009); CLI-09-10, 69 NRC 521 (2009); LBP-09-6, 69 NRC 367 (2009)

NRC takes into account Council on Environmental Quality regulations, with certain exceptions; CLI-10-2, 71 NRC 27 (2010)

once an early site permit is issued, the Commission may not impose new requirements on the site unless they are necessary to ensure adequate protection of the public health and safety or the common defense and security; LBP-07-9, 65 NRC 539 (2007)

SUBJECT INDEX

Part 51 of 10 C.F.R. does not authorize NRC to regulate or enforce compliance with all other environmental laws and regulations; LBP-09-10, 70 NRC 51 (2009)

Part 51 of 10 C.F.R. sets out Staff's obligation to perform a severe accident mitigation alternatives analysis, as required by the National Environmental Policy Act; LBP-07-13, 66 NRC 131 (2007)

petitioner's challenge to the one-fire assumption in the AP1000 design constitutes an impermissible challenge to Commission regulations; CLI-10-9, 71 NRC 245 (2010)

probabilistic rather than deterministic methodology is required to perform a severe accident mitigation alternatives analysis because modeling of extremely complex time- and physical-condition-dependent phenomena is involved; LBP-07-13, 66 NRC 131 (2007)

relevant NRC requirements for a power uprate, be it a stretch power uprate or an extended power uprate, are set forth in 10 C.F.R. 50.90 to 50.92; LBP-08-9, 67 NRC 421 (2008)

Staff guidance documents are not legally binding, but can be useful in instances where legal authority is lacking; LBP-10-16, 72 NRC 361 (2010)

Staff is to review early site permit applications according to the applicable standards set out in 10 C.F.R. Part 50 and its appendices and 10 C.F.R. Part 100; LBP-09-19, 70 NRC 433 (2009)

summary disposition rules 2.1205 and 2.710 are substantially similar; LBP-10-20, 72 NRC 571 (2010)

the board did not create a new regulatory requirement in finding that an application must show how the proposed facility will deal with long-term storage of low-level radioactive waste; CLI-10-2, 71 NRC 27 (2010)

the central purpose of Part 51 rules is to allow NRC to comply with NEPA by identifying and evaluating environmental impacts that are generic to reactor license renewal proceedings and then allowing applicant and NRC to dispense with site-specific evaluations of such environmental impacts in situations covered by the generic analysis; LBP-10-15, 72 NRC 257 (2010)

the Commission has an announced policy to take account of Council on Environmental Quality regulations voluntarily, subject to certain conditions; LBP-10-24, 72 NRC 720 (2010)

the court deferred to NRC's interpretation of the Nuclear Waste Policy Act in promulgating regulations to be applied in administering the licensing stage for the high-level waste repository; LBP-10-11, 71 NRC 609 (2010)

the distinction between contentions of omission and contentions of inadequacy does not appear in NRC contention pleading regulations, but rather is a useful concept from agency case law; CLI-10-2, 71 NRC 27 (2010)

the principal regulatory standards for in situ leach applications are 10 C.F.R. 40.32(c) and (d), which mandate protection of public health and safety; LBP-10-16, 72 NRC 361 (2010)

the regulatory authority relating to renewal of nuclear power plant operating licenses is found in 10 C.F.R. Parts 51 and 54, which enumerate issues to be addressed in license renewal proceedings; LBP-08-22, 68 NRC 590 (2008)

the standard review plan provides guidance but does not impose requirements on license renewal applicants; CLI-10-17, 72 NRC 1 (2010)

to challenge a regulation, petitioner must submit a supporting affidavit setting forth with particularity the special circumstances that justify the waiver or exception requested; LBP-09-18, 70 NRC 385 (2009)

to challenge a rule or regulation in the adjudicatory context, petitioner must submit a request for waiver of the rule under 10 C.F.R. 2.335; LBP-07-11, 66 NRC 41 (2007)

to the extent that an intervenor disagrees with a regulation, its recourse is to petition the Commission for rulemaking to change it; LBP-06-1, 63 NRC 41 (2006)

under 10 C.F.R. 50.55a, components that are part of the reactor coolant pressure boundary must meet the requirements of Class 1 components in Section III of the ASME Boiler and Pressure Vessel Code; LBP-08-25, 68 NRC 763 (2008)

waiver of a rule or regulation is granted on the sole ground that special circumstances with respect to the subject matter of the particular proceeding are such that the application of the rule or regulation would not serve the purposes for which the rule or regulation was adopted; LBP-09-6, 69 NRC 367 (2009)

when a Commission regulation permits the use of a particular analysis, a contention asserting that a different analysis or technique should be utilized is inadmissible because it indirectly attacks the Commission's regulations; LBP-09-16, 70 NRC 227 (2009)

SUBJECT INDEX

with limited exceptions, no rule or regulation of the Commission is subject to attack in any adjudicatory proceeding; LBP-07-16, 66 NRC 277 (2007)

See also Amendment of Regulations; Rules of Practice

REGULATIONS, INTERPRETATION

a conclusion that something is a “connected action” under 40 C.F.R. 1508.25 does not necessarily inform the type of impact analysis that is performed, whether direct, indirect, or cumulative; LBP-09-7, 69 NRC 613 (2009)

a contention calling for a siting safety analysis for an irradiator is not barred by the Part 36 regulatory scheme, but must be sufficiently supported, in light of the Statement of Considerations’ conclusions; CLI-08-3, 67 NRC 151 (2008)

a contention that raises the question as to whether requirements of 10 C.F.R. 51.53(c)(3)(ii)(B) supplement the more general requirements of 10 C.F.R. 51.45(c) and 51.53(c), or instead displace and supplant the latter requirements, raises an admissible and material issue of interpretation and construction of the regulations; LBP-06-20, 64 NRC 131 (2006)

a licensing board’s interpretation of 10 C.F.R. 54.3, 54.21, 54.29 is challenged; CLI-10-17, 72 NRC 1 (2010)

a literal reading of 10 C.F.R. 61.55(a)(6) renders depleted uranium a Class A waste, but the Part 61 rulemaking did not analyze the uranium enrichment waste stream; CLI-06-15, 63 NRC 687 (2006)

a matter need not be actually litigated in order to be “resolved” in an early site permit proceeding; LBP-08-15, 68 NRC 294 (2008)

a term that lacks a statutory or regulatory definition should be construed in accord with its ordinary or natural meaning; LBP-06-1, 63 NRC 41 (2006)

a text should be construed so that effect is given to all of its provisions, so no part will be inoperative or superfluous, void or insignificant; LBP-10-22, 72 NRC 661 (2010)

absent particular circumstances for excluding intruder scenarios in evaluating compliance with the Part 61 regulations, they must be considered by the licensing entity at the time of initial licensing or any subsequent license amendment; LBP-06-8, 63 NRC 241 (2006)

administrative history and other available guidance may be consulted for background information and the resolution of ambiguities in a regulation’s language; LBP-06-11, 63 NRC 483 (2006)

although 10 C.F.R. 2.390(d) never uses the term “sensitive unclassified nonsafeguards information”, this regulation seems to fit NRC Staff’s claim that SUNSI is security-related; LBP-10-2, 71 NRC 190 (2010)

although administrative history and other available guidance may be consulted for background information and the resolution of ambiguities in a regulation’s language, its interpretation may not conflict with the plain meaning of the wording used in that regulation; LBP-09-15, 70 NRC 198 (2009)

although technically not applicable to a request for a stay of NRC Staff action, the 10 C.F.R. 2.342(e) standards simply restate commonplace principles of equity universally followed when judicial (or quasi-judicial) bodies consider stays or other forms of temporary injunctive relief; CLI-10-8, 71 NRC 142 (2010)

although the phrase “possession, custody, or control” appears in 10 C.F.R. 2.336(a)(2)(i), 2.704(a)(2), and 2.707(a)(1)), no NRC decision has ever provided guidance as to what constitutes “control”; LBP-10-23, 72 NRC 692 (2010)

an agency’s interpretation of its own regulation is controlling provided it is not plainly erroneous or inconsistent with the regulation; CLI-10-13, 71 NRC 387 (2010)

any new contentions filed by petitioners, whose original petition was timely and who have demonstrated their standing, that are attributable to the applicant’s construction activity or change of plans or design, are governed by the basic provisions of 10 C.F.R. 2.309(f)(2) rather than by the more restrictive elements applicable to nontimely filings; LBP-07-14, 66 NRC 169 (2007)

“any reactor” in 10 C.F.R. 51.23(a) applies to new reactors; LBP-09-17, 70 NRC 311 (2009); LBP-09-21, 70 NRC 581 (2009)

as guidance reached in a rulemaking following notice and comment, and endorsed by the Commission, the Statement of Considerations is entitled to special weight; CLI-08-3, 67 NRC 151 (2008)

as with a statute, interpretation begins with the language and structure of the provision itself; CLI-08-12, 67 NRC 386 (2008); CLI-08-28, 68 NRC 658 (2008); LBP-08-1, 67 NRC 37 (2008); LBP-09-15, 70 NRC 198 (2009)

SUBJECT INDEX

because a combined license is, in part, an operating license, 10 C.F.R. § 50.33(f) also applies to an application for a combined license; LBP-09-10, 70 NRC 51 (2009)

because applicant's change in cumulative usage factor is already endorsed by 10 C.F.R. 50.55a(g), the approval requirements of subsection 50.55a(a)(3) do not apply; CLI-06-24, 64 NRC 111 (2006)

"close of the hearing" in 10 C.F.R. 2.1209 refers to the closing of the evidentiary record; CLI-08-9, 67 NRC 353 (2008)

constructive knowledge is knowledge of facts sufficient to prompt an inquiry that would have uncovered misrepresentations and is not actual knowledge; LBP-09-24, 70 NRC 676 (2009)

contentions challenging low-level radioactive waste storage may not rely on 10 C.F.R. Part 61, which pertains to land disposal facilities; CLI-10-2, 71 NRC 27 (2010)

courts construe regulations in the same manner as they do statutes, by ascertaining the plain meaning of the regulation; LBP-06-11, 63 NRC 483 (2006)

courts generally will defer to an agency's construction of the statute it is charged with implementing, and to the procedures it adopts for implementing that statute; CLI-10-13, 71 NRC 387 (2010)

courts must construe regulations in light of the statutes they implement, keeping in mind that where there is an interpretation of an ambiguous regulation that is reasonable and consistent with the statute, that interpretation is to be preferred; LBP-09-16, 70 NRC 227 (2009)

"deliberate misconduct" within the meaning 10 C.F.R. 50.5(a)(2) refers to an intentional act or omission that the person knows would cause a licensee to be in violation of any rule; LBP-09-24, 70 NRC 676 (2009)

design basis event is distinguished from design basis threat; CLI-10-9, 71 NRC 245 (2010)

discussion in the environmental report of unaffected areas or sites is not required by 10 C.F.R. 51.45(b); CLI-06-9, 63 NRC 433 (2006)

even if the term "contention," as used in 10 C.F.R. 2.336(a)(1) must be read as pertaining only to formal contentions admitted under section 2.309(f)(1), the term "claim," is not so constrained, and can only be read in its normal sense; LBP-09-30, 70 NRC 1039 (2009)

except as specifically authorized by the Commission in writing, no interpretation of the meaning of the regulations in Part 40 by any officer or employee of the Commission other than a written interpretation by the General Counsel will be recognized to be binding upon the Commission; LBP-08-6, 67 NRC 241 (2008)

for tailings or wastes to fall within the definition of byproduct material, the plain statutory and regulatory language requires that such tailings or wastes be produced from ore that has been processed for its source material content; LBP-06-1, 63 NRC 41 (2006)

in any conflict between a general rule in Part 2, Subpart C, and a special rule in Part 2, the special rule governs; LBP-08-16, 68 NRC 361 (2008)

in construing a regulation, the intent of the enacting body may be ascertained by considering the language used and the overall purpose of the regulation, and by reflecting on the practical effect of the possible interpretations; LBP-06-11, 63 NRC 483 (2006)

"intended functions" that structures, systems, and components must be shown to fulfill in the aging management review are those functions specified in 10 C.F.R. 54.4(a)(1)-(3); CLI-10-14, 71 NRC 449 (2010)

interpretation may not conflict with the plain meaning of the wording used in the regulation; CLI-06-5, 63 NRC 143 (2006)

like Congress, the Commission is not to be assumed to hide elephants in mouseholes; LBP-08-1, 67 NRC 37 (2008)

materiality in the context of paragraph (f)(2) differs from materiality in the context of paragraph (f)(1) of 10 C.F.R. 2.309; LBP-10-1, 71 NRC 165 (2010)

NEPA has only a limited role to play in interpreting Part 51's requirements for the environmental report; LBP-09-16, 70 NRC 227 (2009)

not only the bare meaning of the word but also its placement and purpose in the statutory scheme are considered; LBP-09-15, 70 NRC 198 (2009)

NRC has traditionally read the language "authorized by law" to be the functional equivalent of "not prohibited by law"; LBP-07-6, 65 NRC 429 (2007)

SUBJECT INDEX

organizations seeking to challenge regulations of a government agency failed to demonstrate standing where they did not demonstrate a concrete application of the regulations that threatened imminent harm to their interests; CLI-09-20, 70 NRC 911 (2009)

paragraph (4) of 10 C.F.R. 52.79(a) governs only those structures that are a component of the facility to be constructed under the combined license; LBP-10-8, 71 NRC 433 (2010)

Part 61 of 10 C.F.R. applies only to land disposal facilities that receive waste from others, not to onsite facilities where the licensee intends to store its own low-level radioactive waste; CLI-09-3, 69 NRC 68 (2009)

Part 61 of 10 C.F.R. contains flexibility to deal with the occurrence of new waste streams or disposal methods that were not included in the Part 61 rulemaking; LBP-06-8, 63 NRC 241 (2006)

Part 61 of 10 C.F.R. is inapplicable in a combined license proceeding because it applies only to land disposal facilities that receive waste from others, not to onsite facilities where licensee intends to store its own low-level radioactive waste; LBP-09-10, 70 NRC 51 (2009); LBP-09-27, 70 NRC 992 (2009)

Part 61 of 10 C.F.R. sets forth the NRC's regulations for the disposal of low-level radioactive waste in a land disposal facility, including certain "performance objectives" and "technical requirements" that must be met before waste can be disposed of at a particular site; LBP-06-8, 63 NRC 241 (2006)

Part 61, Subpart C "performance objectives" must be met regardless of the classification of the waste involved; LBP-06-8, 63 NRC 241 (2006)

participants in Subpart J proceedings must make a good-faith effort to make available all documentary material by the date specified for initial compliance; CLI-08-22, 68 NRC 355 (2008)

performance objectives for a near-surface disposal facility require that the relevant licensing entity examine whether, at any particular time after active institutional controls are removed, the section 61.41 dose limitations will be met for an inadvertent intruder; LBP-06-8, 63 NRC 241 (2006)

pursuant to the rule of the last antecedent, qualifying words, phrases, and clauses must be applied to the words or phrases immediately preceding them and are not to be construed as extending to and including others more remote; LBP-06-1, 63 NRC 41 (2006)

"reasonable assurance" specified in 10 C.F.R. 54.29 is not defined, but requires, at a minimum, that an applicant demonstrate compliance with all of NRC's safety regulations; LBP-08-25, 68 NRC 763 (2008)

recourse to regulatory history is not necessary unless the language and structure of the regulation reveal an ambiguity that must be resolved; CLI-08-12, 67 NRC 386 (2008)

section 2.1003's reference to "all documentary material (including circulated drafts but excluding preliminary drafts) generated by, or at the direction of, or acquired by" clearly conveys that possession or control of the documentary material is a prerequisite to the duty to produce it; CLI-08-12, 67 NRC 386 (2008)

section 2.107(a) does not authorize withdrawal of an application but rather clarifies that licensing boards have authority to impose reasonable conditions upon voluntary withdrawals in appropriate circumstances; LBP-10-11, 71 NRC 609 (2010)

section 2.309(f)(1)(vi) is not a second hurdle of materiality that an intervenor must meet, but rather requires that intervenor identify the specific parts of the combined license application that it disputes and show that resolution of those disputes is material to the licensing decision; LBP-09-27, 70 NRC 992 (2009)

section 2.311 is not applicable to the board's refusal to supplement the basis of a contention or to add new contentions because the section applies only when a board decision rules on a request for hearing, petition to intervene, or selection of hearing procedures; CLI-06-24, 64 NRC 111 (2006)

section 40.38 of 10 C.F.R. applies exclusively to uranium enrichment facilities; LBP-09-1, 69 NRC 11 (2009)

section 40.42(d) is written in terms of releasing buildings or areas in accordance with NRC criteria; CLI-09-1, 69 NRC 1 (2009)

section 52.79(a)(3) sets no quantity or time restrictions relative to onsite storage of low level radioactive waste; LBP-09-27, 70 NRC 992 (2009)

section 54.21(c)(1)(i)-(iii) requires that the applicant make its demonstration that the effects of aging will be adequately managed during the period of extended operation in the application, which is necessarily before the license may be granted; LBP-08-25, 68 NRC 763 (2008)

SUBJECT INDEX

section 54.29(a) speaks of both past and future actions, referring specifically to those that have been or will be taken with respect to managing the effects of aging and time-limited aging analyses; CLI-10-17, 72 NRC 1 (2010)

some near-surface disposal facilities may not be capable of accepting large quantities of depleted uranium from enrichment operations, and dose pathway analyses should be performed on a site-specific basis to ensure compliance with Part 61, Subpart C; LBP-06-8, 63 NRC 241 (2006)

summary disposition standards are not applicable to and do not replace the standards applicable to motions to reopen; CLI-08-28, 68 NRC 658 (2008)

technical terms of art should be interpreted by reference to the trade or industry to which they apply; CLI-06-14, 63 NRC 510 (2006)

the “deliberate ignorance” theory is not embraced within the “deliberate misconduct” standard that governs NRC proceedings; LBP-09-24, 70 NRC 676 (2009)

the “demonstrations” mandated by 10 C.F.R. 54.21(c)(1)(i) and (ii) require that the time-limited aging analyses both be performed in a technically accurate manner and produce a prediction that the component will not fail due to aging during the period of extended operation; LBP-08-25, 68 NRC 763 (2008)

the “reasonable assurance” requirement of section 54.29(a) is interpreted; LBP-08-22, 68 NRC 590 (2008)

the amended late-filed contentions rule, 10 C.F.R. 2.309(f)(2), is not intended to alter the standards in section 2.714(a) of its rules of practice as interpreted by NRC case law; LBP-10-17, 72 NRC 501 (2010)

the Commission often refers to the Statement of Considerations as an aid in interpreting its regulations; CLI-08-3, 67 NRC 151 (2008)

the entirety of the provision must be given effect; CLI-08-12, 67 NRC 386 (2008); CLI-08-28, 68 NRC 658 (2008); LBP-09-15, 70 NRC 198 (2009)

the fact that the Commission included language deferring the obligation that would otherwise apply to COL applicants in 10 C.F.R. 50.75(b)(4), but included no equivalent provision in section 50.75(b)(3), confirms that the Commission did not intend to defer the requirement of section 50.75(b)(3) until after the license is issued; LBP-09-15, 70 NRC 198 (2009)

the form, content, and board approval provisions of 10 C.F.R. 2.338 are not limited to settlement agreements achieved via alternative dispute resolution, but apply to all settlement agreements that purport to be binding on the proceeding and that are submitted to a board after the notice of hearing; LBP-06-18, 63 NRC 830 (2006)

the interlocutory review standard in 10 C.F.R. 2.323(f)(1) does not apply to litigants’ petitions for interlocutory review; CLI-09-6, 69 NRC 128 (2009)

the language of 10 C.F.R. 52.79(a)(4) is contrasted with the “means” language of 10 C.F.R. 52.79(a)(3); LBP-10-20, 72 NRC 571 (2010)

the language of a regulation should not be read to destroy itself and a provision should not be read in a way that is inconsistent with its purpose; LBP-07-6, 65 NRC 429 (2007)

the language of the Commission’s case-specific notice establishing 11:59 p.m. Eastern Standard Time as the filing time for hearing petitions controls over the agency’s rule of general applicability for all cases that refers only to 11:59 p.m. Eastern Time; LBP-08-16, 68 NRC 361 (2008)

the most natural way to read a provision that sets forth a general obligation followed by a set of specific requirements is that the specific requirements provide the details necessary to fulfilling the general obligation; LBP-09-15, 70 NRC 198 (2009)

the performance requirements of sections 70.60 and 70.61 regarding nuclear criticality safety are discussed; LBP-06-17, 63 NRC 747 (2006)

the phrase “from the licensed operation” in 10 C.F.R. 20.1301(a)(1) appears to serve as a limitation on what is to be included in the total effective dose equivalent calculation; LBP-06-1, 63 NRC 41 (2006)

the phrase “not under the control of the licensee” in 10 C.F.R. 20.1003 was intended only to apply to Chernobyl-like fallout, not to the antecedent phrase “naturally occurring radioactive materials; LBP-06-1, 63 NRC 41 (2006)

the phrase “possession, custody, or control” as found in the Federal Rules of Civil Procedure and 10 C.F.R. 2.336(a) is in the disjunctive, and thus only one of the enumerated requirements needs to be met; LBP-10-23, 72 NRC 692 (2010)

SUBJECT INDEX

the plain language of 10 C.F.R. 2.336(a)(1) makes it clear that it applies to all parties; LBP-09-30, 70 NRC 1039 (2009)

the plain language of 10 C.F.R. 63.305 does not say anything about analyzing future climate based upon the historical geological record; LBP-10-22, 72 NRC 661 (2010)

the plain meaning of a regulation controls its interpretation; CLI-08-23, 68 NRC 461 (2008)

the purpose of 10 C.F.R. 2.1003 is to define the availability of material, not to provide definitions of types of materials; CLI-06-5, 63 NRC 143 (2006)

the purpose of 10 C.F.R. 40.42 is to reduce the potential risk to public health and the environment from radioactive material remaining for long periods of time at materials facilities after licensed activities have ceased; CLI-09-1, 69 NRC 1 (2009)

the relevance standard of 10 C.F.R. 2.336 is more flexible than the relevance standard of Fed. R. Evid. 401; LBP-10-23, 72 NRC 692 (2010)

the requirement that the designated amount of financial assurance be covered by an acceptable method arises concurrently with the requirement that the applicant submit a decommissioning report to NRC; LBP-09-15, 70 NRC 198 (2009)

the sole issue under 10 C.F.R. 50.5(a)(2) is whether a person knew the information was materially incomplete and inaccurate at the time it was submitted to the NRC; CLI-10-23, 72 NRC 210 (2010)

the Statement of Considerations for Part 36 indicates that in developing those regulations, the NRC considered whether there was a need to impose limits on irradiator siting, but determined that no specific siting limitations were warranted; CLI-08-3, 67 NRC 151 (2008)

the statement of considerations should be given special weight; LBP-09-15, 70 NRC 198 (2009)

the term "contention" in 10 C.F.R. 2.336(a)(1) means simply a point or argument asserted or advanced by any party; LBP-09-30, 70 NRC 1039 (2009)

the term "demonstrate" as used in 10 C.F.R. 54.21 is a strong, definitive verb that logically requires an applicant to provide a reasonably thorough description of its aging management program and to show conclusively how this program will ensure that the effects of aging will be managed for its specific plant; LBP-08-25, 68 NRC 763 (2008)

the term "document" as used in 10 C.F.R. 2.336 includes computer models and associated electronic inputs, outputs, data, and software; LBP-10-23, 72 NRC 692 (2010)

the term "document" as used in 10 C.F.R. 2.336 is not limited to paper documents and it refers to information stored on any medium or form, including electronically stored information; LBP-10-23, 72 NRC 692 (2010)

the term "likely" in section 2.326(a)(3) is construed to be synonymous with "probable" or "more likely than not"; LBP-08-12, 68 NRC 5 (2008)

the term "sensitive unclassified nonsafeguards information" or SUNSI is used only twice in the NRC regulations, relating to authority to establish procedures for disclosure and for appeals of disclosure rulings; LBP-10-2, 71 NRC 190 (2010)

the unavailability of funding for decommissioning adequate to achieve unrestricted release of a site is not one of the conditions specified in 10 C.F.R. 20.1403(a); CLI-09-1, 69 NRC 1 (2009)

there is no prohibition on an applicant using a plan for compliance with 10 C.F.R. 52.79(a)(3) that includes contingent plans should future low-level radioactive waste storage become necessary; LBP-10-20, 72 NRC 571 (2010)

under 10 C.F.R. 2.336(a)(1), intervenors' expert is not required to create a written analysis, but only disclose the written analysis or other documentary authority, if any, that exists and is reasonably available at the time of the disclosure; LBP-09-30, 70 NRC 1039 (2009)

under Part 36, in an exceptional case, NRC may conduct an irradiator facility siting review if a unique threat is involved which may not be addressed by state and local requirements; CLI-08-3, 67 NRC 151 (2008)

use of the permissive term, "may," in 10 C.F.R. 2.310(a) indicates that licensing boards have some discretion in determining whether to hold hearings under Subpart L or Subpart G; LBP-08-6, 67 NRC 241 (2008)

use of the term "resolved" in 10 C.F.R. 52.39(a) implies an intent to grant preclusive effect only when the appropriate agency official makes a determination concerning the issue in dispute; LBP-08-15, 68 NRC 294 (2008)

SUBJECT INDEX

whether a feature, event, or process must be included in the performance assessment for the period after 10,000 years is governed by 10 C.F.R. 63.342, not by section 63.102(j); LBP-10-22, 72 NRC 661 (2010)

words of a statute must be read in their context and with a view to their place in the overall statutory scheme; LBP-10-20, 72 NRC 571 (2010)

REGULATORY GUIDES

a board's request for a list of all regulatory guides applicable to the Staff's analysis of a license application, as well as a list of all instances where potentially applicable regulatory guides were not used, is approved; CLI-06-20, 64 NRC 15 (2006)

although not legally binding, Staff guidance documents provide further information about the content of the integrated safety analysis summary and how an applicant can comply with criticality safety regulations; LBP-06-17, 63 NRC 747 (2006)

although NRC guidance documents are entitled to some weight, they do not have the force of a legally binding regulation and, like any guidance document, may be challenged in an adjudicatory proceeding; LBP-08-22, 68 NRC 590 (2008)

although some special weight should be given to some NRC guidance documents, the same does not apply to industry guidance documents; LBP-08-25, 68 NRC 763 (2008)

compliance with NRC guidance documents is neither necessary nor necessarily sufficient to satisfy the legal requirements that each application must meet under the Atomic Energy Act; LBP-08-25, 68 NRC 763 (2008)

consistency of the generic guidance in NUREG-1757 governing restricted release with the text and intent of the regulations is discussed; CLI-09-1, 69 NRC 1 (2009)

failure of an applicant to address any guidance topics or deviation from the guidance provided does not rise to the level of failure to comply with NRC regulations; LBP-08-9, 67 NRC 421 (2008)

guidance documents are not legally binding, but are useful in instances where legal authority is lacking; LBP-08-24, 68 NRC 691 (2008)

guidance documents do not prescribe requirements, are not substitutes for regulations, and are not binding authority; LBP-07-6, 65 NRC 429 (2007)

if a board finds that the use of a more accurate approach than compliance with regulatory guides is needed to provide reasonable assurance that metal fatigue will be adequately managed during the period of extended operation, then the board is authorized and duty bound to impose such a requirement; LBP-08-25, 68 NRC 763 (2008)

NRC guidelines and regulatory guides are not legally binding on the Staff, the board, or the Commission; LBP-09-10, 70 NRC 51 (2009)

NRC Staff's guidance document NUREG/CR-6909, which prescribes guidance on the calculation of metal fatigue on reactor components in a light water reactor environment, is built upon a larger and more recent database than NUREG/CR-5704 and -6583, but use of the earlier NUREGs is sufficient; LBP-08-25, 68 NRC 763 (2008)

Staff guidance documents are worth noting but do not have the force of law and are not binding on the board's determination as to whether applicant's testing program satisfies the legal standard; LBP-07-2, 65 NRC 153 (2007)

Staff guidance documents generally do not constitute legally binding interpretations of agency regulations; LBP-06-15, 63 NRC 591 (2006)

the fact that a given guidance document upon which an applicant relied was withdrawn does not suffice to support a contention; LBP-07-14, 66 NRC 169 (2007)

REINSTATEMENT OF PERMIT

reinstatement of construction permits did not authorize construction of reactors, but rather was to place the facility in a terminated plant status; CLI-10-26, 72 NRC 474 (2010)

REINSTATEMENT OF PROCEEDING

an admissible contention under the good cause standard must allege that a construction permit holder's reasons for past delay failed to constitute good cause for a CP extension and be supported by a showing that construction delay is traceable to permit holder action that was intentional and without a valid business purpose; LBP-10-7, 71 NRC 391 (2010)

SUBJECT INDEX

boards should restrict their inquiry in a construction permit reinstatement proceeding, including their consideration of contention admissibility matters, in line with the good cause standard of the Atomic Energy Act; LBP-10-7, 71 NRC 391 (2010)

RELEVANCE

the universal understanding of relevance, applicable to the NRC Staff and others, includes matters that appear reasonably calculated to lead to the discovery of admissible evidence; LBP-06-25, 64 NRC 367 (2006)

where the privilege and the need may be equally weak, but the privilege can be protected by other means, adjudicators return to the norms of full and open discovery, so that relevancy, not need, becomes the determinative standard; LBP-06-25, 64 NRC 367 (2006)

REMAND

if a board on remand were to rule in petitioners' favor regarding the admissibility of one contention, then the board should also reconsider its prior ruling that related contentions were admissible; CLI-10-21, 72 NRC 197 (2010)

if appellant had submitted an offer of proof, indicating what rebuttal evidence it would have offered to the board, then the Commission might have some basis for determining whether that evidence would be substantial enough to justify a remand to the Board; CLI-10-23, 72 NRC 210 (2010)

proceeding will remain open during the pendency of a remand, during which time, petitioners are free to submit a motion to reopen the record should they seek to address any genuinely new issues related to the license renewal application that previously could not have been raised; CLI-10-17, 72 NRC 1 (2010)

the Commission grants review of an Atomic Safety and Licensing Board decision that dismissed a contention on summary disposition, reversing the decision in part, and remanding the contention to the board for hearing, as limited by the Commission's ruling; CLI-10-11, 71 NRC 287 (2010)

REOPENING A RECORD

a licensing board need not formally reopen the record in order to assess the relative worth of the parties' competing evidence; LBP-08-12, 68 NRC 5 (2008)

a mere showing of a possible violation is not enough to reopen a closed record; CLI-08-28, 68 NRC 658 (2008)

a motion filed 4 months after release of the information on which it is based is not timely; CLI-08-23, 68 NRC 461 (2008)

a newly proffered contention submitted after the close of the record must meet timeliness standards as well as the requirements of 10 C.F.R. 2.309(c); LBP-08-12, 68 NRC 5 (2008)

a nonparty seeking late intervention after the record has closed must address both the standard for late intervention and the standard for reopening a closed record; CLI-09-5, 69 NRC 115 (2009)

a presiding officer considering environmental contentions in the high-level waste proceeding should apply NRC reopening procedures and standards in 10 C.F.R. 2.326 to the extent possible; CLI-08-25, 68 NRC 497 (2008)

availability of Staff review outside the hearing process generally does not constitute adequate protection of a private party's rights when considering 10 C.F.R. 2.309(c)(1)(ii); LBP-08-12, 68 NRC 5 (2008)

Commission jurisdiction continues until a license is actually issued; CLI-06-19, 63 NRC 19 (2006)

discovery is not permitted for the purpose of developing a motion to reopen or to assist a petitioner in the framing of contentions; LBP-08-12, 68 NRC 5 (2008)

evidence contained in supporting affidavits must meet the regulatory admissibility standards of relevance, materiality, and reliability; LBP-08-12, 68 NRC 5 (2008)

extended power uprate proceeding that has been terminated may not be reopened; CLI-10-17, 72 NRC 1 (2010)

for determining the "likelihood" that a motion to reopen would change the outcome of a license renewal proceeding, the Commission indicated that a "would have been reached" standard is too strict, and a "might have been reached" standard is too lax; LBP-08-12, 68 NRC 5 (2008)

if a matter as presented is devoid of safety significance, there is no likelihood whatsoever that a materially different result would have been likely had the newly proffered evidence been considered initially; LBP-08-12, 68 NRC 5 (2008)

SUBJECT INDEX

if standards for reopening were not strict and demanding, there would be little hope of completing administrative proceedings if each newly arising allegation required an agency to reopen its hearings; LBP-08-12, 68 NRC 5 (2008)

if the problem raised in a late-filed contention presents a sufficiently grave threat to public safety, a board should reopen the record to consider it even if it is not newly discovered and could have been raised in timely fashion; LBP-08-12, 68 NRC 5 (2008)

if, within 60 days after pertinent information that would support the framing of a contention first becomes available, intervenors submit a particularized and otherwise admissible contention regarding the construction of the facility, then the contention will be deemed timely without the need to satisfy the balancing test for late-filing requirements; CLI-09-2, 69 NRC 55 (2009)

in evaluating a motion to reopen, a licensing board properly considers the movant's new allegations and the nonmovant's contrary evidence in determining whether there is a real issue at stake warranting a reopened hearing; LBP-08-12, 68 NRC 5 (2008)

motions must be accompanied by affidavits that set forth the factual and/or technical bases for the movant's claim that the criteria in 10 C.F.R. 2.326(a) have been satisfied; LBP-08-12, 68 NRC 5 (2008)

movant must show that a balancing of eight factors of 10 C.F.R. 2.309(c)(1), to the extent they are relevant to the particular filing, weighs in favor of reopening; LBP-08-12, 68 NRC 5 (2008)

movant must show that its motion is timely; CLI-09-5, 69 NRC 115 (2009); LBP-08-12, 68 NRC 5 (2008)

movants must satisfy a multifactor test in 10 C.F.R. 2.326(a) and (d) that is governed by prescribed evidentiary requirements; LBP-08-12, 68 NRC 5 (2008)

NRC Staff's revision of the final safety evaluation report to account for applicant's confirmatory analysis would not, standing alone, be a materially different result that justifies reopening the record, because it would neither change the outcome of the renewal proceeding nor impose a different licensing condition on an applicant; LBP-08-12, 68 NRC 5 (2008)

once the record of a proceeding is closed, new information may not be considered in the proceeding unless the reopening standards are met; LBP-10-21, 72 NRC 616 (2010)

petitioners seeking to introduce new contentions after the board has denied their initial petition to intervene need to address the reopening standards; LBP-10-21, 72 NRC 616 (2010)

proponents of motions seeking to reopen the record bear a heavy burden; CLI-06-19, 63 NRC 19 (2006); CLI-09-2, 69 NRC 55 (2009); LBP-08-12, 68 NRC 5 (2008)

referral of petitioner's motion to admit a late-filed contention effectively returns jurisdiction to the licensing board to rule on the motion but does not reopen the already-closed record; CLI-09-5, 69 NRC 115 (2009)

relevant, material, and reliable evidence of a significant safety issue in the form of expert affidavit, Staff reports, and statements by the Commission and the NRC must be provided to support a motion to reopen; LBP-08-12, 68 NRC 5 (2008)

speculation that NRC Staff may have failed to identify a health or safety issue because its review was insufficiently thorough does not meet the requirement that the motion address a significant safety or environmental issue; CLI-08-23, 68 NRC 461 (2008)

standards are discussed and analyzed; LBP-10-21, 72 NRC 616 (2010)

the addition of a condition on a license to operate would constitute a materially different result warranting reopening; LBP-08-12, 68 NRC 5 (2008)

the affidavit supporting a motion to reopen a license renewal proceeding must provide sufficient information to support a prima facie showing that a deficiency exists in the application and the deficiency presents a significant safety issue; LBP-08-12, 68 NRC 5 (2008)

the Commission need not reopen adjudicatory proceedings simply on a claim of new evidence; CLI-06-19, 63 NRC 19 (2006)

the goal of this procedure is to maintain "finality" of the hearing process while still enabling participants to bring to light new post-hearing information concerning significant safety situations; LBP-08-12, 68 NRC 5 (2008)

the standard for admitting a new contention after the record is closed is higher than for an ordinary late-filed contention; CLI-08-28, 68 NRC 658 (2008)

SUBJECT INDEX

the term “likely” in section 2.326(a)(3) is construed to be synonymous with “probable” or “more likely than not”; LBP-08-12, 68 NRC 5 (2008)

to justify reopening the record to admit a new contention, the moving papers must be strong enough, in the light of any opposing filings, to avoid summary disposition, and the new information must be significant and plausible enough to require reasonable minds to inquire further; LBP-10-21, 72 NRC 616 (2010)

to reopen a closed record to introduce a new issue, movant has the burden of showing that the new information will likely trigger a different result; LBP-08-12, 68 NRC 5 (2008)

when the contested portion of a proceeding was terminated following an unchallenged merits determination in favor of applicant regarding the proceeding’s sole admitted contention, the board’s focus must be on the requirements applicable to reopening a closed record set out in 10 C.F.R. 2.326; LBP-10-21, 72 NRC 616 (2010)

See also Motions to Reopen

REPLY BRIEFS

a board erred when it disregarded the rule that a reply cannot expand the scope of the arguments set forth in the original hearing request; CLI-09-12, 69 NRC 535 (2009)

a claim not raised in the hearing petition, but added as a new claim in petitioners’ reply brief is considered impermissibly late; CLI-08-17, 68 NRC 231 (2008)

a motion to file late should generally be denied, except under extraordinary conditions; LBP-10-21, 72 NRC 616 (2010)

a moving party has no right to reply except as permitted by the presiding officer; CLI-08-23, 68 NRC 461 (2008)

a party may not present a new contention, or a new basis for a proposed contention, in its reply; LBP-10-9, 71 NRC 493 (2010)

a petitioner may file a reply to any answer within 7 days after service of that answer; LBP-07-4, 65 NRC 281 (2007)

a petitioner may not rectify its contention pleading inadequacies in its reply; LBP-06-12, 63 NRC 403 (2006)

a petitioner that fails to develop an argument in its petition is foreclosed from doing so in the first instance in its reply brief; LBP-06-7, 63 NRC 188 (2006)

a petitioner that fails to submit a reply brief is foreclosed from challenging the assertions advanced by the licensee and the NRC Staff in their answers, unless it put such assertions in issue in its petition; LBP-06-7, 63 NRC 188 (2006)

a reply cannot be used to substantively supplement or amend a contention; LBP-08-18, 68 NRC 533 (2008); LBP-08-26, 68 NRC 905 (2008)

a reply may not be used as a vehicle to introduce new arguments or support, may not expand the scope of arguments set forth in the original petition, and may not attempt to cure an otherwise deficient contention; LBP-07-4, 65 NRC 281 (2007); LBP-09-16, 70 NRC 227 (2009); LBP-09-17, 70 NRC 311 (2009)

allowing new claims in a reply would unfairly deprive other participants of an opportunity to rebut the new claims; LBP-09-6, 69 NRC 367 (2009)

although a licensing board will take into account any information from reply briefs that legitimately amplifies issues presented in the original petitions, it will not consider instances of what essentially constitute untimely attempts to amend the original petitions; LBP-09-17, 70 NRC 311 (2009)

although boards are to provide latitude to pro se participants, petitioner’s decision to provide an expert affidavit, available when it filed its hearing petition, at the time it submitted its reply runs afoul of the Commission’s directive that reply pleadings cannot be used to introduce additional supporting information relative to a contention; LBP-08-16, 68 NRC 361 (2008)

although NRC’s rules of practice regarding motions do not provide for reply pleadings, the board presumes that for a reply to be timely it would have to be filed within 7 days of the date of service of the response it is intended to address; LBP-09-22, 70 NRC 640 (2009)

although petitioners may not use their reply pleadings to provide new threshold support for their contentions, they may use their reply to clarify and to develop information included in their initial petition; LBP-09-6, 69 NRC 367 (2009)

SUBJECT INDEX

answers to a motion to strike are limited to legal or factual issues raised by the motion, and new issues should be raised in a separate motion; LBP-08-1, 67 NRC 37 (2008)

arguments and alleged facts should focus on the legal, factual, or logical arguments presented in the answers; LBP-10-19, 72 NRC 529 (2010)

attempt to introduce a new argument to establish a contention's admissibility is improper; LBP-07-10, 66 NRC 1 (2007)

authorization affidavits for representational standing may not be filed with a reply; CLI-08-19, 68 NRC 251 (2008)

because appellant submitted no offer of proof, its case could be so weak that the denial of a right to reply by the licensing board would have been harmless error; CLI-10-23, 72 NRC 210 (2010)

because of apparent electronic complications and the lack of a challenge to intervenors' reply document as late, the board treats a late filing as a valid reply; LBP-10-9, 71 NRC 493 (2010)

except in a proceeding under section 52.103, the requestor/petitioner may file a reply to any answer, but no other written answers or replies will be entertained; LBP-09-6, 69 NRC 367 (2009)

filings that raise new issues must address the nontimely filing and new-contention factors in 10 C.F.R. 2.309(c) or (f)(2); LBP-09-17, 70 NRC 311 (2009)

format of pleadings for the high-level waste repository proceeding are specified; LBP-08-10, 67 NRC 450 (2008)

if a contention as originally pleaded did not cite adequate documentary support, the petitioner cannot remediate the deficiency in its reply brief by introducing documents that were available to it during the time frame for initially filing contentions; CLI-06-17, 63 NRC 727 (2006)

if no potential party has challenged whether the existence of a genuine dispute has been established with respect to a particular contention, petitioner's reply need not and should not address that issue any further with respect to that contention; LBP-08-10, 67 NRC 450 (2008)

in an abundance of caution and in order to give petitioners every benefit of the doubt, the board considers whether any of the material at issue in a reply brief that would not constitute legitimate amplification might be admissible under the criteria of section 2.309(c) or (f)(2); LBP-09-17, 70 NRC 311 (2009)

in ruling on admissibility of contentions, licensing boards do not consider anything found in a reply to an answer to an intervention petition that was not in petitioners' original contentions, unless it constitutes legitimate amplification of original contentions or properly late-filed material; LBP-06-10, 63 NRC 314 (2006)

new arguments may not be raised for the first time in a reply brief; CLI-06-22, 64 NRC 37 (2006); CLI-06-29, 64 NRC 417 (2006); CLI-07-25, 66 NRC 101 (2007); LBP-06-20, 64 NRC 131 (2006)

new arguments or new legal theories that opposing parties have not had the opportunity to address are not permitted; CLI-06-9, 63 NRC 433 (2006)

new bases for a contention cannot be introduced in a reply brief or at any other time after the date the original contentions are due, unless petitioner meets the late-filing criteria set forth in 10 C.F.R. 2.309(c), (f)(2); CLI-09-7, 69 NRC 235 (2009); CLI-09-12, 69 NRC 535 (2009)

once petitioner's LSN compliance has been raised in an answer to an intervention petition, petitioner then has the opportunity to respond to the challenges in its reply; LBP-09-6, 69 NRC 367 (2009)

petitioner is limited to the contention as initially filed and may not rectify its deficiencies through a reply brief or on appeal; CLI-09-14, 69 NRC 580 (2009); LBP-08-6, 67 NRC 241 (2008)

petitioner may not use its reply brief to cure pleading defects in its intervention petition; CLI-10-1, 71 NRC 1 (2010)

petitioner may respond to and focus on any legal, logical, or factual arguments presented in the answers, and the amplification of statements provided in an initial petition is legitimate and permissible; LBP-06-20, 64 NRC 131 (2006); LBP-06-23, 64 NRC 257 (2006); LBP-07-4, 65 NRC 281 (2007); LBP-08-6, 67 NRC 241 (2008); LBP-09-1, 69 NRC 11 (2009)

petitioner's reply must narrowly focus upon the legal and factual arguments first presented in its petition and cannot be used as a vehicle to remedy a very deficient petition to which opposing parties have no opportunity to respond; LBP-06-12, 63 NRC 403 (2006); LBP-09-2, 69 NRC 87 (2009); LBP-09-6, 69 NRC 367 (2009)

petitioners may not raise entirely new arguments in a reply brief unless the standards for late-filed contentions are met; CLI-09-7, 69 NRC 235 (2009)

SUBJECT INDEX

petitioners should narrowly focus on the legal or logical arguments presented in the answers on a request for hearing or petition to intervene; CLI-10-1, 71 NRC 1 (2010); LBP-10-9, 71 NRC 493 (2010)

petitioner's standing showing can be corrected or supplemented to cure deficiencies by means of its reply pleading; LBP-10-21, 72 NRC 616 (2010)

regulations governing appeals from the denial of intervention provide for a notice of appeal with a supporting brief, and for a brief opposing the appeal, but do not provide for reply briefs; CLI-06-9, 63 NRC 433 (2006)

replies may provide only legitimate amplifications of the original contentions or a logical/legal response to the answers of the Staff and applicant; LBP-09-17, 70 NRC 311 (2009)

Subpart J rules do not provide for the filing of reply briefs in the context of appeals from interlocutory decisions or initial or partial decisions; CLI-08-12, 67 NRC 386 (2008)

the focus must be on the legal or factual arguments first presented in the original petition or raised in the answers to it; CLI-06-17, 63 NRC 727 (2006)

the proper purpose of a reply is to discuss alleged deficiencies in a petition, not to try to fix them; LBP-08-17, 68 NRC 431 (2008)

the scope of a reply filed pursuant to 10 C.F.R. 2.309(h)(2) should be narrowly focused on the legal or logical arguments presented in the applicant/licensee or NRC Staff answer; LBP-07-16, 66 NRC 277 (2007)

were the Commission to accept and consider a belatedly submitted representative-standing affidavit attached to a reply brief, the applicant would be deprived of the right to challenge the substantive sufficiency of the affidavit; CLI-08-19, 68 NRC 251 (2008)

when its Licensing Support Network compliance is challenged, petitioner need only make a straightforward statement in its reply that it has complied with the LSN requirements; LBP-09-6, 69 NRC 367 (2009)

REPLY TO ANSWER TO MOTION

a properly supported request to reply to a summary disposition response would seem to be a reasonable candidate for a favorable board discretionary decision permitting the filing; LBP-08-2, 67 NRC 54 (2008); LBP-08-3, 67 NRC 85 (2008)

because of the significance of the issues at hand, applicant was permitted to reply to the answers to its motion to withdraw; LBP-10-11, 71 NRC 609 (2010)

except for a motion to file a new or amended contention, or where there are compelling circumstances, movant has no right to reply to an answer or respond to a motion; LBP-09-22, 70 NRC 640 (2009)

permission to file must be sought from the board before the replies are due; LBP-08-2, 67 NRC 54 (2008); LBP-08-3, 67 NRC 85 (2008)

silence about facts constitutes a waiver of the specific factual contentions made by the opposing party in a brief filed earlier; LBP-06-7, 63 NRC 188 (2006)

the appropriate vehicle to address whether arguments in a summary disposition answer raise matters outside the scope of a contention is a reply pleading, for which permission to file should have been sought from the board before the replies were due; LBP-08-2, 67 NRC 54 (2008); LBP-08-3, 67 NRC 85 (2008)

there is no right to reply to an answer to a motion for summary disposition, but if the answer contains an allegation that is plainly and factually incorrect, the moving party can request the opportunity to respond and to correct the record; LBP-06-5, 63 NRC 116 (2006)

within 25 days after service of a motion and proposed contention, any other party may file an answer responding to all elements of the motion and contention, and within 7 days of service of the answer, the movant may file a reply; LBP-09-22, 70 NRC 640 (2009)

REPORTING REQUIREMENTS

applicant's commitments for occupational exposure to radiation exceeding the dose limits are described; LBP-07-6, 65 NRC 429 (2007)

failure to document a falsified work order is a violation of 10 C.F.R. 50.9; LBP-08-14, 68 NRC 279 (2008)

generator load rejection transients must be analyzed and reported to the NRC; LBP-07-2, 65 NRC 153 (2007)

information provided to the Commission by an applicant for a license or by a licensee must be complete and accurate in all material respects; LBP-09-1, 69 NRC 11 (2009)

SUBJECT INDEX

- licensee is not required to submit docketed information on the resolution of each fire protection noncompliance during its transition to a risk-informed and performance-based fire protection program, but it is required to implement and maintain compensatory measures for remaining noncompliances; DD-07-3, 65 NRC 643 (2007)
- licensee's report to NRC of a manual reactor trip due to main turbine high vibrations included the details of the event, provided an analysis of the event, including estimated change in conditional core damage probability, and provided a list of corrective actions; DD-09-2, 70 NRC 899 (2009)
- when an MSIV transient occurs, the reactor operator is required to analyze what happened and how the reactor systems responded and performed, and to report to the NRC; LBP-07-2, 65 NRC 153 (2007)
- REQUEST FOR ACTION**
- a motion to reopen that does not satisfy the Commission's procedural requirements but which arguably raises a significant safety or environmental issue may be referred to the Staff under 10 C.F.R. § 2.206; CLI-06-4, 63 NRC 32 (2006)
- although a petition for review does not challenge anything the boards actually decided, the Commission addresses the merits of the request as an exercise of its ultimate supervisory control over proceedings; CLI-09-10, 69 NRC 521 (2009)
- challenges to an Agreement State's program may be raised in a 10 C.F.R. 2.206 petition; CLI-10-8, 71 NRC 142 (2010)
- following termination of a proceeding, the proper avenue for a challenge to an existing license is to file a request to modify, suspend, or revoke a license; CLI-09-5, 69 NRC 115 (2009)
- if intervenors have any cause to believe that a licensee is not adequately following its license conditions, they can petition the NRC Staff for appropriate enforcement action; CLI-06-1, 63 NRC 1 (2006)
- if petitioners wish to propose security measures in addition to those laid out in a Staff enforcement order, their remedy is to petition the NRC under 10 C.F.R. 2.206 for further enforcement action; CLI-10-3, 71 NRC 49 (2010)
- petitioner's request for action concerning deficiencies in licensee's employee concerns program is denied; DD-10-1, 72 NRC 149 (2010)
- petitioner's request that NRC issue a demand for information to licensee regarding vibration levels prior to restart is denied; DD-09-2, 70 NRC 899 (2009)
- petitioner's request that unescorted access authorization be restored so that he could perform his accepted job tasks with all record of denial removed from any and all records is denied; DD-10-2, 72 NRC 163 (2010)
- petitioner's requests for enforcement action for alleged regulatory, criminal, and ethical misconduct and coverup by NRC Staff is denied; DD-10-3, 72 NRC 171 (2010)
- petitioners may protect their interests by filing a request for Commission action under 10 C.F.R. 2.206 rather than a late-filed intervention petition; CLI-10-12, 71 NRC 319 (2010)
- petitions submitted under 10 C.F.R. 2.206 are assessed by the Staff in accord with NRC Management Directive 8.11 and associated Handbook 8.11; LBP-10-7, 71 NRC 391 (2010)
- request for an enforcement-type action where the underlying concern is the partial collapse of a cooling tower is credible and sufficient to warrant further inquiry; DD-08-1, 67 NRC 347 (2008)
- requests for diagnostic evaluation team examination, safety culture assessment, and the NRC investigation at other licensee facilities are rejected for review because they are not requests for enforcement-type actions; DD-08-1, 67 NRC 347 (2008)
- the appropriate avenue for resolution of concerns regarding an ongoing operational issue at a facility is via a request under section 2.206; CLI-08-23, 68 NRC 461 (2008)
- to the extent petitioner believes that NRC Staff has overlooked facts indicating an inadequate safety culture as a matter separate and apart from license renewal, then its remedy is to direct Staff's attention to the supporting facts via a petition for enforcement action; CLI-10-27, 72 NRC 481 (2010)
- REQUEST FOR ADDITIONAL INFORMATION**
- a Staff-issued RAI ordinarily may not be used to support admission of a new contention because such a request, standing alone, generally does not give rise to a genuine dispute on material issues; LBP-06-11, 63 NRC 391 (2006)
- contention that the mere existence of numerous RAIs constituted prima facie evidence that the application is incomplete is rejected; CLI-09-12, 69 NRC 535 (2009)

SUBJECT INDEX

documents that contain the analysis, opinions, and recommendations of NRC Staff members regarding an applicant's response to prior RAIs or the formulation of new RAIs are deliberative and thus may qualify for the privilege; LBP-06-3, 63 NRC 85 (2006)

mere issuance of RAIs does not mean an application is incomplete for docketing; CLI-08-15, 68 NRC 1 (2008); CLI-08-17, 68 NRC 231 (2008)

NRC Staff issuance of an RAI does not alone establish deficiencies in an application, and intervention petitioner must do more than merely quote an RAI to justify admission of a contention; CLI-09-16, 70 NRC 33 (2009); LBP-09-10, 70 NRC 51 (2009); LBP-09-16, 70 NRC 227 (2009)

outstanding RAIs do not give rise to an evidentiary hearing; LBP-08-9, 67 NRC 421 (2008)

petitioner may not simply wait for the Staff to identify missing information and then ground a new contention on that request; CLI-09-12, 69 NRC 535 (2009)

petitioners who base their contentions on RAIs must provide analysis, discussion, or information of their own on the issues raised; LBP-09-16, 70 NRC 227 (2009)

the fact that Staff issues an RAI does not immunize the combined license application from challenge or bar the admission of a new contention on the same subject, provided the contention satisfies the criteria of 10 C.F.R. 2.309(f)(1)(i)-(vi) and (f)(2) or (c); LBP-09-10, 70 NRC 51 (2009)

the licensing board did not commit reversible error by admitting a contention based on low-level radioactive waste storage duration because the NRC Staff itself had issued a request for additional information on this very issue and thus this conflicted with Staff's argument that the issue is immaterial to the findings that must be made on the application; LBP-09-27, 70 NRC 992 (2009)

RESEARCH REACTORS

a request for action regarding leaks or potential leaks of radioactively contaminated water into the ground is denied because existing NRC design and regulatory programs ensure that there is a minimal risk for a significant release of contaminated liquid effluents; DD-06-3, 64 NRC 407 (2006)

petitioner alleges failure to conduct safety review of the modification of the controlled access area by the addition of an undocumented roof access for a siphon breaker experiment; DD-10-3, 72 NRC 171 (2010)

petitioner whose daily commute took her within less than one-half mile of a research reactor had standing based on the obvious potential for offsite consequences; CLI-10-7, 71 NRC 133 (2010)

petitioner whose office was located within one-half mile from a research reactor may be presumed to be affected by operation of the facility; CLI-10-7, 71 NRC 133 (2010)

RESPONSES TO PETITIONS

an answer supporting or opposing a motion for summary disposition or other dispositive motion shall be filed within 20 days after service of the motion; LBP-09-22, 70 NRC 640 (2009)

no later than 20 days after service of materials, the parties and the NRC Staff shall file their written responses, rebuttal testimony with supporting affidavits, and rebuttal exhibits, on a contention-by-contention basis; LBP-09-22, 70 NRC 640 (2009)

to the extent that licensee's response focuses on the merits of petitioner's contention at the admissibility stage, and not on whether it is admissible, the response is beyond consideration; LBP-06-6, 63 NRC 167 (2006)

within 25 days after service of a motion and proposed contention, any other party may file an answer responding to all elements of the motion and contention, and within 7 days of service of the answer, the movant may file a reply; LBP-09-22, 70 NRC 640 (2009)

RESTART

petitioner's request that NRC issue a demand for information to licensee regarding vibration levels prior to restart is denied; DD-09-2, 70 NRC 899 (2009)

RESTRICTED RELEASE

a decommissioning plan will be judged exclusively upon whether residual radioactivity levels will be as low as is reasonably achievable and the total effective dose equivalent to offsite human beings will be below 25 mrem; LBP-08-4, 67 NRC 105 (2008)

a license is terminated upon the completion of decommissioning; CLI-09-1, 69 NRC 1 (2009)

a site will be considered for restricted release if further reductions in residual radioactivity necessary to comply with the provisions of 10 C.F.R. 20.1402 would result in net public or environmental harm or need not be made because residual levels associated with the restricted conditions are as low as reasonably achievable; CLI-09-1, 69 NRC 1 (2009)

SUBJECT INDEX

consistency of the generic guidance in NUREG-1757 governing restricted release with the text and intent of the regulations is discussed; CLI-09-1, 69 NRC 1 (2009)
New Jersey's restricted release criteria are compatible with NRC rules; CLI-10-8, 71 NRC 142 (2010)
the criteria for acceptability of a site for license termination under restricted conditions are discussed; CLI-09-1, 69 NRC 1 (2009)
until decommissioning is completed, a licensee must limit actions to those related to decommissioning and control access to restricted areas until they are suitable for release; CLI-09-1, 69 NRC 1 (2009)

REVERSAL OF RULING

the Commission grants review of licensing board decision that dismissed a contention on summary disposition, reversing the decision in part, and remanding the contention to the board for hearing, as limited by the Commission's ruling; CLI-10-11, 71 NRC 287 (2010)
the Commission reverses the board's admission of two contentions; CLI-09-3, 69 NRC 68 (2009)

REVIEW

a requester may challenge an adverse determination with respect to access to safeguards information by filing a request for review pursuant to 10 C.F.R. 2.311; CLI-09-15, 70 NRC 1 (2009); CLI-10-4, 71 NRC 56 (2010)
all decisions on questions of classification or declassification of information shall be made by appropriate classification officials in the NRC and are not subject to de novo review; CLI-09-15, 70 NRC 1 (2009)
ripeness for judicial review is determined on the basis of the fitness of the issue for judicial decision and the hardship to the parties of withholding court consideration; LBP-09-6, 69 NRC 367 (2009)
See also Antitrust Review; Appellate Review; Environmental Review; Immediate Effectiveness Review; NRC Review; NRC Staff Review; Safety Review; Standard of Review

REVIEW, DISCRETIONARY

although the Commission has discretion to review all underlying factual issues de novo, it is disinclined to do so where a board has weighed arguments presented by experts and rendered reasonable, record-based factual findings; CLI-10-5, 71 NRC 90 (2010)
as for conclusions of law, the Commission will review legal questions de novo and reverse a licensing board's legal rulings if they are a departure from or contrary to established law; CLI-10-5, 71 NRC 90 (2010)
Commission denies petitions for interlocutory review of a licensing board decision that admitted new and amended contentions; CLI-10-30, 72 NRC 564 (2010)
interlocutory review is permitted at the Commission's discretion only upon a showing that the issue for which it is sought threatens the party adversely affected by it with immediate and serious irreparable impact or affects the basic structure of the proceeding in a pervasive or unusual manner; CLI-06-12, 63 NRC 495 (2006); CLI-07-1, 65 NRC 1 (2007); CLI-07-2, 65 NRC 10 (2007); CLI-10-16, 71 NRC 486 (2010); CLI-10-30, 72 NRC 564 (2010)
outside the context of petitions for interlocutory review, the Commission may take interlocutory review of questions or rulings that a licensing board either refers or certifies to the Commission; CLI-07-1, 65 NRC 1 (2007)
parties should not seek review by invoking the grounds under which the Commission might exercise its supervisory authority; CLI-10-30, 72 NRC 564 (2010)
petitioner must demonstrate that the issue for which it seeks review could not be alleviated through a petition for review of the presiding officer's final decision; CLI-10-30, 72 NRC 564 (2010)
the Commission customarily does not entertain discretionary interlocutory appeals, due in large part to a general unwillingness to engage in piecemeal interference in ongoing Licensing Board proceedings; CLI-07-1, 65 NRC 1 (2007)
the Commission generally does not entertain requests to invoke its inherent supervisory authority over adjudications; CLI-10-13, 71 NRC 387 (2010)
the Commission grants review based on petitioner's showing that there is a substantial question with respect to the five considerations listed in 10 C.F.R. 2.341(b)(4); CLI-08-28, 68 NRC 658 (2008); CLI-10-5, 71 NRC 90 (2010)
the Commission grants review only in extraordinary circumstances; CLI-10-30, 72 NRC 564 (2010)
the Commission may, at its discretion, grant a party's request for interlocutory review of a board decision; CLI-10-30, 72 NRC 564 (2010)

SUBJECT INDEX

- the mere potential for legal error in a contention admissibility decision is not a ground for review; CLI-10-30, 72 NRC 564 (2010)
- the standard of clear error for overturning a board's factual finding is quite high; CLI-10-5, 71 NRC 90 (2010)
- REVIEW, INTERLOCUTORY**
- an exception to the general policy limiting interlocutory review permits an appeal of a board's ruling on contention admissibility when a board grants a petition to intervene following consideration of the full petition; CLI-09-18, 70 NRC 859 (2009)
- challenges to board rulings on late-filed contentions normally fall under the rules for interlocutory review; CLI-09-18, 70 NRC 859 (2009)
- discretionary interlocutory review is allowed only when a licensing board certifies a ruling or refers a question, or when an interlocutory board ruling creates immediate and serious irreparable impact or affects the basic structure of the proceeding in a pervasive or unusual manner; CLI-06-18, 64 NRC 1 (2006); CLI-06-24, 64 NRC 111 (2006)
- if the Commission's supervisory authority constituted grounds for a party's own request for appellate review, there would be no limit to the kinds of arguments parties could legitimately present on appeal, a result at odds with the Commission's oft-expressed intent to limit the availability of such appeals; CLI-07-1, 65 NRC 1 (2007)
- increased litigation delay and expense do not justify interlocutory review of an admissibility decision; CLI-09-6, 69 NRC 128 (2009)
- litigation efforts that a litigant considers unnecessary because they relate to a contention that the litigant considers to have been improperly admitted do not affect the basic structure of a proceeding at all, much less in a pervasive and unusual manner; CLI-09-6, 69 NRC 128 (2009)
- no instance has occurred in NRC jurisprudence where either the Commission or its boards have ruled that expenses of any kind constituted irreparable injury; CLI-09-6, 69 NRC 128 (2009)
- NRC rules governing the high-level waste proceeding do not provide for interlocutory review; CLI-10-13, 71 NRC 387 (2010)
- outside the context of petitions for interlocutory review, the Commission may take interlocutory review of questions or rulings that a licensing board either refers or certifies to the Commission; CLI-07-1, 65 NRC 1 (2007)
- review is granted under the pervasive-and-unusual-effect standard only in extraordinary circumstances; CLI-06-24, 64 NRC 111 (2006)
- review is permitted at the Commission's discretion only upon a showing that the issue for which review is sought threatens the party adversely affected by it with immediate and serious irreparable impact or affects the basic structure of the proceeding in a pervasive or unusual manner; CLI-06-24, 64 NRC 111 (2006); CLI-07-1, 65 NRC 1 (2007); CLI-10-13, 71 NRC 387 (2010); CLI-10-16, 71 NRC 486 (2010)
- routine rulings on contention admissibility are usually not occasions for the Commission to exercise its authority to step into ongoing licensing board proceedings and undertake interlocutory review; CLI-09-3, 69 NRC 68 (2009)
- settling some but not all contentions is a routine feature of NRC litigation, but it does not affect the proceeding in a pervasive or unusual manner; CLI-06-18, 64 NRC 1 (2006)
- the Commission customarily does not entertain discretionary interlocutory appeals, due in large part to a general unwillingness to engage in piecemeal interference in ongoing licensing board proceedings; CLI-07-1, 65 NRC 1 (2007); CLI-10-16, 71 NRC 486 (2010)
- the Commission grants discretionary interlocutory review only in extraordinary circumstances; CLI-09-6, 69 NRC 128 (2009)
- the Commission's exercise its discretion to review a licensing board's interlocutory order stems from its inherent supervisory authority over adjudications and in no way implies that parties have a right to seek interlocutory review on that same ground; CLI-09-6, 69 NRC 128 (2009)
- the interlocutory review standard in 10 C.F.R. 2.323(f)(1) does not apply to litigants' petitions for interlocutory review; CLI-09-6, 69 NRC 128 (2009)
- the possibility that an interlocutory ruling may be wrong does not in itself justify interlocutory review; CLI-09-6, 69 NRC 128 (2009)
- the potential for litigation expense and delay is the kind of burden that licensees and applicants voluntarily assume when filing applications with the Commission; CLI-09-6, 69 NRC 128 (2009)

SUBJECT INDEX

the presiding officer may refer a ruling to the Commission if the ruling involves a novel issue that merits Commission review at the earliest opportunity; CLI-09-6, 69 NRC 128 (2009)

the presiding officer may refer a ruling to the Commission if, in the presiding officer's judgment, prompt decision is necessary to prevent detriment to the public interest or unusual delay or expense; CLI-09-6, 69 NRC 128 (2009)

the question whether to hold an NRC enforcement proceeding in abeyance pending a related criminal prosecution is generally suitable for interlocutory review because the abeyance issue cannot await the end of the proceeding; CLI-07-6, 65 NRC 112 (2007)

were the Commission to permit litigants to successfully invoke interlocutory review based merely on an assertion that the licensing board erred in admitting or excluding a contention, then the Commission would be opening the floodgates to a potential deluge of interlocutory appeals from any number of participants who lose admissibility rulings; CLI-09-6, 69 NRC 128 (2009)

whether NEPA requires the NRC to consider potential health effects of consuming irradiated food raises the kind of broad legal question appropriate for Commission interlocutory review; CLI-08-4, 67 NRC 171 (2008); CLI-08-16, 68 NRC 221 (2008)

See also Appeals, Interlocutory; Appellate Review

REVIEW, SUA SPONTE

it is appropriate for the Commission to take review of a claim that raises a threshold legal question going to the proper scope of a proceeding, and a matter with potential new significant NEPA implications for the NRC; CLI-08-16, 68 NRC 221 (2008)

the Commission has authority to review board rulings sponte, in the exercise of its inherent supervisory authority over NRC adjudications, regardless of whether the Commission accepts the referral; CLI-09-3, 69 NRC 68 (2009)

the Commission has used sua sponte review as a vehicle to address unappealed issues or orders, to set a specific timetable or otherwise customize NRC procedures for individual adjudications, to suspend a proceeding, to vacate an unreviewed board order after withdrawal of the challenged application, to decide whether to disqualify a presiding officer, to address an issue of wide implication, and to provide guidance to a licensing board; CLI-07-1, 65 NRC 1 (2007)

the Commission itself may exercise its discretion to review a licensing board's interlocutory order if the Commission wants to address a novel or important issue; CLI-09-6, 69 NRC 128 (2009)

the Commission may review a board ruling pursuant to the inherent supervisory powers where a significant issue may affect multiple pending or imminent licensing proceedings; CLI-08-2, 67 NRC 31 (2008)

the Commission will occasionally take review of an issue on its own motion when that issue is not otherwise before it on appeal; CLI-07-1, 65 NRC 1 (2007)

the Commission's exercise of its authority to instruct the board to certify novel license renewal issues yields essentially the same result as taking sua sponte review; CLI-07-1, 65 NRC 1 (2007)

the section 2.341(a)(2) process that applies to a licensing board determination approving a settlement agreement affords the Commission the opportunity to correct any participant or board misapprehensions regarding the items contemplated in the settlement agreement; LBP-09-23, 70 NRC 659 (2009)

whether NEPA requires the NRC to consider potential health effects of consuming irradiated food raises the kind of broad legal question appropriate for Commission interlocutory review; CLI-08-4, 67 NRC 171 (2008); CLI-08-16, 68 NRC 221 (2008)

REVOCATION OF LICENSES

a license renewal may be set aside or appropriately conditioned even after it has been issued, upon subsequent administrative or judicial review; CLI-10-8, 71 NRC 142 (2010)

lack of either technical competence or character qualifications on the part of licensee or applicant is sufficient grounds for the revocation of a license or the denial of a license application; LBP-09-6, 69 NRC 367 (2009)

NRC may revoke any license for a material false statement in the application; CLI-07-12, 65 NRC 203 (2007)

voluntary surrender of a valid construction permit does not amount to wrongful activity that would warrant revocation; CLI-10-6, 71 NRC 113 (2010)

SUBJECT INDEX

RISK ANALYSIS

Staff's generic environmental impact statement for license renewal has already performed a discretionary analysis of terrorist acts in connection with license renewal and concluded that the core damage and radiological release from such acts would be no worse than the damage and release to be expected from internally initiated events; CLI-07-8, 65 NRC 124 (2007)

the level of risk of a terrorist attack depends upon political, social, and economic factors external to the NRC licensing process, and thus it is not sensible to hold an NRC licensing decision, rather than terrorists themselves, as the proximate cause of an attack on an NRC-licensed facility; CLI-07-8, 65 NRC 124 (2007)

RISK ASSESSMENT

issue of whether location of a nuclear plant in a densely populated area allowed adoption of generic risk factors and a severe accident mitigation design alternatives decision supported by a policy statement rather than a rulemaking was confronted; LBP-10-10, 71 NRC 529 (2010)

RISK-INFORMED PERFORMANCE-BASED PROGRAMS

licensee is not required to submit docketed information on the resolution of each fire protection noncompliance during its transition to a risk-informed and performance-based fire protection program, but it is required to implement and maintain compensatory measures for remaining noncompliances; DD-07-3, 65 NRC 643 (2007)

licensees may voluntarily adopt a risk-informed and performance-based fire protection program; DD-07-3, 65 NRC 643 (2007)

RISKS

events having a less than a one in one million probability of occurring are not credible events; LBP-09-4, 69 NRC 170 (2009)

events that could cause radioactive releases, including aircraft impact events, are included within the set of design basis events required to be analyzed and designed against only if the probability of such events is above one in one million per year; LBP-09-2, 69 NRC 87 (2009)

potential radiological risks associated with an ISFSI license transfer are lower than those for an operating facility, because an ISFSI is essentially a passive structure, and there therefore is less chance of widespread radioactive release; CLI-07-19, 65 NRC 423 (2007)

when an applicant receives a construction permit, it proceeds at its own risk, regardless of the amount of money that it may have expended during construction; LBP-10-7, 71 NRC 391 (2010)

See also Assumption of Risk

RULE OF REASON

a Staff determination that certain scenarios, such as Part 61 intruder scenarios, are so unlikely as to fall outside the scope of the Staff's NEPA review is a proper exercise of NEPA's rule of reason; LBP-06-8, 63 NRC 241 (2006)

all significant environmental impacts and all reasonable alternatives should be considered for a combined license, but these are governed by the rule of reason; LBP-09-10, 70 NRC 51 (2009); LBP-09-17, 70 NRC 311 (2009)

an agency's environmental review need only account for those impacts that have some likelihood of occurring or are reasonably foreseeable; LBP-06-8, 63 NRC 241 (2006)

consideration and evaluation of intruder scenarios and related intruder dose are part of the "hard look" NEPA requires the Staff to take at the environmental impacts associated with a particular licensing action; LBP-06-8, 63 NRC 241 (2006)

consideration of environmental impacts need not address every impact that could possibly result, but rather only those that are reasonably foreseeable or have some likelihood of occurring; LBP-09-7, 69 NRC 613 (2009)

goals of the project sponsor are given substantial weight in determining whether an alternative is reasonable; LBP-09-10, 70 NRC 51 (2009)

if a NEPA contention alleges that impacts or alternatives that are patently outside the realm of reason must be considered, then the contention should be denied for failure to demonstrate that the issue raised is within the legitimate scope of NEPA; LBP-09-10, 70 NRC 51 (2009)

if the accident sought to be considered is sufficiently unlikely, such that it can be characterized fairly as remote and speculative, then consideration under NEPA is not required as a matter of law; LBP-09-4, 69 NRC 170 (2009)

SUBJECT INDEX

- implicit in NEPA is a rule of reason, under which the agency may limit the alternatives discussion where there is no environmental effect or where an effect is simply not significant; LBP-10-10, 71 NRC 529 (2010)
- it would be inconsistent with the National Environmental Policy Act to require that the cumulative impacts analysis individually analyze the effects of remote facilities absent a demonstration that such additional effort would lead to a different conclusion; LBP-09-4, 69 NRC 170 (2009)
- low probability is the key to applying NEPA's rule-of-reason test to contentions that allege that a specified accident scenario presents a significant environmental impact that must be evaluated; LBP-09-26, 70 NRC 939 (2009); LBP-10-10, 71 NRC 529 (2010)
- NEPA analyses are subject to a rule of reason, but it is necessary to have a criterion upon which reasonableness may be determined; LBP-09-4, 69 NRC 170 (2009)
- NEPA does not require applicant to consider energy efficiency in its NEPA analysis, because it is not a reasonable alternative for a merchant power producer; CLI-10-1, 71 NRC 1 (2010)
- NEPA requirements are tempered by a practical rule of reason; CLI-10-22, 72 NRC 202 (2010)
- the hard look required by NEPA is subject to a rule of reason, such that it is not necessary to look at every conceivable alternative to the proposed licensing action, but only those that are feasible, and reasonably related to the scope and goals of the proposed action; LBP-09-21, 70 NRC 581 (2009); LBP-09-26, 70 NRC 939 (2009); LBP-10-10, 71 NRC 529 (2010); LBP-10-14, 72 NRC 101 (2010)
- the National Environmental Policy Act excludes consideration of demand-side management if the proposed new plant is intended to be a merchant plant, selling power on the open market, because it is not feasible for licensee to engage in demand-side management; CLI-10-21, 72 NRC 197 (2010)
- the range of alternatives that must be considered need not extend beyond those reasonably related to the purposes of the project and a rule of reason necessarily informs that choice; CLI-10-18, 72 NRC 56 (2010)
- RULEMAKING**
- a board erred in referring a contention to the Staff for consideration in conjunction with the design certification rulemaking without first assessing its admissibility; CLI-10-1, 71 NRC 1 (2010)
- a challenge to the Waste Confidence Rule, which is the subject of a rulemaking, is inadmissible; CLI-10-9, 71 NRC 245 (2010)
- a contention that attacks a Commission rule, or that seeks to litigate a matter that is, or clearly is about to become, the subject of a rulemaking, is inadmissible; CLI-10-9, 71 NRC 245 (2010); CLI-10-19, 72 NRC 98 (2010); LBP-06-7, 63 NRC 188 (2006); LBP-07-3, 65 NRC 237 (2007); LBP-08-21, 68 NRC 554 (2008); LBP-09-2, 69 NRC 87 (2009); LBP-09-3, 69 NRC 139 (2009); LBP-09-8, 69 NRC 736 (2009); LBP-09-17, 70 NRC 311 (2009); LBP-09-21, 70 NRC 581 (2009); LBP-09-26, 70 NRC 939 (2009); LBP-10-7, 71 NRC 391 (2010)
- a license application will not be held in abeyance until the design certification rulemaking is completed; LBP-09-16, 70 NRC 227 (2009)
- a petition for rulemaking is a more appropriate venue to resolve generic concerns about spent fuel fires; LBP-08-13, 68 NRC 43 (2008)
- a Staff order that neither repudiates nor rescinds any NRC safety and security requirements, but rather imposes new, more stringent security requirements that supplement those already found in NRC regulations does not amount to unlawfully promulgated regulations; CLI-10-3, 71 NRC 49 (2010)
- a state could seek to have licensing proceedings suspended pending an NRC decision on its rulemaking petition, if it participated in the proceedings as an interested state; CLI-09-10, 69 NRC 521 (2009)
- a waste confidence rulemaking is not the appropriate instrument for resolving low-level radioactive waste issues, particularly issues of disposal; CLI-09-3, 69 NRC 68 (2009)
- agencies generally are free to exercise their discretion in determining whether to formulate policy through rulemaking or adjudication; LBP-06-7, 63 NRC 188 (2006)
- agency decisions on rulemaking petitions are judicially reviewable; CLI-07-13, 65 NRC 211 (2007)
- amendment of a combined license application to comply with an amended aircraft impacts rule during the pendency of the COL application could form the basis for a late-filed contention; CLI-10-1, 71 NRC 1 (2010)
- an order modifying a license, such as a Staff order, falls well within the Administrative Procedure Act's definition of adjudication, and as such, the Staff order does not trigger the notice-and-comment procedures applicable to rulemakings; CLI-10-3, 71 NRC 49 (2010)

SUBJECT INDEX

an otherwise admissible contention that raises challenges to information in a design certification rulemaking should be referred to the Staff for resolution in the rulemaking; CLI-09-4, 69 NRC 80 (2009); CLI-09-8, 69 NRC 317 (2009)

any contention directed at a design undergoing rulemaking review fails on its face to satisfy the admission requirements because all matters subject of a rulemaking are outside the scope of licensing proceedings; LBP-09-8, 69 NRC 736 (2009)

challenges to the adequacy of Table S-3, which was initially prepared more than 25 years ago, may be made through a petition for rulemaking; LBP-08-17, 68 NRC 431 (2008)

challenges to the Waste Confidence Rule must be made in the context of a rulemaking, not in the context of an adjudicative proceeding; CLI-10-19, 72 NRC 98 (2010)

contentions that advocate stricter requirements than agency rules impose or that otherwise seek to litigate a generic determination established by a Commission rulemaking are inadmissible; LBP-10-7, 71 NRC 391 (2010)

design certification rulemaking and individual combined license adjudicatory proceedings may proceed simultaneously, and issues raised in an adjudicatory proceeding that are appropriately addressed in the generic design certification rulemaking are to be referred to the Staff for resolution; CLI-09-8, 69 NRC 317 (2009)

if licensee wishes to challenge the compatibility category that is assigned to a particular regulation, including the license termination rule, it may do so at any time through submission of a petition for rulemaking; CLI-10-8, 71 NRC 142 (2010)

if new information becomes available in the course of waste confidence rulemaking proceedings that contravenes a combined license application, petitioner may file a motion to admit a new or amended contention; LBP-09-18, 70 NRC 385 (2009)

if petitioner believes that current NRC regulations are inadequate, the venue for raising such a concern is a section 2.802 petition to institute a rulemaking action; LBP-08-13, 68 NRC 43 (2008)

if petitioners are dissatisfied with NRC's generic approach to a problem, their remedy lies in the rulemaking process, not in adjudication; CLI-10-19, 72 NRC 98 (2010); LBP-08-23, 68 NRC 679 (2008); LBP-09-16, 70 NRC 227 (2009); LBP-09-18, 70 NRC 385 (2009)

if petitioners believe that the specification for climate change no longer provides a reasonable basis for demonstrating compliance based on new scientific evidence, they can petition NRC to amend the rules; LBP-10-22, 72 NRC 661 (2010)

if petitioners wish to propose security measures in addition to those laid out in a Staff enforcement order, their remedy is to ask NRC to institute a rulemaking to impose broader security measures; CLI-10-3, 71 NRC 49 (2010)

if there is reason to believe that a departure from the NRC's license renewal generic environmental impact statement and related regulations is warranted, then the remedy is a petition for rulemaking to modify the rules or a petition for a waiver of the rules based on special circumstances, not an adjudicatory contention; CLI-07-8, 65 NRC 124 (2007)

issuance of a post-9/11 security order does not amount to unlawfully promulgated regulations; CLI-10-3, 71 NRC 49 (2010)

issuance of a proposed rulemaking and requests for comments does not, in itself, constitute information not previously available that entitles a party to file a new contention; LBP-09-10, 70 NRC 51 (2009)

issue of whether location of a nuclear plant in a densely populated area allowed adoption of generic risk factors and a severe accident mitigation design alternatives decision supported by a policy statement rather than a rulemaking was confronted; LBP-10-10, 71 NRC 529 (2010)

issues concerning a reactor design certification application should be resolved in the design certification rulemaking and not in an individual COL proceeding; CLI-08-15, 68 NRC 1 (2008); LBP-08-17, 68 NRC 431 (2008)

it makes more sense for NRC to study whether, as a technical matter, the agency should modify its requirements for all plants across the board than to litigate in particular adjudications whether generic findings in the GEIS are impeached by a claim of new information; CLI-07-3, 65 NRC 13 (2007)

notice-and-comment rulemaking is required only when the NRC is attempting to change a regulation; CLI-10-6, 71 NRC 113 (2010)

NRC rules permit the filing of a combined license application during the pendency of a design certification rulemaking; CLI-10-9, 71 NRC 245 (2010)

SUBJECT INDEX

- NRC rules recognize the possibility of new and significant information calling into question prior generic findings, and a petition for rulemaking is one means to alert the Commission to new information that may render a GEIS finding incorrect; CLI-09-10, 69 NRC 521 (2009)
- once a licensing proceeding has been closed, petitioners will still have the opportunity to raise issues by filing a petition under 10 C.F.R. 2.802; CLI-10-17, 72 NRC 1 (2010)
- only a party to a proceeding, or an interested governmental entity participating under section 2.315, may file a request to stay proceedings pending a rulemaking; CLI-07-13, 65 NRC 211 (2007)
- outside the adjudicatory context, a petitioner's concerns may be addressed through a petition for rulemaking; LBP-07-4, 65 NRC 281 (2007)
- participants in ongoing adjudicatory proceedings that have filed a rulemaking petition should be provided an opportunity to seek a stay of the adjudication pending a resolution of the rulemaking petition; LBP-08-16, 68 NRC 361 (2008)
- pending resolution of a rulemaking petition, NRC Staff may, where appropriate, seek the Commission's permission to suspend the generic determination of a Category I issue and include a new analysis in the plant-specific environmental impact statements; CLI-07-3, 65 NRC 13 (2007)
- petitioners and others who believe the Waste Confidence Rule needs revision must use rulemaking proceedings to express their concerns; LBP-09-4, 69 NRC 170 (2009)
- the agency decided not to include the threat of air attacks in the 2007 revision to the design basis threat rule, a decision upheld by the Ninth Circuit; CLI-10-9, 71 NRC 245 (2010)
- the appropriate path for any petitioner's challenges to proposed reactor design revisions is through participation in those rulemaking proceedings, not through a combined license proceeding; LBP-09-2, 69 NRC 87 (2009)
- the Commission declines to accept the board's suggestion that the Commission consider instituting a "low-level waste confidence" rulemaking proceeding; CLI-09-3, 69 NRC 68 (2009)
- the Commission generally refuses to modify, rescind, or impose new requirements on reactor design certification information, unless through rulemaking; LBP-10-21, 72 NRC 616 (2010)
- the Commission has discretion under the Administrative Procedure Act to impose binding, prospectively applicable legal requirements by either rulemaking or adjudication; CLI-10-3, 71 NRC 49 (2010)
- the design certification rulemaking and individual COL adjudicatory proceedings may proceed simultaneously, and issues raised in an adjudicatory proceeding that are appropriately addressed in the generic design certification rulemaking are to be referred to the rulemaking for resolution; LBP-10-17, 72 NRC 501 (2010)
- the mere potential that an issue may become moot in the future due to a rulemaking does not affect the finality of a decision resting on current law; CLI-07-13, 65 NRC 211 (2007)
- the need for design features to guard against design basis threats is outside the scope of a combined license proceeding because it is the subject of an ongoing rulemaking; LBP-09-2, 69 NRC 87 (2009)
- the SAMDA analysis is part of the design certification application and thus intervenor's contention constitutes an impermissible challenge to a future rulemaking; LBP-10-10, 71 NRC 529 (2010)
- the universe of potential contentions in a combined license proceeding includes site-specific contentions that do not implicate issues appropriately considered in a design certification rulemaking; CLI-09-8, 69 NRC 317 (2009)
- to the extent that an intervenor disagrees with a regulation, its recourse is to petition the Commission for rulemaking to change it; LBP-06-1, 63 NRC 41 (2006)
- to the extent that petitioners argue that the provisions of 10 C.F.R. 50.54(hh) should be applied to dry cask storage, they may file a rulemaking petition with the Commission; LBP-09-17, 70 NRC 311 (2009)
- where a petitioner argues that new information contradicts assumptions underlying the entire generic analysis for all facilities or a whole class of facilities, the appropriate remedy is a rulemaking petition; CLI-07-3, 65 NRC 13 (2007)
- RULES**
- a contention that challenges any Commission rule is outside the scope of the proceeding because, absent a waiver, no rule or regulation of the Commission is subject to attack in any adjudicatory proceeding; LBP-07-4, 65 NRC 281 (2007); LBP-10-7, 71 NRC 391 (2010)
- an adjudication is not the proper forum for challenging applicable statutory requirements or the basic structure of the agency's regulatory process; LBP-07-3, 65 NRC 237 (2007)

SUBJECT INDEX

contentions challenging dose limits in NRC regulations are not admissible; LBP-08-6, 67 NRC 241 (2008)
contentions that advocate stricter requirements than agency rules impose or that otherwise seek to litigate a generic determination established by a Commission rulemaking are inadmissible; LBP-10-7, 71 NRC 391 (2010)
if a rule is suspended for analysis, each supplemental EIS would reflect the corrected analysis until such time as the rule is amended; CLI-07-3, 65 NRC 13 (2007)
policy statements are neither rules nor orders, and therefore do not establish requirements that bind either the agency or the public; CLI-07-27, 66 NRC 215 (2007)
See also Regulations; Waiver of Rule

RULES OF PRACTICE

a board appropriately rejected the contention of a petitioner who failed to support his premise that a river water intake valve is a safety-related system with information or expert opinion; CLI-07-25, 66 NRC 101 (2007)
a board has a duty not only to resolve contested issues, but to articulate in reasonable detail the basis for the course of action chosen; CLI-09-14, 69 NRC 580 (2009)
a board in one proceeding is not constrained to follow the rulings of another board on standing, absent explicit affirmation by the Commission; LBP-08-24, 68 NRC 691 (2008); LBP-07-10, 66 NRC 1 (2007)
a board is not at liberty to abandon the Commission's 50-mile proximity presumption; LBP-09-16, 70 NRC 227 (2009)
a board is not to permit incorporation by reference where the effect would be to circumvent NRC-prescribed specificity requirements; LBP-08-24, 68 NRC 691 (2008)
a board may refer a ruling to the Commission if it determines that prompt decision is necessary to prevent detriment to the public interest or unusual delay or expense, or if the ruling involves a novel issue that merits Commission review at the earliest opportunity; CLI-09-13, 69 NRC 575 (2009); LBP-09-26, 70 NRC 939 (2009)
a board may view a petitioner's supporting information in a light favorable to the petitioner, but it cannot do so by ignoring contention admissibility rules, which require the petitioner (not the board) to supply all required elements for a valid intervention petition; CLI-09-7, 69 NRC 235 (2009)
a board properly found no standing when petitioner failed to demonstrate that it, or any of its members, would suffer any concrete or particularized harm from a proposed license renewal; CLI-06-6, 63 NRC 161 (2006)
a board's determination of standing does not depend on whether the cause of the injury flows directly from the challenged action, but whether the chain of causation is plausible; LBP-09-13, 70 NRC 168 (2009); LBP-10-16, 72 NRC 361 (2010)
a board's determination on a request for access to sensitive unclassified nonsafeguards information is reviewed de novo; CLI-10-24, 72 NRC 451 (2010)
a board's standing analysis must avoid the familiar trap of confusing the standing determination with the assessment of a petitioner's case on the merits; LBP-10-16, 72 NRC 361 (2010)
a brief explanation of the basis for the contention is a necessary prerequisite to its admission; LBP-07-16, 66 NRC 277 (2007); LBP-09-26, 70 NRC 939 (2009)
a broadly stated interest in a problem is not sufficient by itself to render an organization so adversely affected or aggrieved that standing will be granted; LBP-09-13, 70 NRC 168 (2009)
a claim not raised in the hearing petition, but added as a new claim in petitioners' reply brief is considered impermissibly late; CLI-08-17, 68 NRC 231 (2008)
a claim of residence within 50 miles of a facility might entitle petitioner to a presumption of standing based on proximity in a reactor construction permit or operating license proceeding; CLI-07-19, 65 NRC 423 (2007)
a contention based on new information will be considered timely if it is filed within 30 days of the availability of the new information; CLI-10-18, 72 NRC 56 (2010); LBP-10-14, 72 NRC 101 (2010)
a contention can be one of omission as well as one of inadequacy when it alleges that the environmental report is insufficient because it fails to discuss all aspects of the topic adequately; LBP-09-10, 70 NRC 51 (2009)
a contention challenging applicant's environmental report can be superseded by the subsequent issuance of licensing-related documents, whether a draft environmental impact statement or an applicant's response to a request for additional information; LBP-10-14, 72 NRC 101 (2010)

SUBJECT INDEX

- a contention is admissible if it raises a genuine dispute that is material to the findings the NRC must make to support the action involved; LBP-09-25, 70 NRC 867 (2009)
- a contention is material if it shows that some significant link exists between the claimed deficiency and either the health and safety of the public, or the environment; LBP-09-26, 70 NRC 939 (2009)
- a contention is not admissible if it is not plausibly explained or supported by alleged facts; LBP-09-21, 70 NRC 581 (2009)
- a contention must explain why the application is deficient through reference to specific portions of the application, and it must directly controvert a position taken by the applicant in the application; LBP-09-17, 70 NRC 311 (2009)
- a contention must meet certain specificity and basis requirements and must fall within the scope of the proceeding; CLI-06-16, 63 NRC 708 (2006)
- a contention must show that a genuine dispute exists on a material issue of law or fact with regard to the license application, challenge and identify either specific portions of, or alleged omissions from, the application, and provide the supporting reasons for each dispute; LBP-09-26, 70 NRC 939 (2009)
- a contention of omission claims that the application fails to contain information on a relevant matter as required by law and provides the supporting reasons for the petitioner's belief; LBP-08-15, 68 NRC 294 (2008); LBP-09-16, 70 NRC 227 (2009); LBP-09-27, 70 NRC 992 (2009)
- a contention raised in a combined license hearing challenging information in a design certification rulemaking, if otherwise admissible, should be referred to the Staff for consideration in the rulemaking, and held in abeyance by the licensing board pending outcome of rulemaking; LBP-09-3, 69 NRC 139 (2009)
- a contention shall not be admitted if the admissibility requirements are not satisfied or if the contention, even if proven, would not entitle petitioner to relief; CLI-08-1, 67 NRC 1 (2008)
- a contention that attacks a Commission rule or that seeks to litigate a matter that is, or clearly is about to become, the subject of a rulemaking, is inadmissible; CLI-10-9, 71 NRC 245 (2010); LBP-07-3, 65 NRC 237 (2007); LBP-08-16, 68 NRC 361 (2008); LBP-08-21, 68 NRC 554 (2008); LBP-09-2, 69 NRC 87 (2009); LBP-09-3, 69 NRC 139 (2009); LBP-09-8, 69 NRC 736 (2009); LBP-10-7, 71 NRC 391 (2010)
- a contention that attacks applicable statutory requirements, challenges the basic structure of the NRC's regulatory process, or merely expresses generalized policy grievances is not appropriate for a board hearing; LBP-09-3, 69 NRC 139 (2009); LBP-09-6, 69 NRC 367 (2009)
- a contention that challenges applicant's reliance on a pending design certification fundamentally on procedural grounds, constitutes an impermissible challenge to NRC regulations that allow the procedure applicant has chosen; LBP-08-17, 68 NRC 431 (2008)
- a contention that does not directly controvert a position taken by the applicant in the application is subject to dismissal; LBP-06-10, 63 NRC 314 (2006)
- a contention that fails to comply with any of the pleading requirements of 10 C.F.R. 2.309(f)(1) must be rejected; LBP-06-22, 64 NRC 229 (2006); LBP-07-7, 65 NRC 507 (2007)
- a contention that seeks to impose new requirements on applicants and licensees is an impermissible challenge to the agency's regulations; LBP-09-26, 70 NRC 939 (2009)
- a contention that simply states the petitioner's views about what regulatory policy should be does not present a litigable issue; LBP-07-3, 65 NRC 237 (2007); LBP-09-3, 69 NRC 139 (2009)
- a contention will be ruled inadmissible if petitioner has offered no tangible information, no experts, no substantive affidavits, but instead only bare assertions and speculation; LBP-06-7, 63 NRC 188 (2006); LBP-10-6, 71 NRC 350 (2010)
- a decision may be referred to the Commission if it raises significant and novel legal or policy issues, and resolution of the issues would materially advance the orderly disposition of the proceeding; LBP-09-18, 70 NRC 385 (2009)
- a declaration in support of petitioner's standing based on geographic proximity must include a specific statement of distance from the licensed facility; CLI-07-18, 65 NRC 399 (2007)
- a detailed summary of relevant case law on contention admissibility is presented; LBP-07-4, 65 NRC 281 (2007)
- a determination that an injury is fairly traceable to the challenged action does not depend on whether the cause of the injury flows directly from the challenged action, but whether the chain of causation is plausible; LBP-10-4, 71 NRC 216 (2010)

SUBJECT INDEX

- a dispute is material if its resolution would make a difference in the outcome of the licensing proceeding; LBP-10-6, 71 NRC 350 (2010)
- a filing that was 3 days late, which the board characterized as not excessively late, was accepted based on findings that intervenor offered a reasonable explanation for the delay and the delay did not prejudice any of the other parties; LBP-10-21, 72 NRC 616 (2010)
- a filing will be considered complete by electronic transmission when the filer performs the last act that it must perform to transmit a document, in its entirety, electronically; LBP-08-16, 68 NRC 361 (2008)
- a finding that applicant has cured an omission does not preclude litigation concerning the adequacy of the information the applicant has supplied and intervenors must timely file a new or amended contention that addresses the factors in 10 C.F.R. 2.309(f)(1); LBP-09-15, 70 NRC 198 (2009)
- a genuine material dispute is one that could lead to a different conclusion on potential cost-beneficial severe accident mitigation alternatives; LBP-09-26, 70 NRC 939 (2009)
- a hearing must be held upon the request of any person whose interest may be affected by the proceeding; LBP-08-14, 68 NRC 279 (2008)
- a hearing request is timely when petitioner lacks both actual and constructive notice of its opportunity to request a hearing as of the deadline specified by the agency, and the petitioner files the hearing request promptly upon receipt of actual notice; LBP-09-20, 70 NRC 565 (2009)
- a hearing request must state the name, address, and telephone number of the requestor, the nature of the requestor's right under the governing statutes to be made a party to the proceeding, the nature and extent of the requestor's property, financial, or other interest in the proceeding, and the possible effect of any decision or order that may be issued in the proceeding on the requestor's interest; LBP-09-28, 70 NRC 1019 (2009)
- a lack of specificity will be sufficient to reject a claim of standing; LBP-09-18, 70 NRC 385 (2009)
- a late-filed contention will be rejected as untimely unless the petitioner demonstrates that the eight-factor balancing test in 10 C.F.R. 2.309(c) militates in favor of considering the contention's admissibility; LBP-06-22, 64 NRC 229 (2006)
- a late-filed document that supports or provides a basis for a proposed contention should be considered using the late-filing factors of 10 C.F.R. 2.309(c) and 2.309(f)(2); CLI-09-12, 69 NRC 535 (2009)
- a late-filed environmental contention may be admitted only where petitioner relies upon newly available, significant information, meets the late-filing requirements, or successfully argues for supplementing the EIS; LBP-08-11, 67 NRC 460 (2008)
- a legal issue contention need not satisfy all the contention admissibility criteria; LBP-09-29, 70 NRC 1028 (2009)
- a license to possess and to use special nuclear materials at a fuel fabrication facility is the functional equivalent of an operating license for more standard facilities; LBP-07-14, 66 NRC 169 (2007)
- a licensing board cannot make a determination of whether there is a genuine issue of material fact without carefully examining the evidence presented in the parties' affidavits; LBP-07-13, 66 NRC 131 (2007)
- a licensing board is clearly authorized to dismiss a party who obstructs the discovery process, disobeys the board orders, and engages in willful, bad-faith, and prejudicial conduct toward another party; CLI-08-29, 68 NRC 899 (2008)
- a licensing board may not admit a contention that directly or indirectly challenges Table S-3 of 10 C.F.R. 51.51; LBP-09-16, 70 NRC 227 (2009)
- a licensing board need not formally reopen the record in order to assess the relative worth of the parties' competing evidence; LBP-08-12, 68 NRC 5 (2008)
- a licensing board order canceling oral argument on the admissibility of petitioner's proposed contention did not cause serious and irreparable harm to petitioner; CLI-08-7, 67 NRC 187 (2008)
- a licensing board order is final for appellate purposes where it either disposes of at least a major segment of the case or terminates a party's right to participate, and rulings that do neither are interlocutory; CLI-06-18, 64 NRC 1 (2006)
- a licensing board ruling on a summary disposition motion must view the record in the light most favorable to the party opposing such a motion and deny the motion if movant fails to meet its burden, even in the face of an inadequate response; LBP-07-12, 66 NRC 113 (2007)

SUBJECT INDEX

- a licensing board will not “strike from the record” any portions of petitioner’s reply, because any part of a record, whether or not appropriately considered in making any rulings, may become relevant in an appeal; LBP-07-4, 65 NRC 281 (2007)
- a litany of facts and figures on various items without citation to a specific document, expert opinion, or other supporting source reduces them to bare assertions and speculation that will not support the contention admission; LBP-08-16, 68 NRC 361 (2008)
- a motion and proposed contention filed later than 30 days after the date when the new and material information on which it is based first becomes available shall be deemed untimely; LBP-09-22, 70 NRC 640 (2009); LBP-09-29, 70 NRC 1028 (2009)
- a motion for reconsideration may not be filed except with leave of the licensing board, upon a showing of compelling circumstances, such as the existence of a clear and material error in a decision, which could not reasonably have been anticipated, that renders the decision invalid; CLI-07-13, 65 NRC 211 (2007); CLI-10-15, 71 NRC 479 (2010); LBP-08-23, 68 NRC 679 (2008)
- a motion for summary disposition must be granted if the filings in the proceeding together with the statements of the parties and the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a decision as a matter of law; LBP-09-15, 70 NRC 198 (2009)
- a motion to file late should generally be denied, except under extraordinary conditions; LBP-10-21, 72 NRC 616 (2010)
- a motion to reopen a closed proceeding must satisfy the requirements of 10 C.F.R. 2.326; CLI-06-4, 63 NRC 32 (2006)
- a motion to reopen must be accompanied by affidavits that set forth the factual and/or technical bases for the movant’s claim that the criteria of 10 C.F.R. 2.326(a) have been satisfied, including addressing each of the reopening criteria separately with a specific explanation of why it has been met; LBP-10-21, 72 NRC 616 (2010)
- a motion to reopen that does not satisfy the Commission’s procedural requirements but which arguably raises a significant safety or environmental issue may be referred to the Staff under 10 C.F.R. 2.206; CLI-06-4, 63 NRC 32 (2006)
- a motion to strike is an inappropriate vehicle to address whether arguments in a summary disposition answer raise matters outside the scope of a contention; LBP-08-2, 67 NRC 54 (2008); LBP-08-3, 67 NRC 85 (2008)
- a Native American group that has failed to establish that it is a federally recognized Indian tribe is denied standing based on its tribal status; LBP-09-13, 70 NRC 168 (2009)
- a new contention may be filed after the deadline in the notice of hearing with leave of the presiding officer upon a showing that information upon which it is based was not previously available, is materially different than information previously available, and has been submitted in a timely fashion based on the availability of the subsequent information; LBP-09-27, 70 NRC 992 (2009); LBP-10-9, 71 NRC 493 (2010); LBP-10-17, 72 NRC 501 (2010)
- a newly proffered contention submitted after the close of the record must meet timeliness standards as well as the requirements of 10 C.F.R. 2.309(c); LBP-08-12, 68 NRC 5 (2008)
- a nexus between the injury and the relief is required rather than a nexus between the claimed injury and the contention; LBP-09-16, 70 NRC 227 (2009)
- a notice of appeal must be accompanied by a brief; CLI-06-6, 63 NRC 161 (2006)
- a notice of withdrawal combined with an attached memorandum of understanding whereby applicant agrees to perform certain actions and testing, in return for which the intervenor agrees to withdraw, with prejudice, from the litigation, constitutes a *quid pro quo* arrangement which is a settlement agreement within the meaning of 10 C.F.R. 2.338; LBP-06-18, 63 NRC 830 (2006)
- a party at risk of filing out of time can request an extension, doing so well before the time specified expires; LBP-10-21, 72 NRC 616 (2010)
- a party cannot satisfy the “not previously available” standard of 10 C.F.R. 2.309(f)(2)(i) by showing that, as a subjective matter, he or she only recently became aware of, or realized the significance of, public information that was previously available to all; LBP-09-10, 70 NRC 51 (2009)
- a party is excused from producing a document if the document is publicly available and if the party specifies where the document may be found; LBP-10-23, 72 NRC 692 (2010)

SUBJECT INDEX

- a party is not required to prove its case in making or opposing a motion for summary disposition; LBP-07-13, 66 NRC 131 (2007)
- a party may comply by merely providing a description by category and location of all documents subject to mandatory disclosure; LBP-10-23, 72 NRC 692 (2010)
- a party opposing summary disposition must counter each adequately supported material fact with its own statement of material facts in dispute and supporting materials, or the movant's facts will be deemed admitted; LBP-06-9, 63 NRC 289 (2006)
- a party seeking a stay must show that it faces imminent, irreparable harm that is both certain and great; CLI-09-23, 70 NRC 935 (2009)
- a party seeking to reopen a closed record to raise a new matter faces an elevated burden to lay a proper foundation for its claim; CLI-08-28, 68 NRC 658 (2008)
- a party's failure to raise a matter in its proposed findings of fact and conclusions of law seemingly waives this matter as grounds for its challenge to the final environmental impact statement; LBP-09-7, 69 NRC 613 (2009)
- a petition for reconsideration must demonstrate a compelling circumstance, such as the existence of a clear and material error in a decision, which could not have been reasonably anticipated, which renders the decision invalid; CLI-07-22, 65 NRC 525 (2007)
- a petition for review and request for hearing must include a showing that petitioner has standing and that the board should consider the nature of the petitioner's right under the AEA or NEPA to be made a party to the proceeding, the nature and extent of petitioner's property, financial, or other interest in the proceeding, and the possible effect of any decision or order that may be issued in the proceeding on the petitioner's interest; LBP-09-13, 70 NRC 168 (2009); LBP-10-16, 72 NRC 361 (2010)
- a petition for rule waiver must be accompanied by an affidavit that describes with particularity the special circumstances that justify the waiver; CLI-10-10, 71 NRC 281 (2010)
- a petition for rule waiver must show that special circumstances with respect to the subject matter of the particular proceeding are such that the application of the rule or regulation (or a provision of it) would not serve the purposes for which the rule or regulation was adopted; CLI-10-10, 71 NRC 281 (2010); LBP-10-12, 71 NRC 656 (2010)
- a petition or other request for review of or hearing on the Staff's significant hazards consideration determination will not be entertained by the Commission; LBP-08-18, 68 NRC 533 (2008)
- a petition seeking review of an order granting or denying an abeyance motion meets NRC's standard for interlocutory review because the appealed order would have an immediate and serious irreparable impact which, as a practical matter, could not be alleviated through a petition for review of the presiding officer's final decision; CLI-07-6, 65 NRC 112 (2007)
- a petition to waive a Commission regulation can be granted only in unusual and compelling circumstances; LBP-10-22, 72 NRC 661 (2010)
- a petition would qualify for interlocutory review where it challenges a board decision that affects the basic structure of the proceeding in a pervasive and unusual manner; CLI-10-13, 71 NRC 387 (2010)
- a petitioner awarded standing in one proceeding need not restate all of its case to establish standing in another proceeding related to the same facility; LBP-07-14, 66 NRC 169 (2007)
- a petitioner may file a reply to any answer within 7 days after service of that answer; LBP-07-4, 65 NRC 281 (2007)
- a petitioner may have standing based upon geographical proximity to a particular facility; LBP-06-4, 63 NRC 99 (2006); LBP-06-7, 63 NRC 188 (2006)
- a petitioner may in instances of exigent or unavoidable circumstances file a request for an extension of time to file an original hearing petition and contentions; LBP-07-4, 65 NRC 281 (2007)
- a petitioner seeking discretionary intervention must propose at least one admissible contention; CLI-06-16, 63 NRC 708 (2006)
- a petitioner that fails to develop an argument in its petition is foreclosed from doing so in the first instance in its reply brief; LBP-06-7, 63 NRC 188 (2006)
- a petitioner that fails to submit a reply brief is foreclosed from challenging the assertions advanced by the licensee and the NRC Staff in their answers, unless it put such assertions in issue in its petition; LBP-06-7, 63 NRC 188 (2006)

SUBJECT INDEX

- a petitioner who without reason fails to argue that a nontimely contention satisfies the eight-factor balancing test in 10 C.F.R. 2.309(c) may be deemed as having waived that argument; LBP-06-22, 64 NRC 229 (2006)
- a presumption of standing applies when an individual, organization, or individual authorizing an organization to represent his or her interests resides within 50 miles of the proposed facility or has frequent contacts with the area affected by the proposed facility; LBP-10-7, 71 NRC 391 (2010)
- a prima facie showing merely requires the presentation of enough information to allow a board to infer (absent disproof) that special circumstances exist to support a rule waiver; LBP-10-15, 72 NRC 257 (2010)
- a properly pleaded contention of omission must challenge a specific portion of the application and provide a basis for demonstrating the alleged deficiency; LBP-09-26, 70 NRC 939 (2009)
- a proposed contention that fails to directly controvert the application or that mistakenly asserts the application does not address a relevant issue is subject to dismissal; LBP-09-27, 70 NRC 992 (2009)
- a proposed new or amended contention shall be deemed timely if it is filed within 30 days of the date when the new and material information on which it is based first becomes available; LBP-10-9, 71 NRC 493 (2010)
- a public interest group may establish representational standing by having its affected members authorize the organization to represent them; LBP-06-10, 63 NRC 314 (2006)
- a regular commute that takes petitioner past a plant entrance once or twice a week is sufficient to establish standing; LBP-10-1, 71 NRC 165 (2010)
- a reply cannot expand the scope of the arguments set forth in the original pleading; CLI-06-17, 63 NRC 727 (2006)
- a reply is not an opportunity for a petitioner to bolster its original contentions with new supporting facts and arguments; LBP-08-26, 68 NRC 905 (2008)
- a reply may include arguments and alleged facts that are focused on the legal or logical arguments presented in the answers; LBP-10-19, 72 NRC 529 (2010)
- a reply may not be used as a vehicle to introduce new arguments or support, may not expand the scope of arguments set forth in the original petition, and may not attempt to cure an otherwise deficient contention; LBP-07-4, 65 NRC 281 (2007); LBP-09-16, 70 NRC 227 (2009); LBP-09-17, 70 NRC 311 (2009)
- a request for an exemption from a particular regulatory provision does not render a license application deficient; CLI-06-10, 63 NRC 451 (2006)
- a request for an order to modify a license based upon an allegedly hazardous condition in the current spent fuel pool amounts to a request for agency enforcement action and thus is not suitable for a license renewal adjudication, but may be considered under 10 C.F.R. 2.206; CLI-06-26, 64 NRC 225 (2006)
- a rule or regulation may be challenged outside the adjudicatory context by filing a petition for rulemaking under 10 C.F.R. 2.802 or requesting that NRC Staff take enforcement action under 10 C.F.R. 2.206; LBP-07-11, 66 NRC 41 (2007)
- a ruling granting summary disposition on a single contention, where other contentions are still pending in an adjudication, is not a final decision, and is not susceptible to Commission review; CLI-08-2, 67 NRC 31 (2008)
- a safety contention arising from a matter resolved in an early site permit proceeding is within the scope of a combined license proceeding that references the ESP if it concerns whether the site characteristics and design parameters specified in the ESP have been met; LBP-08-15, 68 NRC 294 (2008)
- a SAMA analysis contention was found to be inadmissible because it lacked supporting information regarding the relative costs and benefits of that proposed alternative; LBP-10-15, 72 NRC 257 (2010)
- a "same zip code" test for standing is inappropriate, given that the sizes of zip-code areas vary greatly throughout the country; CLI-07-22, 65 NRC 525 (2007)
- a showing of relevance alone is not sufficient for a party seeking a deliberative process privilege document to demonstrate that its need for the document outweighs the need to protect the document; LBP-06-3, 63 NRC 85 (2006)
- a significant pattern of regular contacts within the 50-mile radius around the plant is sufficient to establish proximity-based standing; LBP-09-18, 70 NRC 385 (2009)

SUBJECT INDEX

- a single sentence labeled a contention, with no reference to the six elements of 10 C.F.R. 2.309(f)(1) does not make an admissible contention; LBP-10-16, 72 NRC 361 (2010)
- a Staff request to an applicant for more information does not make an application incomplete; CLI-08-15, 68 NRC 1 (2008)
- a standing ruling in one proceeding is not dispositive of a determination in another proceeding with the same petitioner because the ruling was not the subject of appellate review; LBP-09-18, 70 NRC 385 (2009)
- a state or local governmental entity that wishes to be a party in a proceeding that involves a facility located within its boundaries is automatically deemed to have standing; LBP-06-7, 63 NRC 188 (2006); LBP-06-23, 64 NRC 257 (2006); LBP-08-13, 68 NRC 43 (2008)
- a statement of petitioner's views about what regulatory policy should be does not present a litigable issue; LBP-08-16, 68 NRC 361 (2008)
- a statement purporting to show a real potential for injury sufficient for standing will be rejected if it is too vague and general; CLI-06-2, 63 NRC 9 (2006)
- a stay of the close of hearings in both license renewal proceedings for 14 days following the date of issuance of mandate is ordered to afford a state the opportunity to request participant status under this section; CLI-08-9, 67 NRC 353 (2008)
- a sufficiently high-ranking person must sign the affidavit asserting the deliberative process privilege; LBP-06-25, 64 NRC 367 (2006)
- a summary disposition movant bears the initial burden of making the requisite showing that there is no genuine issue as to any material fact, which it attempts to do by means of a required statement of material facts not at issue and any supporting materials (including affidavits, discovery responses, and documents) that accompany its dispositive motion; LBP-06-9, 63 NRC 289 (2006)
- a supporting document available in NRC ADAMS system 51 days prior to its submission, but received by petitioners only 1 day before its submission, is timely filed; LBP-08-6, 67 NRC 241 (2008)
- a threatened unwanted exposure to radiation, even a minor one, is sufficient to establish an injury; LBP-06-4, 63 NRC 99 (2006)
- a timely motion to reopen may be denied if it raises issues that are not of major significance to plant safety whereas a nontimely motion may be granted if it raises an issue of sufficient gravity; LBP-10-21, 72 NRC 616 (2010)
- absent a waiver under 10 C.F.R. 2.335(b), contentions challenging applicable statutory requirements or Commission regulations are not admissible in agency adjudications; CLI-08-15, 68 NRC 1 (2008); CLI-08-17, 68 NRC 231 (2008); CLI-09-3, 69 NRC 68 (2009); LBP-08-13, 68 NRC 43 (2008); LBP-08-16, 68 NRC 361 (2008); LBP-08-17, 68 NRC 431 (2008); LBP-09-6, 69 NRC 367 (2009); LBP-09-10, 70 NRC 51 (2009); LBP-09-17, 70 NRC 311 (2009); LBP-09-18, 70 NRC 385 (2009); LBP-09-21, 70 NRC 581 (2009); LBP-10-15, 72 NRC 257 (2010); LBP-10-16, 72 NRC 361 (2010)
- absent an obvious potential for harm, it is a petitioner's burden to show how harm will or may occur; LBP-09-28, 70 NRC 1019 (2009)
- absent evidence to the contrary, a licensing board will not assume licensee will act in derogation of its formal commitments to the NRC Staff; LBP-06-7, 63 NRC 188 (2006)
- absent extreme circumstances, the Commission will not consider on appeal either new arguments or new evidence supporting a contention that the licensing board never had the opportunity to consider; CLI-06-10, 63 NRC 451 (2006); CLI-10-21, 72 NRC 197 (2010)
- absent good cause, a compelling showing must be made on the other section 2.309(c) factors if a nontimely petition is to be granted or a nontimely contention is to be admitted; CLI-10-12, 71 NRC 319 (2010); LBP-09-26, 70 NRC 939 (2009); LBP-10-1, 71 NRC 165 (2010); LBP-10-11, 71 NRC 609 (2010)
- adjudication is not the proper forum for challenging applicable statutory requirements or the basic structure of the agency's regulatory process; LBP-07-10, 66 NRC 1 (2007); LBP-08-16, 68 NRC 361 (2008); LBP-10-7, 71 NRC 391 (2010)
- administrative agencies and their adjudicators routinely approve stipulations and settlements to which fewer than all the parties in a case subscribe; CLI-06-18, 64 NRC 1 (2006)
- admissibility requirements for contentions are specified; LBP-07-10, 66 NRC 1 (2007)
- admissible contentions must include references to specific portions of the application (including the applicant's environmental report and safety report) that petitioner disputes and the supporting reasons for

SUBJECT INDEX

each dispute, or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief; LBP-09-21, 70 NRC 581 (2009)

admissible contentions must provide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact; CLI-09-15, 70 NRC 1 (2009); LBP-09-21, 70 NRC 581 (2009)

affidavits by an individual with standing authorizing an organization to represent him must be filed with specific reference to the proceeding in which standing is sought for the organization; CLI-09-9, 69 NRC 331 (2009)

after the board issues its initial decision, it must provide questions proffered by the parties to the Commission's Secretary for inclusion in the official record of the proceeding; LBP-07-17, 66 NRC 327 (2007)

agencies generally are free to exercise their discretion in determining whether to formulate policy through rulemaking or adjudication; LBP-06-7, 63 NRC 188 (2006)

agencies should be accorded broad discretion in establishing and applying rules for public participation, including rules for determining which community representatives are to be allowed to participate; CLI-08-19, 68 NRC 251 (2008)

all material facts set forth in the statement required to be served by the moving party will be considered to be admitted unless controverted by the statement required to be served by the opposing party; LBP-08-2, 67 NRC 54 (2008); LBP-08-3, 67 NRC 85 (2008)

all motions are required to include a certification that the sponsor of the motion has made a sincere effort to contact the other parties and to resolve the issues raised in the motion; CLI-08-22, 68 NRC 355 (2008)

all nuclear safety and environmental issues concerning severe accident mitigation design alternatives associated with NRC's environmental assessment for the AP1000 design and Appendix IB of the generic Design Control Document are considered resolved by the Commission; LBP-09-2, 69 NRC 87 (2009)

all of the contention admissibility requirements of 10 C.F.R. 2.309(f)(1) must be met for a contention to be admissible; LBP-08-19, 68 NRC 545 (2008); LBP-08-20, 68 NRC 549 (2008)

all proffered contentions must be within the scope of the proceeding as defined by the Commission in its initial hearing notice and order referring the proceeding to the licensing board; LBP-07-10, 66 NRC 1 (2007); LBP-09-3, 69 NRC 139 (2009)

all properly formulated contentions must focus on the license application in question, challenging either specific portions of or alleged omissions from the application (including the Safety Analysis Report and the Environmental Report) so as to establish that a genuine dispute exists with the applicant on a material issue of law or fact; LBP-07-3, 65 NRC 237 (2007)

although a board may appropriately view a petitioner's supporting information in a light favorable to the petitioner, failure to provide such information regarding a proffered contention requires that the contention be rejected; LBP-07-3, 65 NRC 237 (2007); LBP-08-16, 68 NRC 361 (2008); LBP-09-3, 69 NRC 139 (2009); LBP-10-6, 71 NRC 350 (2010)

although a board may appropriately view petitioners' support for its contention in a light that is favorable to the petitioner, petitioner must provide some support for his or her contention, in the form of either facts or expert testimony; LBP-09-26, 70 NRC 939 (2009)

although a board may deny certain portions of a multipart contention as outside of the scope or too attenuated, applying all six criteria of 10 C.F.R. 2.309(f)(1) to each subpart of the contention is inappropriate; LBP-09-10, 70 NRC 51 (2009)

although a board may view petitioner's supporting information in a light favorable to the petitioner, petitioner (not the board) is required to supply all of the required elements for a valid intervention petition; LBP-10-15, 72 NRC 257 (2010); CLI-10-20, 72 NRC 185 (2010); LBP-10-16, 72 NRC 361 (2010)

although a certain amount of latitude might appropriately be extended to pro se litigants, there nonetheless must be a substantial endeavor to meet the clear regulatory requirements for a hearing request; LBP-07-5, 65 NRC 341 (2007)

SUBJECT INDEX

although a licensing board will take into account any information from reply briefs that legitimately amplifies issues presented in the original petitions, it will not consider instances of what essentially constitutes untimely attempts to amend the original petitions; LBP-09-17, 70 NRC 311 (2009)

although a motion to reopen must be timely, an exceptionally grave issue may be considered even if the motion is not timely; LBP-10-19, 72 NRC 529 (2010)

although a petitioner does not have to prove its contention at the admissibility stage, mere notice pleading is insufficient; LBP-09-6, 69 NRC 367 (2009); LBP-09-18, 70 NRC 385 (2009)

although a proximity presumption has been invoked when resolving issues of standing for cases involving reactor licensing, in a case involving an enforcement order, the standing requirement is also based on the confirmatory order itself and the adverse effect of the confirmatory order; LBP-07-16, 66 NRC 277 (2007)

although a request for suspension of a proceeding does not fit cleanly into NRC procedural rules for stays, the Commission exercises discretion and consider petitioner's request; CLI-10-17, 72 NRC 1 (2010)

although all six factors are examined regardless of the result on the critical first "sound record" factor, no NRC decision allowing discretionary intervention in the face of a negative finding on the "sound record" fact has occurred; CLI-06-16, 63 NRC 708 (2006)

although an initial position of protecting privacy may be founded on mere theoretical constructs, when a fact-based challenge is made, concrete or specific analysis is needed to effectively counter the challenge and to establish the privacy interests involved; LBP-06-25, 64 NRC 367 (2006)

although Article III of the Constitution does not constrain the NRC hearing process, and NRC hearings therefore are not governed by judicially created standing doctrine, the Commission nonetheless has generally looked to judicial concepts of standing where appropriate to determine those interests affected within the meaning of section 189a of the Atomic Energy Act; LBP-09-1, 69 NRC 11 (2009)

although boards are to provide latitude to pro se participants, petitioner's decision to provide an expert affidavit, available when it filed its hearing petition, at the time it submitted its reply runs afoul of the Commission's directive that reply pleadings cannot be used to introduce additional supporting information relative to a contention; LBP-08-16, 68 NRC 361 (2008)

although boards generally are to litigate a contention rather than the basis that provides the issue statement's foundational support, the reach of a contention necessarily hinges upon its terms coupled with its stated basis; LBP-08-16, 68 NRC 361 (2008)

although exhibits are not themselves either "petitions" or "contentions," the board considers the timeliness of their filing; LBP-08-6, 67 NRC 241 (2008)

although interlocutory appeal is denied, the Commission exercises its inherent supervisory authority over adjudications to take sua sponte review of a board order; CLI-10-27, 72 NRC 481 (2010)

although latitude is to be afforded a pro se intervenor in the mechanics of contention pleading and citation, an organization that has appeared several times previously is expected to have a heightened awareness of the agency's pleading rules; LBP-08-16, 68 NRC 361 (2008)

although licensing boards generally are to litigate "contentions" rather than "bases," it has been recognized that the reach of a contention necessarily hinges on its terms coupled with its stated bases; LBP-07-3, 65 NRC 237 (2007)

although NRC does not consider Council on Environmental Quality regulations to be binding, they are entitled to substantial deference; LBP-09-10, 70 NRC 51 (2009)

although NRC may reasonably accommodate pro se petitioners who are not technically perfect in their pleading, such parties must still meet the basic requirements of the contention admissibility rules, and if these are not met, boards may not "fill in" any missing support, but, rather, are legally required to deny the contention; LBP-07-4, 65 NRC 281 (2007)

although NRC rules do not explicitly authorize amicus briefs at the licensing board level, such briefs might still be granted in appropriate circumstances; LBP-08-6, 67 NRC 241 (2008)

although petitioner bears the burden of demonstrating standing, in ruling on standing a licensing board is to construe the petition in favor of the petitioner; LBP-09-1, 69 NRC 11 (2009)

although petitioner could participate in another federal agency's comment process relating to a proposed environmental assessment that is the focus of a new contention and thus does have some alternative means for protecting its interests, for the purpose of 10 C.F.R. 2.309(c)(1)(v), that process is not

SUBJECT INDEX

analogous to participation in an NRC adjudicatory proceeding and therefore does not weigh heavily against the petitioner's intervention in the NRC proceeding; LBP-10-1, 71 NRC 165 (2010)

although petitioner does not have to prove its contention at the admissibility stage, mere notice pleading is insufficient; LBP-08-17, 68 NRC 431 (2008)

although petitioner has established the requisite standing, the hearing request must be denied because of a failure to proffer one admissible contention; LBP-10-1, 71 NRC 165 (2010)

although the Army has the burden to protect the public from depleted uranium, that issue is not relevant to a standing inquiry; LBP-10-4, 71 NRC 216 (2010)

although the Commission abolished the Atomic Safety and Licensing Appeal Board in 1991, its decisions still carry precedential weight; CLI-08-19, 68 NRC 251 (2008)

although the Commission commonly looks to Article III concepts for guidance, it is not required to automatically follow them in all respects because NRC proceedings are not subject to Article III; LBP-09-15, 70 NRC 198 (2009)

although the Commission customarily follows judicial concepts of standing, it is not bound to do so given that it is not an Article III court; CLI-08-19, 68 NRC 251 (2008); LBP-08-24, 68 NRC 691 (2008)

although the Commission is disinclined to step into the middle of a labor dispute or involve itself in the personnel decisions of licensees, it has recognized that there may be cases where employment-related contentions are closely tied to specific health-and-safety concerns or to potential violations of NRC rules that can be admitted for a hearing; CLI-06-21, 64 NRC 30 (2006)

although the Commission is not strictly bound by the mootness doctrine, the agency's adjudicatory tribunals have generally adhered to the principle; LBP-09-15, 70 NRC 198 (2009)

although the contention admissibility rule imposes on a petitioner the burden of going forward with a sufficient factual basis, it does not shift the ultimate burden of proof from the applicant to the petitioner; LBP-09-27, 70 NRC 992 (2009)

although the February 2004 revision of the NRC procedural rules no longer permits the amendment and supplementation of petitions and filing of contentions after the original filing of petitions, the substantive contention admissibility standards are essentially the same; LBP-07-11, 66 NRC 41 (2007)

although the obligations under NEPA fall to the agency and therefore the NRC Staff, petitioners are required to raise environmental objections based on the applicant's environmental report; LBP-10-15, 72 NRC 257 (2010)

although the phrase "possession, custody, or control" appears in 10 C.F.R. 2.336(a)(2)(i), 2.704(a)(2), and 2.707(a)(1), no NRC decision has ever provided guidance as to what constitutes "control"; LBP-10-23, 72 NRC 692 (2010)

although the pleading requirements of 10 C.F.R. 2.309 are strict by design, a licensing board may permit potential intervenors to cure defects in petitions in order to obviate dismissal of an intervention petition because of inarticulate draftsmanship or procedural or pleading defects; LBP-08-6, 67 NRC 241 (2008)

although the SUNSI access procedures do not impose a high threshold for demonstrating need, they must be applied consistent with the principle that it is important to prevent unnecessary disclosure of sensitive information; LBP-09-5, 69 NRC 303 (2009)

although wholly conclusory statements for which no supporting evidence is offered need not be taken as true for summary judgment purposes, a court may not make credibility determinations or weigh the evidence at the summary judgment stage; LBP-07-12, 66 NRC 113 (2007)

amicus briefs must be filed by the same deadline as the brief of the party whose side the amicus brief supports, unless the Commission provides otherwise; CLI-08-22, 68 NRC 355 (2008)

amicus curiae briefs are contemplated only after the Commission grants a petition for review, not briefs supporting or opposing petitions for review; CLI-10-17, 72 NRC 1 (2010)

an admissible contention must include a specific statement of the issue of law or fact to be raised or controverted as well as a brief explanation of the basis for the contention; LBP-08-26, 68 NRC 905 (2008)

an admissible contention must raise an issue that is both within the scope of the proceeding, generally defined by the hearing notice, and material to the findings the NRC must make to support the action involved; LBP-08-17, 68 NRC 431 (2008); LBP-09-6, 69 NRC 367 (2009)

an admissible contention must satisfy the six pleading requirements of 10 C.F.R. 2.309(f)(1); LBP-09-3, 69 NRC 139 (2009); LBP-09-6, 69 NRC 367 (2009)

SUBJECT INDEX

- an admissible contention under the good cause standard must allege that a construction permit holder's reasons for past delay failed to constitute good cause for a CP extension and be supported by a showing that construction delay is traceable to permit holder action that was intentional and without a valid business purpose; LBP-10-7, 71 NRC 391 (2010)
- an advisory body that lacks executive or legislative responsibilities is so far removed from having the representative authority to speak and act for the public that it does not qualify as a governmental entity; CLI-07-18, 65 NRC 399 (2007)
- an affidavit supporting representational standing must describe precisely how the affiant is aggrieved, whether based on employment, residence, or activities; CLI-08-19, 68 NRC 251 (2008)
- an allegation that some aspect of a license application is inadequate or unacceptable does not give rise to a genuine dispute unless it is supported by facts and a reasoned statement of why the application is unacceptable in some material respect; LBP-08-17, 68 NRC 431 (2008)
- an alleged injury to health and safety, shared equally by many, can form the basis for standing; LBP-09-18, 70 NRC 385 (2009)
- an ambiguous provision is construed most strongly against the person who selected the language; LBP-08-16, 68 NRC 361 (2008)
- an amended or new contention must be submitted in a timely fashion based on the availability of the subsequent information; LBP-09-27, 70 NRC 992 (2009)
- an appeal as of right by the NRC Staff is permitted on the question of whether a request for access to sensitive unclassified nonsafeguards information should have been denied in whole or in part; CLI-10-24, 72 NRC 451 (2010)
- an appeal as of right from a board's ruling on an intervention petition is permitted upon denial of a petition to intervene and/or request for hearing on the question as to whether it should have been granted or upon the granting of a petition to intervene and/or request for hearing on the question as to whether it should have been wholly denied; CLI-10-16, 71 NRC 486 (2010)
- an applicant has the right to file an interlocutory appeal of board orders admitting contentions, but only if the appeal challenges the admissibility of all admitted contentions; CLI-06-13, 63 NRC 508 (2006)
- an application-specific contention concerning the environmental consequences of the need for extended onsite storage of low-level radioactive waste is admissible if it satisfies the requirements of 10 C.F.R. 2.309(f)(1); LBP-09-4, 69 NRC 170 (2009)
- an assertion that material can be withheld must expressly state the specific privilege being claimed; LBP-06-25, 64 NRC 367 (2006)
- an automatic right to appeal a board decision denying a petition to intervene exists; CLI-07-25, 66 NRC 101 (2007)
- an entity seeking to intervene on behalf of its members must show it has an individual member who can fulfill all the necessary standing elements and who has authorized the organization to represent his or her interests; LBP-08-16, 68 NRC 361 (2008); LBP-10-21, 72 NRC 616 (2010)
- an entity wishing to participate as a governmental body must demonstrate that it goes beyond an advisory role and exercises executive or legislative responsibilities; LBP-09-13, 70 NRC 168 (2009)
- an environmental contention may be admitted during a combined license proceeding if it concerns a significant issue that was not resolved in the early site permit proceeding or if it involves the impacts of construction and operation of the facility and significant new information has been identified; LBP-08-15, 68 NRC 294 (2008)
- an exception to the general policy limiting interlocutory review permits an appeal of a board's ruling on contention admissibility when a board grants a petition to intervene following consideration of the full petition; CLI-09-18, 70 NRC 859 (2009)
- an expert opinion that merely states a conclusion (e.g., the application is deficient, inadequate, or wrong) without providing a reasoned basis or explanation for that conclusion is inadequate because it deprives the board of the ability to make the necessary, reflective assessment of the opinion; CLI-06-10, 63 NRC 451 (2006); LBP-09-16, 70 NRC 227 (2009)
- an Indian tribe whose reservation is adjacent to facilities where spent nuclear fuel is currently stored, the nearest of which resides just 600 yards from an ISFSI, has more than a mere interest in a problem; LBP-10-11, 71 NRC 609 (2010)
- an individual may satisfy the standing requirements by demonstrating that his or her residence is within the geographical area that might be affected by an accidental release of fission products, and in

SUBJECT INDEX

- proceedings involving nuclear power plants this area has been defined as being within a 50-mile radius of such a plant; LBP-07-4, 65 NRC 281 (2007)
- an individual petitioner may not request to intervene in his or her own right while simultaneously authorizing other petitioners to represent his or her interests in the proceeding; CLI-07-19, 65 NRC 423 (2007); LBP-10-16, 72 NRC 361 (2010)
- an injury in fact must go beyond generalized grievances to affect a petitioner in a personal and individual way; LBP-09-13, 70 NRC 168 (2009)
- an interested governmental entity that has not been admitted as a party under section 2.309 must be provided a reasonable opportunity to participate in a hearing; LBP-08-21, 68 NRC 554 (2008); LBP-08-24, 68 NRC 691 (2008)
- an interested local governmental body may introduce evidence, interrogate witnesses in circumstances where cross-examination by the parties is allowed, advise the Commission without being required to take a position on any issue, file proposed findings where such are allowed, and seek Commission review on admitted contentions; LBP-08-24, 68 NRC 691 (2008)
- an interested state or political subdivision thereof that has not become a party to the proceeding must be accorded a reasonable opportunity to participate, through a single representative, in the hearing of one or more of the admitted contentions; LBP-07-5, 65 NRC 341 (2007); LBP-09-2, 69 NRC 87 (2009)
- an intervenor attempting to litigate an issue based on expressed concerns about the draft environmental impact statement may need to amend the admitted contention or, if the information in the DEIS is sufficiently different from that in the environmental report that supported the contention's admission, submit a new contention; LBP-08-2, 67 NRC 54 (2008); LBP-08-3, 67 NRC 85 (2008)
- an intervenor may not attempt to use a license application proceeding to rewrite Commission regulations; LBP-06-1, 63 NRC 41 (2006)
- an intervention petitioner must demonstrate a concrete and particularized injury that is fairly traceable to the challenged action and is likely to be redressed by a favorable decision; CLI-06-2, 63 NRC 9 (2006); LBP-06-4, 63 NRC 99 (2006); LBP-06-7, 63 NRC 188 (2006); LBP-06-10, 63 NRC 314 (2006)
- an order denying a petition to intervene and/or request for hearing may be appealed to the Commission on the question of whether the petition and/or request should have been granted; CLI-10-20, 72 NRC 185 (2010)
- an organization asserting representational standing must demonstrate that the interest of at least one of its members will be harmed, demonstrate that the member would have standing in his or her own right, identify that member by name and address, and demonstrate that the organization is authorized to request a hearing on behalf of that member; CLI-08-19, 68 NRC 251 (2008); LBP-08-6, 67 NRC 241 (2008); LBP-08-9, 67 NRC 421 (2008); LBP-08-13, 68 NRC 43 (2008); LBP-08-17, 68 NRC 431 (2008); LBP-08-24, 68 NRC 691 (2008); LBP-09-6, 69 NRC 367 (2009); LBP-09-13, 70 NRC 168 (2009); LBP-09-16, 70 NRC 227 (2009); LBP-09-20, 70 NRC 565 (2009); LBP-09-21, 70 NRC 581 (2009); LBP-10-16, 72 NRC 361 (2010)
- an organization seeking to intervene in its own right must allege that the challenged action will cause a cognizable injury to its interests or to the interests of its members; LBP-10-15, 72 NRC 257 (2010); LBP-10-16, 72 NRC 361 (2010)
- an organization seeking to intervene in its own right must demonstrate a palpable injury in fact to its organizational interests that is within the zone of interests protected by the Atomic Energy Act or the National Environmental Policy Act; LBP-08-24, 68 NRC 691 (2008)
- an organization that wishes to intervene in a proceeding may do so either in its own right by demonstrating harm to its organizational interests, or in a representational capacity by demonstrating harm to its members; LBP-06-23, 64 NRC 257 (2006); LBP-09-2, 69 NRC 87 (2009)
- an organization's member seeking representation must qualify for standing in his or her own right; CLI-08-19, 68 NRC 251 (2008)
- an organization's promotion of the public interest, environmental protection, and consumer protection are broad interests shared with many others and too general to constitute a protected interest under the Atomic Energy Act or the National Environmental Policy Act; CLI-07-18, 65 NRC 399 (2007)
- an unexplained lapse of several years between the Staff's completion of a thorough investigation and its initiation of an immediately effective enforcement order may jeopardize both public confidence in government decisionmaking and public protection from asserted safety threats, and may require an

SUBJECT INDEX

- explanation if the immediate effectiveness of the order were to be challenged; LBP-06-26, 64 NRC 431 (2006)
- an untimely motion to reopen must demonstrate that the issue raised is not merely significant but exceptionally grave; LBP-10-21, 72 NRC 616 (2010)
- analysis of a motion to compel the mandatory disclosure of information under 10 C.F.R. 2.336(a) is contingent on six factors; LBP-10-23, 72 NRC 692 (2010)
- answers to a motion to strike are limited to legal or factual issues raised by the motion, and new issues should be raised in a separate motion; LBP-08-1, 67 NRC 37 (2008)
- any affected unit of local government need not address standing in the high-level waste proceeding, but rather shall be considered a party provided that it files at least one admissible contention in accordance with 10 C.F.R. 2.309(f); LBP-09-6, 69 NRC 367 (2009)
- any ambiguity relative to the filing date for hearing requests arising from the language of the agency's hearing opportunity notice should be construed in favor of a participant who was seeking to comply with the notice; LBP-08-16, 68 NRC 361 (2008)
- any appeal by petitioners of the admitted contentions must abide the end of the case, i.e., wait approximately 2 or 3 years until the Staff issues the FSER and FEIS and the final disposition of the evidentiary hearing on the three admitted contentions; LBP-09-10, 70 NRC 51 (2009)
- any application of the NRC rules to prevent all parties from raising material issues which could not be raised prior to the release of the environmental reports would be a misapplication subject to judicial review; LBP-06-14, 63 NRC 568 (2006)
- any contention alleging deficiencies or errors in an application must also indicate some significant link between the claimed deficiency and either the health and safety of the public or the environment; LBP-07-3, 65 NRC 237 (2007)
- any contention directed at a design undergoing rulemaking review fails on its face to satisfy the admission requirements because all matters subject of a rulemaking are outside the scope of licensing proceedings; LBP-09-8, 69 NRC 736 (2009)
- any contention that fails to directly controvert the application or that mistakenly asserts the application does not address a relevant issue can be dismissed; LBP-07-3, 65 NRC 237 (2007); LBP-08-17, 68 NRC 431 (2008); LBP-09-3, 69 NRC 139 (2009); LBP-09-18, 70 NRC 385 (2009); LBP-09-26, 70 NRC 939 (2009); LBP-10-6, 71 NRC 350 (2010); LBP-10-7, 71 NRC 391 (2010)
- any contention that falls outside the specified scope of a proceeding must be rejected; LBP-07-3, 65 NRC 237 (2007); LBP-08-26, 68 NRC 905 (2008); LBP-09-3, 69 NRC 139 (2009); LBP-10-17, 72 NRC 501 (2010)
- any doubt as to the existence of a genuine issue of material fact is resolved against the proponent of summary disposition; LBP-10-20, 72 NRC 571 (2010)
- any material provided by a petitioner in support of its contention, including those portions of the material that are not relied upon, is subject to board scrutiny; LBP-07-3, 65 NRC 237 (2007); LBP-07-16, 66 NRC 277 (2007); LBP-08-16, 68 NRC 361 (2008); LBP-08-26, 68 NRC 905 (2008); LBP-09-3, 69 NRC 139 (2009); LBP-09-17, 70 NRC 311 (2009); LBP-09-26, 70 NRC 939 (2009); LBP-10-7, 71 NRC 391 (2010)
- any motion, other than one made orally on the record during a hearing or as otherwise directed by the presiding officer, must contain a certification that the movant has made a sincere effort to contact the other parties and resolve the matter, and that this effort was unsuccessful; LBP-07-4, 65 NRC 281 (2007)
- any organization seeking representational standing must also show that at least one of its members may be affected by the Commission's approval of the transfer, must identify that member, and must demonstrate that the member has (preferably by affidavit) authorized the organization to represent him or her and to request a hearing on his or her behalf; CLI-07-18, 65 NRC 399 (2007); LBP-07-4, 65 NRC 281 (2007)
- any potential harm associated with petitioner's use of water from a water source connecting to a mining site is fairly traceable to the proposed action; LBP-10-16, 72 NRC 361 (2010)
- any request for waiver of or exception to a rule must be accompanied by an affidavit that identifies with particularity the special circumstances alleged to justify the waiver or exception requested; LBP-08-17, 68 NRC 431 (2008)

SUBJECT INDEX

anyone who wishes to request a hearing concerning a proposed licensing action must establish standing and proffer at least one admissible contention; LBP-09-28, 70 NRC 1019 (2009)

appeals as of right are permitted in three circumstances only; CLI-07-2, 65 NRC 10 (2007)

appeals of an initial decision or partial initial decision of the presiding officer are permitted in the high-level waste repository proceeding; CLI-10-10, 71 NRC 281 (2010)

appellate briefs amicus curiae are welcomed from parties in other Commission adjudications that have presented similar issues; CLI-10-17, 72 NRC 1 (2010)

applicable NRC standards governing summary disposition are set forth in 10 C.F.R. 2.710; CLI-10-11, 71 NRC 287 (2010)

applicant's change of reactor design constitutes new and materially different information for the purposes of filing a new contention; LBP-10-17, 72 NRC 501 (2010)

applicant's claim that computer models should be excused from the mandatory disclosure requirements because they entail proprietary information is rejected; LBP-10-23, 72 NRC 692 (2010)

applicant's "control" of computer models prepared by and in possession of a contractor is illustrated by the fact that if NRC Staff requested these documents, applicant could obtain and provide them; LBP-10-23, 72 NRC 692 (2010)

applicant's plan for storage of low-level radioactive waste is a litigable issue because it is material to the findings the NRC must make to support the action that is involved in a combined license proceeding; LBP-08-15, 68 NRC 294 (2008)

applicants are not required to address or demonstrate whether the issuance of a combined license will improve the general welfare, increase the standard of living, or strengthen free competition in private enterprise; LBP-08-17, 68 NRC 431 (2008)

arguments made before the board that are abandoned on appeal are deemed to be waived; CLI-10-3, 71 NRC 49 (2010); CLI-10-9, 71 NRC 245 (2010)

arguments or new facts raised for the first time on appeal are not considered unless their proponent can demonstrate that the information was previously unavailable; CLI-10-3, 71 NRC 49 (2010)

arguments that an intervenor fails to adequately develop are treated as waived; LBP-06-19, 64 NRC 53 (2006)

as a general matter, a board ruling denying a waiver request is interlocutory in nature, and therefore not appealable until the board has issued a final decision resolving the case; CLI-08-27, 68 NRC 655 (2008)

as guidance reached in a rulemaking following notice and comment, and endorsed by the Commission, the Statement of Considerations is entitled to special weight; CLI-08-3, 67 NRC 151 (2008)

as long as counsel is an attorney in good standing and a member of the bar, a Notice of Appearance is sufficient in itself for him or her to represent an Indian tribe in a proceeding; LBP-08-26, 68 NRC 905 (2008)

as the proponent of the agency action at issue, applicant generally has the burden of proof in a licensing proceeding, but when NEPA contentions are involved, the burden shifts to the Staff, because NRC, not an applicant, has the burden of complying with NEPA; LBP-09-7, 69 NRC 613 (2009)

assertions that a member lives within the service area of the utility that operates a licensed facility or within the same county as the facility is insufficiently specific to justify a finding of standing; CLI-07-18, 65 NRC 399 (2007)

at the admissibility stage, petitioner does not have to prove its contentions and boards do not adjudicate disputed facts; LBP-06-20, 64 NRC 131 (2006); LBP-09-6, 69 NRC 367 (2009)

at the admission stage of the proceedings, boards admit contentions, not bases; LBP-09-26, 70 NRC 939 (2009)

at the appropriate point in the overall COLA/DCD process, an interested party will have the opportunity to petition for intervention to raise matters that are material to the decision the NRC must make regarding the licensing of the proposed nuclear units; LBP-09-2, 69 NRC 87 (2009)

at the contention admissibility stage, all that is required is that the petitioner provide an expert opinion or some alleged fact, or facts, in support of its position; LBP-09-26, 70 NRC 939 (2009)

at the contention admission stage, the board's purpose in applying 10 C.F.R. 2.309(f)(1) is only to ensure that the adjudicatory process is used to address real, concrete, specific issues that are appropriate for litigation; LBP-06-20, 64 NRC 131 (2006)

SUBJECT INDEX

at the contention pleading stage, a board simply has to find that each of the elements of contention admissibility is satisfied, and need not weigh the merits of the petitioner's arguments; CLI-09-9, 69 NRC 331 (2009); LBP-06-7, 63 NRC 188 (2006)

at the contention pleading stage, arguments that petitioners' claims are unfounded go to the merits of the contention and do not show that there is no genuine dispute over the substance of the contention; CLI-09-9, 69 NRC 331 (2009)

at the summary disposition stage, the quality of evidentiary support is expected to be of a higher level than that at the contention filing stage; CLI-10-15, 71 NRC 479 (2010)

availability, not possession, custody, or control, is the criterion for the NRC Staff's mandatory disclosure responsibilities; LBP-10-23, 72 NRC 692 (2010)

bare assertions without the requisite support for claims are inadequate to support the admission of a contention; LBP-09-16, 70 NRC 227 (2009)

because agencies are not constrained by Article III of the Constitution, nor are they governed by judicially created standing doctrines restricting access to federal courts, the criteria for establishing administrative standing may permissibly be less demanding than the criteria for judicial standing; LBP-09-18, 70 NRC 385 (2009)

because Intervenor's inability to satisfy the contention admissibility rules is due to factors beyond their control, the Commission declines to require them to meet both the strict late-filing requirements and the even stricter reopening standards if they identify safety issues during the upcoming years of ongoing construction of a fuel fabrication facility; CLI-09-2, 69 NRC 55 (2009)

because it disfavors piecemeal appeals, the Commission will grant interlocutory review only in extraordinary circumstances; CLI-10-29, 72 NRC 556 (2010)

because NEPA is a procedural statute, petitioners need not show that favorable rulings on their NEPA contentions will require denial of the license, but rather that procedures intended for protection of their members' concrete interests will be observed; LBP-09-16, 70 NRC 227 (2009)

because of the significance of the issues at hand, applicant was permitted to reply to the answers to its motion to withdraw; LBP-10-11, 71 NRC 609 (2010)

because petitioner fails to establish his own standing as an individual, the board is precluded from granting representational standing on behalf of an organization; LBP-10-4, 71 NRC 216 (2010)

because petitioner's circumstances may change from one proceeding to the next, it is important that the presiding officer have up-to-date information regarding any standing claims; LBP-10-21, 72 NRC 616 (2010)

because petitioner's pleadings fail to provide adequate information about the interests of the organization to which he belongs and how those interests would be adversely affected by the licensing proceeding, the board is precluded from granting organizational standing; LBP-10-4, 71 NRC 216 (2010)

because Staff relies heavily on applicant's environmental report in preparing the environmental impact statement, should applicant become a proponent of a particular challenged position set forth in the EIS, applicant also has the burden on that matter; LBP-09-7, 69 NRC 613 (2009)

because the burden is on the summary disposition movant, the board must examine the record in the light most favorable to the nonmoving party and give the nonmoving party the benefit of all favorable inferences that can be drawn from the evidence; LBP-10-20, 72 NRC 571 (2010)

because the reach of a contention necessarily hinges upon its terms and its stated bases, the brief explanation helps define the scope of the contention; LBP-09-26, 70 NRC 939 (2009)

before a participant may be precluded from litigating an issue because it failed to raise the issue in an earlier proceeding, it must have had reasonable notice that such an opportunity existed; LBP-08-15, 68 NRC 294 (2008)

before a petition to admit a late-filed contention can be granted, five factors must be balanced; CLI-08-1, 67 NRC 1 (2008)

before an early site permit can be made effective, the Commission must review and approve the licensing board's initial decision authorizing its issuance; CLI-07-7, 65 NRC 122 (2007)

before the board can consider a new contention, petitioner must show that it is based on information that was not previously available, is based on information that is materially different than information previously available, and has been submitted in a timely fashion; LBP-09-29, 70 NRC 1028 (2009)

SUBJECT INDEX

binding case management requirements and related recommendations pertaining to petitions to intervene, contentions, responses and replies, standing arguments, and referencing or attaching supporting materials are provided; LBP-08-10, 67 NRC 450 (2008)

board's role in considering a petition for waiver under 10 C.F.R. 2.335, is limited to deciding whether petitioner has made a prima facie showing of special circumstances that would support a waiver; LBP-10-15, 72 NRC 257 (2010)

boards apply a proximity-plus test to establish standing in materials cases, where the petitioner must show that the proposed licensing action involves a significant source of radiation that has an obvious potential for offsite consequences; CLI-10-20, 72 NRC 185 (2010)

boards are obliged to evaluate the timeliness of a proposed contention even if no party raises the issue; LBP-10-17, 72 NRC 501 (2010)

boards have discretion to reframe contentions for purposes of clarity, succinctness, and a more efficient proceeding; LBP-08-12, 68 NRC 5 (2008)

boards may allow parties to conduct cross-examination in Subpart L proceedings; LBP-09-22, 70 NRC 640 (2009)

boards may appropriately view petitioners' support for their contentions in a light favorable to petitioners, but it is petitioners' burden to establish the admissibility of a contention; LBP-08-16, 68 NRC 361 (2008); LBP-09-17, 70 NRC 311 (2009); LBP-10-21, 72 NRC 616 (2010)

boards may appropriately view petitioner's supporting information in a light favorable to the petitioner, but failure to provide such information regarding a proffered contention requires that the contention be rejected; LBP-10-1, 71 NRC 165 (2010); LBP-10-7, 71 NRC 391 (2010)

boards may consider the merits of a contention that has become moot to the extent doing so will promote the fair and expeditious resolution of the case and there are no significant countervailing concerns; LBP-09-15, 70 NRC 198 (2009)

boards may not supply information that is missing or make assumptions of fact not provided by the petitioner; LBP-10-6, 71 NRC 350 (2010)

boards may reframe contentions, following a determination of their admissibility, for purposes of clarity, succinctness, and a more efficient proceeding; CLI-06-16, 63 NRC 708 (2006)

boards must avoid the familiar trap of confusing the standing determination with the assessment of petitioner's case on the merits; LBP-08-6, 67 NRC 241 (2008)

boards must balance eight factors in evaluating nontimely intervention petitions, hearing requests, and contentions; LBP-10-24, 72 NRC 720 (2010)

boards must consider the extent a petitioner's interests are represented by existing parties, not potential parties; LBP-10-11, 71 NRC 609 (2010)

boards must exercise their discretion and select the hearing procedure most appropriate for newly admitted contentions; LBP-09-10, 70 NRC 51 (2009)

boards must not redraft inadmissible contentions to cure deficiencies and thereby render them admissible; CLI-06-16, 63 NRC 708 (2006)

boards should treat as a cognizable new consideration an attack on the Yucca Mountain environmental impact statements based on significant and substantial information that, if true, would render the statements inadequate; LBP-09-6, 69 NRC 367 (2009)

broad and conclusory statements by petitioners that they have direct information concerning the threat to health and safety posed by the license applicant are insufficient to establish standing; LBP-10-4, 71 NRC 216 (2010)

by complying with the six contention requirements in 10 C.F.R. 2.309(f)(1)(i)-(vi), petitioner must demonstrate that a contention raises an issue that is appropriate for a licensing board hearing and that such a hearing would not likely be a waste of time and resources; LBP-08-17, 68 NRC 431 (2008)

by complying with the six contention requirements, an admissible contention must raise an issue that is both within the scope of the proceeding (normally defined by the hearing notice) and material to the findings the NRC must make to support the action involved; LBP-09-18, 70 NRC 385 (2009)

by defining significantly different information in the draft EIS as a permissible basis for filing a new contention, the Commission has in effect concluded that such new information is good cause for filing a new contention; LBP-10-24, 72 NRC 720 (2010)

SUBJECT INDEX

by definition, contentions admitted under 10 C.F.R. 2.309(f)(2)(i)-(iii) are timely because they are founded on material new information that was not available at the time when the petition was initially due; LBP-09-10, 70 NRC 51 (2009)

challenges to board rulings on late-filed contentions normally fall under the rules for interlocutory review; CLI-09-18, 70 NRC 859 (2009)

challenges to how the Staff performs its reviews are outside the scope of licensing proceedings; LBP-08-9, 67 NRC 421 (2008)

challenges to the admissibility of less than all admitted contentions must abide the end of the case; CLI-06-13, 63 NRC 508 (2006)

challenges to the current operating license are outside the scope of matters challengeable in a power uprate application; LBP-08-9, 67 NRC 421 (2008)

challenges to the merits of contentions must await either motions for summary disposition or an evidentiary hearing; LBP-07-5, 65 NRC 341 (2007)

circumstances in which a particular hearing procedure is required are specified in 10 C.F.R. 2.310(b)-(k); LBP-09-10, 70 NRC 51 (2009)

citation to specific and potentially inconsistent portions of applicant's documents together with the declaration of petitioner's unchallenged expert provide alleged facts or expert opinion that are sufficient to meet the contention pleading requirements; LBP-06-20, 64 NRC 131 (2006)

collateral estoppel should be applied in appropriate circumstances in NRC proceedings; LBP-08-15, 68 NRC 294 (2008)

Commission has authority to issue case-specific orders modifying procedural regulations, including milestone schedules; CLI-08-18, 68 NRC 246 (2008)

Commission jurisdiction to reopen a proceeding continues until a license is actually issued; CLI-06-19, 63 NRC 19 (2006)

Commission pleading rules permit contentions that raise issues of law as well as contentions that raise issues of fact; CLI-09-14, 69 NRC 580 (2009)

Commission regulations do not contemplate filing a vague, unsupported pleading as a placeholder for a more detailed pleading to follow; CLI-09-5, 69 NRC 115 (2009)

Commission regulations may not be directly attacked in adjudicatory proceedings, but a party may petition for a waiver of the application of a regulation; LBP-10-12, 71 NRC 656 (2010)

Commission rules bar contentions where petitioners have only what amounts to generalized suspicions that they hope to substantiate later; LBP-08-17, 68 NRC 431 (2008); LBP-09-18, 70 NRC 385 (2009)

compliance with the requirement that a summary disposition movant make a sincere effort to contact other parties in the proceeding and to resolve the issues raised in the motion can only be determined from the objective reasonableness of the movant's efforts, as shown by all the facts and circumstances, not by his or her subjective intent; LBP-06-5, 63 NRC 116 (2006)

consideration of pending issues will not be postponed until the resolution of other issues unrelated to the adjudication; CLI-10-17, 72 NRC 1 (2010)

contemporaneous judicial standing concepts are applied in NRC proceedings; LBP-10-7, 71 NRC 391 (2010)

contemporaneous judicial standing concepts require that participant establish that it has suffered or will suffer a distinct and palpable injury that constitutes injury-in-fact within the zones of interests arguably protected by the governing, the injury is fairly traceable to the challenged action, and the injury is likely to be redressed by a favorable decision; LBP-10-7, 71 NRC 391 (2010)

contention admissibility requirements are deliberately strict and any contention that does not satisfy the requirements of 10 C.F.R. 2.309(f)(1) will be rejected; CLI-06-24, 64 NRC 111 (2006); CLI-09-14, 69 NRC 580 (2009); CLI-09-20, 70 NRC 911 (2009); CLI-10-1, 71 NRC 1 (2010); CLI-10-9, 71 NRC 245 (2010); CLI-10-21, 72 NRC 197 (2010); LBP-06-22, 64 NRC 229 (2006); LBP-09-10, 70 NRC 51 (2009); LBP-09-26, 70 NRC 939 (2009); LBP-10-6, 71 NRC 350 (2010)

contention admissibility requirements are rigorous and demand a level of discipline and preparedness on the part of petitioners, who must examine the publicly available material and set forth their claims and the support for their claims at the outset; LBP-06-12, 63 NRC 403 (2006)

contention admissibility requirements are strict by design to ensure that hearings cover only genuine and pertinent issues of concern and that the issues are framed and supported concisely enough at the outset

SUBJECT INDEX

to ensure that the proceedings are effective and focused on real, concrete issues; LBP-08-24, 68 NRC 691 (2008)

contention admissibility requirements for a hearing on a confirmatory order are addressed; LBP-08-14, 68 NRC 279 (2008)

contention admissibility rules are not designed to erect an onerous evidentiary hurdle, but rather to help to ensure that full adjudicatory hearings are triggered only by those able to proffer at least some minimal factual and legal foundation in support of their contentions; LBP-06-7, 63 NRC 188 (2006)

contention admissibility rules require a concise statement of the alleged facts or expert opinions that support petitioner's position, but do not require the submission of an expert opinion or require that an expert opinion be submitted in the form of admissible evidence; LBP-06-7, 63 NRC 188 (2006)

contention admissibility standards do not require dispositive proof of the contention or its bases, but they do require a clear statement as to the bases for the contention and supporting information and references to documents and sources that establish the validity of the contention; CLI-10-1, 71 NRC 1 (2010); LBP-10-6, 71 NRC 350 (2010)

contention alleging foreign ownership of applicant, failure to disclose, and various ramifications of such ownership, is admissible; LBP-09-1, 69 NRC 11 (2009)

contention alleging that depleted uranium-contaminated bombing plume dust causes health issues in the community is inadmissible because it lacks a supporting statement of the alleged facts or expert opinions; LBP-10-4, 71 NRC 216 (2010)

contention alleging that worldwide uranium supplies will be inadequate is dismissed for failure to provide expert opinion, documents, or other sources to support its allegation; LBP-08-15, 68 NRC 294 (2008)

contention raising question of whether a quantitative as opposed to qualitative analysis of terrorist attacks and the alternatives for mitigation and prevention is necessary is referred to the Commission as a novel issue; LBP-10-15, 72 NRC 257 (2010)

contention requirements were never intended to be turned into a fortress to deny intervention; LBP-09-6, 69 NRC 367 (2009)

contention standards require pleading specific grievances, not simply providing general notice pleadings; CLI-10-11, 71 NRC 287 (2010); CLI-10-15, 71 NRC 479 (2010)

contention that asks the licensing board to determine whether applicant would be able to obtain permits from and comply with regulatory requirements imposed by other agencies is outside NRC's jurisdiction; LBP-08-15, 68 NRC 294 (2008)

contention that suggests that financial qualifications information should be provided in the application submitted by a regulated electric utility represents an impermissible challenge to Commission regulations; LBP-08-17, 68 NRC 431 (2008)

contention that the environmental report is based on incomplete information because a new earthquake fault has been discovered within 600 meters of nuclear reactors and the results of studies concerning the new fault will be available in the near term is admissible; LBP-10-15, 72 NRC 257 (2010)

contention that worldwide uranium supplies will be inadequate to permit the anticipated power production benefits during the license term is potentially material to the licensing proceeding; LBP-08-15, 68 NRC 294 (2008)

contentions alleging deficiencies or errors in an application must indicate some significant link between the claimed deficiency and either the health and safety of the public or the environment; LBP-08-16, 68 NRC 361 (2008)

contentions are comparable to neither "forms of relief" nor Article III "claims," but are instead comparable to various "grounds" that may be asserted in opposition to a proposed agency action at issue; LBP-09-1, 69 NRC 11 (2009)

contentions challenging applicable statutory requirements or Commission regulations are not admissible in agency adjudications; LBP-08-26, 68 NRC 905 (2008); LBP-09-16, 70 NRC 227 (2009)

contentions challenging Staff's significant hazards consideration determination are not appropriate for review in a license amendment proceeding; LBP-08-19, 68 NRC 545 (2008); LBP-08-20, 68 NRC 549 (2008)

contentions challenging the Waste Confidence Rule are inadmissible; LBP-09-17, 70 NRC 311 (2009)

contentions concerning an applicant's plan for disposal of Greater-Than-Class-C radioactive waste cannot be admitted because disposal of that type of waste is the responsibility of the federal government; LBP-09-4, 69 NRC 170 (2009)

SUBJECT INDEX

contentions for which petitioners have only what amounts to generalized suspicions, hoping to substantiate them later, are barred; LBP-09-6, 69 NRC 367 (2009)

contentions may be filed after the initial 60-day deadline if the petitioner shows that the information on which the amended or new contention is based was not previously available and is materially different than information previously available; and the amended or new contention has been submitted in a timely fashion based on the availability of the subsequent information; CLI-10-18, 72 NRC 56 (2010); LBP-09-26, 70 NRC 939 (2009)

contentions must assert an issue of law or fact that is material to the outcome of a licensing proceeding, meaning that the subject matter of the contention must impact the grant or denial of a pending license application; LBP-08-16, 68 NRC 361 (2008)

contentions must be accompanied by a concise statement of the alleged facts or expert opinions that support the requestor's/petitioner's position on the issue together with references to the specific sources and documents on which it intends to rely to support its position; LBP-09-10, 70 NRC 51 (2009); LBP-09-26, 70 NRC 939 (2009); LBP-10-6, 71 NRC 350 (2010)

contentions must be based on a genuine material dispute, not the possibility that petitioners, if they perform their own additional analyses, may ultimately disagree with the application; CLI-06-10, 63 NRC 451 (2006)

contentions must be based on documents or information available when the hearing petition is to be filed; LBP-08-2, 67 NRC 54 (2008); LBP-08-3, 67 NRC 85 (2008); LBP-08-27, 68 NRC 951 (2008)

contentions must be filed with the original intervention petition within 60 days of notice of the proceeding in the *Federal Register*, unless a longer period is therein specified, an extension is granted, or the contentions meet certain criteria for late-filed or new contentions based on information that is available only at a later time; LBP-07-4, 65 NRC 281 (2007); LBP-08-6, 67 NRC 241 (2008); LBP-09-17, 70 NRC 311 (2009)

contentions must be within the scope of the proceeding as defined by the Commission in its initial hearing notice and order referring the proceeding to the licensing board; CLI-10-2, 71 NRC 27 (2010); LBP-08-16, 68 NRC 361 (2008); LBP-10-7, 71 NRC 391 (2010)

contentions must directly controvert a position taken by the applicant in the application and explain why the application is deficient; LBP-08-6, 67 NRC 241 (2008)

contentions must focus on the license application in question, challenging either specific portions of or alleged omissions from the application; LBP-08-16, 68 NRC 361 (2008)

contentions must satisfy six pleading requirements to be admissible; LBP-08-13, 68 NRC 43 (2008); LBP-08-16, 68 NRC 361 (2008); LBP-10-14, 72 NRC 101 (2010)

contentions must show that a genuine dispute exists on a material issue of law or fact with regard to the license application in question, challenge and identify either specific portions of, or alleged omissions from, the application, and provide the supporting reasons for each dispute; LBP-10-6, 71 NRC 350 (2010)

contentions must specifically challenge the license application to be admissible; LBP-08-9, 67 NRC 421 (2008)

contentions of omission must describe the information that should have been included in the environmental report and provide the legal basis that requires the omitted information to be included; LBP-09-16, 70 NRC 227 (2009)

contentions on the environmental impacts of spent fuel storage are inadmissible; LBP-09-18, 70 NRC 385 (2009)

contentions ought to be interpreted in light of the required specificity, so that adjudicators and parties need not search out broader meanings than were clearly intended; LBP-10-16, 72 NRC 361 (2010)

contentions pertaining to issues dealing with the current operating license, including the updated final safety analysis report, are not within the scope of license renewal review; LBP-08-13, 68 NRC 43 (2008)

contentions raising legal issues, like fact-based contentions, must fall within the allowable scope of the proceeding to be admissible; LBP-10-17, 72 NRC 501 (2010)

contentions relating to the conclusions that the NRC Staff reaches in its NEPA analysis with regard to the environmental impacts from radiological releases to groundwater must await future publication of its supplemental environmental impact statement; LBP-08-13, 68 NRC 43 (2008)

SUBJECT INDEX

contentions that advocate more or less stringent requirements than the NRC rules impose, otherwise seek to litigate a generic determination that the Commission has established by rulemaking, or raise a matter that is or is about to become the subject of rulemaking are barred; LBP-08-9, 67 NRC 421 (2008); LBP-08-17, 68 NRC 431 (2008); LBP-08-16, 68 NRC 361 (2008); LBP-09-3, 69 NRC 139 (2009); LBP-09-6, 69 NRC 367 (2009); LBP-10-7, 71 NRC 391 (2010); LBP-10-21, 72 NRC 616 (2010)

contentions that applicant's ER fails to satisfy NEPA because it does not address the environmental impacts of severe spent fuel pool accidents, and fails to address severe accident mitigation alternatives that would reduce the potential for spent fuel pool water loss and fires, are found inadmissible; LBP-06-23, 64 NRC 257 (2006)

contentions that attack a Commission rule, or that seeks to litigate a matter that is, or clearly is about to become, the subject of a rulemaking, are inadmissible; LBP-10-21, 72 NRC 616 (2010)

contentions that attack applicable statutory requirements, challenge the basic structure of the NRC's regulatory process, or merely express generalized policy grievances are not appropriate for a licensing board hearing; LBP-09-18, 70 NRC 385 (2009); LBP-10-21, 72 NRC 616 (2010)

contentions that directly or indirectly challenge Table S-3 of 10 C.F.R. 51.51 are inadmissible; LBP-09-4, 69 NRC 170 (2009)

contentions that do not satisfy the requirements of 10 C.F.R. 2.309(f)(1) must be rejected; CLI-09-8, 69 NRC 317 (2009)

contentions that fail to directly controvert the application or that mistakenly assert the application does not address a relevant issue can be dismissed; LBP-08-16, 68 NRC 361 (2008)

contentions that fail to provide supporting facts or expert opinion are inadmissible; LBP-08-19, 68 NRC 545 (2008)

contentions that fail to raise a genuine dispute of material fact or law with the applicant are inadmissible; LBP-08-19, 68 NRC 545 (2008)

contentions that fail to satisfy the pleading requirements of 10 C.F.R. 2.309(f)(1) are inadmissible; LBP-08-18, 68 NRC 533 (2008)

contentions that fall outside the scope of the proceeding must be rejected; LBP-08-16, 68 NRC 361 (2008); LBP-09-26, 70 NRC 939 (2009)

contentions that raise issues of law as well as contentions that raise issues of fact are permitted; LBP-10-17, 72 NRC 501 (2010)

contentions that simply state petitioner's views about what regulatory policy should be do not present a litigable issue; LBP-10-7, 71 NRC 391 (2010); LBP-10-21, 72 NRC 616 (2010)

contentions will be ruled inadmissible if petitioner has offered no tangible information, no experts, no substantive affidavits, but instead only bare assertions and speculation; LBP-08-16, 68 NRC 361 (2008); LBP-08-17, 68 NRC 431 (2008)

counsel have a continuing duty to update a tribunal about any development that may conceivably affect the outcome of litigation; LBP-06-10, 63 NRC 314 (2006)

counsel have an ethical responsibility not to knowingly make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer; LBP-06-10, 63 NRC 314 (2006)

counsel have an obligation to assure that, to the best of their knowledge, information, and belief, representations made in all pleadings are true; LBP-06-10, 63 NRC 314 (2006)

counsel's alleged unfamiliarity with the agency's rules of practice or counsel's asserted busy schedule are not satisfactory explanations for late filings; LBP-10-21, 72 NRC 616 (2010)

cross-examination occurs virtually automatically in Subpart G hearings, subject to normal judicial management and the requirement to file a cross-examination plan; LBP-09-10, 70 NRC 51 (2009)

damage to a nuclear power facility's reputation does not constitute a threatened injury to the interests of the Local's members who work at the facility; CLI-08-19, 68 NRC 251 (2008)

decisions on nontimely filings require a balancing of the eight factors set forth in 10 C.F.R. 2.309(c)(1), the first of which, good cause for failure to file on time, is the most important; CLI-09-7, 69 NRC 235 (2009)

deliberative process privilege is a qualified privilege; LBP-06-3, 63 NRC 85 (2006)

deliberative process privilege requires that the information be both predecisional and deliberative; LBP-06-3, 63 NRC (2006)

SUBJECT INDEX

descriptions of activities as being “near,” in “close proximity,” or “in the vicinity” of the facility in question are insufficient to establish standing; CLI-07-18, 65 NRC 399 (2007)

despite not being constitutionally limited by the case or controversy requirement of Article III, common sense counsels against proceeding with an adjudication where no effective relief can be granted; LBP-09-14, 70 NRC 193 (2009)

detailed pleadings put other parties in the proceeding on notice of the petitioners’ specific grievances, thereby giving them a good idea of the claims they will be either supporting or opposing; LBP-07-11, 66 NRC 41 (2007)

determining whether the contention is adequately supported by a concise allegation of the facts or expert opinion is not a hearing on the merits; LBP-09-26, 70 NRC 939 (2009)

disclosure is not required if the burden or expense of the proposed discovery outweighs its likely benefit; LBP-10-23, 72 NRC 692 (2010)

discovery is not permitted for the purpose of developing a motion to reopen the record or to assist a petitioner in the framing of contentions; LBP-08-12, 68 NRC 5 (2008)

discretionary Commission review of a presiding officer’s initial decision is allowed under 10 C.F.R. 2.341(b)(1); CLI-10-17, 72 NRC 1 (2010)

discretionary interlocutory review is allowed if the challenged board decision threatens immediate and serious irreparable impact or affects the basic structure of the proceeding in a pervasive or unusual manner; CLI-06-18, 64 NRC 1 (2006); CLI-06-12, 63 NRC 495 (2006)

discretionary interlocutory review is allowed when a licensing board certifies a ruling or refers a question; CLI-06-18, 64 NRC 1 (2006)

discretionary intervention is meant to ensure a sound adjudicatory record, not simply to provide a second representative to assist (allegedly) ill-represented parties; CLI-06-16, 63 NRC 708 (2006)

discretionary intervention may be granted in circumstances when one petitioner has standing as of right and has proffered at least one admissible contention, but other petitioners have not demonstrated their standing; LBP-10-1, 71 NRC 165 (2010)

discretionary standing is appropriate only when one petitioner has been shown to have standing as of right and an admissible contention so that a hearing will be conducted; LBP-07-10, 66 NRC 1 (2007)

dismissal due to counsel’s malfeasance is a logical extension of the board’s disciplinary authority to reprimand, censure, or suspend from a proceeding any party or representative who refuses to comply with its directions; CLI-08-29, 68 NRC 899 (2008)

dismissal of a party falls within the spectrum of sanctions available to the boards to assist in the management of proceedings, although dismissal should be reserved for severe cases; CLI-08-29, 68 NRC 899 (2008)

docketing decisions are not challengeable in an adjudicatory proceeding; CLI-08-15, 68 NRC 1 (2008)

documents are deemed to be within the control of a party if the party has the right to obtain the documents on demand or if it is held by the party’s attorney, expert, insurance company, accountant, or agent; LBP-10-23, 72 NRC 692 (2010)

documents that contain the analysis, opinions, and recommendations of NRC Staff members regarding an applicant’s response to prior requests for additional information or the formulation of new RAIs are deliberative and thus may qualify for deliberative process privilege; LBP-06-3, 63 NRC 85 (2006)

each intervening participant that wishes to be a party to a proceeding must establish its own standing; LBP-10-7, 71 NRC 391 (2010)

each party to a proceeding must automatically disclose and provide all documents and data compilations in their possession, custody, or control that are relevant to the admitted contentions, without waiting for a party to file a discovery request; LBP-10-23, 72 NRC 692 (2010)

each proposed new contention must satisfy the requirements of 10 C.F.R. 2.309(f)(1)(i)-(vi); CLI-09-5, 69 NRC 115 (2009)

early site permit applications, as partial construction permit applications, are subject to the Atomic Energy Act hearing requirement, as well as all procedural requirements in 10 C.F.R. Part 2; LBP-09-19, 70 NRC 433 (2009)

eight factors of 10 C.F.R. 2.309(c)(1) apply to nontimely intervention petitions, hearing requests, and contentions; LBP-10-9, 71 NRC 493 (2010)

electronic production, filing, and service of all documents are required in the high-level waste proceeding; CLI-08-25, 68 NRC 497 (2008)

SUBJECT INDEX

establishing standing for a contention involves a showing of a concrete and particularized injury that is fairly traceable to the challenged action and likely to be redressed by a favorable decision; LBP-09-1, 69 NRC 11 (2009)

even if a petitioner is unable to show that the NRC Staff's NEPA document differs significantly from the environmental report, it may still be able to meet the late-filed contention requirements; LBP-10-24, 72 NRC 720 (2010)

even if late-filing criteria are satisfied, proposed contentions must still meet the Commission's pleading standards; CLI-08-1, 67 NRC 1 (2008)

even if neither applicant nor the NRC Staff challenges petitioner's standing, the board must make its own determination; LBP-07-10, 66 NRC 1 (2007); LBP-08-15, 68 NRC 294 (2008)

even if NRC's proximity presumption is viewed as more lenient than judicial standing requirements, NRC may choose to retain it; CLI-09-20, 70 NRC 911 (2009)

even if petitioners later retain counsel, it would not be appropriate to hold their petition to those standards of clarity and precision to which a lawyer might reasonably be expected to adhere; LBP-08-6, 67 NRC 241 (2008)

even if the basic facts are uncontroverted, summary disposition is inappropriate when the evidence is susceptible of different interpretations or inferences; LBP-07-12, 66 NRC 113 (2007)

every participant in the adjudicative process has an obligation to fully develop its arguments; LBP-06-7, 63 NRC 188 (2006)

every petitioner bears the burden of demonstrating standing in order to participate in hearings before a licensing board; LBP-09-18, 70 NRC 385 (2009)

evidence contained in affidavits supporting motions to reopen must meet the regulatory admissibility standards of relevance, materiality, and reliability; LBP-08-12, 68 NRC 5 (2008)

exactly when a notice of appearance must be filed (or a notice of withdrawal submitted when an attorney or representative is no longer acting as a participant representative) is not specified in NRC's rules; LBP-10-7, 71 NRC 391 (2010)

except for a motion to file a new or amended contention, or where there are compelling circumstances, movant has no right to reply to an answer or respond to a motion; LBP-09-22, 70 NRC 640 (2009)

existence of a prima facie case is determined based on the sufficiency of the movant's assertions and informational/evidentiary support alone; LBP-10-15, 72 NRC 257 (2010)

expert statements by intervenors that merely state conclusions and provide no reasoned basis or explanation for such conclusions do not meet the contention admission requirement of 10 C.F.R. 2.309(f)(1)(v); LBP-10-6, 71 NRC 350 (2010); LBP-10-10, 71 NRC 529 (2010)

expert support is not required for admission of a contention; LBP-08-6, 67 NRC 241 (2008)

factors (v) and (vi) of 10 C.F.R. 2.309(c) generally are given less weight than factors (vii) and (viii); LBP-10-1, 71 NRC 165 (2010)

factors (vii) and (viii) of 10 C.F.R. 2.309(c)(1) are generally considered to have the most significance in the balancing process in instances in which there are no other parties or ongoing related proceedings; LBP-10-21, 72 NRC 616 (2010)

factors that influence the grant of a stay are addressed; LBP-08-11, 67 NRC 460 (2008)

factors that must be addressed for nontimely intervention petitions, hearing requests, and contentions are set forth; LBP-09-20, 70 NRC 565 (2009)

facts are "material" if they will affect the outcome of a proceeding under the governing law; LBP-07-12, 66 NRC 113 (2007)

facts relied on in support of a contention of omission need not show that applicant's facility cannot be safely operated, but rather that the application is incomplete under the governing regulations; LBP-08-15, 68 NRC 294 (2008)

factual disputes that are irrelevant or unnecessary will not be counted in ruling on summary disposition motions; LBP-07-13, 66 NRC 131 (2007)

failure by movant to address all reopening requirements in its motion is reason enough to deny the motion; LBP-08-12, 68 NRC 5 (2008)

failure of a contention to meet any of the pleading requirements of 10 C.F.R. 2.309(f)(1)(i)-(vi) precludes its admission; CLI-09-7, 69 NRC 235 (2009); CLI-09-15, 70 NRC 1 (2009); LBP-07-3, 65 NRC 237 (2007); LBP-07-4, 65 NRC 281 (2007); LBP-07-10, 66 NRC 1 (2007); LBP-07-11, 66 NRC 41 (2007); LBP-07-16, 66 NRC 277 (2007); LBP-08-6, 67 NRC 241 (2008); LBP-08-16, 68 NRC 361 (2008);

SUBJECT INDEX

LBP-08-24, 68 NRC 691 (2008); LBP-08-26, 68 NRC 905 (2008); LBP-09-3, 69 NRC 139 (2009); LBP-09-17, 70 NRC 311 (2009); LBP-09-21, 70 NRC 581 (2009); LBP-09-26, 70 NRC 939 (2009); LBP-10-4, 71 NRC 216 (2010); LBP-10-6, 71 NRC 350 (2010); LBP-10-7, 71 NRC 391 (2010); LBP-10-15, 72 NRC 257 (2010); LBP-10-16, 72 NRC 361 (2010); LBP-10-21, 72 NRC 616 (2010)

failure of an organizational participant to have a representative provide an appearance notice in accord with section 2.314(b) might provide cause for an appropriate sanction for failure properly to prosecute the litigation; LBP-10-7, 71 NRC 391 (2010)

failure of petitioner to reference any portion of the combined license application with which it takes issue is grounds for dismissal of a contention; CLI-10-9, 71 NRC 245 (2010)

failure to carefully read the governing procedural regulations does not constitute good cause for accepting a late-filed petition; CLI-06-21, 64 NRC 30 (2006)

failure to comply with Commission pleading requirements for late filings constitutes sufficient grounds for rejecting intervention and hearing requests; CLI-09-7, 69 NRC 235 (2009); LBP-10-4, 71 NRC 216 (2010)

failure to indicate how alleged harms might result from license amendments, particularly given not only the shutdown status of the facility, but also the continued applicability of the NRC's safety-oriented regulations governing defueled nuclear plants, is grounds for denial of standing; LBP-10-11, 71 NRC 609 (2010)

failure to provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact is grounds for dismissal of a contention; CLI-10-9, 71 NRC 245 (2010); LBP-10-6, 71 NRC 350 (2010)

failure to raise any challenge to a Staff EIS correction essentially renders that aspect of an intervenor challenge moot, as the intervenor has failed to raise a litigable challenge to the previously identified error; LBP-06-9, 63 NRC 289 (2006)

failure to specify any radiological contacts with enough concreteness to establish some impact on petitioner will result in denial of standing; LBP-10-11, 71 NRC 609 (2010)

failure to specify the language of a contention and distinguish it from the discussion that might otherwise be considered the basis for the issue statement might be grounds for dismissing the contention; LBP-10-7, 71 NRC 391 (2010); LBP-08-16, 68 NRC 361 (2008)

failure under 10 C.F.R. 2.309(d) to support an intervention petition with affidavits providing necessary information regarding the basis for representational standing could interpose a jurisdictional flaw potentially warranting the participant's dismissal from the proceeding; LBP-10-7, 71 NRC 391 (2010)

fairness requires that all participants in NRC adjudicatory proceedings abide by its procedural rules, especially those who are cognizant of those rules and represented by counsel; CLI-10-12, 71 NRC 319 (2010)

federal courts have long recognized the right of agencies to tailor their own standing requirements to fit their specific needs; CLI-08-19, 68 NRC 251 (2008)

filing of a new contention on the basis of the draft or final environmental impact statement where that document contains information that differs significantly from the information that was previously available is allowed; CLI-09-12, 69 NRC 535 (2009)

filings that are nearly 3 months late must satisfy not only the requirements to demonstrate standing and submit at least one admissible contention, but also must satisfy the stringent requirements for untimely filings and late-filed contentions; CLI-06-21, 64 NRC 30 (2006)

five factors must be balanced under pre-2004 rules before a petition to admit a late-filed contention can be granted; CLI-08-8, 67 NRC 193 (2008)

for a contention of omission, petitioner's burden is to show the facts necessary to establish that the application omits information that should have been included; LBP-09-16, 70 NRC 227 (2009)

for a contention regarding environmental impacts of spent fuel storage to be within the scope of an operating license renewal proceeding, petitioner must obtain a waiver under 10 C.F.R. 2.335(d); LBP-10-15, 72 NRC 257 (2010)

for a contention to be admissible, it must satisfy eight pleading requirements; LBP-10-13, 71 NRC 673 (2010)

for a request for hearing and petition to intervene to be granted, a petitioner must establish that it has standing and propose at least one admissible contention; LBP-10-15, 72 NRC 257 (2010)

SUBJECT INDEX

for an admissible contention, petitioner must provide a concise statement of the alleged facts or expert opinion that support the petitioner's position; LBP-09-10, 70 NRC 51 (2009)

for an order issued under 10 C.F.R. 2.202, the time for filing a hearing request runs from the date of the order, not the date of publication of the order in the *Federal Register*; LBP-09-20, 70 NRC 565 (2009)

for an organization to establish standing, it must show either immediate or threatened injury to its organizational interests or to the interests of identified members; LBP-08-6, 67 NRC 241 (2008); LBP-09-17, 70 NRC 311 (2009)

for contentions to be admissible, the subject matter of a contention must impact the grant or denial of a pending license application; LBP-09-3, 69 NRC 139 (2009)

for determining the "likelihood" that a motion to reopen would change the outcome of a license renewal proceeding, the Commission indicated that a "would have been reached" standard is too strict, and a "might have been reached" standard is too lax; LBP-08-12, 68 NRC 5 (2008)

for each contention, a petitioner must provide a specific statement of the issue of law or fact to be raised or controverted, and a brief explanation of the basis for the contention; LBP-06-10, 63 NRC 314 (2006)

for each contention, a petitioner must provide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact; LBP-06-10, 63 NRC 314 (2006)

for factual disputes, petitioner must present sufficient information to show a genuine dispute; CLI-10-20, 72 NRC 185 (2010)

for factual disputes, petitioner need not proffer facts in formal affidavit or evidentiary form, sufficient to withstand a summary disposition motion, but must present sufficient information to show a genuine dispute and reasonably indicating that a further inquiry is appropriate; LBP-09-16, 70 NRC 227 (2009); LBP-09-27, 70 NRC 992 (2009)

for organizational standing, petitioner must identify any discrete institutional injury to itself other than general environmental and policy interests of the sorts the federal courts and NRC repeatedly have found insufficient; CLI-10-3, 71 NRC 49 (2010); LBP-07-14, 66 NRC 169 (2007)

for organizational standing, the organization must, in its own right, satisfy the same requirements of injury, causation, and redressability as an individual; LBP-09-28, 70 NRC 1019 (2009)

for organizations to demonstrate standing to intervene, they must allege that the challenged action will cause a cognizable injury to the organization's interests or to the interests of its members; LBP-08-13, 68 NRC 43 (2008); LBP-08-24, 68 NRC 691 (2008)

for representational standing, an organization must demonstrate that the licensing action will affect at least one of its members, identify that member by name and address, show that it is authorized by that member to request a hearing on his or her behalf, demonstrate that the member would qualify for standing in his or her own right, show that the interests the organization seeks to protect are germane to its own purpose, and show that neither the proffered contentions nor the requested relief would require an individual member to participate in the proceeding; LBP-07-14, 66 NRC 169 (2007); LBP-09-28, 70 NRC 1019 (2009)

for Subpart G proceedings, each expert witness is required to create, sign, and submit a written expert report; LBP-09-30, 70 NRC 1039 (2009)

for systems, structures, and components subject to aging management review, discussion of proposed inspection and monitoring details will come before a board only as they are needed to demonstrate that the intended function of relevant SSCs will be maintained for the license renewal period; LBP-08-13, 68 NRC 43 (2008)

for the purposes of summary disposition, mere allegations are insufficient, including speculative or bare conclusory statements by an expert; LBP-07-13, 66 NRC 131 (2007)

for timely new or amended contentions, the pleading shall include a motion for leave to file the contention showing that it satisfies 10 C.F.R. 2.309(f)(1); LBP-09-22, 70 NRC 640 (2009)

for untimely new or amended contentions, the pleading shall include a motion for leave to file the contention and the support for the proposed new or amended contention showing that it satisfies 10 C.F.R. 2.309(f)(1); LBP-09-22, 70 NRC 640 (2009)

general allegations covering the overall adequacy of structures, systems, and components, with no mention of potential errors or deficiencies in an applicant's license renewal application, do not support the admissibility of a contention; LBP-08-13, 68 NRC 43 (2008)

SUBJECT INDEX

- general assertions, unsupported by specific facts or expert opinion, that personnel reductions may adversely affect health and safety are inadmissible in a license transfer proceeding; CLI-06-21, 64 NRC 30 (2006)
- general assertions, without some effort to show why the assertions undercut findings or analyses in the environmental report, fail to satisfy the requirements of 10 C.F.R. 2.309(f)(1)(vi); LBP-10-6, 71 NRC 350 (2010)
- general counsel for an Indian tribe is not required to submit a declaration stating the basis of his or her authority to represent the tribe; LBP-08-26, 68 NRC 905 (2008)
- general environmental and policy interests are insufficient for organizational standing; LBP-09-20, 70 NRC 565 (2009)
- generalized claims that are vague and insufficiently supported and do not tend to establish any connection with the proposed license or potential harm to petitioner are insufficient to support a contention; CLI-10-20, 72 NRC 185 (2010)
- generalized expertise, even scientific eminence, is an insufficient substitute for particularized knowledge of the issues actually in dispute; CLI-06-16, 63 NRC 708 (2006)
- generic NRC policies and standards and the nature of the NRC Staff's licensing review are not subject to challenge in an adjudicatory proceeding; CLI-08-17, 68 NRC 231 (2008)
- given that consideration of terrorist attacks is part of the NRC's NEPA obligations in the Ninth Circuit, the issue of whether terrorist attacks have been fully considered in the NEPA analysis for a power plant in that jurisdiction is plainly material to the decision the NRC must make; LBP-10-15, 72 NRC 257 (2010)
- given that the *Federal Register* notice defines the scope of the issues that may properly be raised in a request for a hearing, it also defines the scope of the issues that could reasonably be deemed resolved during an ESP proceeding; LBP-08-15, 68 NRC 294 (2008)
- given the information known about the nature of the facility and the available radioactive and chemical materials at risk and the resulting potential for offsite consequences, there is no need for pro se petitioners to plead these matters more specifically; LBP-07-14, 66 NRC 169 (2007)
- good cause for late filing is the most important factor, and failure to meet this factor considerably enhances the burden of showing that the other factors justify admission of a late-filed petition; CLI-10-12, 71 NRC 319 (2010); CLI-10-17, 72 NRC 1 (2010); LBP-09-20, 70 NRC 565 (2009); LBP-09-26, 70 NRC 939 (2009); LBP-10-1, 71 NRC 165 (2010); LBP-10-9, 71 NRC 493 (2010); LBP-10-11, 71 NRC 609 (2010); LBP-10-21, 72 NRC 616 (2010); LBP-10-24, 72 NRC 720 (2010)
- having established proximity standing, petitioner need not separately establish the requisite injury, causation, and redressability elements; LBP-09-10, 70 NRC 51 (2009); LBP-09-13, 70 NRC 168 (2009); LBP-09-16, 70 NRC 227 (2009); LBP-09-17, 70 NRC 311 (2009); LBP-09-18, 70 NRC 385 (2009); LBP-09-20, 70 NRC 565 (2009); LBP-09-21, 70 NRC 581 (2009)
- health effects of arsenic contamination of drinking water from mining operations are admissible in materials license amendment proceedings; LBP-09-1, 69 NRC 11 (2009)
- hearing requests and intervention petitions must set forth with particularity the contentions sought to be raised; CLI-10-9, 71 NRC 245 (2010)
- hearings regarding immediately effective enforcement orders must be held expeditiously; CLI-07-6, 65 NRC 112 (2007)
- how the Commission determines proximity-based standing in license transfer cases is described; CLI-08-19, 68 NRC 251 (2008)
- identifying the individual or individuals authorized to act on behalf of each participant should provide the means whereby any participant needing to reach another participant's authorized representatives to serve a filing or have a discussion about any litigation-related matters will be able to do so; LBP-10-7, 71 NRC 391 (2010)
- if a combined license application is amended or material new information subsequently becomes available, petitioners must be given a fair opportunity to file new or amended contentions challenging these changes; LBP-09-10, 70 NRC 51 (2009)
- if a contention alleges the omission of particular information or an issue from an application, and the information is later supplied by the applicant, the contention is moot; LBP-06-16, 63 NRC 737 (2006)

SUBJECT INDEX

- if a contention as originally pleaded did not cite adequate documentary support, the petitioner cannot remediate the deficiency in its reply brief by introducing documents that were available to it during the time frame for initially filing contentions; CLI-06-17, 63 NRC 727 (2006)
- if a contention based on new information fails to satisfy the three-part test for admission, it may be evaluated under section 2.309(c); LBP-10-24, 72 NRC 720 (2010)
- if a contention challenges the legal sufficiency of the application that is the subject of the Notice of Hearing and Opportunity to Petition for Leave to Intervene, the contention is within the scope of the proceeding; LBP-08-15, 68 NRC 294 (2008)
- if a contention header uses a particular phrase, but the statement of the contention does not refer to the phrase or regulation, then the board may interpret the contention in accordance with the express statement of the contention; LBP-10-15, 72 NRC 257 (2010)
- if a contention makes a prima facie allegation that the application omits information required by law, it necessarily presents a genuine dispute with applicant on a material issue; LBP-09-16, 70 NRC 227 (2009)
- if a contention meets the 10 C.F.R. 2.309(f)(2) criteria, it is timely and the intervenor proffering the contention need not also make a showing under 10 C.F.R. 2.309(c); LBP-09-27, 70 NRC 992 (2009); LBP-10-9, 71 NRC 493 (2010); LBP-10-14, 72 NRC 101 (2010)
- if a motion to reopen and the proposed new contention are based on material information that was not previously available, then it qualifies as timely; LBP-10-19, 72 NRC 529 (2010)
- if a motion to reopen relates to a contention not previously in controversy among the parties, movant must meet the late-filing requirements of section 2.309(c); CLI-06-4, 63 NRC 32 (2006); LBP-10-21, 72 NRC 616 (2010)
- if a NEPA contention alleges that impacts or alternatives that are patently outside the realm of reason must be considered, then the contention should be denied for failure to demonstrate that the issue raised is within the legitimate scope of NEPA; LBP-09-10, 70 NRC 51 (2009)
- if a newly presented contention fails to satisfy 10 C.F.R. 2.309(f)(2), it will be deemed nontimely and must satisfy 10 C.F.R. 2.309(c) to be admitted; LBP-06-11, 63 NRC 391 (2006)
- if a notice of adoption of a contention is filed within a reasonable time (such as 20 days) after the contention has been filed and admitted, then it is deemed timely; LBP-06-20, 64 NRC 131 (2006)
- if a party files a new contention within 30 days of the availability of the information new to that party, the contention will generally be considered timely; LBP-09-17, 70 NRC 311 (2009)
- if a petitioner neglects to provide the requisite support for its contentions, it is not within the board's power to make assumptions of fact that favor the petitioner, nor may the board supply information that is lacking; LBP-07-3, 65 NRC 237 (2007)
- if a question arises over the scope of an admitted contention, the board or Commission will refer back to the bases set forth in support of the contention; CLI-10-15, 71 NRC 479 (2010)
- if a requested document or data compilation is publicly available, then a citation to the document and a description of where it may be publicly obtained is sufficient; LBP-10-23, 72 NRC 692 (2010)
- if an expert asserts a factual or technical position that is so patently incorrect or absurd, a presiding officer must reject that position as constituting a genuine dispute; LBP-06-5, 63 NRC 116 (2006)
- if an organization does not identify the members it purportedly represents, the Commission cannot determine whether the organization actually does represent members who consider that they will be affected by the licensing action or is simply seeking the vindication of its own value preference; CLI-07-18, 65 NRC 399 (2007)
- if an organization seeks to intervene as a representative of its members, it must identify at least one member by name and address, show that member would have standing in his or her own right, and demonstrate that the member has authorized the organization to intervene on his or her behalf; LBP-09-26, 70 NRC 939 (2009)
- if applicant cures the omission, the contention of omission will become moot, and then intervenor must timely file a new or amended contention if it intends to challenge the sufficiency of the new information supplied by applicant; LBP-08-12, 68 NRC 5 (2008); LBP-08-15, 68 NRC 294 (2008); LBP-10-16, 72 NRC 361 (2010)
- if good cause is not shown for the late filing of a contention, petitioner must make a compelling showing on the four remaining factors; CLI-08-1, 67 NRC 1 (2008); CLI-08-8, 67 NRC 193 (2008); LBP-10-24, 72 NRC 720 (2010)

SUBJECT INDEX

- if leave to file a motion for reconsideration is granted, the motion must show compelling circumstances, such as the existence of an unanticipated, clear, and material error, which could not have been anticipated, that renders the decision invalid; CLI-10-9, 71 NRC 245 (2010)
- if new and materially different information becomes available during the processing of the application, and a petitioner promptly files a new contention based on this new information, the contention is admissible if it also satisfies the general contention pleading standards; LBP-06-14, 63 NRC 568 (2006)
- if no expert opinion or supporting relevant documents are submitted with a contention, any fact-based argument that is provided must be reasonably specific, coherent, and logical, sufficient to show such a dispute and indicate the appropriateness of further inquiry; LBP-09-17, 70 NRC 311 (2009)
- if no particular procedure is required, then the board may conduct the proceeding for a particular contention under Subpart L; LBP-09-10, 70 NRC 51 (2009)
- if none of the affidavits submitted in support of a hearing request indicate that an organization seeking to intervene represents the interests of the submitter, the organization has failed to establish that it has standing; LBP-08-16, 68 NRC 361 (2008)
- if petitioner cannot establish the elements of proximity-based standing, then he must establish standing according to traditional principles; CLI-10-20, 72 NRC 185 (2010)
- if petitioner fails to offer alleged facts or expert opinion and a reasoned statement explaining any alleged inadequacy in the application, petitioner has not demonstrated a genuine dispute; LBP-10-6, 71 NRC 350 (2010)
- if petitioner fails to provide the requisite support for its contentions, the board may not make assumptions of fact that favor the petitioner or supply information that is lacking; LBP-08-16, 68 NRC 361 (2008); LBP-08-17, 68 NRC 431 (2008); LBP-09-18, 70 NRC 385 (2009); LBP-09-26, 70 NRC 939 (2009)
- if petitioner files a new contention within the 20-day time limit set by the board, and if it satisfies the remaining factors in section 2.309(f)(2), petitioner need not address the requirements under section 2.309(c), which apply to nontimely filings; LBP-06-16, 63 NRC 737 (2006)
- if petitioner has made a prima facie showing of special circumstances for rule waiver, then the board certifies the matter to the Commission; LBP-10-15, 72 NRC 257 (2010); LBP-10-22, 72 NRC 661 (2010)
- if petitioner identifies specific omissions in the combined license application, those omissions should be addressed in a contention to the board which, in turn, should refer such a contention to the Staff for consideration in the design certification rulemaking, and hold that contention in abeyance, if it is otherwise admissible; LBP-08-21, 68 NRC 554 (2008)
- if petitioner makes a prima facie allegation that the application omits information required by law, it necessarily presents a genuine dispute with applicant and raises an issue plainly material to an essential finding of regulatory compliance needed for license issuance; LBP-10-16, 72 NRC 361 (2010)
- if petitioner neglects to provide the requisite support for its contentions, it is not within the board's power to make assumptions of fact that favor the petitioner, nor may the board supply information that is lacking; LBP-07-10, 66 NRC 1 (2007); LBP-09-3, 69 NRC 139 (2009); LBP-10-6, 71 NRC 350 (2010); LBP-10-7, 71 NRC 391 (2010)
- if petitioner requests a remedy that is beyond the scope of the hearing, then the hearing request must be denied because redressability is an element of standing; LBP-07-16, 66 NRC 277 (2007); LBP-08-14, 68 NRC 279 (2008)
- if petitioner wishes to challenge a generic determination in a license renewal proceeding, it must seek and receive a waiver; LBP-08-26, 68 NRC 905 (2008)
- if petitioners believe that the specification for climate change no longer provides a reasonable basis for demonstrating compliance based on new scientific evidence, they can petition NRC to amend the rules; LBP-10-22, 72 NRC 661 (2010)
- if petitioners cannot show that their new or revised contentions could not have been submitted without the requested access to the redacted information in the license transfer application, then they will have to meet not only the contention pleading requirements, but also the late-filing requirements; CLI-07-18, 65 NRC 399 (2007)
- if petitioners offer a reason for needing safeguards information material to the findings a licensing board must make and otherwise explain why publicly available versions of the application would not be sufficient to provide the basis and specificity for a proffered contention, they would satisfy the need criterion; LBP-09-5, 69 NRC 303 (2009)

SUBJECT INDEX

- if safety contentions filed before construction begins would be considered premature and/or speculative, NRC hearing opportunities could soon come to be viewed as chimerical; LBP-07-14, 66 NRC 169 (2007)
- if standards for reopening were not strict and demanding, there would be little hope of completing administrative proceedings if each newly arising allegation required an agency to reopen its hearings; LBP-08-12, 68 NRC 5 (2008)
- if summary disposition movant satisfies its initial burden and supports its motion by affidavit, opponent must either proffer rebutting evidence or submit an affidavit explaining why it is impractical to do so; LBP-07-12, 66 NRC 113 (2007)
- if the attorney or representative of a party is contacted pursuant to the consultation requirement, then that person (or his or her alternate) must make a sincere effort to make himself or herself available to listen and to respond to the moving party's explanation, and to resolve the factual and legal issues raised in the motion; LBP-09-22, 70 NRC 640 (2009)
- if the filings demonstrate the existence of a genuine material fact, the evidence submitted in support of a motion fails to show the nonmovant's position is a sham or fails to foreclose the possibility of a factual dispute, or there is an issue as to the credibility of movant's evidentiary material, movant will be found to have failed to meet its burden on summary disposition; LBP-07-12, 66 NRC 113 (2007)
- if the presiding officer determines from affidavits filed by the party opposing summary disposition that the opposing party cannot present by affidavit the facts essential to justify its opposition, the presiding officer may order a continuance to permit such affidavits to be obtained, or may take other appropriate action; LBP-07-12, 66 NRC 113 (2007)
- if the support a party offers, to demonstrate that a genuine dispute exists as to a material fact, indicates that, after expanding that support to its logical limits, it cannot support a finding of fact material to the determination the agency must make, that party's position cannot prevail; LBP-07-13, 66 NRC 131 (2007)
- if there are problems with meeting a filing date, participants should seek an extension of time or, if the time for filing has passed, submit a motion for leave to file out of time; LBP-08-16, 68 NRC 361 (2008)
- if there is doubt as to whether the parties should be required to proceed further, a motion for summary disposition should be denied; LBP-07-12, 66 NRC 113 (2007)
- if there is no prima facie showing for a rule waiver, the board may not further consider the matter; LBP-10-22, 72 NRC 661 (2010)
- if, within 60 days after pertinent information that would support the framing of a contention first becomes available, intervenors submit a particularized and otherwise admissible contention regarding the construction of the facility, then the contention will be deemed timely without the need to satisfy the balancing test for late-filing requirements; CLI-09-2, 69 NRC 55 (2009)
- imminent mootness of an issue has been cause for taking interlocutory review if the issue sought to be reviewed would have become moot by the time the board issued a final decision; CLI-10-29, 72 NRC 556 (2010)
- in a case involving an enforcement order, the standing requirement is based on the confirmatory order itself, and petitioner must show that he will be adversely affected by the terms of the order; LBP-08-14, 68 NRC 279 (2008)
- in a contention of omission, intervenors must show that what is allegedly omitted is required by law; LBP-10-10, 71 NRC 529 (2010)
- in a contested uranium enrichment facility proceeding, the licensing board shall make findings of fact and conclusions of law on admitted contentions; CLI-09-15, 70 NRC 1 (2009)
- in a license renewal proceeding, there is no mandatory or automatic default to Subpart L procedures; LBP-07-15, 66 NRC 261 (2007)
- in a license transfer case, a petitioner cannot, for purposes of standing, successfully claim injury based on the financial qualifications and assurances of the transferor; CLI-07-22, 65 NRC 525 (2007)
- in a materials licensing case, petitioner must show more than that he lives or works within a certain distance of the site where materials will be located; CLI-10-20, 72 NRC 185 (2010)
- in a materials licensing proceeding, petitioners have the burden to show a specific and plausible means whereby the licensing decision may harm them; CLI-09-9, 69 NRC 331 (2009)

SUBJECT INDEX

- in a proceeding involving the safety of a proposed 20% increase in the power of a nuclear power reactor, the seriousness of the litigation and the issues involved weigh in favor of disclosing deliberative process documents; LBP-06-3, 63 NRC 85 (2006)
- in a Subpart L evidentiary hearing, the board may ask witnesses to appear in person and answer questions; LBP-09-22, 70 NRC 640 (2009)
- in a Subpart L proceeding, the board must apply the summary disposition standard set forth in Subpart G; LBP-10-20, 72 NRC 571 (2010)
- in a Subpart L proceeding, the mandatory disclosure provisions of 10 C.F.R. 2.336 apply; CLI-10-24, 72 NRC 451 (2010); CLI-10-25, 72 NRC 469 (2010)
- in addition to general contention admissibility requirements, amended or new contentions filed after an intervenor's initial filing will be admitted only upon leave of the presiding officer and a demonstration that information upon which the contention is based was not previously available, is materially different than information previously available, and has been submitted in a timely fashion based on the availability of the subsequent information; LBP-10-13, 71 NRC 673 (2010)
- in addressing a summary disposition motion and the opposition thereto, licensing boards must examine the substance of the information provided by the parties; LBP-07-13, 66 NRC 131 (2007)
- in addressing a summary disposition motion, guidance on determining whether an issue is "material" is taken from procedures for contention admissibility; LBP-07-13, 66 NRC 131 (2007)
- in addressing the section 2.309(e)(1) factors, failure to provide any specific discussion of most of these items or the weight they should be given in the balance is a potentially fatal omission; LBP-10-21, 72 NRC 616 (2010)
- in adjudicatory proceedings it is the license application, not the NRC Staff review, that is at issue; CLI-08-15, 68 NRC 1 (2008)
- in analyzing the abeyance question, the risk of harm that the subject of the enforcement action could suffer from an abeyance order is balanced against the risk of harm DOJ could suffer from the NRC Staff moving forward in its enforcement hearing; CLI-07-6, 65 NRC 112 (2007)
- in any conflict between a general rule in Part 2, Subpart C, and a special rule in Part 2, the special rule governs; LBP-08-16, 68 NRC 361 (2008)
- in assessing a petition to determine whether the requirements for standing are met, the board construes the petition in favor of the petitioner; LBP-07-3, 65 NRC 237 (2007); LBP-09-2, 69 NRC 87 (2009); LBP-09-3, 69 NRC 139 (2009)
- in assessing whether petitioner has standing, NRC has long applied contemporaneous judicial concepts of standing; CLI-09-20, 70 NRC 911 (2009)
- in balancing the six factors for discretionary hearing, assistance in developing a sound record is the most important; CLI-06-16, 63 NRC 708 (2006)
- in cases involving ISL uranium mining and other source materials licensing, petitioner must demonstrate injury, causation, and redressability because proximity to the proposed facility alone is not adequate to demonstrate standing; LBP-10-16, 72 NRC 361 (2010)
- in cases involving the possible construction or operation of a nuclear power reactor, the Commission has created a presumption that residing or regularly conducting activities within a 50-mile proximity of the proposed facility is considered sufficient to establish the requisite injury, causation, and redressability elements; LBP-07-10, 66 NRC 1 (2007); LBP-08-16, 68 NRC 361 (2008); LBP-09-3, 69 NRC 139 (2009); LBP-10-21, 72 NRC 616 (2010)
- in cases not involving nuclear power reactors, whether petitioner could be affected by the licensing action must be determined on a case-by-case basis, taking into account petitioner's distance from the source, the nature of the licensed activity, and the significance of the radioactive source; CLI-10-20, 72 NRC 185 (2010)
- in cases where the record fails to support the existence of a significant source of radioactivity producing an obvious potential for offsite consequences at a particular distance frequented by a petitioner, it becomes petitioner's burden to show a specific and plausible means of how the challenged action may harm him or her; LBP-10-4, 71 NRC 216 (2010)
- in conducting Subpart L hearings, board members pose questions to the parties' witnesses in those areas that, in the board's judgment, require additional clarification and development; LBP-07-17, 66 NRC 327 (2007)

SUBJECT INDEX

- in construction permit and operating license proceedings for power reactors, petitioner is presumed to have standing to intervene if petitioner lives within, or otherwise has frequent contacts with, the zone of possible harm; CLI-09-20, 70 NRC 911 (2009)
- in construction permit proceedings, proximity to the proposed facility has been considered sufficient to establish standing; LBP-10-7, 71 NRC 391 (2010)
- in deciding a summary disposition motion the tribunal must examine the evidence in the light most favorable to the nonmoving party; LBP-08-7, 67 NRC 361 (2008)
- in deciding whether to grant a stay, the Commission considers whether the moving party has made a strong showing that it is likely to prevail on the merits, whether the party will be irreparably injured unless a stay is granted, whether the granting of a stay would harm the other parties, and where the public interest lies; CLI-09-23, 70 NRC 935 (2009)
- in demonstrating that a proposed action involves a significant source of radioactivity producing an obvious potential for offsite consequences, petitioner cannot rely on conclusory allegations about potential radiological harm, but must show how these various harms might result from the proposed action; LBP-09-20, 70 NRC 565 (2009)
- in determining whether a petitioner has established standing, boards are to construe the petition in favor of the petitioner; LBP-08-17, 68 NRC 431 (2008); LBP-08-26, 68 NRC 905 (2008); LBP-09-6, 69 NRC 367 (2009); LBP-09-18, 70 NRC 385 (2009); LBP-09-21, 70 NRC 581 (2009); LBP-10-15, 72 NRC 257 (2010)
- in determining whether an individual or organization should be granted party status in a proceeding based on standing as of right, the agency has applies contemporaneous judicial standing concepts; LBP-07-3, 65 NRC 237 (2007); LBP-07-10, 66 NRC 1 (2007); LBP-08-9, 67 NRC 421 (2008); LBP-08-26, 68 NRC 905 (2008); LBP-09-1, 69 NRC 11 (2009); LBP-09-3, 69 NRC 139 (2009); LBP-09-6, 69 NRC 367 (2009); LBP-09-17, 70 NRC 311 (2009); LBP-10-4, 71 NRC 216 (2010); LBP-10-15, 72 NRC 257 (2010); LBP-10-16, 72 NRC 361 (2010); LBP-10-21, 72 NRC 616 (2010)
- in determining whether petitioner is an “interested person” for the purposes of a standing determination, NRC is not strictly bound by judicial standing doctrines; CLI-09-20, 70 NRC 911 (2009)
- in establishing proximity-based standing, it is petitioner’s responsibility to provide enough detail to allow the board to distinguish a casual interest from a substantial one; LBP-10-1, 71 NRC 165 (2010)
- in evaluating a motion to reopen the record, a licensing board properly considers the movant’s new allegations and the nonmovant’s contrary evidence in determining whether there is a real issue at stake warranting a reopened hearing; LBP-08-12, 68 NRC 5 (2008)
- in evaluating petitions to intervene, licensing boards are not free to ignore the contention admissibility requirements of 10 C.F.R. 2.309(f)(1); CLI-09-8, 69 NRC 317 (2009)
- in evaluating the specificity of petitioners’ standing arguments, a licensing board must take into account the information provided by the applicant and the NRC Staff in the environmental impact statement; LBP-07-14, 66 NRC 169 (2007)
- in exceptional instances, the Commission may grant a petition for interlocutory review when a party demonstrates that a ruling threatens it with immediate and serious irreparable impact or affects the basic structure of the proceeding in a pervasive or unusual matter; CLI-07-2, 65 NRC 10 (2007)
- in five-factor analysis for admission of a late-filed contention, factors three and five are to be given more weight than factors two and four; CLI-08-1, 67 NRC 1 (2008); CLI-08-8, 67 NRC 193 (2008)
- in high-level waste repository proceedings, the burden of proof rests on the proponent of a motion to strike; LBP-08-5, 67 NRC 205 (2008)
- in license amendment cases, petitioner cannot base standing simply upon a residence or visits near the plant, unless the proposed action quite obviously entails an increased potential for offsite consequences; LBP-08-18, 68 NRC 533 (2008)
- in license transfer cases, the Commission determines on a case-by-case basis whether the proximity presumption should apply, considering the obvious potential for offsite radiological consequences, or lack thereof, from the application at issue, and specifically taking into account the nature of the proposed action and the significance of the radioactive source; CLI-07-19, 65 NRC 423 (2007)
- in light of the requirements that any new contention be based on material information that was not previously available, the timeliness determination required under 10 C.F.R. 2.309(f)(2) and the section 2.326(a) reopening standard can be closely equated; LBP-10-21, 72 NRC 616 (2010)

SUBJECT INDEX

- in nonreactor cases, the potential for offsite consequences is not always clear, and thus the burden falls on petitioner to demonstrate that the proposed action involves a significant source of radioactivity producing an obvious potential for offsite consequences; LBP-09-20, 70 NRC 565 (2009)
- in operating license amendment cases, a petitioner must assert an injury-in-fact associated with the challenged license amendment, not simply a general objection to the facility; LBP-07-10, 66 NRC 1 (2007)
- in order to raise a timely contention, a party must piece together disparate shreds of information that, standing alone, have little apparent significance; CLI-10-27, 72 NRC 481 (2010)
- in power reactor license proceedings, proximity within 50 miles of a plant is often enough on its own to demonstrate standing; LBP-08-17, 68 NRC 431 (2008); LBP-08-24, 68 NRC 691 (2008)
- in proceedings involving nuclear power reactors, petitioner is presumed to have standing to intervene without the need to specifically plead injury, causation, and redressability if the petitioner lives within 50 miles of the nuclear power reactor; LBP-06-7, 63 NRC 188 (2006); LBP-06-10, 63 NRC 314 (2006); LBP-09-10, 70 NRC 51 (2009); LBP-09-13, 70 NRC 168 (2009); LBP-09-16, 70 NRC 227 (2009); LBP-09-17, 70 NRC 311 (2009); LBP-09-18, 70 NRC 385 (2009); LBP-09-20, 70 NRC 565 (2009); LBP-09-21, 70 NRC 581 (2009); LBP-09-26, 70 NRC 939 (2009); LBP-10-1, 71 NRC 165 (2010); LBP-10-4, 71 NRC 216 (2010); LBP-10-15, 72 NRC 257 (2010); LBP-10-16, 72 NRC 361 (2010)
- in proceedings not involving power reactors, proximity alone is not sufficient to establish standing; LBP-08-6, 67 NRC 241 (2008)
- in proceedings other than for construction permits, operating licenses, or significant amendments thereto, the Commission decides on a case-by-case basis whether the proximity presumption should apply, taking into account any obvious potential for offsite radiological consequences, as well as the nature of the proposed action and the significance of the radioactive source; LBP-09-20, 70 NRC 565 (2009); LBP-09-28, 70 NRC 1019 (2009)
- in proceedings where petitioner's factual assertions in support of standing are challenged, untenable, conjectural, or conclusory, a board need not uncritically accept such assertions; LBP-10-4, 71 NRC 216 (2010)
- in ruling on a nontimely petition, boards are to consider eight factors that will excuse the tardiness of the petition if, on balance, they weigh in favor of the petitioner; CLI-10-12, 71 NRC 319 (2010)
- in ruling on admissibility of contentions, licensing boards do not consider anything found in a reply to an answer to an intervention petition that was not in petitioners' original contentions, unless it constitutes legitimate amplification of original contentions or properly late-filed material; LBP-06-10, 63 NRC 314 (2006)
- in ruling on contention admissibility a board is not to look to the merits of the contention; LBP-09-17, 70 NRC 311 (2009)
- in ruling on petitions to intervene in the high-level waste proceeding, boards must consider any failure of the petitioner to participate as a potential party in the pre-license application phase under 10 C.F.R. Part 2, Subpart J; LBP-09-6, 69 NRC 367 (2009)
- in ruling on requests for discretionary intervention, NRC's presiding officers and licensing boards traditionally consider the six factors of 10 C.F.R. 2.309(e)(1)-(2); CLI-06-16, 63 NRC 708 (2006)
- in ruling on standing, boards are to construe intervention petitions in favor of the petitioner; LBP-07-10, 66 NRC 1 (2007)
- in ruling on standing, NRC cannot automatically assume that an organization member necessarily considers him- or herself potentially aggrieved by a particular outcome of the proceeding; CLI-08-19, 68 NRC 251 (2008)
- in ruling on the qualified nature of deliberative process privilege, five factors are relevant in balancing the need for the documents against the government's interest in nondisclosure; LBP-06-3, 63 NRC 85 (2006)
- in situations in which a board denies a petition to intervene in its entirety or grants a petition to intervene that, according to an opposing litigant, should have been denied in its entirety, the losing litigant has a right to Commission review; CLI-09-6, 69 NRC 128 (2009)
- in the absence of a showing that the proposed operating license amendment obviously entails an increased potential for offsite consequences, petitioner must base its standing upon more than residence or activities within a particular proximity of the plant by making a showing of a plausible chain of events

SUBJECT INDEX

that would result in offsite radiological consequences posing a distinct new harm or threat to the participant; LBP-07-10, 66 NRC 1 (2007)

in the case of the yet-to-issue NRC rules for the high-level waste proceeding, the Commission is dispensing in advance with all late-filing factors except the "good cause" factor; CLI-08-25, 68 NRC 497 (2008)

in the circumstances of the high-level waste proceeding, the criteria and procedures of 10 C.F.R. 2.326 are either irrelevant or redundant; LBP-09-6, 69 NRC 367 (2009)

in the context of a safety contention, petitioner must show a waiver of the regulation is necessary to reach a significant safety problem; LBP-10-15, 72 NRC 257 (2010)

in the event of some 11th-hour unforeseen development, a party may tender a document belatedly, but the tender must be accompanied by a motion for leave to file out-of-time which satisfactorily explains not only the reason for the lateness, but also why a motion for an extension of time could not have been seasonably submitted; CLI-10-26, 72 NRC 474 (2010)

in the high-level waste proceeding, the Commission conferred standing as of right on certain parties; LBP-09-6, 69 NRC 367 (2009)

in the interest of efficient case management and prompt resolution of adjudications, the Commission has generally enforced the 10-day deadline for appeals strictly, excusing it only in unavoidable and extreme circumstances; CLI-10-26, 72 NRC 474 (2010)

increased litigation delay and expense do not justify interlocutory review of an admissibility decision; CLI-09-6, 69 NRC 128 (2009)

individual petitioners living within 50 miles of a nuclear power plant may establish standing based on a longstanding proximity presumption principle; LBP-06-23, 64 NRC 257 (2006)

information required to show standing includes the nature of petitioner's right under a relevant statute to be made a party, the nature and extent of petitioner's property, financial, or other interest in the proceeding, and the possible effect of any decision or order that might be issued on petitioner's interest; LBP-10-15, 72 NRC 257 (2010)

information upon which an amended or new contention is based must be materially different than information previously available; LBP-09-27, 70 NRC 992 (2009)

information upon which an amended or new contention is based must not have been previously available; LBP-09-27, 70 NRC 992 (2009)

information, alleged facts, and expert opinions provided by a petitioner will be examined by the board to confirm that the petitioner does indeed supply adequate support for its contention; LBP-10-6, 71 NRC 350 (2010)

information, facts, and expert opinions provided by petitioner will be examined by the board to confirm that the petitioner does indeed supply adequate support for the contention; LBP-09-26, 70 NRC 939 (2009)

injury-in-fact may be either actual or threatened to establish standing, but must arguably lie within the zone of interests protected by the statutes governing the proceeding; LBP-08-6, 67 NRC 241 (2008)

injury-in-fact to establish standing requires more than a general interest in preserving the environment; LBP-09-28, 70 NRC 1019 (2009)

integration, consolidation, restatement, or collection of previously available information into a new document does not convert it into information that was not previously available within the meaning of 10 C.F.R. 2.309(f)(2)(i); LBP-09-10, 70 NRC 51 (2009)

interest in the promotion of economic use of energy falls outside the zone of interests protected by either the Atomic Energy Act or the National Environmental Policy Act; CLI-07-18, 65 NRC 399 (2007)

interests of an organization's member seeking representation must be germane to the organization's purpose; CLI-08-19, 68 NRC 251 (2008); LBP-08-17, 68 NRC 431 (2008)

interests that a representative organization seeks to protect must be germane to its own purpose, and neither the asserted claim nor the required relief must require an individual member to participate in the organization's legal action; LBP-09-18, 70 NRC 385 (2009); LBP-09-20, 70 NRC 565 (2009)

interlocutory review is granted only in extraordinary circumstances; CLI-06-24, 64 NRC 111 (2006); CLI-10-30, 72 NRC 564 (2010)

interlocutory review is granted only when the disputed ruling threatens the aggrieved party with serious, immediate, and irreparable harm or where it will have a pervasive or unusual effect on the proceedings below; CLI-06-24, 64 NRC 111 (2006); CLI-10-16, 71 NRC 486 (2010)

SUBJECT INDEX

interlocutory review is granted where the issues are significant, have potentially broad impact, and may well recur in the likely license renewal proceedings for other plants; CLI-10-27, 72 NRC 481 (2010)

interlocutory review of the presiding officer's decision will be granted where the decision either threatens the party adversely affected by it with immediate and serious irreparable impact which, as a practical matter, could not be alleviated through a petition for review, or affects the basic structure of the proceeding in a pervasive or unusual manner; CLI-09-2, 69 NRC 55 (2009); CLI-09-9, 69 NRC 331 (2009); CLI-10-30, 72 NRC 564 (2010)

interlocutory rulings may be reviewed, if necessary, on appeals from partial initial decisions or other final appealable orders; CLI-09-6, 69 NRC 128 (2009)

intervenor cannot establish good cause for filing a late contention when the information on which the contention is based was publicly available for some time prior to the filing of the contention; CLI-10-27, 72 NRC 481 (2010)

intervenor is entitled to submit a new safety contention, with leave of the board, upon three showings; CLI-10-17, 72 NRC 1 (2010)

intervenor is not required to make its case at the contention admission stage of the proceeding, but rather to indicate what facts or expert opinions of which it is aware at that point in time that provide the basis for its contention; LBP-09-1, 69 NRC 11 (2009); LBP-10-9, 71 NRC 493 (2010)

intervenor must comply with procedural requirements for the filing of new or amended contentions, including the requirement that the contentions be submitted in a timely fashion based on the availability of the subsequent information; LBP-10-17, 72 NRC 501 (2010)

intervenor should not be held to a prima facie burden at the contention admissibility stage of a proceeding, but its showing should be sufficient to require reasonable minds to inquire further; LBP-10-10, 71 NRC 529 (2010)

intervenor's appeal 3 days out of time was accepted when applicants' motion to strike failed to even hint at prejudice; LBP-10-21, 72 NRC 616 (2010)

intervenor's concise statement of alleged facts that support the contention and reliance on various parts of the application itself satisfy the requirement that mandates references to specific portions of the application; LBP-09-1, 69 NRC 11 (2009)

intervenor's expert is not required to create a written analysis, but only disclose the written analysis or other documentary authority, if any, that exists and is reasonably available at the time of the disclosure; LBP-09-30, 70 NRC 1039 (2009)

intervenor has a regulatory burden to present facts or expert opinion to support their contentions; CLI-09-2, 69 NRC 55 (2009); LBP-09-3, 69 NRC 139 (2009)

intervenor may not freely change the focus of an admitted contention at will to add a host of new issues and objections that could have been raised at the outset; CLI-10-11, 71 NRC 287 (2010)

intervenor must move for leave to file a timely new or amended contention under 10 C.F.R. 2.309(c), (f)(2); LBP-10-14, 72 NRC 101 (2010)

intervenor must provide sufficient information to show that a genuine dispute exists in regard to a material issue of law or fact, including references to specific portions of the application that intervenor dispute, or, in the case when the application is alleged to be deficient, the identification of such deficiencies and supporting reasons for this belief; LBP-10-9, 71 NRC 493 (2010)

intervenor must timely file a new or amended contention that addresses the factors in section 2.714(b) in order to raise specific challenges regarding new information; LBP-10-10, 71 NRC 529 (2010)

intervenor with contentions rooted in new material information need not make the same showing as intervenor who have simply delayed filing their contentions until after expiration of the regulatory deadline; LBP-10-9, 71 NRC 493 (2010)

intervention is permitted in the high-level waste repository proceeding by the state and local governmental body in which the geologic repository operations area is located, and by any affected federally recognized Indian tribe; LBP-09-6, 69 NRC 367 (2009)

intervention petitioner must be able to show how it would have personally suffered or will suffer a distinct and palpable harm that constitutes injury in fact; LBP-09-18, 70 NRC 385 (2009)

intervention petitioner must establish a concrete and particularized injury that is fairly traceable to the challenged action, is likely to be redressed by a favorable decision, and is arguably within the zone of interests protected by the governing statute; CLI-09-20, 70 NRC 911 (2009); LBP-08-24, 68 NRC 691 (2008); LBP-09-28, 70 NRC 1019 (2009)

SUBJECT INDEX

- intervention petitioner must state the nature of its right to be made a party to the proceeding, the nature and extent of its property, financial, or other interest in the proceeding, and the possible effect of any decision or order that might be issued in the proceeding on its interest; LBP-09-26, 70 NRC 939 (2009)
- intervention petitioners are not required to demonstrate their asserted injury with certainty or to provide extensive technical studies in support of their standing argument; LBP-08-24, 68 NRC 691 (2008)
- intervention petitioner's claimed injury must be arguably within the zone of interests protected by the governing statute; LBP-08-24, 68 NRC 691 (2008)
- intervention petitioners have an automatic right to appeal a board decision wholly denying a petition to intervene; CLI-10-1, 71 NRC 1 (2010)
- intervention petitions are to be construed in favor of the petitioner; LBP-08-21, 68 NRC 554 (2008)
- intervention petitions must establish the nature of the petitioner's right under the governing statutes to be made a party, its interest in the proceeding, and the possible effect of any decision or order on the petitioner's interest; LBP-08-17, 68 NRC 431 (2008)
- intervention petitions must set forth with particularity petitioner's interest in the proceeding and how that interest may be affected by the results of the proceeding, and must also include at least one contention meeting the requirements of 10 C.F.R. 2.309(f)(1); CLI-09-15, 70 NRC 1 (2009); CLI-10-4, 71 NRC 56 (2010); LBP-09-17, 70 NRC 311 (2009); LBP-09-18, 70 NRC 385 (2009)
- issuance of a proposed rulemaking and requests for comments does not, in itself, constitute information not previously available that entitles a party to file a new contention; LBP-09-10, 70 NRC 51 (2009)
- "issues" in license transfer proceedings constitute "contentions" under 10 C.F.R. 2.309(f) and must therefore meet the standards for admissibility set forth in that regulation; CLI-07-18, 65 NRC 399 (2007)
- issues raised in contentions must be both within the scope of the proceeding and material to the findings the NRC must make to support the action that is involved in the proceeding; LBP-07-3, 65 NRC 237 (2007); LBP-10-9, 71 NRC 493 (2010)
- issues relating to threats to public health and safety and potential impacts on the environment arising out of water quality issues are within the scope of a license amendment proceeding; LBP-08-6, 67 NRC 241 (2008)
- it is a contention's proponent, not the licensing board, that is responsible for formulating the contention and providing the necessary information to satisfy the basis requirement for the admission of contentions; LBP-10-24, 72 NRC 720 (2010)
- it is a fundamental principle of statutory construction that the meaning of a word cannot be determined in isolation, but must be drawn from the context in which it is used; LBP-09-15, 70 NRC 198 (2009)
- it is an abuse of the adjudicatory process to use a motion for summary disposition as a subterfuge for the filing of interrogatories, requests for admission, or other discovery; LBP-06-5, 63 NRC 116 (2006)
- it is appropriate for a reply to respond to the legal, logical, and factual arguments presented in the answers, as long as new issues are not raised; LBP-07-4, 65 NRC 281 (2007)
- it is enough that petitioner has demonstrated a realistic threat of sustaining a direct injury as a result of contaminated groundwater flowing from the site to his property; LBP-10-16, 72 NRC 361 (2010)
- it is generally not sufficient to seek to establish standing in a proceeding by merely cross-referencing the showing made in another proceeding, rather than making a new presentation or at least providing a submission that updates the factual information that was provided previously; LBP-10-21, 72 NRC 616 (2010)
- it is inappropriate at the summary disposition stage for a board to attempt to untangle the expert affidavits and decide which experts are more correct; LBP-07-12, 66 NRC 113 (2007)
- it is inconsistent with dispute avoidance/resolution purposes, and thus insufficient, for the contacted attorney or representative to fail or refuse to consider the substance of the consultation attempt, or for the party to respond that it takes no position on the motion (or issues) and that it reserves the right to file a response to the motion when it is filed; LBP-09-22, 70 NRC 640 (2009)
- it is insufficient for petitioner to point to an Internet website or article and expect the board on its own to discern what particular issue a petitioner is raising and why; CLI-10-15, 71 NRC 479 (2010)
- it is not acceptable in NRC practice for petitioner to claim standing based on vague assertions, and when that fails, to attempt to repair the defective pleading with fresh details offered for the first time in its reply; LBP-09-2, 69 NRC 87 (2009)

SUBJECT INDEX

it is not necessary for petitioners to allege facts under section 2.309(f)(1)(v) or to provide an affidavit that sets out the factual and/or technical bases under section 51.109(a)(2) to support a purely legal contention; CLI-09-14, 69 NRC 580 (2009)

it is not proper for a board to untangle conflicting expert affidavits and decide which experts are more correct; LBP-06-5, 63 NRC 116 (2006)

it is not sufficient to rely on the standing of one petitioner because Commission practice requires each party to separately establish standing; CLI-07-18, 65 NRC 399 (2007)

it is not the duty of an adjudicative body to dig through the reams of paper that litigants have deposited to construct and develop their arguments; LBP-06-19, 64 NRC 53 (2006)

it is petitioner's responsibility to provide the necessary information to satisfy the basis requirement for the admission of its contentions and demonstrate that a genuine dispute exists within the scope of the proceeding; LBP-10-6, 71 NRC 350 (2010)

it is proper for a reply to respond to the legal, logical, and factual arguments presented in answers, as long as new issues are not raised; LBP-09-1, 69 NRC 11 (2009)

it is the admissibility of the contention, not the basis, that must be determined; LBP-08-17, 68 NRC 431 (2008)

it is the petitioner's obligation to present factual information and/or expert opinion necessary to support its contention; LBP-07-3, 65 NRC 237 (2007)

it is within Commission discretion to grant interlocutory review; CLI-10-29, 72 NRC 556 (2010)

it may be necessary to examine the language of the bases to determine a contention's scope; LBP-06-16, 63 NRC 737 (2006)

it might be sufficient to allow petitioner to rely on a prior standing demonstration if that prior demonstration is specifically identified and shown to correctly reflect the current status of petitioner's standing; LBP-10-21, 72 NRC 616 (2010)

judicial concepts of standing are applied in NRC proceedings; LBP-08-6, 67 NRC 241 (2008); LBP-08-13, 68 NRC 43 (2008); LBP-08-14, 68 NRC 279 (2008); LBP-08-15, 68 NRC 294 (2008); LBP-08-16, 68 NRC 361 (2008); LBP-09-13, 70 NRC 168 (2009); LBP-09-16, 70 NRC 227 (2009); LBP-09-18, 70 NRC 385 (2009); LBP-09-20, 70 NRC 565 (2009); LBP-09-26, 70 NRC 939 (2009); LBP-09-28, 70 NRC 1019 (2009); LBP-10-1, 71 NRC 165 (2010)

judicial concepts of standing require a petitioner to allege an actual or threatened, concrete and particularized injury that is fairly traceable to the challenged action, falls among the general interests protected by the Atomic Energy Act or other applicable statute, and is likely to be redressed by a favorable decision; LBP-08-13, 68 NRC 43 (2008); LBP-08-14, 68 NRC 279 (2008); LBP-08-16, 68 NRC 361 (2008); LBP-09-18, 70 NRC 385 (2009); LBP-10-4, 71 NRC 216 (2010)

legal issue contentions do not require any supporting facts; LBP-10-11, 71 NRC 609 (2010)

legal issues are reviewed de novo on appeal, but the Commission generally defers to board findings of fact, unless they are clearly erroneous; CLI-10-17, 72 NRC 1 (2010)

license applicants may appeal contention admissibility rulings within 10 days after a board grants a petition to intervene, but only if the license applicant argues that the petition should have been wholly denied; CLI-06-25, 64 NRC 128 (2006)

licensing board decisions denying a petition for waiver are interlocutory and not reviewable until the board has issued a final decision resolving the case, unless a party seeking review shows that one of the grounds for interlocutory review has been met; CLI-10-29, 72 NRC 556 (2010)

licensing boards and the Commission have considered the late-filing criteria even in cases where the factors were not fully addressed by petitioners and/or the NRC Staff or were not addressed at all; LBP-10-24, 72 NRC 720 (2010)

licensing boards are bound by Commission and appeal board precedent and therefore are not at liberty to reject the 50-mile proximity presumption; LBP-09-4, 69 NRC 170 (2009)

licensing boards are expected to examine cited materials to verify that they support a contention, but are not expected to search through pleadings or other materials to uncover arguments and support never advanced by the petitioners themselves; CLI-06-10, 63 NRC 451 (2006)

licensing boards are not authorized to admit conditionally, for any reason, contentions that fall short of meeting the specificity requirements set forth in NRC procedural rules; CLI-09-2, 69 NRC 55 (2009)

SUBJECT INDEX

licensing boards are not foreclosed from considering docketed licensing material that has been submitted to the board and that, on its face, appears to be relevant to the disposition of a pending motion; LBP-08-12, 68 NRC 5 (2008)

licensing boards are required to reject treaty-based claims of ownership by Native American tribes; LBP-08-24, 68 NRC 691 (2008)

licensing boards are to look to judicial concepts of standing in determining whether a petitioner has established the necessary interest to intervene; CLI-06-6, 63 NRC 161 (2006); LBP-06-4, 63 NRC 99 (2006); LBP-06-10, 63 NRC 314 (2006); LBP-06-23, 64 NRC 257 (2006); LBP-07-11, 66 NRC 41 (2007)

licensing boards are to refer novel issues of law to the Commission; LBP-10-15, 72 NRC 257 (2010)

licensing boards do not have jurisdiction over matters properly before other regulatory bodies; LBP-06-8, 63 NRC 241 (2006)

licensing boards have authority to set a proceeding's schedule and to ensure compliance with that schedule; LBP-10-21, 72 NRC 616 (2010)

licensing boards have been lenient in permitting pro se petitioners the opportunity to cure procedural defects in petitions to intervene regarding standing; LBP-09-18, 70 NRC 385 (2009)

licensing boards have substantial authority to regulate hearing procedures; LBP-10-21, 72 NRC 616 (2010)

licensing boards may appropriately view a petitioner's supporting information in a light favorable to the petitioner, but failure to provide such information regarding a proffered contention requires the contention be rejected; LBP-07-10, 66 NRC 1 (2007)

licensing boards may not admit contentions that directly or indirectly challenges Table S-3; LBP-09-18, 70 NRC 385 (2009)

licensing boards must assess intervention petitions to determine whether elements for standing are met even though there are no objections to petitioner's standing; LBP-10-21, 72 NRC 616 (2010)

licensing boards must consider the nature of petitioner's right under the Atomic Energy Act or the National Environmental Policy Act to be made a party to the proceeding, the nature and extent of the petitioner's property, financial, or other interest in the proceeding, and the possible effect of any decision or order that may be issued on the petitioner's interest; LBP-09-16, 70 NRC 227 (2009); LBP-09-17, 70 NRC 311 (2009); LBP-09-18, 70 NRC 385 (2009); LBP-09-20, 70 NRC 565 (2009); LBP-09-21, 70 NRC 581 (2009)

licensing boards should not accept in individual license proceedings contentions which are, or are about to become, the subject of general rulemaking by the Commission; LBP-06-7, 63 NRC 188 (2006); LBP-09-21, 70 NRC 581 (2009)

licensing boards, in determining whether proffered contentions are premature, must apply norms in a manner that fits the circumstances and must consider whether to condition rejection of such contentions so as to preserve the opportunity for them to be re-presented later; LBP-07-14, 66 NRC 169 (2007)

litigation efforts that a litigant considers unnecessary because they relate to a contention that the litigant considers to have been improperly admitted do not affect the basic structure of a proceeding at all, much less in a pervasive and unusual manner; CLI-09-6, 69 NRC 128 (2009)

local governmental bodies within whose boundaries a facility is located do not need to make any further demonstration of standing; CLI-07-18, 65 NRC 399 (2007)

mandatory disclosure is the only form of discovery allowed in Subpart L proceedings, and all other forms are expressly prohibited; LBP-10-23, 72 NRC 692 (2010)

mandatory disclosures are updated every month; LBP-10-23, 72 NRC 692 (2010)

mandatory disclosures required by 10 C.F.R. 2.336 consist of an exchange of prescribed information and documents between the litigants, and do not need to be submitted to the board; LBP-09-30, 70 NRC 1039 (2009)

material provided in support of a contention will be carefully examined by the board to confirm that on its face it does supply adequate support for the contention; LBP-08-16, 68 NRC 361 (2008); LBP-09-3, 69 NRC 139 (2009)

materiality in the context of paragraph (f)(2) differs from materiality in the context of paragraph (f)(1) of 10 C.F.R. 2.309; LBP-10-1, 71 NRC 165 (2010)

materiality requires a showing that the alleged error or omission is of possible significance to the result of the proceeding; LBP-09-26, 70 NRC 939 (2009); LBP-10-6, 71 NRC 350 (2010)

SUBJECT INDEX

members of intervenor organizations who reside, work, or recreate within 50 miles of the proposed nuclear power plant have proximity-based standing; LBP-10-9, 71 NRC 493 (2010)

mere conclusory allegations about potential harm to petitioner or others is insufficient to confer standing; LBP-08-24, 68 NRC 691 (2008)

mere mention of a document without providing its contents or an explanation of its significance cannot support admissibility of the contention; LBP-09-21, 70 NRC 581 (2009)

mere notice pleading is insufficient for contention admission; LBP-08-26, 68 NRC 905 (2008); LBP-10-6, 71 NRC 350 (2010)

mere reference to general materials on a website is insufficient to provide support for a contention; LBP-08-21, 68 NRC 554 (2008)

mere statements of government officials are insufficient to overturn 10 C.F.R. § 51.23; LBP-09-21, 70 NRC 581 (2009)

mootness occurs when a justiciable controversy no longer exists; LBP-10-10, 71 NRC 529 (2010)

more than mere notice pleading, which is a broad standard requiring only a short and plain statement of the claim, is required for contention admission; LBP-09-17, 70 NRC 311 (2009)

motions filed under 10 C.F.R. 2.323 are not a legitimate means to bring challenges to board decisions to the Commission; CLI-10-28, 72 NRC 553 (2010)

motions for reconsideration are appropriately considered under 10 C.F.R. 2.323(e); CLI-10-9, 71 NRC 245 (2010)

motions for reconsideration may not be filed except upon leave of the adjudicatory body that rendered the decision; CLI-10-9, 71 NRC 245 (2010)

motions for reconsideration must be filed within 10 days of the action for which reconsideration is requested; CLI-06-2, 63 NRC 9 (2006); CLI-10-9, 71 NRC 245 (2010)

motions for reconsideration will be denied if they point to no compelling circumstances warranting reconsideration; CLI-10-10, 71 NRC 281 (2010)

motions to reopen a closed proceeding must be timely; CLI-06-4, 63 NRC 32 (2006)

motions to reopen a proceeding to introduce an entirely new contention must successfully navigate at least nineteen different regulatory factors under 10 C.F.R. 2.326, 2.309(c), and 2.309(f)(1); LBP-10-19, 72 NRC 529 (2010)

motions to reopen must address a significant safety or environmental issue; CLI-08-23, 68 NRC 461 (2008)

motions to reopen must be accompanied by affidavits that set forth the factual and/or technical bases for the movant's claim that the criteria in 10 C.F.R. 2.326(a) have been satisfied; LBP-08-12, 68 NRC 5 (2008); LBP-10-19, 72 NRC 529 (2010)

motions to reopen must satisfy a multifactor test in 10 C.F.R. 2.326(a) and (d) that is governed by prescribed evidentiary requirements; LBP-08-12, 68 NRC 5 (2008)

motions will be rejected if they do not include certification by the attorney or representative of the moving party that they have made a sincere effort to contact the other parties in the proceeding, to explain to them the factual and legal issues raised in the motion, and to resolve those issues; LBP-09-22, 70 NRC 640 (2009)

movant must show that a balancing of eight factors of 10 C.F.R. 2.309(c)(1), to the extent they are relevant to the particular filing, weighs in favor of reopening; LBP-08-12, 68 NRC 5 (2008)

movant must show that it is more probable than not that it would have prevailed on the merits of the proposed new contention; LBP-10-19, 72 NRC 529 (2010)

multiple requests for reconsideration of the same decision are not allowed; CLI-10-9, 71 NRC 245 (2010)

Native American tribes are entitled to a reasonable opportunity to participate in NRC proceedings; LBP-08-6, 67 NRC 241 (2008)

neither legal ownership nor title is required in order for a party to have "possession, custody, or control" of a document; LBP-10-23, 72 NRC 692 (2010)

neither mere speculation nor bare or conclusory assertions, even by an expert, alleging that a matter should be considered will suffice to allow the admission of a proffered contention; LBP-07-3, 65 NRC 237 (2007); LBP-08-16, 68 NRC 361 (2008); LBP-09-3, 69 NRC 139 (2009); LBP-10-7, 71 NRC 391 (2010)

neither the asserted claim nor the requested relief must require an individual member to participate in the organization's legal action; CLI-07-18, 65 NRC 399 (2007); CLI-08-19, 68 NRC 251 (2008)

SUBJECT INDEX

neither the Rules of Practice nor Commission precedent mandates the consideration at the threshold of every basis assigned for every contention advanced by the hearing requestor; LBP-06-27, 64 NRC 438 (2006)

new bases for a contention cannot be introduced in a reply brief, or any other time after the date the original contentions are due, unless the petitioner meets the late-filing criteria; CLI-06-17, 63 NRC 727 (2006); CLI-09-12, 69 NRC 535 (2009)

new contentions based on assumptions that cannot be considered information that was not previously available or materially different than information previously available do not meet admissibility requirements; CLI-10-17, 72 NRC 1 (2010)

new contentions filed by an intervenor must comply with timeliness standards; LBP-10-2, 71 NRC 190 (2010)

new information may constitute good cause for late intervention if petitioners file promptly thereafter; LBP-10-11, 71 NRC 609 (2010)

new or amended contentions can be filed with leave of the board if the information upon which the amended or new contention is based was not previously available, the information is materially different from information previously available, and the contention has been submitted in a timely fashion based on the availability of the subsequent information; LBP-08-27, 68 NRC 951 (2008); LBP-10-14, 72 NRC 101 (2010)

newly filed contentions must meet the requirements of 10 C.F.R. 2.309(f)(2) as well as the six basic contention admissibility standards set forth in section 2.309(f)(1)(i)-(vi); CLI-09-7, 69 NRC 235 (2009); LBP-08-27, 68 NRC 951 (2008)

no appeals may be taken from any presiding officer order or decision, except as otherwise permitted by 10 C.F.R. 2.1015(a); CLI-10-10, 71 NRC 281 (2010)

no contention will be admitted for litigation in any NRC adjudicatory proceeding unless the pleading requirements are met; CLI-06-9, 63 NRC 433 (2006); CLI-06-10, 63 NRC 451 (2006)

no obvious potential for offsite consequences sufficient to establish organizational standing was shown even though the organization's office was a mere 3 miles from the facility; LBP-09-28, 70 NRC 1019 (2009)

no proximity presumption applies in source materials cases; LBP-09-13, 70 NRC 168 (2009); LBP-10-16, 72 NRC 361 (2010)

no specific number of days whereby a board can measure or determine whether a contention is timely is specified by NRC regulations; LBP-06-14, 63 NRC 568 (2006)

nontimely contentions may be accepted only upon a showing of good cause for failure to file in a timely manner and a weighing of a number of factors; LBP-08-27, 68 NRC 951 (2008)

nontimely hearing requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the licensing board that the petition and/or request should be granted and/or the contentions should be admitted based on a balancing of the factors specified in 10 C.F.R. 2.309(c)(1)(i)-(viii); CLI-10-4, 71 NRC 56 (2010); LBP-10-4, 71 NRC 216 (2010)

nontimely new contentions are subject to the more stringent eight-factor balancing test; LBP-07-15, 66 NRC 261 (2007)

nontimely petitions to intervene and contentions, amended petitions, and supplemental petitions will not be entertained absent a determination by the Commission, the licensing board, or a presiding officer that the petition should be granted and/or the contentions should be admitted based upon a balancing of eight factors; CLI-09-15, 70 NRC 1 (2009)

not all entities with governmental ties are entitled to participate in licensing proceedings as local governmental bodies; CLI-07-18, 65 NRC 399 (2007); LBP-09-13, 70 NRC 168 (2009)

not all of the contention admissibility requirements of 10 C.F.R. 2.309(f)(1) necessarily apply to legal-issue contentions; LBP-09-6, 69 NRC 367 (2009)

nothing in the NRC case law or regulations requires, at the contention admissibility stage, that a contention be supported by an expert opinion, substantive affidavits, or evidence; LBP-09-10, 70 NRC 51 (2009)

nothing precludes an individual from seeking to intervene both on his/her own behalf and as a representative of others; CLI-07-19, 65 NRC 423 (2007)

notice pleading is expressly prohibited; CLI-09-5, 69 NRC 115 (2009)

SUBJECT INDEX

NRC applies judicial standing concepts that require a petitioner to establish a distinct and palpable harm that constitutes injury-in-fact, the harm is fairly traceable to the challenged action, and the harm is likely to be redressed by a favorable decision; LBP-07-14, 66 NRC 169 (2007); LBP-10-11, 71 NRC 609 (2010)

NRC generally defers to the Department of Justice when it seeks a delay in NRC enforcement proceedings pending the conclusion of DOJ's own criminal investigations or proceedings; CLI-06-12, 63 NRC 495 (2006)

NRC guidelines and regulatory guides are not legally binding on the Staff, the board, or the Commission; LBP-09-10, 70 NRC 51 (2009)

NRC has broad discretion to provide hearings or permit intervention in cases where these avenues of public participation would not be available as a matter of right; CLI-06-16, 63 NRC 708 (2006)

NRC intervention rules are strict by design; LBP-09-1, 69 NRC 11 (2009)

NRC must provide a hearing upon the request of any person whose interest may be affected by the proceeding; LBP-06-23, 64 NRC 257 (2006); LBP-08-6, 67 NRC 241 (2008)

NRC regulations do not provide a right to appeal interlocutory orders; CLI-06-12, 63 NRC 495 (2006)

NRC regulations teach that a fact cannot be material to a summary disposition ruling unless its consideration could materially affect the decision of the NRC vis-a-vis implementation of any particular severe accident mitigation alternative; LBP-07-13, 66 NRC 131 (2007)

NRC rules call for a clear statement of the basis for the contentions and the submission of supporting information and references to specific documents and sources that establish the validity of the contention; CLI-06-9, 63 NRC 433 (2006)

NRC rules governing the high-level waste proceeding do not provide for interlocutory review; CLI-10-13, 71 NRC 387 (2010)

NRC Staff communications are factual in nature and are not protected by the deliberative process privilege when the communications summarize the procedural aspects of Staff projects or report on the status of Staff work; LBP-06-3, 63 NRC 85 (2006)

NRC Staff communications concerning the appropriate wording and scope of a potential license condition are deliberative and thus may qualify for the deliberative process privilege; LBP-06-3, 63 NRC 85 (2006)

NRC Staff communications concerning whether a potential license condition should be imposed are deliberative and thus may qualify for the deliberative process privilege; LBP-06-3, 63 NRC 85 (2006)

NRC Staff verification that a licensee complies with preapproved design or testing criteria is a highly technical inquiry not particularly suitable for hearing; CLI-06-1, 63 NRC 1 (2006)

NRC Staff's revision of the final safety evaluation report to account for applicant's confirmatory analysis would not, standing alone, be a materially different result that justifies reopening the record, because it would neither change the outcome of the renewal proceeding nor impose a different licensing condition on an applicant; LBP-08-12, 68 NRC 5 (2008)

NRC would not accept incorporation by reference of another petitioner's issues in an instance where petitioner has not submitted at least one admissible issue of its own; LBP-10-11, 71 NRC 609 (2010)

NRC's adjudicatory process is not a forum for litigating matters that are primarily the responsibility of other federal or state/local regulatory agencies; LBP-07-10, 66 NRC 1 (2007)

NRC's adjudicatory process is not the proper venue for the evaluation of a petitioner's own view regarding the direction that regulatory policy should take; LBP-09-26, 70 NRC 939 (2009)

NRC's expanding adjudicatory docket makes it critically important that parties comply with NRC pleading requirements and that the board enforce those requirements; CLI-10-27, 72 NRC 481 (2010)

NRC's production-of-documents regulation, 10 C.F.R. 2.707(a)(1) is essentially the same as Fed. R. Civ. P. 34(a)(1); LBP-10-23, 72 NRC 692 (2010)

NRC's proximity presumption does not disregard contemporaneous judicial concepts of standing, but rather the Commission applied its expertise to determine that persons living within a 50-mile radius of a nuclear reactor face a realistic threat of harm if a release of radioactive material were to occur from the facility; LBP-09-16, 70 NRC 227 (2009)

NRC's regulatory scheme for balancing privacy interests arising in a law enforcement context against the need for party discovery combines elements of both FOIA and the Federal Rules of Civil Procedure; LBP-06-25, 64 NRC 367 (2006)

objections not raised at hearing are deemed waived; CLI-10-14, 71 NRC 449 (2010)

SUBJECT INDEX

on appeal, the Commission usually defers to boards' fact-based decisions; CLI-06-12, 63 NRC 495 (2006)

on issues of whether a contention has been rendered moot by provision of information by an applicant, the applicant bears the burden of persuasion; LBP-10-10, 71 NRC 529 (2010)

once a party demonstrates that it has standing to intervene on its own accord, that party may then raise any contention that, if proved, will afford the party relief from the injury it relies upon for standing; LBP-09-16, 70 NRC 227 (2009); LBP-09-21, 70 NRC 581 (2009)

once a petition to intervene and request for hearing have been granted and contentions are admitted for hearing, appeals of board rulings on new or amended contentions are treated under section 2.341(f)(2), regardless of the subject matter of those contentions; CLI-10-16, 71 NRC 486 (2010)

once a petition to intervene has been granted, issues involving access to documents for use in the proceeding are governed by NRC discovery rules; CLI-10-24, 72 NRC 451 (2010)

once the deadline for filing an initial intervention petition has passed, a party wishing to submit new or amended contentions on matters not associated with issuance of the Staff's draft or final environmental impact statement must satisfy the requirements of 10 C.F.R. 2.309(f)(2); LBP-10-21, 72 NRC 616 (2010)

once the record of a proceeding is closed, new information may not be considered in the proceeding unless the reopening standards are met; LBP-10-21, 72 NRC 616 (2010)

one does not acquire standing as a consequence of being a member of a legislative tribunal; LBP-07-5, 65 NRC 341 (2007)

only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment; LBP-07-13, 66 NRC 131 (2007)

only in truly unavoidable and extreme circumstances are late filings to be accepted; LBP-10-21, 72 NRC 616 (2010)

only one admissible contention is required for each petitioner to intervene; LBP-10-11, 71 NRC 609 (2010)

opponent of summary disposition must counter any adequately supported material facts provided by the movant with its own separate, short, and concise statement of the material facts as to which it contends there exists a genuine issue to be heard; LBP-10-8, 71 NRC 433 (2010)

opponents of summary disposition cannot rest on the mere allegations or denials of a pleading, but must go beyond the pleadings and by the party's own affidavits, or by the depositions, answers to interrogatories, and admissions on file, designate specific facts showing that there is a genuine issue for trial; CLI-10-11, 71 NRC 287 (2010); LBP-08-7, 67 NRC 361 (2008)

opponents of summary disposition must counter any adequately supported material facts provided by the movant with their own separate, short, and concise statement of the material facts as to which it is contended there exists a genuine issue to be heard; LBP-08-2, 67 NRC 54 (2008); LBP-08-3, 67 NRC 85 (2008)

opponents of summary disposition must respond to each of the "material facts" listed by the movant, admitting or denying each of them, and must set forth specific facts, by affidavit or otherwise, showing that there are genuine issues of fact; LBP-06-5, 63 NRC 116 (2006)

opposing trial or litigation counsel may be deposed only if no other means exist to obtain the information, and the information sought is relevant and nonprivileged, and crucial to the preparation of the case; LBP-06-10, 63 NRC 314 (2006)

organizational standing requires the party to demonstrate a palpable injury in fact to its organizational interests that is within the zone of interests protected by the Atomic Energy Act or the National Environmental Policy Act; LBP-08-26, 68 NRC 905 (2008); LBP-09-21, 70 NRC 581 (2009)

organizations may demonstrate standing in either an organizational or a representational capacity; LBP-09-28, 70 NRC 1019 (2009)

organizations seeking to intervene in their own right must satisfy the same standing requirements as individuals seeking to intervene because an organization, like an individual, is considered a "person"; CLI-07-18, 65 NRC 399 (2007)

outside the context of petitions for interlocutory review, the Commission may take interlocutory review of questions or rulings that a licensing board either refers or certifies to the Commission; CLI-07-1, 65 NRC 1 (2007)

page limits on briefs are intended to encourage parties to make their strongest arguments as concisely as possible; CLI-06-10, 63 NRC 451 (2006)

SUBJECT INDEX

participant filing out of time must offer a satisfactory explanation for its lateness, including, if necessary, an account as to why a request for extension could not have been filed beforehand; LBP-10-21, 72 NRC 616 (2010)

parties and licensing boards must be on notice of the issues being litigated, so that parties and boards may prepare for summary disposition or for hearing; CLI-10-15, 71 NRC 479 (2010)

parties are expected to file motions for extensions of time so that they are received by NRC well before the time specified expires; CLI-10-26, 72 NRC 474 (2010)

parties in NRC adjudications are generally entitled to obtain, through discovery and other pretrial activities, the fullest possible knowledge of the issues and facts before trial; LBP-06-25, 64 NRC 367 (2006)

parties provide proposed written questions prior to, and during the course of, a Subpart L hearing; LBP-07-17, 66 NRC 327 (2007)

pendency of a petition for Commission review does not absolve petitioner of its duty to file a motion to reopen in a timely fashion; LBP-10-19, 72 NRC 529 (2010)

permission to intervene should prove more readily available where petitioners show significant ability to contribute on substantial issues of law or fact that will not otherwise be properly raised or presented; LBP-10-11, 71 NRC 609 (2010)

persons who reside or frequent the area within a 50-mile radius of the reactor are presumed to have standing to participate in a proceeding involving that reactor; LBP-09-17, 70 NRC 311 (2009)

petitioner bears the burden of demonstrating standing, but in ruling on standing a licensing board is to construe the petition in favor of the petitioner; LBP-08-6, 67 NRC 241 (2008)

petitioner cannot rely on another board's finding of standing in a prior proceeding, even where the same licensed facility is involved; CLI-10-7, 71 NRC 133 (2010)

petitioner cannot satisfy NRC's standing requirement by offering a vague claim of 50-mile proximity in an initial petition and later using a petition for reconsideration to fill in gaps with more specific information that was available all along; CLI-07-21, 65 NRC 519 (2007)

petitioner does not become entitled to an evidentiary hearing merely on request, or on a bald or conclusory allegation that a dispute exists, but must make a minimal showing that material facts are in dispute, thereby demonstrating that an inquiry in depth is appropriate; LBP-09-17, 70 NRC 311 (2009)

petitioner does not have standing to assert rights of employees or caretakers on her land where caretakers are not minors or otherwise legally incapable of representing their own interests; LBP-08-18, 68 NRC 533 (2008)

petitioner does not have to prove its contention at the admissibility stage; LBP-09-26, 70 NRC 939 (2009); LBP-10-6, 71 NRC 350 (2010)

petitioner does not need to provide expert opinion or a substantive affidavit in order to satisfy 10 C.F.R. 2.309(f)(1)(v); LBP-10-15, 72 NRC 257 (2010)

petitioner failed to establish materiality of its contention related to management of low-level radioactive waste by referring to 10 C.F.R. Part 61 because applicant was not seeking a license under Part 61, and it was speculative whether such a license would ever be necessary; LBP-08-15, 68 NRC 294 (2008)

petitioner has alleged sufficient new information concerning the seismic situation to raise a prima facie showing that strict application of the generic NEPA analysis of the management of spent fuel in nuclear reactors would not serve the purpose for which Part 51, Appendix B and 10 C.F.R. 51.53(c)(2) were adopted; LBP-10-15, 72 NRC 257 (2010)

petitioner has an affirmative duty to demonstrate that it has standing in each proceeding in which it seeks to participate because a petitioner's status can change over time and the bases for its standing in an earlier proceeding may no longer apply; LBP-09-18, 70 NRC 385 (2009)

petitioner has an iron-clad obligation to examine the publicly available documentary material with sufficient care to enable it to uncover any information that could serve as the foundation for a specific contention; CLI-10-27, 72 NRC 481 (2010)

petitioner has an obligation to explain why cited testimony provides a basis for its contention; LBP-10-17, 72 NRC 501 (2010)

petitioner has presented a prima facie showing for waiver of the NRC regulation covering the environmental impacts of spent fuel pool accidents generically, and has shown that its contention concerning earthquake-induced spent fuel pool accidents is otherwise admissible; LBP-10-15, 72 NRC 257 (2010)

SUBJECT INDEX

petitioner has standing to intervene without the need to specifically plead injury, causation, and redressability if the petitioner lives within, or otherwise has frequent contacts with, the zone of possible harm from the nuclear reactor or other source of radioactivity; LBP-08-9, 67 NRC 421 (2008)

petitioner is not required to prove its case at the contention stage and need not proffer facts in formal affidavit or evidentiary form sufficient to withstand a summary disposition motion; LBP-08-6, 67 NRC 241 (2008); LBP-09-17, 70 NRC 311 (2009)

petitioner is not required to provide an exhaustive discussion in its proffered contention, as long as it meets the Commission's admissibility requirements; LBP-06-4, 63 NRC 99 (2006)

petitioner is obligated to read the pertinent portions of the license application, state the applicant's position and the petitioner's opposing view, and explain why it disagrees with the applicant; LBP-09-25, 70 NRC 867 (2009)

petitioner is obliged to present factual information and/or expert opinion necessary to support its contention; LBP-10-4, 71 NRC 216 (2010); LBP-10-6, 71 NRC 350 (2010); LBP-10-7, 71 NRC 391 (2010)

petitioner is presumed to have standing to intervene without the need specifically to plead injury, causation, and redressability if the petitioner lives within 50 miles of the nuclear power reactor; LBP-08-13, 68 NRC 43 (2008); LBP-08-15, 68 NRC 294 (2008); LBP-08-26, 68 NRC 905 (2008)

petitioner is required merely to provide a simple nexus between the contention and the referenced factual or legal support; LBP-09-21, 70 NRC 581 (2009); LBP-09-25, 70 NRC 867 (2009)

petitioner may amend contentions or file new contentions on issues arising under NEPA if there are data or conclusions in NRC environmental documents that differ significantly from the data or conclusions in applicant's documents; LBP-10-1, 71 NRC 165 (2010)

petitioner may have standing based entirely upon its geographical proximity to a particular proposed facility; LBP-08-15, 68 NRC 294 (2008); LBP-08-26, 68 NRC 905 (2008); LBP-09-18, 70 NRC 385 (2009)

petitioner may in instances of exigent or unavoidable circumstances file a request for an extension of time to file an original hearing petition and contentions; LBP-09-17, 70 NRC 311 (2009)

petitioner may not be granted party status in the high-level waste proceeding if it cannot demonstrate substantial and timely compliance with the requirements in 10 C.F.R. 2.1003 concerning the availability of documentary material on the Licensing Support Network; LBP-09-6, 69 NRC 367 (2009)

petitioner may not claim standing based on vague assertions, and when that fails, attempt to repair the defective pleading with fresh details offered for the first time in a petition for reconsideration; CLI-08-19, 68 NRC 251 (2008)

petitioner may not demand a hearing to express generalized grievances about NRC policies or to attack the NRC's general competence; LBP-08-17, 68 NRC 431 (2008)

petitioner may not demand an adjudicatory hearing to attack generic NRC requirements or regulations or to express generalized grievances about NRC policies; LBP-07-11, 66 NRC 41 (2007)

petitioner may not establish standing by alleging injury on behalf of another entity, but rather, petitioner must be the object of the actual or threatened injury; LBP-10-4, 71 NRC 216 (2010)

petitioner may not simply incorporate massive documents by reference as the basis for a statement of his contentions; LBP-08-21, 68 NRC 554 (2008)

petitioner may not use its reply brief to cure pleading defects in its intervention petition; CLI-10-1, 71 NRC 1 (2010)

petitioner must allege a concrete and particularized injury that is fairly traceable to the challenged action and is likely to be redressed by a favorable decision; LBP-07-5, 65 NRC 341 (2007); LBP-09-13, 70 NRC 168 (2009); LBP-09-26, 70 NRC 939 (2009); LBP-10-15, 72 NRC 257 (2010)

petitioner must demonstrate that the issue raised in a contention is both within the scope of the proceeding and material to the findings the NRC must make to support the action that is involved in the proceeding; LBP-07-10, 66 NRC 1 (2007); LBP-07-11, 66 NRC 41 (2007); LBP-08-16, 68 NRC 361 (2008); LBP-08-21, 68 NRC 554 (2008); LBP-08-26, 68 NRC 905 (2008); LBP-09-16, 70 NRC 227 (2009); LBP-09-17, 70 NRC 311 (2009); LBP-09-21, 70 NRC 581 (2009); LBP-10-16, 72 NRC 361 (2010)

petitioner must establish standing and proffer at least one admissible contention that meets the requirements of 10 C.F.R. 2.309(f)(1); LBP-10-16, 72 NRC 361 (2010)

SUBJECT INDEX

- petitioner must include sufficient information in its contention to show that a genuine dispute exists with the applicant/licensee on a material issue of fact; LBP-09-10, 70 NRC 51 (2009); LBP-09-27, 70 NRC 992 (2009)
- petitioner must make a fresh demonstration of standing for each proceeding in which he seeks intervention because petitioner's circumstances may change from one proceeding to the next; CLI-10-7, 71 NRC 133 (2010); LBP-10-21, 72 NRC 616 (2010)
- petitioner must meet the prudential standing requirement by showing that the asserted interest arguably falls within the zone of interests protected by the governing law; LBP-08-15, 68 NRC 294 (2008)
- petitioner must present factual information and/or expert opinion necessary to support its contention; LBP-07-10, 66 NRC 1 (2007)
- petitioner must present sufficient information to show a genuine dispute and reasonably indicate that a further inquiry is appropriate; LBP-08-6, 67 NRC 241 (2008)
- petitioner must provide a brief explanation of the basis for the contention; LBP-09-21, 70 NRC 581 (2009)
- petitioner must provide a concise statement of the alleged facts or expert opinions that support its position on the issue and on which it intends to rely at hearing, together with references to the specific sources and documents on which it intends to rely to support its position on the issue; LBP-08-16, 68 NRC 361 (2008); LBP-09-16, 70 NRC 227 (2009); LBP-09-21, 70 NRC 581 (2009); LBP-09-27, 70 NRC 992 (2009); LBP-10-16, 72 NRC 361 (2010)
- petitioner must provide basic information supporting its claim to standing in order to satisfy the requirements of 10 C.F.R. 2.309(d)(1)(ii)-(iv); LBP-08-13, 68 NRC 43 (2008)
- petitioner must provide more than vague assertions that it will be able to assist in developing the record to satisfy a requirement for late filing; CLI-10-12, 71 NRC 319 (2010)
- petitioner must provide only a brief explanation of the rationale underlying its contention; LBP-10-13, 71 NRC 673 (2010)
- petitioner must read the pertinent portions of the license application, including the safety analysis report and the environmental report, state the applicant's position and the petitioner's opposing view, and explain why petitioner disagrees with the applicant; LBP-07-4, 65 NRC 281 (2007); LBP-08-6, 67 NRC 241 (2008); LBP-09-17, 70 NRC 311 (2009)
- petitioner must set forth his or her interest in the proceeding, as well as the possible effect that any order or decision entered therein might have upon that interest; LBP-07-5, 65 NRC 341 (2007)
- petitioner must set forth with particularity the contentions sought to be raised; CLI-06-21, 64 NRC 30 (2006)
- petitioner must show a pattern of regular, significant contacts within the vicinity of the site to satisfy standing requirements; LBP-10-4, 71 NRC 216 (2010)
- petitioner must show some risk of discrete institutional injury to itself, other than the general environmental and policy interests of the sort repeatedly found insufficient for organizational standing; CLI-08-19, 68 NRC 251 (2008)
- petitioner must show that the information on which its new contention is based was not reasonably available to the public previously and that it filed its intervention petition promptly after learning of such new information; LBP-10-11, 71 NRC 609 (2010)
- petitioner must show that the subject matter of a contention would impact the grant or denial of a pending license application; LBP-09-26, 70 NRC 939 (2009); LBP-10-6, 71 NRC 350 (2010)
- petitioner must state its name, address, and telephone number, nature of its right under the Atomic Energy Act to be made a party to the proceeding, nature and extent of its property, financial, or other interest in the proceeding, and possible effect of any decision or order issued in the proceeding on its interest; LBP-10-7, 71 NRC 391 (2010)
- petitioner must support its contentions with documents, expert opinion, or at least a fact-based argument; LBP-08-6, 67 NRC 241 (2008)
- petitioner requesting a hearing on a confirmatory order must show that the request is within the scope of the proceeding by demonstrating that the petitioner will be adversely affected by the existing terms of the enforcement order; LBP-08-14, 68 NRC 279 (2008)
- petitioner should submit a fully developed showing regarding standing in each proceeding in which it seeks to intervene, regardless of whether it has previously been found to have standing relative to the facility that is the locus of the proceedings; LBP-07-10, 66 NRC 1 (2007)

SUBJECT INDEX

petitioner who had frequently visited an area allegedly affected by the proposed action for recreational purposes showed injury in the standing context; LBP-10-1, 71 NRC 165 (2010)

petitioner who has not submitted an admissible contention is not allowed adopt the contentions of other petitioners; LBP-08-13, 68 NRC 43 (2008)

petitioner who might have had standing in an earlier proceeding will not automatically be granted standing in subsequent proceedings; LBP-09-18, 70 NRC 385 (2009)

petitioner, especially one represented by counsel, bears the burden of going forward and specifically addressing each of the six elements in 10 C.F.R. 2.309(f)(1); LBP-10-16, 72 NRC 361 (2010)

petitioner's claim that he routinely pierces the 50-mile radius around a reactor site is too vague to support standing; LBP-10-1, 71 NRC 165 (2010)

petitioner's claimed injury must be arguably within the zone of interests protected by the governing statute in the proceeding; LBP-10-16, 72 NRC 361 (2010)

petitioner's failure to carefully read the governing procedural regulations does not constitute good cause for its late filing; CLI-10-12, 71 NRC 319 (2010)

petitioner's issue will be ruled inadmissible if petitioner has offered no tangible information, no experts, no substantive affidavits, but instead only bare assertions and speculation; LBP-09-15, 70 NRC 198 (2009); LBP-09-16, 70 NRC 227 (2009); LBP-09-26, 70 NRC 939 (2009); LBP-10-15, 72 NRC 257 (2010)

petitioner's lack of access to SUNSI may hinder it in its ability to demonstrate why publicly available versions of the application would not be sufficient to provide the basis and specificity for a proffered contention, but this does not absolve a petitioner from at least endeavoring to address this criterion; LBP-09-5, 69 NRC 303 (2009)

petitioner's participation in a licensing proceeding hinges on a demonstration that the petitioner has standing; LBP-10-16, 72 NRC 361 (2010)

petitioner's proximity to the pertinent facility triggers a presumption that it has standing to intervene without the need to specifically plead injury, causation, and redressability if the petitioner lives within, or otherwise has frequent contacts with, the zone of possible harm; LBP-08-17, 68 NRC 431 (2008)

petitioner's reply must be narrowly focused on the legal or logical arguments presented in the applicant/licensee or NRC Staff answer; LBP-06-12, 63 NRC 403 (2006)

petitioner's residence within a 50-mile radius of the proposed facility has established standing in his own right, and, accordingly, representational standing has been established through him; LBP-09-18, 70 NRC 385 (2009)

petitioner's right to participate in a proceeding concerns whether the petitioner has sufficient stake in a matter, as contrasted with whether there is a real dispute; LBP-08-6, 67 NRC 241 (2008)

petitioner's showing establishing standing in one proceeding need not be repeated to establish standing in another proceeding regarding that same facility; LBP-07-10, 66 NRC 1 (2007)

petitioner's standing showing can be corrected or supplemented to cure deficiencies by means of its reply pleading; LBP-10-21, 72 NRC 616 (2010)

petitioner's status as an anti-nuclear advocate and a source of information for its community is insufficient, without more, to qualify it for organizational standing; CLI-08-19, 68 NRC 251 (2008)

petitioner's tardiness due to its belated realization that it could present its arguments before the NRC did not constitute good cause for its late filing; CLI-10-12, 71 NRC 319 (2010)

petitioner's vague statements that it would rely on its experts and documents from various sources are insufficient to satisfy a requirement for late filing; CLI-10-12, 71 NRC 319 (2010)

petitioners and others who believe the Waste Confidence Rule needs revision must use rulemaking proceedings to express their concerns; LBP-09-4, 69 NRC 170 (2009)

petitioners are not required to demonstrate their asserted injury with certainty at the contention admission stage, or to provide extensive technical studies in support of their standing argument; LBP-07-14, 66 NRC 169 (2007); LBP-10-16, 72 NRC 361 (2010)

petitioners are not required to show standing for each contention separately; LBP-09-1, 69 NRC 11 (2009)

petitioners bear the burden of providing sufficient relevant, specific information, whether by good-faith estimate or otherwise, to establish the basis for their standing claims; LBP-10-1, 71 NRC 165 (2010)

petitioners have an automatic right to appeal a board decision wholly denying a petition to intervene; CLI-10-9, 71 NRC 245 (2010); CLI-10-12, 71 NRC 319 (2010)

SUBJECT INDEX

petitioners have an ironclad obligation to search the public record for information supporting their contentions; LBP-08-6, 67 NRC 241 (2008)

petitioners may enforce procedural rights only if the procedures in question are designed to protect some threatened concrete interest of theirs that is the ultimate basis of their standing; LBP-10-11, 71 NRC 609 (2010)

petitioners may not seek to enhance the measures outlined in an enforcement order; LBP-08-14, 68 NRC 279 (2008)

petitioners may not seek to skirt contention rules by initially filing unsupported contentions, and later recasting or modifying their contentions on appeal with new arguments never raised before the board; CLI-08-17, 68 NRC 231 (2008)

petitioners may protect their interests by filing a request for Commission action under 10 C.F.R. 2.206 rather than a late-filed intervention petition; CLI-10-12, 71 NRC 319 (2010)

petitioners may protect their interests by participating as appropriate, as amici curiae; CLI-10-12, 71 NRC 319 (2010)

petitioners must demonstrate that their motion to reopen is timely; LBP-08-12, 68 NRC 5 (2008)

petitioners must offer specific contentions on material issues, supported by alleged facts or expert opinion; CLI-09-8, 69 NRC 317 (2009)

petitioners must provide a clear statement as to the basis for the contentions and submit supporting information and references to specific documents and sources that establish the validity of the contention; CLI-09-8, 69 NRC 317 (2009)

petitioners must raise NEPA contentions in response to the environmental report, rather than await the agency's draft environmental impact statement; LBP-09-4, 69 NRC 170 (2009)

petitioners must seek leave to request reconsideration of a decision and set forth compelling circumstances that petitioners could not reasonably have anticipated and that would render the decision invalid; CLI-10-21, 72 NRC 197 (2010)

petitioners must set forth their contentions with particularity; CLI-10-15, 71 NRC 479 (2010)

petitioners need not show a nexus between interest upon which standing is based and the substance of their proposed contentions; CLI-09-9, 69 NRC 331 (2009)

petitioners seeking admission of new or amended contentions under 10 C.F.R. 2.309(f)(2) must also satisfy the standard admissibility requirements in 10 C.F.R. 2.309(f)(1); LBP-06-11, 63 NRC 391 (2006)

petitioners seeking reconsideration of a Commission order must demonstrate that the Commission has committed clear error, must do so by raising new arguments, and must not previously have been able to make those arguments; CLI-07-22, 65 NRC 525 (2007)

petitioners seeking to introduce new contentions after the board has denied their initial petition to intervene need to address the reopening standards; LBP-10-21, 72 NRC 616 (2010)

petitioners who are not represented by counsel are held to less rigid pleading standards than would ordinarily be applied to litigants who are represented by counsel; LBP-10-4, 71 NRC 216 (2010)

petitioners who are not represented by counsel will be held to less rigid standards for pleading, although a totally deficient petition will not be admitted; LBP-08-15, 68 NRC 294 (2008)

petitioners who fail to provide specific information regarding proximity or frequency of contacts that may establish standing only complicate matters for themselves; LBP-10-1, 71 NRC 165 (2010)

petitioners who seek to introduce a new or amended contention based on allegedly new information must show that such information was not previously available and is materially different than information previously available and the amended or new contention has been submitted in a timely fashion based on the availability of the subsequent information; LBP-06-22, 64 NRC 229 (2006)

petitioners will not be denied the opportunity to participate in a proceeding because of an error that can easily be corrected and that has caused no prejudice to any other participant; LBP-09-4, 69 NRC 170 (2009)

petitions and contentions filed after the initial 60-day deadline are admissible only upon a balancing of eight factors of 10 C.F.R. 2.309(c); LBP-09-26, 70 NRC 939 (2009)

petitions for reconsideration are limited to 10 pages; CLI-07-22, 65 NRC 525 (2007)

petitions for review will be granted at the Commission's discretion, giving due weight to the existence of a substantial question with respect to the five considerations of 10 C.F.R. 2.341(b)(4)(i)-(v); CLI-10-14, 71 NRC 449 (2010)

SUBJECT INDEX

pleading requirements call for a recitation of facts or expert opinion supporting the issue raised, but are inapplicable to a contention of omission beyond identifying the regulatively required missing information; LBP-09-16, 70 NRC 227 (2009)

pleading requirements calling for a recitation of facts or expert opinion supporting the issue raised are inapplicable to a contention of omission beyond identifying the legally required missing information; LBP-10-16, 72 NRC 361 (2010)

pleadings submitted by a petitioner acting pro se are not always expected to meet the same standards as pleadings drafted by lawyers, but late filing of documents is not condoned; LBP-06-14, 63 NRC 568 (2006)

portions of a reply that respond to legal, logical, and factual arguments raised in the answers are appropriate; LBP-06-20, 64 NRC 131 (2006)

post-contention admission events, such as issuance of a Staff draft environmental impact statement, can render a previously admitted contention of omission subject to dismissal as moot; LBP-08-2, 67 NRC 54 (2008); LBP-08-3, 67 NRC 85 (2008)

post-hearing resolution of licensing issues must not be employed to obviate the basic findings prerequisite to a license, including a reasonable assurance that the facility can be operated without endangering the health and safety of the public; CLI-06-1, 63 NRC 1 (2006)

preservation of cultural traditions is a protected interest under federal law, and its endangerment or harm qualifies as an injury for the purposes of establishing standing; LBP-08-24, 68 NRC 691 (2008)

prima facie case is defined as establishment of a legally required rebuttable presumption or a party's production of enough evidence to allow the fact-trier to infer the fact at issue and rule in the party's favor; LBP-10-15, 72 NRC 257 (2010)

prior to 2004, in addition to meeting the substantive admissibility criteria found in 10 C.F.R. 2.714(b)(2), the issue statement was based on environmental impact statement or environmental assessment information that differed significantly from the data or conclusions in the applicant's environmental report; LBP-10-1, 71 NRC 165 (2010)

pro se petitioners are not held to the same standard of pleading as those represented by counsel; LBP-08-6, 67 NRC 241 (2008)

proof of independent ability to litigate a contention by an adopting party is not required; LBP-06-20, 64 NRC 131 (2006)

properly formulated contentions must focus on the license application in question, challenging either specific portions of or alleged omissions from the application so as to establish that a genuine dispute exists with the applicant on a material issue of law or fact; LBP-09-3, 69 NRC 139 (2009); LBP-10-7, 71 NRC 391 (2010)

proponent of a motion to reopen must do more than simply raise a safety issue, but must show that the safety issue it raises is significant; LBP-10-19, 72 NRC 529 (2010)

proponent of a summary disposition motion bears the burden of making the requisite showing by providing a separate, short, and concise statement of the material facts as to which movant contends that there is no genuine issue to be heard; LBP-10-8, 71 NRC 433 (2010)

proponents of motions to reopen the record bear a heavy burden; LBP-08-12, 68 NRC 5 (2008); CLI-09-2, 69 NRC 55 (2009)

proponents of summary disposition bear the burden of making the requisite showing by providing a separate, short, and concise statement of the material facts as to which the moving party contends that there is no genuine issue to be heard; LBP-08-2, 67 NRC 54 (2008); LBP-08-3, 67 NRC 85 (2008)

proponents of summary disposition bear the initial burden of informing the tribunal of the basis for its motion and identifying those portions of the record that demonstrate the absence of a genuine issue of material fact; LBP-08-7, 67 NRC 361 (2008)

proposed questions that are proffered to the board during a Subpart L hearing must be kept by the board in confidence until they are either propounded by the board, or until issuance of the initial decision on the issue being litigated; LBP-07-17, 66 NRC 327 (2007)

providing any material or document as a basis for a contention, without setting forth an explanation of its significance, is inadequate to support the admission of the contention; LBP-07-3, 65 NRC 237 (2007); LBP-09-26, 70 NRC 939 (2009); LBP-10-6, 71 NRC 350 (2010)

proximity alone does not suffice for standing in materials licensing cases; CLI-09-12, 69 NRC 535 (2009); LBP-08-24, 68 NRC 691 (2008)

SUBJECT INDEX

proximity standing in a license transfer proceeding has been recognized at close distances where a petitioner frequently engages in substantial business and related activities in the vicinity of the facility, engages in normal, everyday activities in the vicinity, has regular and frequent contacts in an area near a licensed facility, or otherwise has visits of a length and nature showing an ongoing connection and presence; CLI-07-21, 65 NRC 519 (2007)

proximity standing rests on the presumption that an accident associated with the nuclear facility could adversely affect the health and safety of people working, living, or regularly engaging in activities offsite but within a certain distance of that facility; CLI-08-19, 68 NRC 251 (2008)

proximity-based presumption of standing applies in proceedings for nuclear power plant construction permits, operating licenses, or significant amendments thereto; LBP-10-16, 72 NRC 361 (2010)

proximity-based standing has been denied when petitioner has demonstrated only occasional contact with the zone of possible harm; LBP-10-1, 71 NRC 165 (2010)

proximity-based standing has been denied where contact has been limited to mere occasional trips to areas located close to reactors; CLI-07-21, 65 NRC 519 (2007)

proximity-based standing in license transfer proceedings had been denied to petitioners within 5-10 miles, 12 miles, and 40 miles from licensed facilities; CLI-07-21, 65 NRC 519 (2007)

proximity-based standing will be denied when petitioner fails to supply more specific information regarding the frequency, nature, and length of his contacts within the proximity zone; LBP-10-1, 71 NRC 165 (2010)

purely factual material is not generally protected by the deliberative process privilege, except factual materials too intertwined with deliberative discussions and summaries of factual materials compiled to assist in agency decisionmaking; LBP-06-25, 64 NRC 367 (2006)

pursuant to the proximity-plus approach, a presumption based on geographical proximity (albeit at distances much closer than 50 miles) may be applied where there is a determination that the proposed action involves a significant source of radioactivity producing an obvious potential for offsite consequences; LBP-10-4, 71 NRC 216 (2010)

qualified privilege materials may be excluded from discovery, depending on the particular circumstances presented; LBP-06-25, 64 NRC 367 (2006)

reasonably specific factual and legal allegations are required at the outset to ensure that matters admitted for hearing have at least some minimal foundation, are material to the proceeding, and provide notice to opposing parties of the issues they will need to defend against; CLI-10-11, 71 NRC 287 (2010)

redressability requires petitioner to show that its alleged injury-in-fact could be cured or alleviated by some action of the tribunal; LBP-09-13, 70 NRC 168 (2009)

regular but intermittent residence 1 week a month in a house 35 miles from a facility is sufficient to establish standing; LBP-07-10, 66 NRC 1 (2007)

regulations governing appeals from the denial of intervention provide for a notice of appeal with a supporting brief, and for a brief opposing the appeal, but do not provide for reply briefs; CLI-06-9, 63 NRC 433 (2006)

rejection or admission of a contention where petitioner has been admitted as a party and has other contentions pending neither constitutes serious and irreparable impact nor affects the basic structure of the proceeding in a pervasive and unusual manner; CLI-10-16, 71 NRC 486 (2010)

reopening a closed record requires, among other things, a showing that the motion is timely; CLI-08-23, 68 NRC 461 (2008)

replies may provide only legitimate amplifications of the original contentions or a logical/legal response to the answers of the Staff and applicant; LBP-09-17, 70 NRC 311 (2009)

replies should be narrowly focused on the legal or logical arguments presented in the answers on a request for hearing/petition to intervene; CLI-10-1, 71 NRC 1 (2010)

reply briefs that raise new issues must address the late-filing and new-contention factors in 10 C.F.R. 2.309(c) or (f)(2); LBP-09-17, 70 NRC 311 (2009)

representational standing requires the organization to demonstrate that the licensing action will affect at least one of its members, identify the member by name and address, demonstrate that the member has standing, and show that the organization is authorized to request a hearing on that member's behalf; LBP-08-15, 68 NRC 294 (2008); LBP-08-26, 68 NRC 905 (2008)

SUBJECT INDEX

representational standing will not be granted where petitioner has provided no supporting affidavits or other evidence that any member has authorized it to represent their interests in the proceeding; LBP-09-28, 70 NRC 1019 (2009)

request for waiver is required for contentions that challenge Commission's regulations; LBP-08-21, 68 NRC 554 (2008)

request for waiver of application of 10 C.F.R. 51.53(b), 51.95(b), and 51.106(c) precluding consideration of need for power and alternative energy sources from a Part 50 operating license proceeding fails to provide the prima facie showing required; LBP-10-12, 71 NRC 656 (2010)

requests for hearing or petitions for leave to intervene must set forth with particularity the contentions sought to be raised, addressing six pleading requirements; CLI-10-1, 71 NRC 1 (2010)

requests for rule waiver or exception must be accompanied by an affidavit that identifies with particularity the special circumstances alleged to justify the waiver or exception requested; LBP-09-6, 69 NRC 367 (2009)

requirement to show distinct new harm from a license amendment application would not preclude standing to contest commencement of new operations at a separate site, where petitioner showed potential for harm to himself from new operation; CLI-09-12, 69 NRC 535 (2009)

requirements for filing both new and nontimely contentions are stringent; LBP-09-27, 70 NRC 992 (2009)

requirements for representational standing apply to labor unions; CLI-08-19, 68 NRC 251 (2008)

requiring a petitioner to allege facts under section 2.309(f)(1)(v) or to provide an affidavit that sets out the factual and/or technical bases under section 51.109(a)(2) in support of a legal contention as opposed to a factual contention is not necessary; LBP-10-17, 72 NRC 501 (2010)

resolution of a summary disposition motion in a license renewal proceeding is governed by the standards for summary disposition set forth in Subpart G; LBP-07-12, 66 NRC 113 (2007)

resolution of factual disputes is not the appropriate subject of inquiry at the contention admissibility stage of the proceeding; LBP-06-4, 63 NRC 99 (2006)

review at the end of the case would be meaningless because the Commission cannot later, on appeal from a final board decision, rectify an erroneous disclosure order; CLI-10-29, 72 NRC 556 (2010)

rules on contention admissibility are strict by design; CLI-08-17, 68 NRC 231 (2008); LBP-08-14, 68 NRC 279 (2008); LBP-10-15, 72 NRC 257 (2010); LBP-10-16, 72 NRC 361 (2010)

rulings may be referred to the Commission if they raise significant and novel legal or policy issues, the resolution of which would materially advance the orderly disposition of the proceeding; LBP-09-16, 70 NRC 227 (2009)

sanctions have been imposed against a party seeking to file a written request for hearing only when that party has not followed established Commission procedures; LBP-08-19, 68 NRC 545 (2008); LBP-08-20, 68 NRC 549 (2008)

scope of the proceeding is defined by the Commission in its initial hearing notice and order referring the proceeding to the licensing board; LBP-10-17, 72 NRC 501 (2010)

section 2.107(a) does not authorize withdrawal of an application but rather clarifies that licensing boards have authority to impose reasonable conditions upon voluntary withdrawals in appropriate circumstances; LBP-10-11, 71 NRC 609 (2010)

section 2.1003's reference to "all documentary material (including circulated drafts but excluding preliminary drafts) generated by, or at the direction of, or acquired by" clearly conveys that possession or control of the documentary material is a prerequisite to the duty to produce it; CLI-08-12, 67 NRC 386 (2008)

selection of hearing procedures for contentions at the outset of a proceeding is not immutable, because the availability of Subpart G procedures depends critically on the credibility of eyewitnesses, and the identity of such witnesses may not be known until after the contentions are admitted; LBP-09-10, 70 NRC 51 (2009)

settlements that are presumably based on an analysis of litigation risk and optimum use of the NRC Staff's scarce resources are commonplace in litigation and have, in the past, received Commission approval; CLI-06-18, 64 NRC 1 (2006)

settling some but not all contentions is a routine feature of NRC litigation, but it does not affect the proceeding in a pervasive or unusual manner; CLI-06-18, 64 NRC 1 (2006)

showing necessary for grant of a petition for interlocutory review is described; CLI-10-29, 72 NRC 556 (2010)

SUBJECT INDEX

showing that estimated dose consequences associated with operation under extended power uprate conditions can be expected to increase by the 20% power level change establishes that the proposed EPU creates an obvious potential for offsite consequences; LBP-07-10, 66 NRC 1 (2007)

simply attaching material or documents as a basis for a contention, without setting forth an explanation of that information's significance, is inadequate to support the admission of the contention; LBP-07-10, 66 NRC 1 (2007); LBP-08-16, 68 NRC 361 (2008); LBP-08-17, 68 NRC 431 (2008); LBP-09-3, 69 NRC 139 (2009); LBP-09-18, 70 NRC 385 (2009); LBP-10-7, 71 NRC 391 (2010)

six basic requirements for an admissible contention can be summarized as specificity, brief explanation, within scope, materiality, concise statement of alleged facts or expert opinion, and genuine dispute; LBP-10-15, 72 NRC 257 (2010)

six requirements must be satisfied for a contention to be admissible; LBP-09-8, 69 NRC 736 (2009)

some circumstances exist in which petitioners may be presumed to have standing based on their geographic proximity to a facility or source of radioactivity, without the need to show injury in fact, causation, or redressability; LBP-08-6, 67 NRC 241 (2008)

somewhat greater latitude generally is afforded pro se petitioners in drafting their intervention petitions; LBP-07-10, 66 NRC 1 (2007)

specificity and support are required for the positions parties take in their filings; LBP-07-13, 66 NRC 131 (2007)

Staff counsel had a duty to inform the board of a telephone call from a former expert witness of petitioners because she knew that this information was conceivably relevant to a ruling on a contention; LBP-06-10, 63 NRC 314 (2006)

Staff's agreement with a summary disposition movant's factual or technical positions, either informally or in a formal document such as a safety evaluation report, does not "resolve" the dispute or mean that there is no genuine issue of material fact in dispute; LBP-06-5, 63 NRC 116 (2006)

Staff's propositions at the contention admission stage regarding what would effectively cure an omission from a license renewal application are matters for a merits decision, not for a determination of whether or not a contention of omission is admissible; LBP-10-15, 72 NRC 257 (2010)

standards for the admissibility of contentions originally came into being in 1989, when the Commission amended its rules to raise the threshold for the admission of contentions; LBP-09-17, 70 NRC 311 (2009)

standing cannot be based on unfounded conjecture; LBP-09-28, 70 NRC 1019 (2009)

standing generally has been denied when the threat of injury is not concrete and particularized; LBP-10-16, 72 NRC 361 (2010)

standing requires that petitioner allege a particularized injury that is fairly traceable to the challenged action and is likely to be redressed by a favorable decision; LBP-10-16, 72 NRC 361 (2010)

standing will be denied where contact has been limited to mere occasional trips to areas located close to reactors; LBP-10-1, 71 NRC 165 (2010)

state agencies may participate as nonparty interested states; LBP-08-15, 68 NRC 294 (2008)

stating that an allegation that some aspect of a license application is inadequate or unacceptable does not give rise to a genuine dispute unless it is supported by facts and a reasoned statement of why the application is unacceptable in some material respect; LBP-09-18, 70 NRC 385 (2009)

strict contention pleading requirements help to ensure that full adjudicatory hearings are triggered only by those able to proffer at least some minimal factual and legal foundation in support of their contentions; LBP-07-11, 66 NRC 41 (2007)

strict contention standards ensure that those admitted to NRC hearings bring actual knowledge of safety and environmental issues that bear on the licensing decision, and therefore can litigate issues meaningfully; CLI-08-17, 68 NRC 231 (2008)

strict pleading requirements under 10 C.F.R. 2.309(f)(1) must be satisfied for a contention to be admissible; LBP-08-21, 68 NRC 554 (2008)

subject matter of a contention must impact the grant or denial of the pending license application; LBP-10-17, 72 NRC 501 (2010)

subject to limited exceptions, legal determinations made on appeal in a case are controlling precedent, becoming the law of the case, for all later decisions in the same case; LBP-06-19, 64 NRC 53 (2006)

submission of a new contention within 30 days of the event giving rise to that contention is timely; LBP-10-17, 72 NRC 501 (2010)

SUBJECT INDEX

Subpart G hearing procedures apply only to certain enumerated types of proceedings, not including materials license proceedings; LBP-09-1, 69 NRC 11 (2009)

Subpart J rules do not provide for the filing of reply briefs in the context of appeals from interlocutory decisions or initial or partial decisions; CLI-08-12, 67 NRC 386 (2008)

Subpart K procedures apply where invoked by a party; CLI-08-1, 67 NRC 1 (2008)

substantial deference is given to boards' determinations on threshold issues, such as standing and contention admissibility; CLI-09-20, 70 NRC 911 (2009)

substantive admissibility standards for contentions and the case law interpreting the requirements are discussed; LBP-06-23, 64 NRC 257 (2006)

sufficiency of an application is not a matter committed solely to the NRC Staff's discretion and thus is within the scope of an adjudicatory proceeding; LBP-10-17, 72 NRC 501 (2010)

sufficient information for assessing the claim of privilege or protected status of documents withheld from discovery must be provided to the requesting party; LBP-06-25, 64 NRC 367 (2006)

summary disposition is not a tool for trying to convince a licensing board to decide, on written submissions, genuine issues of material fact that warrant resolution at a hearing; LBP-07-12, 66 NRC 113 (2007); LBP-10-20, 72 NRC 571 (2010)

summary disposition is not the vehicle for untangling expert disputes so long as the experts are competent and the information they provide is adequately stated and explained; LBP-08-2, 67 NRC 54 (2008)

summary disposition may be entered with respect to all or any part of the matters involved in the proceeding if the motion, along with any appropriate supporting materials, shows that there is no genuine issue as to any material fact and that the moving party is entitled to a decision as a matter of law; CLI-10-11, 71 NRC 287 (2010); LBP-06-9, 63 NRC 289 (2006); LBP-08-2, 67 NRC 54 (2008); LBP-08-3, 67 NRC 85 (2008); LBP-08-7, 67 NRC 361 (2008)

summary disposition may be granted only if the truth is clear; LBP-10-20, 72 NRC 571 (2010); LBP-10-8, 71 NRC 433 (2010)

summary disposition motions are generally evaluated according to the same standards used by Federal District Courts in ruling on motions for summary judgment; LBP-07-12, 66 NRC 113 (2007)

summary disposition motions in informal, Subpart L, proceedings are to be resolved in accord with the standards for dispositive motions for formal hearings, as set forth in Part 2, Subpart G; LBP-08-2, 67 NRC 54 (2008); LBP-08-3, 67 NRC 85 (2008)

summary disposition movant must show that the matter entails no genuine issue as to any material fact and that movant is entitled to a decision as a matter of law; LBP-10-20, 72 NRC 571 (2010)

summary disposition opponent must set forth specific facts showing that there is a genuine issue, and may not rely on mere allegations or denials; LBP-07-12, 66 NRC 113 (2007)

summary disposition rules 2.1205 and 2.710 are substantially similar; LBP-10-20, 72 NRC 571 (2010)

summary disposition standards set forth in Subpart G are applied in Subpart L proceedings; LBP-06-5, 63 NRC 116 (2006)

SUNSI requests need not be accompanied by affidavits or include lengthy, detailed justifications addressing the likelihood of standing; LBP-09-5, 69 NRC 303 (2009)

SUNSI requests need to include the name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the proposed licensing action sufficient to demonstrate a reasonable basis to conclude he or she could likely establish standing; LBP-09-5, 69 NRC 303 (2009)

support for a contention generally is fulfilled when the sponsor of an otherwise acceptable contention provides a brief recitation of the factors underlying the contention or references to documents and texts that provide such reasons; LBP-09-6, 69 NRC 367 (2009)

support for a contention, as reflected in its stated bases and any accompanying affidavits or documentary information, should be set forth with reasonable specificity; LBP-08-2, 67 NRC 54 (2008)

technical perfection is not an essential element of contention pleading, but the rules have nonetheless been held to bar contentions where petitioners have only what amounts to generalized suspicions, hoping to substantiate them later; LBP-08-6, 67 NRC 241 (2008); LBP-09-17, 70 NRC 311 (2009)

that interlocutory review will only be granted under extraordinary circumstances reflects the Commission's disfavor of piecemeal appeals during ongoing licensing board proceedings; CLI-10-16, 71 NRC 486 (2010)

SUBJECT INDEX

- the “sound record” factor is foremost in importance in the balancing of six factors, but other factors, especially inappropriate broadening or delay of the proceeding, could overcome it; CLI-06-16, 63 NRC 708 (2006)
- the adequacy of the applicant’s license application, not the NRC Staff’s safety evaluation, is the safety issue in any licensing proceeding, and contentions on the adequacy of the content of the Safety Evaluation Report are not cognizable; LBP-06-27, 64 NRC 438 (2006)
- the affidavit accompanying a petition for rule waiver need not be prepared by an expert; LBP-10-15, 72 NRC 257 (2010)
- the affidavit asserting the deliberative process privilege should provide the basis for the withholding and a statement of specific harm, applicable to the circumstances of the case, that would result from disclosure; LBP-06-25, 64 NRC 367 (2006)
- the affidavit supporting a motion to reopen a license renewal proceeding must provide sufficient information to support a prima facie showing that a deficiency exists in the application and the deficiency presents a significant safety issue; LBP-08-12, 68 NRC 5 (2008)
- the amended late-filed contentions rule, 10 C.F.R. 2.309(f)(2), is not intended to alter the standards in section 2.714(a) of its rules of practice as interpreted by NRC case law; LBP-10-17, 72 NRC 501 (2010)
- the appropriate distance for proximity standing is decided on a case-by-case basis taking into account the nature of the proposed action and the significance of the radioactive source; LBP-07-14, 66 NRC 169 (2007)
- the argument that information provided in support of an intervenor’s response to a summary disposition motion should not be considered because the information is outside the scope of the intervenor’s admitted contention, if true, can be a meritorious assertion; LBP-08-2, 67 NRC 54 (2008); LBP-08-3, 67 NRC 85 (2008)
- the bar against corrective redrafting of contentions is particularly compelling in the context of a request for discretionary intervention because rewriting undermines the very basis for granting discretionary intervention, i.e., the petitioner’s demonstrated ability to contribute to the record; CLI-06-16, 63 NRC 708 (2006)
- the benefit of the doubt should be given to the potential intervenor in order to prevent the dismissal of a petition due to inarticulate draftsmanship or procedural or pleading defects; LBP-09-18, 70 NRC 385 (2009)
- the benefits of the proximity presumption are not limited to those who reside within the area in which the presumption applies, but can be extended to those who conduct everyday activities or visit within that area; LBP-07-10, 66 NRC 1 (2007)
- the better practice for an intervention petitioner is to submit a fully developed showing regarding standing in each proceeding in which it seeks to intervene, regardless of whether it has previously been found to have standing relative to the facility that is the locus of the proceedings; LBP-09-18, 70 NRC 385 (2009)
- the board declines to impose a requirement that petitioners perform an independent technical analysis at the standing phase of a proceeding, especially when the chain of plausible causation that could lead to offsite doses is abundantly clear; LBP-07-14, 66 NRC 169 (2007)
- the board determines the hearing procedure on a contention-by-contention basis, selecting the most appropriate for each contention; LBP-07-15, 66 NRC 261 (2007)
- the board grants intervenors’ motion to compel disclosure of certain groundwater modeling information associated with a combined license application; LBP-10-23, 72 NRC 692 (2010)
- the board may refer certain rulings to the Commission, and certain participants in the proceeding may request that the presiding officer certify to the Commission rulings not otherwise immediately appealable pursuant to section 2.1015(b); CLI-10-10, 71 NRC 281 (2010)
- the brief explanation of the basis that is required by section 2.309(f)(1)(ii) helps define the scope of a contention, but it is the contention, not bases, whose admissibility must be determined; LBP-08-6, 67 NRC 241 (2008)
- the brief explanation of the logical underpinnings of a contention does not require a petitioner to provide an exhaustive list of possible bases, but simply to provide sufficient alleged factual or legal bases to support the contention; LBP-08-26, 68 NRC 905 (2008)

SUBJECT INDEX

- the burden is on opponents of a settlement to come forward and show that the public interest requires the rejection of the settlement and the adjudication of the issues; LBP-06-18, 63 NRC 830 (2006)
- the burden of a settlement with an intervenor regarding NEPA issues falls on the NRC Staff; CLI-06-18, 64 NRC 1 (2006)
- the chilling effect upon frank government discussions can be just as great when the release is limited only to those involved in particular litigation as when the documents are released publicly; LBP-06-25, 64 NRC 367 (2006)
- the Commission and licensing boards have imposed sanctions against a party seeking to file a written request for hearing only when that party has not followed established Commission procedures despite prior agency warnings; LBP-08-18, 68 NRC 533 (2008)
- the Commission customarily disregards briefs that contain personal attacks on the board; CLI-06-6, 63 NRC 161 (2006)
- the Commission customarily does not entertain discretionary interlocutory appeals, due in large part to a general unwillingness to engage in piecemeal interference in ongoing licensing board proceedings; CLI-07-1, 65 NRC 1 (2007)
- the Commission defers to a board's rulings on threshold issues such as standing and contention admissibility unless the appeal points to an error of law or abuse of discretion; CLI-06-24, 64 NRC 111 (2006); CLI-09-20, 70 NRC 911 (2009); CLI-09-8, 69 NRC 317 (2009); CLI-09-12, 69 NRC 535 (2009); CLI-09-22, 70 NRC 932 (2009)
- the Commission does not endorse deferring the consideration of proposed contentions because prompt consideration of contentions promotes the efficient and complete development of the record while conserving resources; CLI-07-20, 65 NRC 499 (2007)
- the Commission does not entertain on appeal arguments not raised before a licensing board; CLI-09-12, 69 NRC 535 (2009)
- the Commission elaborates on the standards for accepting an appeal filed out of time; LBP-10-21, 72 NRC 616 (2010)
- the Commission generally applies the same standard for summary disposition that federal courts apply when ruling on motions for summary judgment under Rule 56 of the Federal Rules of Civil Procedure; LBP-10-20, 72 NRC 571 (2010)
- the Commission grants discretionary interlocutory review only in extraordinary circumstances; CLI-09-6, 69 NRC 128 (2009)
- the Commission has a longstanding policy of supporting settlements; CLI-06-18, 64 NRC 1 (2006)
- the Commission has authority to review board rulings sua sponte, in the exercise of its inherent supervisory authority over NRC adjudications, regardless of whether the Commission accepts the referral; CLI-09-3, 69 NRC 68 (2009)
- the Commission has discretion to allow oral argument upon the request of a party made in a petition for review, brief on review, or upon its own initiative; CLI-10-9, 71 NRC 245 (2010)
- the Commission has discretion to grant a petition for review, giving due weight to the existence of a substantial question with respect to any of the grounds listed in the Commission's regulations as potential justification; LBP-06-11, 63 NRC 483 (2006)
- the Commission has discretion to grant interlocutory review at the request of a party in limited circumstances, but its longstanding general policy disfavors interlocutory review; CLI-06-24, 64 NRC 111 (2006)
- the Commission has discretion to review all underlying factual issues de novo, but it is disinclined to do so where a board has weighed arguments presented by experts and rendered reasonable, record-based factual findings; CLI-06-15, 63 NRC 687 (2006)
- the Commission has set forth a four-part test for grant of a rule waiver, and all four factors must be met; LBP-10-22, 72 NRC 661 (2010)
- the Commission has the authority to enter case-specific procedural orders to facilitate the efficient resolution of issues before a licensing board; LBP-07-3, 65 NRC 237 (2007)
- the Commission is entitled to review the record itself and amplify the board's findings; CLI-09-14, 69 NRC 580 (2009)
- the Commission is generally inclined to accommodate an abeyance request from DOJ as long as it provides at least some showing of potential detrimental effect on its parallel criminal case; CLI-07-6, 65 NRC 112 (2007)

SUBJECT INDEX

the Commission itself may exercise its discretion to review a licensing board's interlocutory order if the Commission wants to address a novel or important issue; CLI-09-6, 69 NRC 128 (2009)

the Commission may consider a request for discretionary intervention when at least one requestor/petitioner has established standing and at least one admissible contention has been admitted so that a hearing will be held; CLI-08-19, 68 NRC 251 (2008)

the Commission may consider the criteria listed in 10 C.F.R. 2.786(b)(4) when reviewing interlocutory matters on the merits, but when determining whether to undertake such review, the standards in section 2.786(g) control the determination; CLI-10-29, 72 NRC 556 (2010)

the Commission may reject an appeal summarily for violating NRC procedural regulations; CLI-08-17, 68 NRC 231 (2008)

the Commission may, at its discretion, grant a party's request for interlocutory review of a board decision; CLI-10-30, 72 NRC 564 (2010)

the Commission often refers to the Statement of Considerations as an aid in interpreting its regulations; CLI-08-3, 67 NRC 151 (2008)

the Commission recognizes a 50-mile proximity presumption to establish standing in proceedings concerning nuclear power reactor construction and operating licenses; LBP-09-28, 70 NRC 1019 (2009)

the Commission routinely accords substantial deference to licensing boards on matters involving standing and credibility determinations, and thus does not lightly set aside a board's grant of discretionary intervention; CLI-06-16, 63 NRC 708 (2006)

the Commission seeks wherever possible to avoid the delays, such as an additional round of pleadings, caused by a petitioner's attempt to backstop elemental deficiencies in its original petition to intervene; CLI-08-19, 68 NRC 251 (2008)

the Commission usually defers to boards' fact-based decisions; CLI-06-19, 64 NRC 9 (2006)

the Commission will consider a petition for review if it raises a substantial question with respect to one or more of the five paragraphs of 10 C.F.R. 2.341(b)(4); CLI-10-17, 72 NRC 1 (2010)

the Commission will defer to a board's rulings on threshold issues absent an error of law or abuse of discretion; CLI-10-3, 71 NRC 49 (2010); CLI-10-12, 71 NRC 319 (2010)

the Commission will not consider information that was not raised before the board; CLI-10-9, 71 NRC 245 (2010)

the Commission will occasionally take review of an issue on its own motion when that issue is not otherwise before it on appeal; CLI-07-1, 65 NRC 1 (2007)

the Commission will reverse a licensing board's determination on discretionary intervention only if the board has abused its discretion; CLI-06-16, 63 NRC 708 (2006)

the Commission will review referred rulings only if the referral raises significant and novel legal or policy issues, and resolution of the issues would materially advance the orderly disposition of the proceeding; CLI-09-3, 69 NRC 68 (2009); CLI-09-13, 69 NRC 575 (2009); CLI-09-21, 70 NRC 927 (2009)

the Commission's denial of review is not a decision on the merits, but simply indicates that the appealing party identified no clearly erroneous factual finding or important legal error requiring Commission correction; LBP-06-1, 63 NRC 41 (2006)

the Commission's exercise of its discretion to review a licensing board's interlocutory order stems from its inherent supervisory authority over adjudications and in no way implies that parties have a right to seek interlocutory review on that same ground; CLI-09-6, 69 NRC 128 (2009)

the Commission's power to define the scope of a proceeding will lead to the denial of intervention when the Commission amends a license to require additional or better safety measures; LBP-09-20, 70 NRC 565 (2009)

the common thread in decisions applying the 50-mile proximity presumption is a recognition of the potential effects at significant distances from the facility of the accidental release of fissionable materials; LBP-09-4, 69 NRC 170 (2009)

the concept of control extends to situations in which the party has the practical ability to obtain materials in the possession of another, even if the party does not have the legal right to compel the other person or entity to produce the requested materials; LBP-10-23, 72 NRC 692 (2010)

the contention admissibility decision sometimes turns on a determination about when, as a cumulative matter, separate pieces of the information puzzle were sufficiently in place to make the particular concerns reasonably apparent; LBP-09-10, 70 NRC 51 (2009)

SUBJECT INDEX

- the contention admissibility rule does not require a petitioner to prove its case at the contention stage; LBP-06-10, 63 NRC 314 (2006); LBP-09-27, 70 NRC 992 (2009)
- the contention admissibility threshold is less than is required at the summary disposition stage; LBP-09-26, 70 NRC 939 (2009)
- the contention requirements were never intended to be turned into a fortress to deny intervention; LBP-09-21, 70 NRC 581 (2009)
- the contention rule is strict by design and does not permit the filing of a vague, unparticularized contention, unsupported by affidavit, expert, or documentary support; CLI-07-18, 65 NRC 399 (2007); LBP-07-5, 65 NRC 341 (2007)
- the contention rule is strict by design, having been toughened in 1989 because in prior years licensing boards had admitted and litigated numerous contentions that appeared to be based on little more than speculation; LBP-08-6, 67 NRC 241 (2008); LBP-09-16, 70 NRC 227 (2009); LBP-09-17, 70 NRC 311 (2009)
- the current version of contention admissibility rules no longer incorporates provisions that permitted the supplementation of petitions and the filing of contentions after the original filing of petitions; LBP-07-4, 65 NRC 281 (2007)
- the decision as to whether an alleged environmental impact or alternative is significant or reasonable is the merits of a NEPA contention and should not be adjudicated at the contention admissibility stage under the guise of materiality or scope; LBP-09-10, 70 NRC 51 (2009)
- the decision of an appellate tribunal should ordinarily be followed in all subsequent phases of that case, provided that the particular question in issue was actually decided or decided by necessary implication; LBP-06-1, 63 NRC 41 (2006)
- the determinative factor in a summary disposition motion is whether there is any genuine issue of material fact remaining in dispute, and that determination is made through examination of the filings with respect to the motion; LBP-07-13, 66 NRC 131 (2007)
- the disclosing party can either provide the other parties with an actual copy of the document or data compilation or can simply describe it and provide it if the other party requests it; LBP-10-23, 72 NRC 692 (2010)
- the duty to produce all documentary material generated by, or at the direction of, or acquired by, a potential party pursuant to 10 C.F.R. 2.1003(a)(1) applies to extant documentary material and does not require that the potential party delay its initial certification until all documentary material that it intends to rely on is finished and complete; LBP-08-1, 67 NRC 37 (2008)
- the elements of standing will be presumed to be satisfied if an individual lives within the zone of possible harm from a significant source of radioactivity, which has been defined in proceedings involving nuclear power plants as being within a 50-mile radius of such a plant; LBP-07-11, 66 NRC 41 (2007)
- the fact that a party may have other obligations does not relieve that party of its hearing obligations; CLI-10-26, 72 NRC 474 (2010)
- the fact that deliberative process privilege documents contain important new analyses that are relevant to admitted contentions weighs in favor of their disclosure; LBP-06-3, 63 NRC 85 (2006)
- the fact that NRC Staff issues a request for additional information does not, per se, demonstrate that the combined license application is incomplete or ensure the admission of a new contention; LBP-09-10, 70 NRC 51 (2009)
- the fact that Staff issues a request for additional information does not immunize the combined license application from challenge or bar the admission of a new contention on the same subject, provided the contention satisfies the criteria of 10 C.F.R. 2.309(f)(1)(i)-(vi) and (f)(2) or (c); LBP-09-10, 70 NRC 51 (2009)
- the February 2004 revision of NRC procedural rules no longer permits the amendment and supplementation of petitions and the filing of contentions after the original filing of petitions; LBP-06-10, 63 NRC 314 (2006)
- the February 2004 revision of the rules no longer incorporates provisions that permitted the amendment and supplementation of petitions and filing of contentions after the original filing of petitions; LBP-08-6, 67 NRC 241 (2008)
- the Federal Rules of Criminal Procedure prescribe the disclosures necessary for a fair balance between criminal defendants' and prosecutors' interests; CLI-06-12, 63 NRC 495 (2006)

SUBJECT INDEX

the filing in a reply brief of new arguments or new legal theories that opposing parties have not had the opportunity to address are not permitted; CLI-06-9, 63 NRC 433 (2006)

the filing of new or amended contentions based on new information is permitted if sufficient justification is provided; LBP-09-15, 70 NRC 198 (2009)

the first step in assessing the admissibility of a new contention is to determine if it is timely under 10 C.F.R. 2.309(f)(2)(iii) or nontimely under section 2.309(c); LBP-09-10, 70 NRC 51 (2009)

the foundation for the threshold criteria regarding the level of support required for summary disposition is found in the contention admissibility provisions; LBP-07-13, 66 NRC 131 (2007)

the fundamental purpose of a Notice of Hearing is to provide facility opponents a fair opportunity to be heard; LBP-07-14, 66 NRC 169 (2007)

the general purpose of the deliberative process privilege is to protect frank agency deliberations from public scrutiny and thus to prevent injury to the quality of agency decisions; LBP-06-25, 64 NRC 367 (2006)

the general rule on amicus briefs, 10 C.F.R. 2.315(d), as a formal matter applies only to petitions for review filed under section 2.341 or to matters taken up by the Commission sua sponte, not to appeals filed under section 2.1015; CLI-08-22, 68 NRC 355 (2008)

the good cause factor favors petitioners who have filed their petition within 30 days of the availability of the document they contend contains new and significant information so as to form the basis for their contention; LBP-10-1, 71 NRC 165 (2010)

the imminent availability of Staff's authoritative position on a subject that is discussed in deliberative process documents constitutes "other evidence" such that the immediate need for the documents does not outweigh the deliberative process privilege; LBP-06-3, 63 NRC 85 (2006)

the increased risk of living within 50 miles of a nuclear power plant constitutes injury-in-fact, is traceable to the challenged action, and is likely to be redressed by a favorable decision that either denies a license or mandates compliance with legal requirements that protect the interests of the petitioners; LBP-09-4, 69 NRC 170 (2009)

the injury-in-fact necessary to establish organizational standing must be more than a mere interest in a problem, no matter how longstanding the interest and no matter how qualified the organization is in evaluating the problem; LBP-09-13, 70 NRC 168 (2009); LBP-10-16, 72 NRC 361 (2010)

the interests that a representative organization seeks to protect must be germane to its own purpose, and neither the asserted claim nor the required relief must require an individual member to participate in the organization's legal action; LBP-09-16, 70 NRC 227 (2009)

the interests that the representative organization seeks to protect must be germane to its own purpose; CLI-07-18, 65 NRC 399 (2007)

the interlocutory review standard in 10 C.F.R. 2.323(f)(1) does not apply to litigants' petitions for interlocutory review; CLI-09-6, 69 NRC 128 (2009)

the issue that generally arises under 10 C.F.R. 2.309(f)(1)(i) is whether a contention is stated with sufficient specificity; LBP-09-17, 70 NRC 311 (2009)

the law generally recognizes a personal privacy interest not to have allegations of unlawful activity publicly disseminated after they have been shown to be insubstantial, but a privacy interest does not exist as a generalized theory; LBP-06-25, 64 NRC 367 (2006)

the Licensing Support Network functions as a mechanism for early collection of all extant documents that normally would be collected later through traditional discovery; CLI-08-22, 68 NRC 355 (2008)

the longest specific distance for which the Commission has granted proximity-based standing in a post-Vogtle license transfer case is 6 to 6-1/2 miles; CLI-07-21, 65 NRC 519 (2007)

the manner in which the Staff conducts its review is outside the scope of a proceeding; LBP-10-17, 72 NRC 501 (2010)

the materiality requirement for contention admission often dictates that any contention alleging deficiencies or errors in an application also indicate some significant link between the claimed deficiency and either the health and safety of the public or the environment; LBP-10-7, 71 NRC 391 (2010)

the member of an organization that seeks standing must qualify for standing in his or her own right, and the interests that the organization seeks to protect must be germane to its own purpose; LBP-09-6, 69 NRC 367 (2009)

the member of a petitioning organization seeking representation must qualify for standing in his or her own right; CLI-07-18, 65 NRC 399 (2007)

SUBJECT INDEX

the mere potential for legal error in a contention admissibility decision is not a ground for interlocutory review; CLI-10-30, 72 NRC 564 (2010)

the most natural way to read a provision that sets forth a general obligation followed by a set of specific requirements is that the specific requirements provide the details necessary to fulfilling the general obligation; LBP-09-15, 70 NRC 198 (2009)

the nontrivial increased risk of living within 50 miles of a proposed reactor constitutes injury-in-fact, is traceable to the challenged action, and is likely to be redressed by a favorable decision that either denies a license or mandates compliance with legal requirements that protect the interests of the petitioners; CLI-09-20, 70 NRC 911 (2009); LBP-09-16, 70 NRC 227 (2009)

the party supporting abeyance of an enforcement proceeding based on the pendency of a criminal case involving the same facts carries the burden of proof and must make at least some showing of potential detrimental effect on the criminal case; CLI-06-12, 63 NRC 495 (2006)

the phrase "possession, custody, or control" as found in the Federal Rules of Civil Procedure and 10 C.F.R. 2.336(a) is in the disjunctive, and thus only one of the enumerated requirements needs to be met; LBP-10-23, 72 NRC 692 (2010)

the plain language of a contention will reveal whether it is a claim of omission, a specific substantive challenge to an application, or a combination of both; LBP-06-16, 63 NRC 737 (2006)

the possibility that an interlocutory ruling may be wrong does not in itself justify interlocutory review; CLI-09-6, 69 NRC 128 (2009)

the possibility that the prevailing party would use the board's order in his favor to persuade a District Court to reconsider part of the penalty imposed on him in a parallel criminal proceeding did not constitute immediate, irreparable harm to the NRC Staff; CLI-09-23, 70 NRC 935 (2009)

the potential for litigation expense and delay is the kind of burden that licensees and applicants voluntarily assume when filing applications with the Commission; CLI-09-6, 69 NRC 128 (2009)

the practice of granting or denying discretionary intervention should develop not through precedent, but through attention to the concrete facts of particular situations; CLI-06-16, 63 NRC 708 (2006)

the precedential value of a licensing board decision that is not affirmed by the Commission is limited to its power to persuade; LBP-06-1, 63 NRC 41 (2006)

the preliminary question for a judge deciding a summary disposition motion is whether there is any evidence upon which a jury could properly proceed to find a verdict for the nonmovant; LBP-07-13, 66 NRC 131 (2007)

the presiding officer may refer a ruling to the Commission if the ruling involves a novel issue that merits Commission review at the earliest opportunity or a prompt decision is necessary to prevent detriment to the public interest or unusual delay or expense; CLI-09-6, 69 NRC 128 (2009)

the presiding officer must assess a petition to intervene even if there are no objections to a petitioner's standing; LBP-08-16, 68 NRC 361 (2008)

the presiding officer must determine whether petitioner is a person whose interest may be affected by the proceeding; LBP-10-7, 71 NRC 391 (2010)

the privacy interests for which protection is sought can be amply preserved by a protective order that limits the disclosures to those involved in the litigation and thus having a need to know; LBP-06-25, 64 NRC 367 (2006)

the procedure for seeking access to SUNSI does not provide a method for general or topical access, but only access to information necessary to meaningfully participate in an adjudicatory proceeding and to provide the basis and specificity of a proffered contention; LBP-09-5, 69 NRC 303 (2009)

the process of sifting and weighing participants' factual proffers often calls upon a board to make difficult choices, so that a petitioner who fails to provide specific information regarding the geographic proximity or the timing and duration of its visits only complicates matters for itself; LBP-09-18, 70 NRC 385 (2009)

the proper purpose of a reply is to discuss alleged deficiencies in a petition, not to try to fix them; LBP-08-17, 68 NRC 431 (2008)

the protected interests are so strong that federal courts and NRC adjudicators are generally unwilling to compel discovery of deliberative materials unless there is a particular and compelling reason for the privilege to be suspended; LBP-06-25, 64 NRC 367 (2006)

the proximity presumption applies in proceedings for nuclear power plant construction permits, operating licenses, or significant amendments thereto; LBP-08-13, 68 NRC 43 (2008); LBP-08-15, 68 NRC 294

SUBJECT INDEX

(2008); LBP-09-13, 70 NRC 168 (2009); LBP-09-16, 70 NRC 227 (2009); LBP-09-26, 70 NRC 939 (2009); LBP-10-15, 72 NRC 257 (2010)

the proximity presumption applies when petitioners live within 50 miles of the proposed facility or when they have frequent contacts with the area affected by the proposed facility; LBP-08-18, 68 NRC 533 (2008); LBP-10-1, 71 NRC 165 (2010)

the proximity presumption does not permit persons with no actual or imminent claim of injury to obtain a hearing; LBP-09-4, 69 NRC 170 (2009)

the purpose of contention pleading requirements is to focus litigation on concrete issues and result in a clearer and more focused record for decision; LBP-08-14, 68 NRC 279 (2008); LBP-09-26, 70 NRC 939 (2009); LBP-10-15, 72 NRC 257 (2010); LBP-10-16, 72 NRC 361 (2010)

the question whether to hold an NRC enforcement proceeding in abeyance pending a related criminal prosecution is generally suitable for interlocutory Commission review because, unlike most interlocutory questions, the abeyance issue cannot await the end of the proceeding because it becomes moot; CLI-06-19, 64 NRC 9 (2006); CLI-07-6, 65 NRC 112 (2007); CLI-10-29, 72 NRC 556 (2010)

the radioactive source posing the danger in a reactor license renewal case is the identical source giving rise to the 50-mile proximity presumption rule for standing in reactor construction permit and operating license proceedings; LBP-06-7, 63 NRC 188 (2006)

the rationale for the 50-mile presumption does not depend upon the probability that a proposed reactor is likely to generate an accidental release of radioactive materials, but rather the fact that, if such an accident were to occur, it could realistically impact the geographic area within which the petitioners reside; LBP-09-4, 69 NRC 170 (2009)

the reach of a contention necessarily hinges upon its terms coupled with its stated bases; CLI-10-11, 71 NRC 287 (2010)

the regulations do not define the phrase “differ significantly” but in the absence of a statutory definition, courts normally define a term by its ordinary meaning; LBP-10-24, 72 NRC 720 (2010)

the relevance standard of 10 C.F.R. 2.336 is more flexible than the relevance standard of Fed. R. Evid. 401; LBP-10-23, 72 NRC 692 (2010)

the representative of an interested governmental entity participating under section 2.315(c) shall identify those contentions on which it will participate in advance of any hearing held; LBP-06-20, 64 NRC 131 (2006); LBP-08-24, 68 NRC 691 (2008)

the requirement of 10 C.F.R. 2.309(f)(1)(ii) that the petition include a brief explanation of the basis for the contention requires an explanation of the rationale or theory of the contention; LBP-09-10, 70 NRC 51 (2009)

the requirement of materiality often dictates that any contention alleging deficiencies or errors in an application also indicate some significant link between the claimed deficiency and either the health and safety of the public or the environment; LBP-09-3, 69 NRC 139 (2009)

the requirement that an injury or threat of injury be concrete and particularized perforce means that the injury must not be conjectural or hypothetical; LBP-10-4, 71 NRC 216 (2010)

the requirement that contentions be supported by alleged facts or expert opinion generally is fulfilled when the sponsor of an otherwise acceptable contention provides a brief recitation of the factors underlying the contention or references to documents and text that provide such reasons; LBP-10-14, 72 NRC 101 (2010)

the requirement to discuss the basis for a proffered contention to obtain access to SUNSI is not to be equated with the discussion that would be necessary to support an admissible contention; LBP-09-5, 69 NRC 303 (2009)

the requirement to establish standing does not apply to petitions for discretionary intervention because discretionary intervention was created to afford party status to petitioners unable to demonstrate standing; CLI-06-16, 63 NRC 708 (2006)

the requisite injury to establish standing may be either actual or threatened but must nonetheless be concrete and particularized, not conjectural or hypothetical; LBP-09-28, 70 NRC 1019 (2009)

the role of “private attorney general” is not contemplated under the Atomic Energy Act; CLI-08-19, 68 NRC 251 (2008)

the scope of a contention is limited to issues of law and fact pleaded with particularity in the intervention petition, including its stated bases, unless the contention is satisfactorily amended in accordance with the Commission’s rules; CLI-10-5, 71 NRC 90 (2010); CLI-10-15, 71 NRC 479 (2010)

SUBJECT INDEX

the scope of a license renewal proceeding is limited to a review of the plant structures and components that will require an aging management review for the period of extended operation and the plant's systems, structures, and components that are subject to an evaluation of time-limited aging analyses; LBP-06-22, 64 NRC 229 (2006)

the scope of a proceeding is defined in the Commission's initial hearing notice and order referring the proceeding to the licensing board; LBP-09-25, 70 NRC 867 (2009); LBP-09-26, 70 NRC 939 (2009)

the scope of an enforcement proceeding is limited to whether an enforcement order should be sustained; LBP-07-16, 66 NRC 277 (2007)

the scope of discovery is broader than the scope of admissible evidence; LBP-10-23, 72 NRC 692 (2010)

the scope of the mandatory disclosure obligations under 10 C.F.R. 2.336, which apply to Subpart L proceedings, is wide-reaching; LBP-10-23, 72 NRC 692 (2010)

the significance of the issue being raised by a new contention would be a relevant "good cause" consideration; LBP-10-21, 72 NRC 616 (2010)

the six criteria that govern the admissibility of contentions are discussed; LBP-09-21, 70 NRC 581 (2009)

the six-factor contention admissibility test in 10 C.F.R. 2.309(f)(1) applies regardless of whether a contention is submitted at the beginning of a proceeding, as a timely new contention under section 2.309(f)(2), or as a nontimely new contention under section 2.309(c); LBP-07-15, 66 NRC 261 (2007)

the source of the practice in NRC proceedings of referring to judicial standing concepts is a 1976 Commission decision in which it affirmed the Appeal Board's determination that petitioners in the case did not meet the judicial standing test; LBP-09-1, 69 NRC 11 (2009)

the standard for admitting a new contention after the record is closed is higher than for an ordinary late-filed contention; CLI-08-28, 68 NRC 658 (2008)

the standard for amendment of a contention is whether the information was available to the public, not whether the petitioner has recently found it; LBP-09-26, 70 NRC 939 (2009)

the standard for review of an interlocutory board order is whether the ruling threatens the petitioner with immediate and serious, irreparable impact or will affect the basic structure of the proceeding in a pervasive and unusual manner; CLI-08-7, 67 NRC 187 (2008)

the standard of review in an appeal from an NRC Staff denial of a SUNSI request is de novo; LBP-09-5, 69 NRC 303 (2009)

the standard of review on appeal is abuse of discretion; CLI-10-24, 72 NRC 451 (2010)

the statement of purpose and need in the final environmental impact statement is independent of any specific project area, and thus a prior decision of the Commission adjudicating an intervenor's challenge to the statement of purpose and need applies with equal force to all areas of a proposed project; LBP-06-19, 64 NRC 53 (2006)

the strict contention rule serves multiple interests; LBP-07-11, 66 NRC 41 (2007); LBP-08-6, 67 NRC 241 (2008); LBP-09-17, 70 NRC 311 (2009)

the strict contention rule serves to focus the hearing process on real disputes susceptible of resolution in an adjudication, to put other parties on notice of petitioners' specific grievances, and to ensure that full adjudicatory hearings are triggered only by those able to proffer at least some minimal factual and legal foundation in support of their contentions; LBP-06-10, 63 NRC 314 (2006); LBP-06-23, 64 NRC 257 (2006)

the subject matter of a contention must impact the grant or denial of a pending license application; LBP-07-3, 65 NRC 237 (2007); LBP-09-27, 70 NRC 992 (2009)

the substantive standard for allowing parties to conduct cross-examination is the same under 10 C.F.R. Part 2, Subparts G and L; LBP-09-10, 70 NRC 51 (2009)

the term "likely" in section 2.326(a)(3) is construed to be synonymous with "probable" or "more likely than not"; LBP-08-12, 68 NRC 5 (2008)

the threshold question in determining if certain items must be made available on the High-Level Waste Repository Licensing Support Network is whether the particular items fall within any of the three classes of documentary material; CLI-06-5, 63 NRC 143 (2006)

the time an E-Filing submission is received by the system server is not necessarily controlling relative to the timeliness of the filing; LBP-08-16, 68 NRC 361 (2008)

the timeliness of a motion to reopen depends on what/when was the trigger that provided the footing for the new contention and was the motion seeking record reopening/contention admission timely filed after that trigger event; LBP-10-21, 72 NRC 616 (2010)

SUBJECT INDEX

the ultimate test for standing is not whether NRC's test conforms to that applied by federal courts, but whether NRC's test represents a reasonable construction of section 189a of the Atomic Energy Act; LBP-09-4, 69 NRC 170 (2009)

the unavailability of documents does not constitute a showing of good cause for admitting a late-filed contention when the factual predicate for that contention is available from other sources in a timely manner; CLI-10-27, 72 NRC 481 (2010)

the underlying purpose of NEPA as an information-gathering and disclosure mechanism requires a different view of the concept of "materiality" under 10 C.F.R. 2.309(f)(1)(iv) than might be applied to a contention seeking to establish a health and safety issue; LBP-08-16, 68 NRC 361 (2008)

the universal understanding of relevance, applicable to the NRC Staff and others, includes matters that appear reasonably calculated to lead to the discovery of admissible evidence; LBP-06-25, 64 NRC 367 (2006)

the weight to be given the proponent's reason for seeking an abeyance turns on the quality of the factual record on which the proponent relies; CLI-06-12, 63 NRC 495 (2006)

there is a difference between contentions that allege that a license application suffers from an improper omission and contentions that raise a specific substantive challenge to how particular information or issues have been discussed in a license application; LBP-08-12, 68 NRC 5 (2008)

there is an automatic right to appeal a licensing board standing and contention admissibility decision on the issue of whether the request for hearing or petition to intervene should have been wholly denied; CLI-09-22, 70 NRC 932 (2009)

there is no conflict between the basic requirements for standing, as applied in the federal courts, and the NRC's proximity presumption; CLI-09-22, 70 NRC 932 (2009); LBP-09-4, 69 NRC 170 (2009)

there is no requirement for any nexus between an asserted injury and a contention; LBP-09-1, 69 NRC 11 (2009)

there is no requirement that information provided to the board by Staff counsel about a telephone call from petitioner's former expert witness be in the form of a motion; LBP-06-10, 63 NRC 314 (2006)

there is no right to reply to an answer to a motion for summary disposition, but if the answer contains an allegation that is plainly and factually incorrect, the moving party can request the opportunity to respond and to correct the record; LBP-06-5, 63 NRC 116 (2006)

there simply would be no end to NRC licensing proceedings if petitioners could disregard timeliness requirements and add new contentions at their convenience during the course of a proceeding based on information that could have formed the basis for a timely contention at the outset of the proceeding; CLI-10-27, 72 NRC 481 (2010)

third parties have no absolute right to veto settlements that the agreeing parties find to their advantage; CLI-06-18, 64 NRC 1 (2006)

threat of terrorist attack at spent fuel pools has been evaluated generically by NRC, and special circumstances for rule waiver have not been shown; LBP-10-15, 72 NRC 257 (2010)

three conditions must be satisfied for the proximity presumption to afford standing as of right; LBP-07-10, 66 NRC 1 (2007)

three regulations govern the admissibility of contentions added after an adjudicatory hearing has commenced; LBP-06-14, 63 NRC 568 (2006)

threshold admissibility requirements for contentions should not be turned into a fortress to deny intervention; CLI-07-18, 65 NRC 399 (2007)

threshold contention standards are imposed to avoid admission of contentions based on little more than speculation and intervenors who have negligible knowledge of nuclear power issues; CLI-08-17, 68 NRC 231 (2008)

threshold contention standards require petitioners to review application materials and set forth their contentions with particularity; CLI-10-11, 71 NRC 287 (2010)

timeliness as measured under NRC regulations is from the point at which new information is discovered relevant to the question; LBP-08-12, 68 NRC 5 (2008)

timeliness of a motion to reopen in which the proponent of the motion proffers a new contention depends primarily on an assessment as to when the proponent of the motion first knew, or should have known, enough information to raise the issues presented in the new contention; LBP-10-19, 72 NRC 529 (2010)

SUBJECT INDEX

timeliness of a new or amended contention based on material new information is based on the timing of the availability of the information on which the contention is based, not the timing of the NRC Staff NEPA document; LBP-10-24, 72 NRC 720 (2010)

timely new non-NEPA contentions are subject to a three-factor test; LBP-07-15, 66 NRC 261 (2007)

to amend a contention, petitioner must demonstrate that the information upon which the amended contention is based was not previously available and is materially different from information previously available, and that the amended contention has been submitted in a timely fashion; LBP-09-26, 70 NRC 939 (2009)

to assert an appropriate injury for organizational standing, an organization must demonstrate a palpable injury in fact to its organizational interests; LBP-09-13, 70 NRC 168 (2009); LBP-10-16, 72 NRC 361 (2010)

to be admissible, a contention must assert an issue of law or fact that is material to the findings the NRC must make to support the action that is involved in the proceeding; LBP-09-26, 70 NRC 939 (2009); LBP-10-6, 71 NRC 350 (2010)

to be admissible, a contention must satisfy the six pleading requirements of 10 C.F.R. 2.309(f)(1)(i)-(vi); LBP-10-4, 71 NRC 216 (2010)

to be admissible, a contention must show that some significant link exists between the claimed deficiency and either the health and safety of the public or the environment; LBP-10-6, 71 NRC 350 (2010)

to be admissible, a proposed contention must include specific statements of law or fact to be raised or controverted; LBP-10-9, 71 NRC 493 (2010)

to be admissible, contentions must assert an issue of law or fact that is material to the outcome of a licensing proceeding, meaning that the subject matter of the contention must impact the grant or denial of a pending license application; LBP-10-7, 71 NRC 391 (2010)

to be admissible, contentions must satisfy the six factors of 10 C.F.R. 2.309(f)(1); LBP-06-4, 63 NRC 99 (2006)

to be appealable, a disputed order must dispose of the entire petition so that a successful appeal by a nonpetitioner will terminate the proceeding as to the appellee petitioner; CLI-09-18, 70 NRC 859 (2009)

to be considered timely, a document must be submitted to the E-Filing system for docketing and service by 11:59 p.m. Eastern Time; LBP-08-16, 68 NRC 361 (2008)

to be sincere, movant should contact other parties sufficiently in advance to provide enough time for the possible resolution of the matter or issues in question; LBP-09-22, 70 NRC 640 (2009)

to challenge a regulation, petitioner must submit a supporting affidavit setting forth with particularity the special circumstances that justify the waiver or exception requested; LBP-07-11, 66 NRC 41 (2007); LBP-09-18, 70 NRC 385 (2009)

to counter a board's normal assumption that protective orders will not be breached, the withholding party must show evidence of the likelihood of a breach; LBP-06-25, 64 NRC 367 (2006)

to demonstrate organizational standing, petitioner must show injury in fact to the interests of the organization itself; LBP-08-15, 68 NRC 294 (2008)

to demonstrate standing to intervene, petitioner must state, and boards must assess, the nature of petitioner's right under the governing statutes to be made a party, the nature and extent of petitioner's property, financial, or other interest, and the possible effect of the outcome of the proceeding on petitioner's interest; CLI-09-20, 70 NRC 911 (2009)

to demonstrate standing, an organization seeking to intervene in a proceeding must allege that the challenged action will cause a cognizable injury to the organization's interests or to the interests of its members; LBP-09-26, 70 NRC 939 (2009)

to demonstrate standing, petitioner must identify an interest in the proceeding and specify the facts pertaining to that interest; CLI-08-19, 68 NRC 251 (2008)

to derive standing from a member, an organization must demonstrate that the individual member has standing to participate and has authorized the organization to represent his or her interests; CLI-10-1, 71 NRC 1 (2010); LBP-10-16, 72 NRC 361 (2010)

to determine whether an interest is in the zone of interests of a statute, it is necessary first to discern the interests arguably to be protected by the statutory provision at issue and then to inquire whether petitioner's interests affected by the agency action are among them; LBP-10-16, 72 NRC 361 (2010)

to determine whether petitioner has an interest potentially affected by a proceeding, the licensing board considers the nature of the petitioner's right under the Atomic Energy Act to be made a party, the

SUBJECT INDEX

- nature and extent of petitioner's property, financial, or other interest in the proceeding, and the possible effect of any decision or order on petitioner's interest; LBP-08-14, 68 NRC 279 (2008)
- to determine whether petitioners have standing, boards accept as true all material allegations of the complaint and construe the complaint in favor of the complaining party; CLI-10-20, 72 NRC 185 (2010)
- to establish causation, petitioner must show that there is a causal connection between the injury-in-fact and the conduct complained of; LBP-09-13, 70 NRC 168 (2009); LBP-10-16, 72 NRC 361 (2010)
- to establish organizational standing, an organization must demonstrate that the action at issue will cause an injury-in-fact to the organization's interests or the interests of its members and that the injury is within the zone of interests protected by the National Environmental Policy Act or the Atomic Energy Act; LBP-07-4, 65 NRC 281 (2007); LBP-07-11, 66 NRC 41 (2007); LBP-09-13, 70 NRC 168 (2009); LBP-09-16, 70 NRC 227 (2009); LBP-09-20, 70 NRC 565 (2009); LBP-10-16, 72 NRC 361 (2010)
- to establish proximity-based standing, it is petitioner's responsibility to provide enough detail to allow the board to distinguish a casual interest from a substantial one; LBP-10-7, 71 NRC 391 (2010)
- to establish representational standing, an organization must show that at least one of its members may be affected by the licensing action and would have standing to sue in his or her own right, identify that member by name and address, and show that the organization is authorized to request a hearing on behalf of that member; LBP-06-7, 63 NRC 188 (2006); LBP-07-11, 66 NRC 41 (2007); LBP-10-11, 71 NRC 609 (2010)
- to establish representational standing, the member must qualify for standing in his or her own right, the interests that the organization seeks to protect must be germane to its own purpose, and neither petitioner's contentions nor the requested relief must require an individual member to participate in the proceeding; LBP-08-17, 68 NRC 431 (2008)
- to establish standing based on frequent contacts, petitioner must show that it frequently engages in substantial business and related activities in the vicinity of the facility, engages in normal, everyday activities in the vicinity, has regular and frequent contacts in an area near a licensed facility, or otherwise has visits of a length and nature showing an ongoing connection and presence; LBP-10-1, 71 NRC 165 (2010)
- to establish standing in federal court, a party must show injury-in-fact, causation, and redressability; LBP-10-16, 72 NRC 361 (2010)
- to establish standing petitioner must show that it has suffered or will suffer a distinct and palpable injury that constitutes injury-in-fact within the zones of interests arguably protected by the governing statutes, the injury is fairly traceable to the challenged action, and the injury is likely to be redressed by a favorable decision; CLI-06-21, 64 NRC 30 (2006); LBP-07-16, 66 NRC 277 (2007); LBP-08-15, 68 NRC 294 (2008); LBP-09-16, 70 NRC 227 (2009); LBP-09-17, 70 NRC 311 (2009); LBP-09-20, 70 NRC 565 (2009); LBP-10-1, 71 NRC 165 (2010); LBP-10-21, 72 NRC 616 (2010)
- to establish standing, petitioner must show that its alleged injury in fact could be cured or alleviated by some action of the tribunal; LBP-10-16, 72 NRC 361 (2010)
- to establish standing, petitioner's claimed injury must be arguably within the zone of interests protected by the governing statute in the proceeding; LBP-09-13, 70 NRC 168 (2009)
- to establish the requisite proximity for standing, petitioner must clearly indicate where he lives and/or what contact he has with the site; LBP-10-1, 71 NRC 165 (2010); LBP-10-7, 71 NRC 391 (2010)
- to force intervenors to file contentions before the results of an ongoing NRC investigation are announced to the public would effectively force intervenors to speculate about the results of such investigations and the conclusions the Staff might reach; LBP-10-9, 71 NRC 493 (2010)
- to interpose a new contention after a proceeding has been terminated requires submission of a fresh intervention petition that fulfills the applicable standards for such filings, including an appropriate standing demonstration; LBP-10-21, 72 NRC 616 (2010)
- to intervene as of right in any Commission licensing proceeding, a petitioner must demonstrate that its interest may be affected by the proceeding and specify the facts pertaining to that interest; CLI-07-18, 65 NRC 399 (2007)
- to intervene in an NRC proceeding, a petitioner must, in addition to demonstrating standing, submit at least one contention meeting the pleading requirements of 10 C.F.R. § 2.309(f)(1); CLI-08-17, 68 NRC 231 (2008); LBP-08-24, 68 NRC 691 (2008); LBP-06-10, 63 NRC 314 (2006); LBP-06-23, 64 NRC

SUBJECT INDEX

- 257 (2006); LBP-07-4, 65 NRC 281 (2007); LBP-07-11, 66 NRC 41 (2007); LBP-09-16, 70 NRC 227 (2009); LBP-09-26, 70 NRC 939 (2009); LBP-10-2, 71 NRC 190 (2010)
- to intervene in NRC proceedings, petitioner must file a written petition for leave to intervene in accordance with the requirements of 10 C.F.R. 2.309; CLI-09-15, 70 NRC 1 (2009)
- to intervene in the high-level waste repository proceeding, petitioner must establish that it has standing, be able to demonstrate substantial and timely Licensing Support Network compliance, and proffer at least one admissible contention; LBP-09-6, 69 NRC 367 (2009)
- to justify reopening the record to admit a new contention, the moving papers must be strong enough, in the light of any opposing filings, to avoid summary disposition, and the new information must be significant and plausible enough to require reasonable minds to inquire further; LBP-10-21, 72 NRC 616 (2010)
- to meet its burden, it is generally sufficient if petitioner provides plausible factual allegations that satisfy each element of standing; LBP-10-4, 71 NRC 216 (2010)
- to obtain discretionary interlocutory review, petitioner must demonstrate that the licensing board's ruling at issue either threatens the party adversely affected by it with immediate and serious irreparable impact which, as a practical matter, could not be alleviated through a petition for review of the presiding officer's final decision, or affects the basic structure of the proceeding in a pervasive or unusual manner; CLI-07-1, 65 NRC 1 (2007)
- to qualify for standing, a petitioner must allege a concrete and particularized injury that is fairly traceable to the challenged action and likely to be redressed by a favorable decision; LBP-06-23, 64 NRC 257 (2006)
- to raise a timely contention, a party is not expected to piece together disparate shreds of information that, standing alone, have little apparent significance; LBP-10-9, 71 NRC 493 (2010)
- to raise an admissible contention with respect to a Staff finding of no significant impact, petitioner need not demonstrate that there will be a significant environmental impact as a consequence of the proposed action, but it must allege facts that, if true, show that the proposed project may significantly degrade some human environmental factor; LBP-06-27, 64 NRC 438 (2006)
- to reopen a closed record to introduce a new issue, movant has the burden of showing that the new information will likely trigger a different result; LBP-08-12, 68 NRC 5 (2008)
- to rule that disclosure under 10 C.F.R. 2.336(a)(2)(i) is limited to formal contractual deliverables would encourage applicants to draft consulting contracts to insulate themselves from the obligation to disclose critical computer modeling information; LBP-10-23, 72 NRC 692 (2010)
- to satisfy the "clearly erroneous" standard, a litigant must show that the board's findings are not even plausible in light of the record viewed in its entirety; CLI-10-17, 72 NRC 1 (2010)
- to satisfy the likelihood of establishing standing criteria in the context of a SUNSI request, petitioner organizations are required to provide sufficient information to allow the NRC Staff to conclude that the requirements for standing could likely be satisfied; LBP-09-5, 69 NRC 303 (2009)
- to show good cause for the late filing of a contention, petitioner must show that the information on which the new contention is based was not reasonably available to the public, not merely that the petitioner recently found out about it; CLI-10-27, 72 NRC 481 (2010)
- to succeed, a petition for reconsideration must demonstrate a compelling circumstance, such as the existence of a clear and material error in a decision, which could not have been reasonably anticipated, which renders the decision invalid; CLI-07-21, 65 NRC 519 (2007)
- to support a contention challenging a Commission rule, petitioner must request, and demonstrate any supporting reasons for, a waiver of the rule; CLI-10-9, 71 NRC 245 (2010)
- to support their contentions, petitioners need not proffer facts in formal affidavit or evidentiary form, sufficient to withstand a summary disposition motion; LBP-09-17, 70 NRC 311 (2009)
- to the degree the response to a summary disposition motion fails to contravene the material facts proffered by the movant, the movant's facts will be considered to be admitted; LBP-08-2, 67 NRC 54 (2008); LBP-08-3, 67 NRC 85 (2008); LBP-10-8, 71 NRC 433 (2010)
- to the extent applicant may be subject to unreasonable or burdensome discovery requests in the future, it is free to seek relief from the board, which has ample authority to prevent or modify unreasonable discovery demands; CLI-09-6, 69 NRC 128 (2009)
- to the extent that the draft or final supplemental environmental impact statement contains data or conclusions that differ significantly from the data or conclusions in the applicant's environmental report

SUBJECT INDEX

or in the generic environmental impact statement, a petitioner is entitled to use 10 C.F.R. 2.309(f)(2) as the grounds to file a new or amended contention; LBP-06-20, 64 NRC 131 (2006)

under 10 C.F.R. 2.309(g) and 2.310, the board determines which hearing procedure will be used (Subpart G or L) on a contention-by-contention basis; LBP-09-10, 70 NRC 51 (2009)

under pre-2004 rules, the fact that a petition or new/amended contention was filed after the hearing opportunity notice deadline because the document or other item relied upon as the submission trigger was not available was considered good cause for the late filing; LBP-10-1, 71 NRC 165 (2010)

under Subpart L informal hearing procedures, summary disposition motions are to be resolved in accord with the same standards for dispositive motions that are utilized for formal hearings under Subpart G; LBP-10-8, 71 NRC 433 (2010)

under Subpart L, a party seeking to conduct cross-examination must file a written motion and obtain leave from the board; LBP-09-10, 70 NRC 51 (2009)

under the 2004 Part 2 revisions, contentions are now required to be included with, rather than being submitted sometime subsequent to the filing of, the intervention petition; LBP-10-1, 71 NRC 165 (2010)

unfamiliarity with NRC's Rules of Practice is not sufficient excuse for late filings, particularly when the order that is being challenged expressly advised petitioner of his appellate rights and of the time within which those rights had to be exercised; CLI-10-26, 72 NRC 474 (2010)

unless a deadline has been specified in the scheduling order for the proceeding, the determination of timeliness is subject to a reasonableness standard that depends on the facts and circumstances of each situation; LBP-10-24, 72 NRC 720 (2010)

unless a proposed action involves obvious potential for offsite consequences, such as with construction or operation of reactor or certain major alterations to facility, petitioner must allege some specific injury in fact that will result from the action taken; LBP-08-18, 68 NRC 533 (2008)

unlike federal court practice, the Commission does not accept mere notice pleading in support of an admissible contention; LBP-08-24, 68 NRC 691 (2008)

use of the permissive term, "may," in 10 C.F.R. 2.310(a) indicates that licensing boards have some discretion in determining whether to hold hearings under Subpart L or Subpart G; LBP-08-6, 67 NRC 241 (2008)

vague assertions of possible harm do not amount to a showing of concrete and particularized injury to petitioner's interests that is actual or imminent, not conjectural or hypothetical; LBP-08-18, 68 NRC 533 (2008)

waiver of a rule can be granted only in unusual and compelling circumstances; LBP-08-17, 68 NRC 431 (2008)

waiver of a rule or regulation is granted on the sole ground that special circumstances with respect to the subject matter of the particular proceeding are such that the application of the rule or regulation would not serve the purposes for which the rule or regulation was adopted; LBP-09-6, 69 NRC 367 (2009)

were the Commission to accept and consider a belatedly submitted representative-standing affidavit attached to a reply brief, the applicant would be deprived of the right to challenge the substantive sufficiency of the affidavit; CLI-08-19, 68 NRC 251 (2008)

were the Commission to permit litigants to successfully invoke interlocutory review based merely on an assertion that the licensing board erred in admitting or excluding a contention, then the Commission would be opening the floodgates to a potential deluge of interlocutory appeals from any number of participants who lose admissibility rulings; CLI-09-6, 69 NRC 128 (2009)

when a board has not made even a threshold ruling on petitioner's standing and contentions, the Commission considers a petition under its usual standard for review of an interlocutory board order; CLI-08-7, 67 NRC 187 (2008)

when a claim becomes moot, a decision on the merits may be appropriate if the same basic dispute is likely to recur in the future, unless it seems sufficient to await the event or better to defer to another court; LBP-09-15, 70 NRC 198 (2009)

when a contention of omission has been rendered moot, and the intervenor wishes to raise specific challenges regarding the new information, it may timely file a new contention that addresses the admissibility factors of 10 C.F.R. 2.309(f)(1); LBP-06-16, 63 NRC 737 (2006)

when a contested proceeding has been terminated following the resolution of all submitted contentions, an individual, group, or governmental entity that wishes to interpose an additional issue must submit a new

SUBJECT INDEX

intervention petition that addresses the standards in section 2.309(c)(1) that govern nontimely intervention petitions; LBP-10-21, 72 NRC 616 (2010)

when a federal court dismisses a claim as moot and avoids any further consideration of the merits of that claim, it does so because the claim no longer satisfies the case or controversy requirement of Article III; LBP-09-15, 70 NRC 198 (2009)

when a new contention is filed challenging new data or conclusions in NRC's environmental documents, the timeliness of the new contention is based on whether it was filed promptly after the NRC's NEPA document became publicly available, not whether it was filed promptly after the information on which the intervenor bases its challenge became publicly available; LBP-10-24, 72 NRC 720 (2010)

when a Notice of Hearing is issued before construction is commenced, additional petitions to intervene or statements of contentions may be filed as construction unfolds and reveals potential shortcomings; LBP-07-14, 66 NRC 169 (2007)

when a participant fails to meet its obligations, a board should consider the imposition of sanctions against the offending party; LBP-09-1, 69 NRC 11 (2009)

when a petitioner cannot establish proximity-plus standing, he or she must resort to establishing standing under traditional principles; LBP-10-4, 71 NRC 216 (2010)

when a reopening motion is untimely, the section 3.326(a)(1) "exceptionally grave circumstances" test supplants the "significant issue" standard under section 2.326(a)(2); LBP-10-21, 72 NRC 616 (2010)

when a state advises a licensing board that a proceeding involves a facility within its borders, the board shall not require a further demonstration of standing; LBP-06-7, 63 NRC 188 (2006)

when a substantial and important question of law is presented, Commission review is appropriate; CLI-06-7, 63 NRC 165 (2006)

when an entity seeks to intervene on behalf of its members, that entity must show that it has an individual member who can fulfill all the necessary standing elements and has authorized the organization to represent those interests; LBP-07-3, 65 NRC 237 (2007); LBP-09-3, 69 NRC 139 (2009)

when an intervenor's challenges in an admitted contention are directed at a draft environmental impact statement because the FEIS has not yet been issued by the Staff, the contention can be construed as a challenge to the FEIS without the need for further modification; LBP-06-8, 63 NRC 241 (2006)

when an investigation is open and notorious, the interview transcripts are not confidential, and the public has constructive knowledge that those interviewed had a sufficient relationship to the root problem to warrant being interviewed, the right of personal privacy being asserted is weak compared to the privacy rights in other circumstances of unsubstantiated allegation; LBP-06-25, 64 NRC 367 (2006)

when an issue is no longer live, such that a party no longer has a legal interest in the issue, then it is moot; LBP-10-10, 71 NRC 529 (2010)

when an organization takes formal corporate action to initiate litigation not only germane but integral to its purpose, that action can constitute the requisite, if implicit, proof of authorization; LBP-09-6, 69 NRC 367 (2009)

when assessing whether petitioner has set forth a sufficient interest to intervene, licensing boards apply judicial concepts of standing; LBP-08-18, 68 NRC 533 (2008)

when balancing the six discretionary intervention factors, licensing boards must keep in mind that discretionary intervention is an extraordinary procedure; CLI-06-16, 63 NRC 708 (2006)

when character or integrity issues are raised, they are expected to be directly germane to the challenged licensing action; CLI-10-9, 71 NRC 245 (2010)

when conflicting expert opinions are involved, summary disposition is rarely appropriate; LBP-06-5, 63 NRC 116 (2006)

when considering whether to undertake pendent appellate review of otherwise unappealable issues, the Commission has expressed a willingness to take up otherwise unappealable issues that are "inextricably intertwined" with appealable issues; CLI-08-27, 68 NRC 655 (2008)

when critical information has been submitted to the NRC under a claim of confidentiality and was not available to petitioners when framing their issues, it is appropriate to defer ruling on the admissibility of an issue until the petitioner has had an opportunity to review this information and submit a properly documented issue; CLI-07-18, 65 NRC 399 (2007)

when deciding whether to grant standing to a petitioner, a board shall consider the nature of the petitioner's right under AEA to be made a party to the proceeding, the nature and extent of the

SUBJECT INDEX

- petitioner's property, financial, or other interest in the proceeding, and the possible effect of any order that may be entered in the proceeding on the petitioner's interest; LBP-07-4, 65 NRC 281 (2007)
- when denial of a license would alleviate a petitioner's asserted potential injury, any admissible contention with such a result can be prosecuted by a petitioner, regardless of whether that contention is directly related to that petitioner's articulated injury; LBP-09-16, 70 NRC 227 (2009)
- when determining whether a petitioner has established the necessary "interest" under Commission rules, licensing boards are directed by Commission precedent to look to judicial concepts of standing for guidance; LBP-07-4, 65 NRC 281 (2007)
- when environmental issues are dealt with in a separate proceeding, environmental contentions are beyond the scope of the safety proceeding unless they meet requirements beyond the ordinary contention admissibility tests; LBP-07-14, 66 NRC 169 (2007)
- when information becomes available piecemeal over time, and the foundation for a new contention does not become reasonably apparent until the last piece of information becomes available and falls into place, the test for good cause for late filing may be met; LBP-09-10, 70 NRC 51 (2009)
- when new contentions are based on breaking developments of information, they are to be treated as new or amended, not as nontimely; LBP-07-14, 66 NRC 169 (2007); LBP-08-27, 68 NRC 951 (2008)
- when NRC issues the environmental impact statement, petitioners have the opportunity to file a second wave of environmental contentions, which focus on the adequacy of the NRC Staff's EIS (or EA) under NEPA; LBP-09-25, 70 NRC 867 (2009)
- when NRC Staff is a party in a proceeding and not merely an indifferent bystander to private-party litigation, the role of the government in the litigation weighs in favor of disclosure; LBP-06-3, 63 NRC 85 (2006)
- when petitioner addresses 10 C.F.R. 2.309(c)(1)(viii), it should set out with as much particularity as possible the precise issues it plans to cover, identify its prospective witnesses, and summarize their proposed testimony; CLI-10-12, 71 NRC 319 (2010)
- when petitioner seeks to introduce a new contention after the record has been closed, it should address the reopening standards contemporaneously with a late-filed intervention petition, which must satisfy the standards for both contention admissibility and late filing; LBP-10-21, 72 NRC 616 (2010)
- when seeking to intervene in a representational capacity, an organization must identify by name and address at least one member who is affected by the licensing action and who qualifies for standing in his or her own right, and show that the member has authorized the organization to intervene on his or her behalf; LBP-10-15, 72 NRC 257 (2010)
- when standing in a prior proceeding related to the same facility is based on an issue that is outside the scope of the new proceeding, it cannot serve as the basis for standing in the new proceeding; LBP-07-14, 66 NRC 169 (2007)
- when taking the extraordinary action of allowing discretionary intervention, boards are expected to set out specific findings on each of the six factors; CLI-06-16, 63 NRC 708 (2006)
- when the Commission endorsed the use of the Federal Rules of Evidence as guidance for the boards, it did so with the express proviso that boards must apply the Part 2 rules with greater flexibility than the FRE; LBP-10-23, 72 NRC 692 (2010)
- when the Commission reviews board rulings on contention admissibility, it employs the clear error and abuse of discretion standards of review; CLI-10-17, 72 NRC 1 (2010)
- when the contested portion of a proceeding is terminated following an unchallenged merits determination in favor of applicant regarding the proceeding's sole admitted contention, the board's focus must be on the requirements applicable to reopening a closed record set out in 10 C.F.R. 2.326; LBP-10-21, 72 NRC 616 (2010)
- when the record of a proceeding has long been closed, the burden on a party seeking to reopen the record is significant; CLI-06-19, 63 NRC 19 (2006)
- where a contention alleges the omission of particular information or an issue from an application, and the information is later supplied by the applicant or considered by the Staff in a draft EIS, intervenors must timely file a new or amended contention that addresses the factors in section 2.714(b) in order to raise specific challenges regarding the new information; LBP-09-27, 70 NRC 992 (2009); LBP-10-10, 71 NRC 529 (2010)
- where a contention challenges applicant's compliance with the Commission's rules implementing the National Environmental Policy Act, materiality relates not only to the Commission's determination

SUBJECT INDEX

- regarding denial, issuance, or conditioning of the requested combined license, but also to the Commission's fulfillment of its obligations under NEPA; LBP-10-6, 71 NRC 350 (2010)
- where a contention is superseded by the subsequent issuance of licensing-related documents, the contention must be disposed of or modified; LBP-10-17, 72 NRC 501 (2010)
- where a hearing request was granted, but no actual notice of hearing was issued, the board approves of the settlement agreement; LBP-06-2, 63 NRC 80 (2006)
- where a motion to reopen a proceeding to introduce a new contention founders on several of the initial criteria, the board find it unnecessary to prolong the ruling by analyzing all of the other factors; LBP-10-19, 72 NRC 529 (2010)
- where a motion to reopen the record seeks to admit a new contention that has not previously been in controversy among the parties, movant must show that a balancing of the factors of 10 C.F.R. 2.309(c)(1) weighs in favor of reopening; LBP-08-12, 68 NRC 5 (2008)
- where a petitioner is accorded standing in one proceeding, that petitioner need not make a separate demonstration of standing in another proceeding regarding that same facility and the same parties; LBP-08-24, 68 NRC 691 (2008)
- where a petitioner is not conferred automatic standing in the high-level waste proceeding, a petition to intervene must provide information supporting petitioner's claim to standing, including the nature of petitioner's right under the governing statutes to be made a party, the nature of petitioner's interest in the proceeding, and the possible effect of any decision or order on petitioner's interest; LBP-09-6, 69 NRC 367 (2009)
- where a potential intervenor claims that the board wrongly rejected all contentions, an appeal lies; CLI-06-24, 64 NRC 111 (2006)
- where a presiding officer has reviewed an extensive record in detail, with the assistance of a technical advisor, the Commission is generally disinclined to upset his findings and conclusions, particularly on matters involving fact-specific issues or where the affidavits or submissions of experts must be weighed; CLI-06-1, 63 NRC 1 (2006)
- where any issue arises over the proper scope of a contention, NRC opinions have long referred back to the bases set forth in support of the contention; CLI-10-11, 71 NRC 287 (2010)
- where applicant is required to include measures to prevent nuclear criticality, an applicant's assertion that petitioners have not demonstrated that the facility involves a significant source of radioactivity with an obvious potential for offsite consequences does not stand up; LBP-07-14, 66 NRC 169 (2007)
- where appropriate, the Commission will exercise its authority to instruct the board to certify novel license renewal issues; CLI-07-1, 65 NRC 1 (2007)
- where intervenors have filed new contentions based on a supplement to the combined license application, in advance of a full board ruling on the original contentions, no appeal lies until the board acts on all contentions, both the original and the newly filed ones; CLI-09-18, 70 NRC 859 (2009)
- where NRC Staff or the license applicant argues that the board ought to have rejected all contentions, an appeal lies; CLI-06-24, 64 NRC 111 (2006)
- where petitioner conceded that information in its addendum was previously available, admitted the lateness of her filing, and made no effort at the time of its submission to justify its lateness or explain why the board should consider it, her request to supplement her submission was denied; LBP-10-4, 71 NRC 216 (2010)
- where petitioner has established standing to intervene, but has not submitted an admissible contention, its request for an evidentiary hearing is denied; LBP-08-17, 68 NRC 431 (2008)
- where petitioner was admitted to the case as a party at the time it filed an amended contention, consideration of the contention's admissibility is also governed by the general contention admissibility requirements of section 2.309(f)(1); CLI-10-18, 72 NRC 56 (2010)
- where petitioners failed to file on time or seek an extension because they had not yet decided whether to seek to intervene, such indecision does not constitute good cause; LBP-09-26, 70 NRC 939 (2009)
- where the nonmoving party declines to oppose a motion for summary disposition, the moving party is not perforce entitled to a favorable judgment, but has the burden to show that he is entitled to judgment under established principles; LBP-08-7, 67 NRC 361 (2008)
- where the privilege and the need may be equally weak, but the privilege can be protected by other means, adjudicators return to the norms of full and open discovery, so that relevancy, not need, becomes the determinative standard; LBP-06-25, 64 NRC 367 (2006)

SUBJECT INDEX

where there is no obvious potential for offsite harm, petitioner must show a specific and plausible means of how the challenged action may harm him or her; CLI-09-9, 69 NRC 331 (2009)

whether a nontimely petition and its associated contentions should be considered is based upon a balancing of eight factors; LBP-10-1, 71 NRC 165 (2010)

whether and at what distance a petitioner can be presumed to be affected must be judged on a case-by-case basis, taking into account the nature of the proposed action and the significance of the radioactive source; LBP-10-4, 71 NRC 216 (2010)

whether applicant has a valid NPDES permit is outside the scope of a power uprate proceeding; LBP-08-9, 67 NRC 421 (2008)

whether good cause exists to excuse the late-filing of a contention is the most important factor; CLI-08-8, 67 NRC 193 (2008)

whether the party seeking a stay faces potentially irreparable harm is the most important factor considered in the Commission's determination whether to grant a stay; CLI-09-23, 70 NRC 935 (2009)

with limited exceptions, no rule or regulation of the Commission is subject to attack in any adjudicatory proceeding; LBP-09-26, 70 NRC 939 (2009)

with respect to 10 C.F.R. 2.309(c)(1)(vi), the presence of another admitted party to the proceeding, particularly when that party previously raised the issue that is the subject of the new contention, weighs against a petitioner; LBP-10-1, 71 NRC 165 (2010)

with respect to an applicant's appeal, applicant must contend that, after considering all pending contentions, the board has erroneously granted a hearing to the petitioner; CLI-09-18, 70 NRC 859 (2009)

with respect to orders modifying a license, petitioner must always request a remedy that falls within the scope of the proceeding, as articulated in the notice of hearing; LBP-09-20, 70 NRC 565 (2009)

withdrawal of an application after the issuance of a notice of hearing shall be on such terms as the presiding officer may prescribe; CLI-10-13, 71 NRC 387 (2010)

within 25 days after service of a motion and proposed contention, any other party may file an answer responding to all elements of the motion and contention, and within 7 days of service of the answer, the movant may file a reply; LBP-09-22, 70 NRC 640 (2009)

without written authorization for representation, the Commission would have no concrete indication that, in fact, the member wishes to have the organization represent its interests in the proceeding; CLI-07-18, 65 NRC 399 (2007)

RULES OF PROCEDURE

a motion to stay issuance of a license might be granted where the factors usually considered in granting emergency injunctive relief are satisfied, including the likelihood of success on the merits, irreparable harm, absence of harm to others, and the public interest; CLI-08-13, 67 NRC 396 (2008)

arguments on a separate matter, which petitioner adopts in a motion for reconsideration but could have made earlier, do not provide a compelling substantive basis for reconsidering a decision; CLI-09-8, 69 NRC 317 (2009)

as for conclusions of law, the Commission will review legal questions de novo and reverse a licensing board's legal rulings if they are a departure from or contrary to established law; CLI-10-5, 71 NRC 90 (2010)

asserted procedural defects should be called to an agency's attention when, if in fact they were defects, they would have been correctable; CLI-10-14, 71 NRC 449 (2010)

Commission rules and longstanding precedent bar discovery in connection with the preparation of proposed contentions; CLI-08-28, 68 NRC 658 (2008)

discretionary review is granted based on petitioner's showing that there is a substantial question with respect to the five considerations listed in 10 C.F.R. 2.341(b)(4); CLI-10-5, 71 NRC 90 (2010)

even if late-filed contention criteria are satisfied, proposed contentions still must meet the threshold admissibility standards contained in 10 C.F.R. 2.309(f)(1); CLI-09-7, 69 NRC 235 (2009)

failure to address the four stay factors in a motion to stay issuance of a license is reason enough to deny the motion; CLI-08-13, 67 NRC 396 (2008)

grant of petitions for review is discretionary, giving due weight to the existence of a substantial question with respect to the five considerations listed in 10 C.F.R. 2.341(b)(4); CLI-09-7, 69 NRC 235 (2009); CLI-10-18, 72 NRC 56 (2010)

SUBJECT INDEX

in Subpart L proceedings, NRC Staff must produce a hearing file and make it available to all parties; LBP-09-22, 70 NRC 640 (2009)

license renewal may be set aside or appropriately conditioned even after it has been issued, upon subsequent administrative or judicial review; CLI-08-13, 67 NRC 396 (2008)

mere speculation concerning a nuclear accident does not demonstrate immediate and irreparable harm necessary for a stay; CLI-06-8, 63 NRC 235 (2006)

motions to reopen are governed by 10 C.F.R. 2.326, which requires satisfaction of three listed criteria and that the motion be accompanied by an affidavit that meets certain specific requirements; CLI-09-7, 69 NRC 235 (2009)

motions to reopen must be accompanied by affidavits of qualified experts presenting the factual and/or technical bases for the claim that there is a significant safety issue, together with evidence that satisfies NRC admissibility standards; CLI-08-28, 68 NRC 658 (2008); CLI-09-7, 69 NRC 235 (2009)

new bases for a contention cannot be introduced in a reply brief or at any other time after the date the original contentions are due, unless the petitioner meets the late-filing criteria set forth in 10 C.F.R. 2.309(c), (f)(2); CLI-09-7, 69 NRC 235 (2009)

no rule exists for a motion to stay issuance of a license while proceedings are pending before the board; CLI-08-13, 67 NRC 396 (2008)

NRC rules do not provide for multiple requests for reconsideration of the same decision; CLI-09-8, 69 NRC 317 (2009)

parties and the NRC Staff have a continuing duty to update their mandatory disclosures; LBP-09-22, 70 NRC 640 (2009)

petitioners may not raise entirely new arguments in a reply brief unless the standards for late-filed contentions are met; CLI-09-7, 69 NRC 235 (2009)

petitioners must examine the publicly available material and set forth their claims and the support for their claims at the outset; CLI-09-7, 69 NRC 235 (2009)

scheduling orders are to include provisions for disclosure of electronically stored information; LBP-09-22, 70 NRC 640 (2009)

Subpart G procedures focus on issues where the credibility of an eyewitness and/or issues of motive or intent of the party or eyewitness may reasonably be expected to be at issue; LBP-09-22, 70 NRC 640 (2009)

the burden of participating in a proceeding is not a harm that can form the basis for holding a proceeding in abeyance; CLI-09-8, 69 NRC 317 (2009)

the burden of satisfying the reopening requirements is a heavy one, and proponents of a reopening motion bear the burden of meeting all of these requirements; CLI-09-7, 69 NRC 235 (2009)

the Commission may grant a petition for review at its discretion, giving due weight to the existence of a substantial question with respect to the five considerations listed in 10 C.F.R. 2.341(b)(4); CLI-08-28, 68 NRC 658 (2008)

the informal procedural rules of Part 2, Subpart L place greater emphasis and responsibility on the presiding officer to oversee the development of a full and complete record; CLI-10-17, 72 NRC 1 (2010)

the opportunity for cross-examination under Subpart L is equivalent to the opportunity for cross-examination under the Administrative Procedure Act; LBP-07-4, 65 NRC 281 (2007)

the presiding officer is allowed to resolve factual and legal disputes in spent fuel storage controversies, including disagreements between experts, on the basis of a brief discovery period and written submissions and oral argument without a full trial-type evidentiary hearing; CLI-08-26, 68 NRC 509 (2008)

under Subpart K and the Nuclear Waste Policy Act, the Commission resorts to full evidentiary hearings on spent fuel storage controversies only when necessary for accuracy; CLI-08-26, 68 NRC 509 (2008)

where a motion to reopen proposes a contention not previously part of the proceeding, the requirements for late-filed contentions set out in 10 C.F.R. 2.309(c) must also be satisfied; CLI-08-28, 68 NRC 658 (2008)

See also Subpart G Procedures; Subpart L Procedures

SAFE SHUTDOWN SYSTEMS

evaluation of the fire protection properties of Thermo-Lag, Hemyc, and Kaowool materials and licensees' responses to those findings are discussed; DD-06-1, 63 NRC 133 (2006)

SUBJECT INDEX

SAFEGUARDS INFORMATION

- a 10-day deadline from the date of the hearing notice is reasonable for filing requests for access to safeguards information or sensitive, unclassified, nonsafeguards information; CLI-09-4, 69 NRC 80 (2009)
- a completed Form FD-258 (fingerprint card), signed in original ink, and submitted in accordance with 10 C.F.R. 73.57(d) is required for access to SGI; CLI-09-15, 70 NRC 1 (2009)
- a completed Form SF-85, "Questionnaire for Non-Sensitive Positions" is required for each individual who would have access to SGI; CLI-09-15, 70 NRC 1 (2009); CLI-10-4, 71 NRC 56 (2010)
- a requester may challenge an adverse determination with respect to access to safeguards information by filing a request for review; CLI-09-15, 70 NRC 1 (2009)
- after a closed hearing, parties can propose creation of a public copy of the transcript, with appropriate redactions for protected information; LBP-10-5, 71 NRC 329 (2010)
- an individual requesting access must provide a statement that explains the individual's need to know; CLI-10-4, 71 NRC 56 (2010)
- applicant requested that its mitigative strategies report be withheld from public disclosure because it contained security-related information; CLI-10-24, 72 NRC 451 (2010)
- before an adverse determination on trustworthiness and reliability for access to SGI is made, the proposed recipient must be provided any records that were considered in the determination and given an opportunity to correct or explain the information; CLI-09-15, 70 NRC 1 (2009)
- before the Office of Administration makes an adverse determination regarding a proposed recipient's trustworthiness and reliability for access to safeguards information, it must provide the proposed recipient any records that were considered in the trustworthiness and reliability determination, so that the proposed recipient will have an opportunity to correct or explain the record; CLI-10-4, 71 NRC 56 (2010)
- content of a statement that explains an individual's "need to know" safeguards information is described; CLI-09-15, 70 NRC 1 (2009)
- documents containing classified information or SGI must be evaluated paragraph by paragraph and those paragraphs containing classified information or SGI are to be redacted and the remaining paragraphs (not containing such sensitive material) are to be made available for disclosure to the public; LBP-10-2, 71 NRC 190 (2010)
- during closed portions of oral argument, only the board, NRC Staff, applicant, and individuals who signed nondisclosure affidavits pursuant to protective order would be permitted to remain in the hearing room; LBP-10-5, 71 NRC 329 (2010)
- even if the Commission could waive the application fee for access to safeguards information, the mere fact that petitioners are public interest organizations provides no special reason for departing from well-established NRC practice; CLI-09-4, 69 NRC 80 (2009)
- hearings on alternative terrorist scenario claims could not be conducted in a meaningful way without substantial disclosure of classified and safeguards information on threat assessments and security arrangements and without substantial litigation over their significance; CLI-08-1, 67 NRC 1 (2008); CLI-08-26, 68 NRC 509 (2008)
- if NRC Staff determines that the requestor has satisfied its requirements, the Office of Administration will then determine, based upon completion of the background check, whether the proposed recipient is trustworthy and reliable; CLI-09-15, 70 NRC 1 (2009)
- individuals requesting access to safeguards information who believe they belong to one or more of the categories of individuals that are exempt from the criminal history records check and background check requirements should specifically state which exemption the requestor is invoking and explaining the requestor's basis for believing that the exemption is applicable; CLI-09-15, 70 NRC 1 (2009); CLI-10-4, 71 NRC 56 (2010)
- legal authority exists for nondisclosure and protection of security-related information concerning the physical protection of nuclear power plants under 10 C.F.R. 2.390(d)(1); LBP-10-5, 71 NRC 329 (2010)
- NRC is explicitly prohibited by law from paying the expenses of or otherwise compensating intervenors, and thus cannot grant petitioners funds to prepare requests for access to safeguards information or sensitive unclassified nonsafeguards information; CLI-09-4, 69 NRC 80 (2009)

SUBJECT INDEX

NRC Staff must file a notice of intent if, at the time of publication of Notice of Hearing, it appears that it will be impracticable for the Staff to avoid the introduction of restricted data or national security information into a proceeding; CLI-10-4, 71 NRC 56 (2010)

petitioners' request for additional information on redacted portions of the combined license application is denied because the public record indicates the nature of the redacted information; CLI-09-4, 69 NRC 80 (2009)

prior to providing safeguards information to a requestor, NRC Staff will conduct (as necessary) an inspection to confirm that the recipient's information protection system is sufficient to satisfy the requirements of 10 C.F.R. 73.22; CLI-09-15, 70 NRC 1 (2009); CLI-10-4, 71 NRC 56 (2010)

requester may challenge NRC Staff's or Office of Administration's adverse determination with respect to access to safeguards information by filing a request for review; CLI-10-4, 71 NRC 56 (2010)

section 2.390(d)(1) of 10 C.F.R. provides legal authority for nondisclosure and protection of security-related information concerning the physical protection of nuclear power plants, and for the closing of portions of hearings and other sessions in which such information will necessarily be discussed; LBP-10-5, 71 NRC 329 (2010)

SGI qualifies for the exemption from disclosure; LBP-10-2, 71 NRC 190 (2010)

Staff may withhold some facts underlying its findings and conclusions on terrorism-related risks; CLI-07-11, 65 NRC 148 (2007)

the condition that requires investigation of an individual's character to grant access to restricted data is not linked to the general license criteria; LBP-09-6, 69 NRC 367 (2009)

the fee for access to SGI documents is used by NRC to pay the costs it incurs in determining whether the individual should be granted access to SGI; CLI-09-4, 69 NRC 80 (2009)

the newness of a deadline, along with petitioners' companion requests for additional resources to support their requests for such safeguards information justify a 10-day extension to request access to the information; CLI-09-4, 69 NRC 80 (2009)

the Office of Administration must determine, based upon completion of the background check, whether a proposed recipient is trustworthy and reliable, as required for access to safeguards information; CLI-10-4, 71 NRC 56 (2010)

the Secretary will assess initially whether the proposed recipient has shown a need for sensitive unclassified nonsafeguards information or SGI; LBP-10-2, 71 NRC 190 (2010)

SAFETY

severe accident mitigation alternatives analysis must be site specific and given careful consideration in order to comply with the Atomic Energy Act; LBP-09-10, 70 NRC 51 (2009)

the questions of the safety and environmental impacts of onsite low-level waste storage are, in the Commission's view, largely site- and design-specific, and appropriately decided in an individual licensing proceeding, provided that litigants proffer properly framed and supported contentions; CLI-09-3, 69 NRC 68 (2009)

SAFETY ANALYSIS

a preclosure safety analysis must be performed for the high-level waste repository and it must demonstrate, among other things, that the requirements of 10 C.F.R. 63.111(a) are met; CLI-09-14, 69 NRC 580 (2009)

although the analysis required by 10 C.F.R. 50.59 is not the same as the final safety analysis, it is nevertheless a formal, written analysis involving safety issues (accident probabilities and/or consequences); LBP-10-20, 72 NRC 571 (2010)

applicant's safety analysis report is a required part of its license application and must include a preclosure safety analysis; LBP-08-1, 67 NRC 37 (2008)

early site permit applicants must submit a safety assessment that includes an analysis of a fission product release from an accident, using the expected demonstrable containment leak rate and any fission product cleanup systems intended to mitigate the consequences of the accidents; LBP-09-19, 70 NRC 433 (2009)

fission product releases are associated with accidents that have generally been assumed to result in substantial meltdown of the core with subsequent release into the containment of appreciable quantities of fission products; LBP-09-19, 70 NRC 433 (2009)

SUBJECT INDEX

the function of 10 C.F.R. 50.59 is to deal with changes to a nuclear power plant, and it requires, as a prerequisite to any such change, that the licensee perform safety analyses in addition to those contained in the final safety analysis report; LBP-10-20, 72 NRC 571 (2010)

the preclosure safety analysis for the high-level waste repository must demonstrate that in the event of Category 1 or Category 2 event sequences, prescribed dose limits will be met; CLI-09-14, 69 NRC 580 (2009)

the purpose of the severe accident mitigation alternatives review is to ensure that any plant changes that have a potential for significantly improving severe accident safety performance are identified and assessed; CLI-10-11, 71 NRC 287 (2010)

SAFETY ANALYSIS REPORT

a limited work authorization applicant must submit design information related to activities within the scope of the requested LWA; LBP-09-19, 70 NRC 433 (2009)

applicant's SAR is a required part of its license application and must include a preclosure safety analysis; LBP-08-1, 67 NRC 37 (2008)

the high-level waste repository application must contain information pertaining to evaluation of potential exposures during the post-closure period beyond 10,000 years following disposal; CLI-08-20, 68 NRC 272 (2008)

the SAR component of an application for a standard design certification must analyze and address the problem of extremely low probability for accidents that could result in the release of significant quantities of radioactive fission products; LBP-09-10, 70 NRC 51 (2009)

the site SAR submitted with an early site permit application must contain the seismic, meteorological, hydrologic, and geologic characteristics of the proposed site; LBP-09-19, 70 NRC 433 (2009)

See also Final Safety Analysis Report

SAFETY CULTURE

allegations of historical improprieties are relevant in a license renewal proceeding because NRC must assure the public that the facility's current management encourages a safety-conscious attitude and must provide reasonable assurance that the facility can be safely operated; LBP-08-24, 68 NRC 691 (2008)

although not required by regulation, settlement agreements that contain language reinforcing employees' rights to raise safety concerns and communicate with the NRC avoid the possibility of being construed in a way that could be a violation; DD-10-1, 72 NRC 149 (2010)

broad-based issues akin to safety culture, such as operational history, quality assurance, quality control, management competence, and human factors, are beyond the bounds of a license renewal proceeding; CLI-10-27, 72 NRC 481 (2010)

Green inspection finding indicates that the deficiency in licensee performance has a very low-risk significance and has little or no impact on safety, but White, Yellow, and Red findings indicate increasingly serious safety problems; CLI-10-27, 72 NRC 481 (2010)

if the Commission were to permit fundamentally routine inspection findings and regulatory determinations to form the basis for safety culture contentions, this result could lead to a potentially never-ending stream of minitrials on operational issues, in which the applicant would be required to demonstrate how each issue was satisfactorily resolved; CLI-10-27, 72 NRC 481 (2010)

nondisparagement clauses in retention bonus agreements are common in employment agreements and NRC should not interfere with these agreements unless it finds such a clause violates 10 C.F.R. 50.7(f) or is applied in a fashion that prevents or retaliates against an employee for engaging in protected activities such as communicating with NRC; DD-10-1, 72 NRC 149 (2010)

NRC continually takes measures to include the monitoring of safety culture in its oversight programs and internal management processes; CLI-10-27, 72 NRC 481 (2010)

operating reactor licensees are not required to implement an employee concerns program, but are required to establish and implement an effective corrective action program; DD-10-1, 72 NRC 149 (2010)

petitioner's request for action concerning deficiencies in licensee's employee concerns program is denied; DD-10-1, 72 NRC 149 (2010)

requests for diagnostic evaluation team examination, safety culture assessment, and the NRC investigation at other licensee facilities are rejected for review because they are not requests for enforcement-type actions; DD-08-1, 67 NRC 347 (2008)

SUBJECT INDEX

the purpose of 10 C.F.R. 50.7(f) is to ensure that licensees do not enter into employment agreements that would prohibit, restrict, or otherwise discourage an employee or former employee from providing the NRC with information of regulatory significance; DD-10-1, 72 NRC 149 (2010)
to the extent petitioner believes that NRC Staff has overlooked facts indicating an inadequate safety culture as a matter separate and apart from license renewal, then its remedy is to direct Staff's attention to the supporting facts via a petition for enforcement action; CLI-10-27, 72 NRC 481 (2010)

SAFETY EVALUATION

early site permit applicants must perform an evaluation and analysis of the postulated fission product release to evaluate the offsite radiological consequences; LBP-09-19, 70 NRC 433 (2009)
Part 54 compliance is not dependent on complete fulfillment of Part 51 requirements given that the Commission has explicitly excluded SAMA analysis from Part 54 and distinguished the safety requirements of Part 54 from the environmental evaluation commanded by Part 51; LBP-10-13, 71 NRC 673 (2010)
requiring a full reassessment of safety issues that were thoroughly reviewed when the facility was first licensed and continue to be routinely monitored and assessed by ongoing agency oversight and agency-mandated licensee programs would be both unnecessary and wasteful at the license renewal stage; LBP-07-4, 65 NRC 281 (2007)
seismic siting factors are part of the safety determination a board must make in an early site permit proceeding; LBP-07-9, 65 NRC 539 (2007)

SAFETY EVALUATION REPORT

adequacy of the applicant's license application, not NRC Staff's safety evaluation, is the safety issue in any licensing proceeding, and contentions on the adequacy of the content of the Safety Evaluation Report are not cognizable in a proceeding; LBP-06-27, 64 NRC 438 (2006)
for purposes of the mandatory/uncontested portion of an early site permit proceeding, the board takes official notice of publicly available documents associated with NRC Staff's safety and environmental reviews; LBP-09-19, 70 NRC 433 (2009)

SAFETY INFORMATION

early site permit applications must contain a description and safety assessment of the site that includes an analysis and evaluation of the major structures, systems, and components of the facility that bear significantly on the acceptability of the site under radiological consequence evaluation factors; LBP-09-19, 70 NRC 433 (2009)

SAFETY ISSUES

a board appropriately rejected the contention of a petitioner who failed to support his premise that a river water intake valve is a safety-related system with information or expert opinion; CLI-07-25, 66 NRC 101 (2007)
a board must determine whether an ESP application and the record of the proceeding contain sufficient information, and the review of the application by the NRC Staff has been adequate, to support a negative finding on the question of whether the issuance of an early site permit will be inimical to the common defense and security or to the health and safety of the public; LBP-07-6, 65 NRC 429 (2007); LBP-07-9, 65 NRC 539 (2007)
a finding of reasonable assurance that there will be adequate protection to the health and safety of the public is based on judgment, not on the application of a mechanical verbal formula, a set of objective standards, or specific confidence interval; LBP-08-25, 68 NRC 763 (2008)
a new issue is raised only when the argument itself (as distinct from its chances of success) was not apparent at the time of the application; CLI-09-7, 69 NRC 235 (2009)
a new safety contention can be filed, with leave of the board, on a showing that the new contention is based on information that was not previously available and is materially different from previously available information, and the new contention has been submitted in a timely fashion based on the availability of the subsequent information; LBP-09-9, 70 NRC 41 (2009)
a safety contention arising from a matter resolved in an early site permit proceeding is within the scope of a combined license proceeding that references the ESP if it concerns whether the site characteristics and design parameters or terms or conditions specified in the ESP have been met or a requested variance from the ESP is unwarranted or should be modified; LBP-08-15, 68 NRC 294 (2008)

SUBJECT INDEX

- a technically accurate projection of the time-limited aging analysis that predicts that the component will fail due to aging during the 20-year period of extended operation will not suffice; LBP-08-25, 68 NRC 763 (2008)
- a timely motion to reopen may be denied if it raises issues that are not of major significance to plant safety whereas a nontimely motion may be granted if it raises an issue of sufficient gravity; LBP-10-21, 72 NRC 616 (2010)
- adequate aging management programs are both a required element of the license renewal application and a central finding that NRC must make before it can issue a license renewal; LBP-08-25, 68 NRC 763 (2008)
- because a contention focuses on the safety-related aspects of a COL application, it is not apparent that the issue resolved in the board's admissibility ruling has any particular implications for a contention challenging the environmental impacts of long-term onsite low-level radioactive waste storage admitted and pending in another proceeding; LBP-10-8, 71 NRC 433 (2010)
- boards must perform two types of inquiries with respect to safety matters in uncontested early site permit proceedings; LBP-06-28, 64 NRC 460 (2006)
- boards should conduct a simple sufficiency review of uncontested issues; LBP-06-28, 64 NRC 460 (2006)
- burden is on applicant to show that concrete in containment structures will maintain its integrity during the extended period of operations or to develop an aging management plan that ensures that any indication of degradation is detected and remediated; LBP-08-13, 68 NRC 43 (2008)
- current licensing basis represents an evolving set of requirements and commitments for a specific plant that are modified as necessary over the life of a plant to ensure continuation of an adequate level of safety; LBP-08-25, 68 NRC 763 (2008)
- during the license renewal term, the current licensing basis incorporates the CLB for the current license, including all licensee commitments, plus any new commitments to monitor, manage, and correct age-related degradation unique to license renewal; LBP-08-25, 68 NRC 763 (2008)
- each application must contain an integrated plant assessment for which specified components will demonstrate that the effects of aging will be adequately managed so that the intended function(s) will be maintained consistent with the current licensing basis for the period of extended operation; LBP-08-13, 68 NRC 43 (2008)
- each license renewal application must contain an evaluation of time-limited aging analyses, a list of TLAAs, a demonstration relating to TLAAs, and the actual TLAAs; LBP-08-25, 68 NRC 763 (2008)
- even if the time-limited aging analyses predict that the component will fail during the period of extended operation, a license renewal can still be granted if the applicant demonstrates that the effects of aging will be adequately managed during the period of extended operation; LBP-08-25, 68 NRC 763 (2008)
- if a matter as presented is devoid of safety significance, there is no likelihood whatsoever that a materially different result would have been likely had the newly proffered evidence been considered initially; LBP-08-12, 68 NRC 5 (2008)
- if safety contentions filed before construction begins would be considered premature and/or speculative, NRC hearing opportunities could soon come to be viewed as chimerical; LBP-07-14, 66 NRC 169 (2007)
- if the problem raised in a late-filed contention presents a sufficiently grave threat to public safety, a board should reopen the record to consider it even if it is not newly discovered and could have been raised in timely fashion; LBP-08-12, 68 NRC 5 (2008)
- in a license renewal proceeding, contentions must focus on topics related to the detrimental effects of aging and related time-limited issues; LBP-07-15, 66 NRC 261 (2007)
- in a license renewal proceeding, petitioners must demonstrate that an issue focuses on the potential impacts of an additional 20 years of nuclear power plant operation, not on everyday operational issues; CLI-06-4, 63 NRC 32 (2006)
- in a mandatory proceeding, a licensing board is to determine whether the application and record of the proceeding contain sufficient information and whether the NRC Staff's review of the application has been adequate; LBP-06-17, 63 NRC 747 (2006)
- in an uncontested uranium enrichment proceeding, a licensing board, without conducting a de novo evaluation of the application, will determine whether the application and record of the proceeding contain sufficient information to support licensing and whether NRC Staff's review of the application has been adequate; LBP-06-17, 63 NRC 747 (2006)

SUBJECT INDEX

in evaluating metal fatigue, a component's cumulative usage factor is the fundamental parameter used to determine whether it will likely develop cracks during the license renewal period and thus is subject to an aging management plan; LBP-08-13, 68 NRC 43 (2008)

in the context of a safety contention, petitioner must show that a waiver of the regulation is necessary to reach a significant safety problem; LBP-10-15, 72 NRC 257 (2010)

in the mandatory hearing, NRC must address whether issuance of an early site permit will be inimical to the common defense and security or to the health and safety of the public; CLI-07-27, 66 NRC 215 (2007)

in the mandatory hearing, NRC must address whether, taking into consideration the site criteria contained in 10 C.F.R. Part 100, a reactor or reactors having the characteristics that fall within the parameters for the site can be constructed and operated without undue risk to the health and safety of the public; CLI-07-27, 66 NRC 215 (2007)

in the mandatory proceeding on an early site permit application, the board must review the sufficiency of the record and the sufficiency of the NRC Staff's review, and decide if they are adequate to support the Staff's proposed findings; LBP-07-9, 65 NRC 539 (2007)

issues that were reviewed for the initial license and that have been closely monitored by NRC inspection during the license term need not be reviewed again in the context of a license renewal application; LBP-08-13, 68 NRC 43 (2008)

metal fatigue is an example of age-related degradation that properly falls within the scope of a license renewal proceeding; LBP-07-15, 66 NRC 261 (2007)

new information concerning safety may be new evidence, but not necessarily raise a new issue; CLI-09-7, 69 NRC 235 (2009)

NRC hearings on safety issues concern the adequacy of the license application, not the NRC Staff's work, but NRC hearings on NEPA issues focus entirely on the adequacy of the NRC Staff's work; CLI-07-17, 65 NRC 392 (2007)

power reactor licensees have safely stored and managed low-level radioactive waste under NRC oversight for years without the development of immediate safety problems or concerns; LBP-09-16, 70 NRC 227 (2009)

proponent of a motion to reopen must do more than simply raise a safety issue, but must show that the safety issue it raises is significant; LBP-10-19, 72 NRC 529 (2010)

protection against a highly unlikely loss-of-coolant accident has long been an essential part of the defense-in-depth concept used by the nuclear power industry and the AEC to ensure the safety of nuclear power plants; LBP-08-12, 68 NRC 5 (2008)

safety issues other than age-related degradation may arise in connection with renewal that are not relevant to safety during the initial operating license term but, because of their plant-specific nature, must be addressed in renewals case by case; LBP-08-25, 68 NRC 763 (2008)

site characterization issues are safety-related because, in determining the acceptability of a site, factors important to hydrological radionuclide transport must be obtained from onsite measurements; LBP-07-9, 65 NRC 539 (2007)

technical accuracy of the time-limited aging analyses is necessary, but not sufficient, to demonstrate that it remains valid because a technically accurate TLAA that shows that the component will fail during the period of extended operation does not satisfy 10 C.F.R. 54.21(c)(1)(i); LBP-08-25, 68 NRC 763 (2008)

the "demonstrations" mandated by 10 C.F.R. 54.21(c)(1)(i) and (ii) require that the time-limited aging analyses both be performed in a technically accurate manner and produce a prediction that the component will not fail due to aging during the period of extended operation; LBP-08-25, 68 NRC 763 (2008)

the board in an uncontested early site permit proceeding must decide whether, taking into consideration the site criteria contained in 10 C.F.R. Part 100, a reactor or reactors having the characteristics that fall within the parameters for the site can be constructed without undue risk to the health and safety of the public; LBP-07-9, 65 NRC 539 (2007)

the board may not consider that long-term erosion might entirely eliminate the proposed repository's upper geologic barrier unless the erosion is also shown to be a safety concern in the relatively near term; LBP-10-22, 72 NRC 661 (2010)

SUBJECT INDEX

the licensing basis for a nuclear power plant during the renewal term consists of the current licensing basis together with new commitments to monitor, manage, and correct age-related degradation unique to license renewal; LBP-08-25, 68 NRC 763 (2008)

the only safety issue where the regulatory process may not adequately maintain a plant's current licensing basis involves the potential detrimental effects of aging on the functionality of certain systems, structures, and components during the period of extended operations; CLI-10-27, 72 NRC 481 (2010)

the potential for tritium contamination of water is primarily a NEPA issue because it involves the environmental impacts of the proposed early site permit and possible mitigation measures, but also has a safety element because safety regulations require that exposure to radiation be as low as reasonably achievable; LBP-07-9, 65 NRC 539 (2007)

the presiding officer or licensing board has discretion to accelerate the merits hearing on safety issues, but not on environmental issues; CLI-07-17, 65 NRC 392 (2007)

the required low-level radioactive waste storage information is tied to a combined license applicant's particular plans for compliance through design, operational organization, and procedures; CLI-10-2, 71 NRC 27 (2010)

the statutory conditions for grant of a license renewal are described; LBP-08-25, 68 NRC 763 (2008)

there is no requirement that such concerns must be raised in the environmental report; LBP-10-10, 71 NRC 529 (2010)

threshold environmental legal and policy issues need not await issuance of the final environmental impact statement; CLI-07-17, 65 NRC 392 (2007)

under 10 C.F.R. 2.325, applicant has the burden of proving that it has met the reasonable assurance standard of 10 C.F.R. 54.29; LBP-08-25, 68 NRC 763 (2008)

whether excessive safety design could lead to licensing uncertainty, unnecessary costs, or delays are not issues material to the high-level waste repository construction authorization proceeding; CLI-09-14, 69 NRC 580 (2009)

whether NEPA requires the NRC to consider potential health effects of consuming irradiated food raises the kind of broad legal question appropriate for Commission interlocutory review; CLI-08-4, 67 NRC 171 (2008)

See also Generic Safety Issues

SAFETY REVIEW

aging management review for license renewal focuses on structures and components that perform passive functions, with no moving parts or changes in configuration or properties; CLI-10-14, 71 NRC 449 (2010)

aging management review for license renewal focuses on those systems, structures, and components that are of principal importance to safety; CLI-10-14, 71 NRC 449 (2010)

all non-safety-related structures, systems, and components whose failure could prevent satisfactory accomplishment of any of the safety functions identified in 10 C.F.R. 54.4(a)(1), including auxiliary systems necessary for the function of safety-related systems, are subject to aging management review for license renewal; CLI-10-14, 71 NRC 449 (2010)

all structures, systems, and components relied on in safety analyses or plant evaluations to perform a function that demonstrates compliance with the NRC's regulations for fire protection, environmental qualification, pressurized thermal shock, anticipated transients without scram, and station blackout are subject to aging management review for license renewal; CLI-10-14, 71 NRC 449 (2010)

claims about the adequacy of the Staff's review are not litigable in licensing proceedings; CLI-08-23, 68 NRC 461 (2008)

cracking of a nonsafety-related steam dryer could cause a release of loose parts that could have an adverse impact on safety-related equipment and thus it is within the scope of aging management review in a license renewal proceeding; LBP-08-25, 68 NRC 763 (2008)

findings that a board must make for issuance of an early site permit are clarified; LBP-09-19, 70 NRC 433 (2009)

for license renewal, the focus is on those potential detrimental effects of aging that are not routinely addressed by ongoing regulatory oversight programs; LBP-07-11, 66 NRC 41 (2007); LBP-08-22, 68 NRC 590 (2008)

general categories of structures, systems, and components falling within the initial focus of the safety review for license renewal are outlined; CLI-10-14, 71 NRC 449 (2010)

SUBJECT INDEX

if a structure or component is already required to be replaced at mandated, specified time periods, it would fall outside the scope of license renewal review; LBP-06-23, 64 NRC 257 (2006); LBP-08-22, 68 NRC 590 (2008)

in an exceptional case, NRC may conduct an irradiator facility siting review if a unique threat is involved which may not be addressed by state and local requirements; CLI-08-3, 67 NRC 151 (2008)

issues relating to a plant's current licensing basis are ordinarily beyond the scope of a license renewal review, because those issues already are monitored, reviewed, and commonly resolved as needed by ongoing regulatory oversight; LBP-06-7, 63 NRC 188 (2006)

it is neither possible nor necessary for the Staff to verify each and every factual assertion in complex license applications; CLI-08-23, 68 NRC 461 (2008)

monitoring, and the installation of monitoring wells, is a matter for ongoing operation and maintenance, and not within the scope of matters properly considered in a license renewal; LBP-08-22, 68 NRC 590 (2008)

NRC provides detailed guidance for Staff personnel reviewing the safety aspects of early site permit applications; LBP-09-19, 70 NRC 433 (2009)

NRC Staff review for license renewals focuses on certain aging effects that would not reveal themselves through performance indicators associated with active functions; CLI-08-23, 68 NRC 461 (2008)

NRC Staff's review of the safety-related aspects of each license renewal application focuses on the adequacy of the applicant's aging management programs and an evaluation of the applicant's time-limited aging analyses; LBP-08-25, 68 NRC 763 (2008)

NRC's public health and safety review for a license renewal ordinarily is limited to a review of the plant structures and components that will require an aging management review for the period of extended operation and the plant's systems, structures, and components that are subject to an evaluation of time-limited aging analyses; LBP-06-7, 63 NRC 188 (2006); LBP-06-10, 63 NRC 314 (2006)

petitioner alleges failure to conduct safety review of the modification of the controlled access area by the addition of an undocumented roof access for a siphon breaker experiment; DD-10-3, 72 NRC 171 (2010)

renewal applicants must demonstrate that they will adequately manage the detrimental effects of aging for all important components and structures, with attention, for example, to metal fatigue, erosion, corrosion, thermal and radiation embrittlement, microbiologically induced effects, creep, and shrinkage; CLI-06-24, 64 NRC 111 (2006)

review of a license renewal application does not reopen issues relating to a plant's current licensing basis, or any other issues that are subject to routine and ongoing regulatory oversight and enforcement; CLI-06-24, 64 NRC 111 (2006)

Staff's audit, or sampling, method of verifying a license renewal applicant's aging management programs, together with the other components of its review, enables the Staff to make the safety findings necessary for issuance of a renewed license; CLI-08-23, 68 NRC 461 (2008)

Staff's review must support a conclusion that a proposed irradiator would protect health and minimize danger to life or property; CLI-08-3, 67 NRC 151 (2008)

the aging management review for license renewal does not focus on all aging-related issues; CLI-10-27, 72 NRC 481 (2010)

the general scope of the license renewal safety review is outlined in 10 C.F.R. 54.4; CLI-10-14, 71 NRC 449 (2010)

the only severe accident mitigation alternatives that applicant must implement as part of a license renewal safety review are those dealing with aging management; LBP-10-13, 71 NRC 673 (2010)

the Part 54 review is limited to those potentially detrimental effects of aging that are not routinely addressed by ongoing regulatory oversight programs; CLI-06-24, 64 NRC 111 (2006); LBP-06-23, 64 NRC 257 (2006)

the scope of the licensing board's review in an uncontested early site permit proceeding is described; LBP-07-1, 65 NRC 27 (2007)

there is no legal requirement that the Staff find that the proposed design is not too conservative or that the associated costs are not excessive as part of its safety review of the high-level waste repository construction authorization application; CLI-09-14, 69 NRC 580 (2009)

to the extent that any analyses performed during the initial licensing process were limited to the initial 40-year license period, a license renewal applicant must show that it has reassessed these time-limited

SUBJECT INDEX

aging analyses and that these analyses remain valid for the period of extended operation; CLI-06-24, 64 NRC 111 (2006)

SAFETY-RELATED

all non-safety-related structures, systems, and components whose failure could prevent satisfactory accomplishment of any of the safety functions identified in 10 C.F.R. 54.4(a)(1), including auxiliary systems necessary for the function of safety-related systems, are subject to aging management review for license renewal; CLI-10-14, 71 NRC 449 (2010)

cracking of a nonsafety-related steam dryer could cause a release of loose parts that could have an adverse impact on safety-related equipment and thus it is within the scope of aging management review in a license renewal proceeding; LBP-08-25, 68 NRC 763 (2008)

each engineered or administrative criticality control/control system must be designated an item relied on for safety; LBP-06-17, 63 NRC 747 (2006)

motion to reopen to introduce a new contention asserting issues related to aging management of effects of moist or wet environments on buried, below-grade, underground, or hard-to-access safety-related electrical cables is denied; LBP-10-19, 72 NRC 529 (2010)

structures, systems, and components that are relied upon to remain functional during and following design-basis events to ensure the integrity of the reactor coolant pressure boundary, the capability to shut down the reactor and maintain it in a safe shutdown condition, or the capability to prevent or mitigate the consequences of accidents that could result in potential offsite exposures are subject to aging management review for license renewal; CLI-10-14, 71 NRC 449 (2010)

the design basis flood is the magnitude of the flood event that is used to evaluate safety structures, systems, and components important to safety during facility design; LBP-09-25, 70 NRC 867 (2009)

SANCTIONS

a board may impose sanctions including dismissal of the specific contentions, dismissal of the adjudication, or dismissal of the application for any continuing unexcused failure to make the required mandatory disclosures; LBP-09-30, 70 NRC 1039 (2009)

a key factor in establishing the length of a potential employment ban is whether the subject has taken responsibility for his actions and expressed the appropriate remorse; LBP-09-24, 70 NRC 676 (2009)

a licensing board is clearly authorized to dismiss a party who obstructs the discovery process, disobeys the board orders, and engages in willful, bad-faith, and prejudicial conduct toward another party; CLI-08-29, 68 NRC 899 (2008)

a single charge, if serious enough, could justify a 5-year employment ban; LBP-09-24, 70 NRC 676 (2009)

a spectrum of sanctions from minor to severe may be employed by a board to assist in the management of a proceeding; LBP-10-21, 72 NRC 616 (2010)

an attempt to circumvent page-limit rules by incorporating documents by reference could be grounds for sanctions; CLI-10-9, 71 NRC 245 (2010)

because of an attorney's previous disregard of the NRC's practices and procedures, the Commission orders the Office of the Secretary to screen all filings bearing the offender's signature and not to accept or docket them unless they meet all procedural requirements; CLI-06-4, 63 NRC 32 (2006)

boards lack authority to establish prospective sanctions for any failure by the Staff and/or the applicant to comply with the Board's notice conditions; CLI-09-2, 69 NRC 55 (2009)

boards may reprimand, censure, or suspend intervenors for contemptuous conduct; CLI-07-28, 66 NRC 275 (2007)

carefully crafted restraints in the Constitution preserve freedom by curbing the exercise of power; LBP-09-24, 70 NRC 676 (2009)

courts have been careful to strictly limit the exercise of summary contempt power to cases in which it was clear that all of the elements of misconduct were personally observed by the judge; LBP-09-24, 70 NRC 676 (2009)

dismissal due to counsel's malfeasance is a logical extension of the board's disciplinary authority to reprimand, censure, or suspend from a proceeding any party or representative who refuses to comply with its directions; CLI-08-29, 68 NRC 899 (2008)

dismissal of a party falls within the spectrum of sanctions available to the boards to assist in the management of proceedings, although dismissal should be reserved for severe cases; CLI-08-29, 68 NRC 899 (2008)

SUBJECT INDEX

- examples include warning a party that offending conduct will not be tolerated in the future, refusing to consider a filing, denying the right to cross-examine or present evidence, dismissing contentions, imposing sanctions on counsel, or dismissing the party from the proceeding; LBP-10-21, 72 NRC 616 (2010)
- exercise of the power of compulsory process must be carefully circumscribed when the investigative process tends to impinge upon such highly sensitive areas as freedom of speech or press, freedom of political association, and freedom of communication of ideas; LBP-09-24, 70 NRC 676 (2009)
- factors considered in selecting an appropriate sanction include relative importance of the unmet obligation, its potential for harm to other parties or the orderly conduct of the proceeding, whether its occurrence is an isolated incident or a part of a pattern of behavior, the importance of the safety or environmental concerns raised by the party, and all of the circumstances; LBP-10-21, 72 NRC 616 (2010)
- failure of an organizational participant to have a representative provide an appearance notice in accord with section 2.314(b) might provide cause for an appropriate sanction for failure to properly prosecute the litigation; LBP-10-7, 71 NRC 391 (2010)
- failure under 10 C.F.R. 2.309(d) to support an intervention petition with affidavits providing necessary information regarding the basis for representational standing could interpose a jurisdictional flaw potentially warranting the participant's dismissal from the proceeding; LBP-10-7, 71 NRC 391 (2010)
- immediately effective deprivation of the legally acknowledged right to pursue one's livelihood should not be imposed without the Staff having substantial reason to do so and explaining its reasons in advance and in some detail; LBP-09-24, 70 NRC 676 (2009)
- licensing boards have awarded payment of litigation fees and expenses from a licensee to an intervenor if there has been legal harm to the intervenors caused by some activity or action of the licensee; LBP-09-1, 69 NRC 11 (2009)
- licensing boards have broad discretion to sanction willful, prejudicial, and bad-faith behavior; LBP-09-1, 69 NRC 11 (2009)
- sanctions have been imposed against a party seeking to file a written request for hearing only when that party has not followed established Commission procedures; LBP-08-18, 68 NRC 533 (2008); LBP-08-19, 68 NRC 545 (2008); LBP-08-20, 68 NRC 549 (2008)
- states can be required to carefully tailor the means of satisfying a legitimate state interest when fundamental liberties and rights are threatened; LBP-09-24, 70 NRC 676 (2009)
- the appropriateness of a 5-year employment ban may not depend on a board's upholding all of the several charges and then imposing a multiyear ban on a sort of "1 year for each violation" approach; LBP-09-24, 70 NRC 676 (2009)
- the Commission may reject an appeal summarily for violating NRC procedural regulations; CLI-08-17, 68 NRC 231 (2008)
- the target of an immediately effective enforcement order has the right to challenge the immediate effectiveness and the promise of an expedited hearing; LBP-09-24, 70 NRC 676 (2009)
- to succeed in imposing pretrial detention because the accused is a danger to the community, the government must, among other things, prove in an adversary hearing by clear and convincing evidence that no conditions of release can reasonably ensure the community's safety; LBP-09-24, 70 NRC 676 (2009)
- when a participant fails to meet its obligations, a board should consider the imposition of sanctions against the offending party; LBP-09-1, 69 NRC 11 (2009)
- where the government has deprived an individual of a property interest without a hearing, the government must be prepared to show an important government interest, accompanied by a substantial assurance that the deprivation is not baseless or unwarranted; LBP-09-24, 70 NRC 676 (2009)
- with an eye toward mitigating prejudice to nonbreaching participants, boards must tailor sanctions to bring about improved future compliance; LBP-10-21, 72 NRC 616 (2010)
- SCHEDULE, BRIEFING**
- allowing discovery or an evidentiary hearing with respect to safety-related issues to proceed before the final safety evaluation report is issued will serve to further the Commission's objective to ensure a fair, prompt, and efficient resolution of contested issues; CLI-09-15, 70 NRC 1 (2009)
- although participants generally must comply with the schedule established by the presiding officer, they might sometimes be unable to meet established deadlines; LBP-10-21, 72 NRC 616 (2010)

SUBJECT INDEX

Commission has authority to issue case-specific orders modifying procedural regulations, including milestone schedules; CLI-08-18, 68 NRC 246 (2008)

in establishing and enforcing schedule deadlines, boards must take care not to compromise the Commission's fundamental commitment to a fair and thorough hearing process; LBP-10-21, 72 NRC 616 (2010)

licensing boards have authority to set a proceeding's schedule and to ensure compliance with that schedule; LBP-10-21, 72 NRC 616 (2010)

obligations of parties include participation within the schedule established for the proceeding despite the burden on a participant's time and resources and despite uncertainties engendered by the potential for new information; CLI-09-8, 69 NRC 317 (2009)

the presiding officer may grant extensions of time for individual milestones for the participants' filings, and may delay its own issuances for up to 30 days beyond the date of the milestone set in the hearing schedule; CLI-08-18, 68 NRC 246 (2008)

SCHEDULING

an initial scheduling order is designed to ensure proper case management of the proceeding; LBP-09-22, 70 NRC 640 (2009)

application for approval of an alternate schedule for the submission of a decommissioning plan for a site containing expended depleted uranium munitions is approved; LBP-08-4, 67 NRC 105 (2008)

boards have an obligation to establish a case scheduling order, and to advise the Commission of any significant delay in meeting major activities set forth in the hearing schedule; CLI-09-17, 70 NRC 309 (2009)

hearing schedule milestones have been modified for the high-level-waste proceeding; CLI-08-25, 68 NRC 497 (2008)

licensing boards have authority to control the schedule for a proceeding to ensure that intervenors have adequate time to prepare new or amended contentions in response to new information; LBP-10-17, 72 NRC 501 (2010)

no later than 1 year after issuance of the combined license or at the start of construction, whichever is later, the COL licensee must submit its schedule for completing the inspections, tests, or analyses and provide schedule updates; LBP-09-19, 70 NRC 433 (2009)

orders are to include provisions for disclosure of electronically stored information; LBP-09-22, 70 NRC 640 (2009)

the Commission has the authority to enter into case-specific procedural orders to facilitate the efficient resolution of issues before the board; CLI-07-17, 65 NRC 392 (2007)

the initial scheduling order is to be issued within 55 days of the board decision granting intervention and admitting contentions; LBP-09-22, 70 NRC 640 (2009)

the licensing board is directed to revise its mandatory hearing schedule with a goal of issuing a final Commission decision on the pending application within 30 months from the date that the application was received; CLI-07-5, 65 NRC 109 (2007)

the presiding officer or licensing board has discretion to accelerate the merits hearing on safety issues, but not on environmental issues; CLI-07-17, 65 NRC 392 (2007)

to be granted, an alternate schedule for submission of a decommissioning plan must be necessary to the effective conduct of decommissioning operations; LBP-07-7, 65 NRC 507 (2007)

under certain conditions, the Commission may approve an alternative schedule for the submittal of a decommissioning plan; LBP-06-6, 63 NRC 167 (2006)

within 45 days after the filing of answers and replies the presiding officer must issue a decision on each request for hearing/petition to intervene, absent an extension from the Commission; CLI-07-20, 65 NRC 499 (2007)

SECRETARY OF THE COMMISSION

referral of petitioner's motion to admit a late-filed contention effectively returns jurisdiction to the licensing board to rule on the motion; CLI-09-5, 69 NRC 115 (2009)

the Secretary is authorized to establish procedures for obtaining access to sensitive unclassified nonsafeguards information prior to granting intervention in a licensing proceeding; LBP-10-2, 71 NRC 190 (2010)

the Secretary of the Commission has authority to refer a motion to the board for any action the board deems appropriate; CLI-09-5, 69 NRC 115 (2009)

SUBJECT INDEX

the Secretary will assess initially whether the proposed recipient has shown a need for sensitive unclassified nonsafeguards information or safeguards information; LBP-10-2, 71 NRC 190 (2010)

SECURITY

- a contention that applicant has failed to identify non-safety-related systems, structures, and components in the security area whose failure could prevent satisfactory accomplishment of the functions of safety-related systems, structures, and components is not admissible because security-related issues are not within the scope of a license renewal proceeding; LBP-06-20, 64 NRC 131 (2006)
- a domestic corporation in which a foreign entity has an ownership interest is considered controlled or dominated if its will is subjugated to the will of the foreign entity on primary safety matters or access policies that may be inimical to the national defense and security of the United States; LBP-09-4, 69 NRC 170 (2009)
- a person may be denied access at a licensee facility based on falsification of information, trustworthiness or reliability issues, and issues related to fitness for duty; DD-10-2, 72 NRC 163 (2010)
- a senior plant supervisor's deliberate failure to contact the appropriate site security manager to initiate an assessment of the trustworthiness and reliability of two contract technicians who falsified a maintenance report is a violation; LBP-08-14, 68 NRC 279 (2008)
- access control measures to prevent exposure to radiation from slag and baghouse dust piles until final decommissioning is completed are discussed; CLI-09-1, 69 NRC 1 (2009)
- an individual requiring clarification or resolution of an access authorization concern must resolve the issue with the licensee where unescorted access was last held or otherwise denied; DD-10-2, 72 NRC 163 (2010)
- disclosure of documents under the National Environmental Policy Act is expressly governed by the Freedom of Information Act; CLI-08-8, 67 NRC 193 (2008)
- each licensee must evaluate access denial status on a case-by-case basis and make a determination of trustworthiness and reliability; DD-10-2, 72 NRC 163 (2010)
- if petitioners wish to propose security measures in addition to those laid out in a Staff enforcement order, their remedy is to petition NRC under 10 C.F.R. 2.206 for further enforcement action or to ask NRC to institute a rulemaking to impose broader security measures; CLI-10-3, 71 NRC 49 (2010)
- issuance of a post-9/11 security order does not amount to unlawfully promulgated regulations; CLI-10-3, 71 NRC 49 (2010)
- measures the NRC has imposed upon its licensees since September 11, 2001, and national anti-terrorist measures, coupled with the robust nature of spent fuel pools, make the probability of a successful terrorist attack, though numerically indeterminable, very low; LBP-08-21, 68 NRC 554 (2008)
- NRC has not established an ownership interest threshold or plateau above which a foreign entity is presumed to have control or domination over the applicant; LBP-09-4, 69 NRC 170 (2009)
- nuclear industry was required to develop, implement, and maintain an industry database accessible by NRC-licensed facilities to share information, including determination of whether an individual is denied access at any other NRC-licensed facility; DD-10-2, 72 NRC 163 (2010)
- petitioner alleges failure to conduct safety review of the modification of the controlled access area by the addition of an undocumented roof access for a siphon breaker experiment; DD-10-3, 72 NRC 171 (2010)
- potentially disqualifying information for unescorted access authorization may include unfavorable information from an employer, developed or disclosed criminal history, credit history, judgments, unfavorable reference information, evidence of drug or alcohol abuse, discrepancies between information disclosed and developed; DD-10-2, 72 NRC 163 (2010)
- terrorism contentions are directly related to security and are therefore, under NRC license renewal rules, unrelated to the detrimental effects of aging, and consequently are beyond the scope of, not material to, and inadmissible in, a license renewal proceeding; CLI-07-8, 65 NRC 124 (2007); CLI-07-9, 65 NRC 139 (2007)
- the "design basis threat" rule describes general adversary characteristics that designated NRC licensees, including nuclear power plant licensees, are required to defend against with high assurance; CLI-07-8, 65 NRC 124 (2007)
- the Atomic Energy Act restriction on foreign ownership focuses on safeguarding access to nuclear materials, and not on other licensing matters; LBP-09-4, 69 NRC 170 (2009)

SUBJECT INDEX

the decision of whether or not to grant a license to a corporation hinges on whether the applicant is being controlled or dominated by the foreign entity; LBP-09-4, 69 NRC 170 (2009)
until decommissioning is completed, a licensee must limit actions to those related to decommissioning and control access to restricted areas until they are suitable for release; CLI-09-1, 69 NRC 1 (2009)
See also Common Defense and Security; National Security Information

SECURITY CLEARANCES

high assurance must be provided that individuals granted unescorted access are trustworthy and reliable, and do not constitute an unreasonable risk to the public health and safety, including a potential to commit radiological sabotage; LBP-08-14, 68 NRC 279 (2008)

SECURITY PLANS

hearings on alternate terrorist scenario claims could not be conducted in a meaningful way without substantial disclosure of classified and safeguards information on threat assessments and security arrangements and without substantial litigation over their significance; CLI-08-26, 68 NRC 509 (2008)

SEISMIC ANALYSIS

adequacy of the analysis for the site found in the Final Safety Analysis Report is not a litigable issue; LBP-08-16, 68 NRC 361 (2008)

applicant's site safety analysis report must include seismic and geologic characteristics of the proposed site with appropriate consideration of the most severe historical natural phenomena that have been reported for the site; LBP-09-19, 70 NRC 433 (2009)

in providing information on seismic and geologic characteristics of a proposed site, applicants must conform to the requirements of 10 C.F.R. 100.23; LBP-09-19, 70 NRC 433 (2009)

the site safety analysis report submitted with an early site permit application must contain the seismic, meteorological, hydrologic, and geologic characteristics of the proposed site; LBP-09-19, 70 NRC 433 (2009)

SEISMIC DESIGN

a nuclear power plant must be designed so that, if the safe shutdown earthquake occurs, certain structures, systems, and components will remain functional and within applicable stress, strain, and deformation limits; LBP-07-9, 65 NRC 539 (2007)

panoramic irradiators to be built in seismic areas must have concrete shielding meeting the seismic design requirements of appropriate industry or local building codes; CLI-08-3, 67 NRC 151 (2008)

the stability of ISFSI concrete pads holding dry spent fuel storage casks during earthquakes is addressed; DD-07-2, 65 NRC 365 (2007)

SEISMIC ISSUES

petitioner has alleged sufficient new information concerning the seismic situation to raise a prima facie showing that strict application of the generic NEPA analysis of the management of spent fuel in nuclear reactors would not serve the purpose for which Part 51 Appendix B and 10 C.F.R. 51.53(c)(2) were adopted; LBP-10-15, 72 NRC 257 (2010)

petitioner has presented a prima facie showing for waiver of the NRC regulation covering the environmental impacts of spent fuel pool accidents generically, and has shown that its contention concerning earthquake-induced spent fuel pool accidents is otherwise admissible; LBP-10-15, 72 NRC 257 (2010)

See also Earthquakes

SEISMIC RISK

seismic siting factors are part of the safety determination a board must make in an early site permit proceeding; LBP-07-9, 65 NRC 539 (2007)

SENIOR REACTOR OPERATOR LICENSE

license automatically expires upon termination of employment with the facility licensee; LBP-09-14, 70 NRC 193 (2009)

license is limited to the facility for which it is issued; LBP-09-14, 70 NRC 193 (2009)

no license that petitioner might be awarded could be active because (not having been at the facility for more than 6 months) petitioner could not have performed the functions of an operator or senior operator for the necessary minimum number of hours during each calendar quarter; LBP-09-14, 70 NRC 193 (2009)

SUBJECT INDEX

where applicant had proposed that a senior reactor operator license be both issued and cancelled retroactively, the Commission declined to engage in such an empty exercise; LBP-09-14, 70 NRC 193 (2009)

SENSITIVE UNCLASSIFIED NONSAFEGUARDS INFORMATION

a board's determination on a request for access is reviewed de novo; CLI-10-24, 72 NRC 451 (2010)

a participant in administrative litigation, having an even greater interest in obtaining access to SUNSI than does the general public, is entitled to obtain documents under standards no more restrictive than would be accorded the general public under the Freedom of Information Act; LBP-10-2, 71 NRC 190 (2010)

a SUNSI access order is issued by the Commission or NRC in its role as supervisor of NRC Staff and does not constitute an adjudicatory ruling by the Commission; LBP-10-2, 71 NRC 190 (2010)

a SUNSI requester files a challenge to NRC Staff's adverse determination with respect to access to SUNSI with the presiding officer, and the NRC Staff may file a reply to the requester's challenge; LBP-09-5, 69 NRC 303 (2009)

although 10 C.F.R. 2.390(d) never uses the term "sensitive unclassified nonsafeguards information," this regulation seems to fit NRC Staff's claim that SUNSI is security-related; LBP-10-2, 71 NRC 190 (2010)

although the NRC public website states that SUNSI encompasses a wide variety of categories (e.g., personnel privacy, attorney-client privilege, confidential source), there is no legal basis for sweeping aside the well-established and long-recognized privileges such as the Privacy Act, 5 U.S.C. § 552(a), and the attorney-client privilege; LBP-10-2, 71 NRC 190 (2010)

although the SUNSI access procedures do not impose a high threshold for demonstrating need, they must be applied consistent with the principle that it is important to prevent unnecessary disclosure of sensitive information; LBP-09-5, 69 NRC 303 (2009)

an appeal as of right by NRC Staff is permitted on the question of whether a request for access to SUNSI should have been denied in whole or in part; CLI-10-24, 72 NRC 451 (2010)

because of the security-related SUNSI categorization of a Staff guidance document used to assess an application's compliance with NRC rules, the Staff would not have to produce the document but would be required to identify the document as part of its continuing duty of disclosure; CLI-10-24, 72 NRC 451 (2010)

documents that qualify as exempt from FOIA disclosure are described; LBP-10-2, 71 NRC 190 (2010)

excessively broad claims of SUNSI in a licensing proceeding impact not just an intervenors' access to documents, but also the public's access to the adjudicatory process; LBP-10-2, 71 NRC 190 (2010)

for documents that are otherwise discoverable, but for which there is a claim of privilege or protected status, NRC Staff must list them and provide sufficient information for assessing their privilege or protected status; CLI-10-24, 72 NRC 451 (2010); CLI-10-25, 72 NRC 469 (2010)

handling of confidential commercial or financial (proprietary) information that has been submitted to the agency is governed by 10 C.F.R. 2.390; CLI-10-24, 72 NRC 451 (2010)

if a SUNSI request is denied, the NRC Staff shall briefly state the reasons for the denial; LBP-09-5, 69 NRC 303 (2009)

if petitioners offer a reason for needing information material to the findings a licensing board must make and otherwise explain why publicly available versions of the application would not be sufficient to provide the basis and specificity for a proffered contention, they would satisfy the need criterion; LBP-09-5, 69 NRC 303 (2009)

in adjudicating petitioners' appeal from the NRC Staff's denial of their request for access to sensitive unclassified nonsafeguards information, boards consider whether Staff correctly applied the criteria established by the Commission; LBP-09-5, 69 NRC 303 (2009)

in its supervisory capacity, the Commission provides guidance on the "need for SUNSI" analysis, for use in those instances when an access order applies; CLI-10-24, 72 NRC 451 (2010)

interlocutory appeal to the Commission of certain rulings relating to SUNSI is authorized; LBP-10-2, 71 NRC 190 (2010)

NRC is explicitly prohibited by law from paying the expenses of or otherwise compensating intervenors, and thus cannot grant petitioners funds to prepare requests for access to safeguards information or sensitive unclassified nonsafeguards information; CLI-09-4, 69 NRC 80 (2009)

SUBJECT INDEX

- petitioner's lack of access to SUNSI may hinder it in its ability to demonstrate why publicly available versions of the application would not be sufficient to provide the basis and specificity for a proffered contention, but this does not absolve a petitioner from at least endeavoring to address this criterion; LBP-09-5, 69 NRC 303 (2009)
- procedures and schedules set forth in the SUNSI access order are intended only to deal with issues arising before intervention occurs and a board is created; LBP-10-2, 71 NRC 190 (2010)
- requests for access must demonstrate a reasonable basis to believe that a potential party is likely to establish standing to intervene and that the proposed recipient has a need for the SUNSI; LBP-09-5, 69 NRC 303 (2009)
- Staff's designation of its own material as SUNSI is inconsistent with SUNSI's purported objective of protecting licensee or applicant data; LBP-10-2, 71 NRC 190 (2010)
- SUNSI requests need not be accompanied by affidavits or include lengthy, detailed justifications addressing the likelihood of standing; LBP-09-5, 69 NRC 303 (2009)
- SUNSI requests need to include the name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the proposed licensing action sufficient to demonstrate a reasonable basis to conclude that he or she could likely establish standing; LBP-09-5, 69 NRC 303 (2009)
- the "need for SUNSI" inquiry is essentially a relevance inquiry just as a federal court litigant must show that information sought in discovery is relevant to its claims or defenses; CLI-10-24, 72 NRC 451 (2010)
- the procedure for seeking access to SUNSI does not provide a method for general or topical access, but only access to information necessary to meaningfully participate in an adjudicatory proceeding and to provide the basis and specificity of a proffered contention; LBP-09-5, 69 NRC 303 (2009)
- the requirement to discuss the basis for a proffered contention to obtain access to SUNSI is not to be equated with the discussion that would be necessary to support an admissible contention; LBP-09-5, 69 NRC 303 (2009)
- the Secretary of the Commission is authorized to establish procedures for obtaining access to SUNSI prior to granting intervention in a licensing proceeding; LBP-10-2, 71 NRC 190 (2010)
- the Secretary will assess initially whether the proposed recipient has shown a need for SUNSI or safeguards information; LBP-10-2, 71 NRC 190 (2010)
- the showing required for "need" for SUNSI could include, but does not require (nor is it limited to), an explanation that the information will be used as support for a contention; CLI-10-24, 72 NRC 451 (2010)
- the standard of review in an appeal from an NRC Staff denial of a SUNSI request is de novo; LBP-09-5, 69 NRC 303 (2009)
- to demonstrate a need for SUNSI, intervenors must discuss the basis for a proffered contention and describe why the information available to the intervenors is not sufficient to provide the basis and specificity for a proffered contention; LBP-10-5, 71 NRC 329 (2010)
- to satisfy the likelihood of establishing standing criteria in the context of a SUNSI request, petitioner organizations are required to provide sufficient information to allow the NRC Staff to conclude that the requirements for standing could likely be satisfied; LBP-09-5, 69 NRC 303 (2009)
- upon a showing of need, petitioners' request to obtain access to an unredacted application was granted; CLI-10-24, 72 NRC 451 (2010)
- withholding from public access an entire document just because it may contain some SUNSI information is not only a misuse of the SUNSI designator, but fails the logic test by excluding the public from access to information that is not security-related; LBP-10-2, 71 NRC 190 (2010)
- SERVICE OF DOCUMENTS**
- a filing will be considered complete by electronic transmission when the filer performs the last act that it must perform to transmit a document, in its entirety, electronically; LBP-08-16, 68 NRC 361 (2008)
- any ambiguity relative to the filing date for hearing requests arising from the language of the agency's hearing opportunity notice should be construed in favor of a participant who was seeking to comply with the notice; LBP-08-16, 68 NRC 361 (2008)
- electronic production, filing, and service of all documents are required in the high-level waste proceeding; CLI-08-25, 68 NRC 497 (2008)

SUBJECT INDEX

the language of the Commission's case-specific notice establishing 11:59 p.m. Eastern Standard Time as the filing time for hearing petitions controls over the agency's rule of general applicability for all cases that refers only to 11:59 p.m. Eastern Time; LBP-08-16, 68 NRC 361 (2008)

the time an E-filing submission is received by the system server is not necessarily controlling relative to the timeliness of the filing; LBP-08-16, 68 NRC 361 (2008)

to be considered timely, a document must be submitted to the E-filing system for docketing and service by 11:59 p.m. Eastern Time; LBP-08-16, 68 NRC 361 (2008)

SETTLEMENT AGREEMENTS

a clause in a settlement agreement regarding standing does not apply to NRC Staff, nor would it bind a future licensing board to make any particular determination regarding whether any of the petitioners has established its standing, either as of right or as a matter of discretion; LBP-09-23, 70 NRC 659 (2009)

a notice of hearing having been issued by the Commission in a COL proceeding, the board has jurisdiction to approve a settlement agreement; LBP-09-23, 70 NRC 659 (2009)

a notice of withdrawal combined with an attached memorandum of understanding whereby applicant agrees to perform certain actions and testing, in return for which the intervenor agrees to withdraw, with prejudice, from the litigation, constitutes a *quid pro quo* arrangement which is a settlement agreement within the meaning of 10 C.F.R. 2.338; LBP-06-18, 63 NRC 830 (2006)

allowance is made for petitioner's military service in Iraq that interrupted his operator license testing; LBP-06-2, 63 NRC 80 (2006)

although not required by regulation, settlement agreements that contain language reinforcing employees' rights to raise safety concerns and communicate with the NRC avoid the possibility of being construed in a way that could be a violation; DD-10-1, 72 NRC 149 (2010)

boards are authorized to impose additional requirements as part of a settlement; LBP-06-18, 63 NRC 830 (2006)

finding that a settlement agreement is consistent with the content and form requirements and is in the public interest, the board approves the agreement and terminates this contested hearing; LBP-09-23, 70 NRC 659 (2009)

for a licensing board to review a settlement agreement for compliance with agency regulations, and to evaluate whether the agreement is plainly in the public interest, the wording of the agreement must be clear enough for the board to ascertain unambiguously what its terms signify; LBP-06-26, 64 NRC 431 (2006)

if approved by the presiding officer, the terms of the settlement or compromise shall be embodied in a decision or order settling and discontinuing the proceeding; LBP-06-18, 63 NRC 830 (2006)

licensing boards must be satisfied that the terms of a proposed agreement reflect a fair and reasonable resolution of the matter at hand, are in keeping with the objectives of NRC's enforcement policy, and satisfy the requirements of 10 C.F.R. 2.338(g) and (h); LBP-09-11, 70 NRC 151 (2009); LBP-09-12, 70 NRC 159 (2009)

NRC has a longstanding policy of encouraging the fair and reasonable settlement of contested licensing proceedings; LBP-06-18, 63 NRC 830 (2006)

opponents of a settlement may not simply object to settlement in order to block it, but must show some substantial basis for disapproving the settlement or the existence of some material issue that requires resolution; LBP-06-18, 63 NRC 830 (2006)

Severity Level III violation for licensee's failure to develop and implement a formalized procedure to neutralize a spill involving hydrofluoric acid, resulting in exposure to licensee operators, is recategorized to a violation with no assigned severity level; LBP-10-18, 72 NRC 519 (2010)

the agreement becomes effective upon its execution by both parties, but the agreement is contingent upon approval by the board; LBP-09-12, 70 NRC 159 (2009)

the form, content, and board approval provisions of 10 C.F.R. 2.338 are not limited to settlement agreements achieved via alternative dispute resolution, but apply to all settlement agreements that purport to be binding on the proceeding and that are submitted to a board after the notice of hearing; LBP-06-18, 63 NRC 830 (2006)

the process for determining whether a proposed settlement is in the public interest is left to the discretion of the board; LBP-06-18, 63 NRC 830 (2006)

the section 2.341(a)(2) sua sponte review process that applies to a licensing board determination approving a settlement agreement affords the Commission the opportunity to correct any participant or

SUBJECT INDEX

- board misapprehensions regarding the items contemplated in the settlement agreement; LBP-09-23, 70 NRC 659 (2009)
 - upon submitting for approval to work under a reciprocity agreement licensee will send a copy of the board order confirming the settlement agreement to the regulator processing the reciprocity application at least 2 weeks prior to engaging in activity authorized by the reciprocity agreement; LBP-09-12, 70 NRC 159 (2009)
 - when an adjudicatory proceeding has been terminated before a licensing board pursuant to a settlement agreement, the board loses its jurisdiction over, and thus its authority to act with respect to, that licensing action; LBP-09-23, 70 NRC 659 (2009)
 - when evaluating whether a settlement in an enforcement proceeding is in the public interest, four factors are considered; LBP-06-18, 63 NRC 830 (2006)
- SETTLEMENT NEGOTIATIONS
- although interested governmental entities would not have a formal role in a proceeding absent the admission of parties and contentions, boards expect that such entities would be kept appropriately apprised of the other participants' settlement efforts; LBP-09-23, 70 NRC 659 (2009)
- SETTLEMENTS
- administrative agencies and their adjudicators routinely approve stipulations and settlements to which fewer than all the parties in a case subscribe; CLI-06-18, 64 NRC 1 (2006)
 - basing settlements on an analysis of litigation risk and optimum use of the NRC Staff's scarce resources is commonplace in litigation and has, in the past, received Commission approval; CLI-06-18, 64 NRC 1 (2006)
 - in a challenge to an NRC Staff immediately effective enforcement order prohibiting a former licensee employee from working in NRC-licensed activities for 5 years, the licensing board finds a proposed settlement to be in the public interest; LBP-06-21, 64 NRC 219 (2006)
 - no adjudication is required where a licensing board finds a settlement to be in the public interest; LBP-06-21, 64 NRC 219 (2006)
 - the burden of a settlement with an intervenor regarding NEPA issues falls on the NRC Staff; CLI-06-18, 64 NRC 1 (2006)
 - the Commission has a longstanding policy of supporting settlements; CLI-06-18, 64 NRC 1 (2006)
 - third parties have no absolute right to veto settlements that the agreeing parties find to their advantage; CLI-06-18, 64 NRC 1 (2006)
- SEVERE ACCIDENT MITIGATION ALTERNATIVES ANALYSIS
- a contention that applicant's SAMA analysis is deficient regarding input data on evacuation times, economic consequences, and meteorological patterns, resulting in incorrect conclusions about the costs versus benefits of possible mitigation alternatives, is admitted; LBP-06-23, 64 NRC 257 (2006)
 - a contention that fails to provide even a ballpark figure for the cost of implementing any proposed SAMAs is inadmissible because it is difficult to assess whether a SAMA may be cost-beneficial and thus warrant serious consideration; LBP-09-26, 70 NRC 939 (2009)
 - a license renewal applicant need not discuss severe accident mitigation alternatives for generic, or Category 1, issues; CLI-07-3, 65 NRC 13 (2007)
 - a NEPA analysis of the potential impacts of deliberate attacks on a spent fuel pool and analysis of alternatives to mitigate spent fuel pool accidents are beyond the scope of a license renewal proceeding and therefore inadmissible; CLI-09-10, 69 NRC 521 (2009)
 - a SAMA analysis contention was found to be inadmissible because it lacked supporting information regarding the relative costs and benefits of that proposed alternative; LBP-10-15, 72 NRC 257 (2010)
 - additional briefing is requested on whether any additional SAMAs should have been identified as potentially cost-beneficial, not whether further analysis may refine the details in the SAMA NEPA analysis; CLI-09-11, 69 NRC 529 (2009)
 - adequacy or inadequacy of applicant's SAMA analysis is within the scope of a license renewal proceeding; LBP-10-15, 72 NRC 257 (2010)
 - all nuclear safety and environmental issues concerning severe accident mitigation design alternatives associated with NRC's environmental assessment for the AP1000 design and Appendix 1B of the generic Design Control Document are considered resolved by the Commission; LBP-09-2, 69 NRC 87 (2009)

SUBJECT INDEX

alternatives to mitigate severe accidents must be considered for all plants that have not previously considered such alternatives; LBP-07-4, 65 NRC 281 (2007)

although "severe accident," "severe accident mitigation alternatives," and "SAMA" are not defined in NRC's NEPA regulations, the NRC policy documents that originated the terms clearly limit them to nuclear reactors and do not include spent fuel pools or storage; LBP-10-15, 72 NRC 257 (2010)

although the methodology is available to provide the required analysis, neither NEPA nor NRC regulations require that the analysis under 10 C.F.R. 51.45(c) be performed using that methodology; LBP-09-26, 70 NRC 939 (2009)

an early site permit is conditioned to require that radioactive waste management systems, structures, and components for a future reactor must include features to preclude accidental releases of radionuclides into potential liquid pathways; CLI-07-14, 65 NRC 216 (2007)

an environmental impact statement must disclose measures that will mitigate potential adverse environmental impacts; LBP-09-4, 69 NRC 170 (2009)

analyses are not required for the spent fuel storage impacts associated with license renewals; LBP-10-15, 72 NRC 257 (2010)

analyses are rooted in a cost-benefit assessment, and the purpose of the assessment is to identify plant changes whose costs would be less than their benefit; LBP-10-14, 72 NRC 101 (2010)

analyses must be site specific and given careful consideration in order to comply with safety and environmental requirements; LBP-09-10, 70 NRC 51 (2009)

applicant requested that its mitigative strategies report be withheld from public disclosure because it contained security-related information; CLI-10-24, 72 NRC 451 (2010)

applicant's environmental report for its license renewal application must include a SAMA analysis, outlining the costs and benefits of potential mitigation measures to reduce severe accident risk or consequences; CLI-10-30, 72 NRC 564 (2010)

applicant's environmental report is required to analyze the alternatives available for reducing or avoiding adverse environmental effects; LBP-09-10, 70 NRC 51 (2009); LBP-09-19, 70 NRC 433 (2009); LBP-09-26, 70 NRC 939 (2009)

challenge to specific input data to the SAMA analysis could bring a contention on adequacy of an evacuation plan within the scope of license renewal; LBP-07-11, 66 NRC 41 (2007)

completeness and clarity are of paramount importance in meeting the hydrology requirements; LBP-07-9, 65 NRC 539 (2007)

contention challenging a particular use of a straight-line Gaussian air dispersion model in the applicant's SAMA analysis is admissible in a license renewal proceeding; CLI-09-11, 69 NRC 529 (2009)

contention raising question of whether a quantitative as opposed to qualitative analysis of terrorist attacks and the alternatives for mitigation and prevention is necessary is referred to the Commission as a novel issue; LBP-10-15, 72 NRC 257 (2010)

environmental reports must include an analysis that considers and balances the environmental effects of the proposed action, the environmental impacts of alternatives to the proposed action, and alternatives available for reducing or avoiding adverse environmental effects; LBP-10-16, 72 NRC 361 (2010)

existence of another independent nuclear power plant within the 10-mile-radius emergency planning zone of a proposed new nuclear power plant is a significant factor for purposes of emergency planning for the new reactor; LBP-09-10, 70 NRC 51 (2009)

factors to be considered when evaluating a proposed site include population density and use characteristics, the nature and proximity of man-related hazards such as airports, and the physical characteristics of the site including seismology, meteorology, geology, and hydrology; LBP-07-9, 65 NRC 539 (2007)

for a fact to be material with regard to the SAMA analysis, it must be a fact that can reasonably be expected to impact the Staff's conclusion that any particular mitigation alternative may or may not be cost-effective; LBP-07-13, 66 NRC 131 (2007)

for all issues designated as Category 1 the Commission has concluded that (generically) additional site-specific mitigation alternatives are unlikely to be beneficial; CLI-07-3, 65 NRC 13 (2007)

if NRC Staff finds any SAMA conferring a substantial benefit compared to its cost of implementation, it must make such SAMA a license condition for the renewed operating license; LBP-10-13, 71 NRC 673 (2010)

SUBJECT INDEX

- if NRC Staff has not previously considered severe accident mitigation alternatives for the applicant's plant in an environmental impact statement or related supplement or in an environmental assessment, a consideration of alternatives to mitigate severe accidents must be provided; LBP-07-13, 66 NRC 131 (2007)
- if the accident sought to be considered is sufficiently unlikely that it can be characterized fairly as remote and speculative, then consideration under NEPA is not required as a matter of law; LBP-09-26, 70 NRC 939 (2009)
- if the benefit-to-cost ratio is glaringly large for a potentially cost-beneficial SAMA, NRC Staff must, as a prerequisite to extending a license, impose implementation of that SAMA as a license condition or, in the alternative, explain why it is not requiring implementation of that SAMA; LBP-10-13, 71 NRC 673 (2010)
- in evaluating early site permit applications, where detailed design information is not available, the Commission may defer resolution of SAMAs until the construction permit or combined license stage; LBP-09-19, 70 NRC 433 (2009)
- issues are safety-related because, in determining the acceptability of a site, factors important to hydrological radionuclide transport must be obtained from onsite measurements; LBP-07-9, 65 NRC 539 (2007)
- license renewal environmental reports must include a SAMA analysis if not previously considered by NRC Staff; CLI-10-11, 71 NRC 287 (2010); LBP-10-15, 72 NRC 257 (2010)
- low probability is the key to applying NEPA's rule-of-reason test to contentions that allege that a specified accident scenario presents a significant environmental impact that must be evaluated; LBP-09-26, 70 NRC 939 (2009)
- motion for summary disposition of contention questioning applicant's handling of its SAMA analysis concerning evacuation times, economic consequences, and meteorological patterns is granted; LBP-07-13, 66 NRC 131 (2007)
- NEPA implicitly requires agencies to consider measures to mitigate environmental impacts; LBP-09-10, 70 NRC 51 (2009); LBP-09-19, 70 NRC 433 (2009)
- NEPA requires dealing with uncertainties by inclusion in an environmental impact statement of a summary of existing credible scientific evidence relevant to evaluating the reasonably foreseeable significant adverse impacts regarding those events with potential catastrophic consequences even if their probability is low; LBP-09-26, 70 NRC 939 (2009)
- NEPA requires the NRC to provide a reasonable mitigation alternatives analysis, containing reasonable estimates, including full disclosures of any known shortcomings in methodology, incomplete or unavailable information and significant uncertainties; CLI-10-22, 72 NRC 202 (2010)
- NRC cannot generically dispense with the consideration of SAMAs, under NEPA, through a policy statement issued pursuant to its Atomic Energy Act authority; LBP-10-13, 71 NRC 673 (2010)
- NRC regulations require the use of probabilistic rather than deterministic methodology because modeling of extremely complex time- and physical condition-dependent phenomena is involved; LBP-07-13, 66 NRC 131 (2007)
- NRC Staff is obligated to consider severe accident mitigation alternatives if it has not already done so as part of its NEPA obligations in a license renewal review; LBP-10-13, 71 NRC 673 (2010)
- NRC Staff's hard look at all potentially cost-beneficial severe accident mitigation alternatives under NEPA and Part 51 ensures that it has given proper consideration to all relevant factors in granting a license renewal; LBP-10-13, 71 NRC 673 (2010)
- onsite storage of spent fuel during the license renewal term is a Category 1 issue and as such does not warrant any additional site-specific analysis of mitigation measures; CLI-10-14, 71 NRC 449 (2010)
- Part 54 compliance is not dependent on complete fulfillment of Part 51 requirements given that the Commission has explicitly excluded SAMA analysis from Part 54 and distinguished the safety requirements of Part 54 from the environmental evaluation commanded by Part 51; LBP-10-13, 71 NRC 673 (2010)
- petitioner is not required to redo SAMA analyses in order to raise a material issue; LBP-08-13, 68 NRC 43 (2008)
- petitioner need not submit a sensitivity analysis in order to establish that a SAMA-related contention is material; LBP-10-15, 72 NRC 257 (2010)

SUBJECT INDEX

- petitioner's assumption that, because it cannot check all SAMA analysis details, the analysis is incomplete or incorrect is mere speculation and is insufficient to support the admissibility of its contention; LBP-08-13, 68 NRC 43 (2008)
- potential plant modifications as well as plant procedural changes or training program changes that can reduce the risks of severe accidents are considered; LBP-09-19, 70 NRC 433 (2009)
- probabilistic risk assessment is the Commission's accepted and standard practice in SAMA analyses; LBP-10-15, 72 NRC 257 (2010)
- the analysis of reasonably foreseeable significant adverse impacts regarding those events with potential catastrophic consequences must be supported by credible scientific evidence, must not be based on pure conjecture, and must be within the rule of reason; LBP-09-26, 70 NRC 939 (2009)
- the manner in which NRC meets its obligation to consider these alternatives is to perform a cost-benefit analysis; LBP-07-13, 66 NRC 131 (2007)
- the National Environmental Policy Act demands no fully developed plan or detailed examination of specific measures that will be employed to mitigate adverse environmental effects; CLI-10-11, 71 NRC 287 (2010)
- the only SAMAs that applicant must implement as part of a license renewal safety review are those dealing with aging management; LBP-10-13, 71 NRC 673 (2010)
- the purpose of the SAMA review is to ensure that any plant changes that have a potential for significantly improving severe accident safety performance are identified and assessed; CLI-10-11, 71 NRC 287 (2010)
- under the National Environmental Policy Act, Staff is obliged to perform a SAMA analysis; LBP-07-13, 66 NRC 131 (2007)
- unless it looks genuinely plausible that inclusion of an additional factor or use of other assumptions or models may change the cost-benefit conclusions for the SAMA candidates evaluated, no purpose would be served to further refine the SAMA analysis, whose goal is only to determine what safety enhancements are cost-effective to implement; CLI-10-11, 71 NRC 287 (2010)
- where it is shown that even with no evacuation a severe accident mitigation alternative is still not cost-effective, any errors in assumptions regarding the evacuation time or pattern cannot reasonably be expected to rise to a level necessary to cause implementation of any SAMA to become cost-effective; LBP-07-13, 66 NRC 131 (2007)
- where these analyses are customarily prepared using the MACCS2 code, and where this code has been widely used and accepted as an appropriate tool in a large number of similar instances, the Staff is fully justified in finding that analysis using this code is an acceptable method; LBP-07-13, 66 NRC 131 (2007)
- whether a SAMA must be analyzed in an environmental report hinges on whether it could potentially be cost-beneficial; LBP-08-13, 68 NRC 43 (2008)
- SEVERE ACCIDENT MITIGATION DESIGN ALTERNATIVES ANALYSIS**
- all environmental issues concerning SAMDAs associated with the information in the NRC's environmental assessment for a certified design are considered resolved; LBP-09-19, 70 NRC 433 (2009)
- challenge to the SAMDA analysis performed for the AP1000 certified design constitutes an impermissible challenge to NRC regulations; CLI-10-1, 71 NRC 1 (2010); CLI-10-9, 71 NRC 245 (2010); LBP-10-10, 71 NRC 529 (2010)
- challenges to a SAMDA analysis are within the scope of a combined license proceeding; LBP-10-14, 72 NRC 101 (2010)
- design certification applicants are required to address SAMDAs; LBP-09-19, 70 NRC 433 (2009)
- early site permit applicants must submit a safety assessment that includes an analysis of a fission product release from an accident, using the expected demonstrable containment leak rate and any fission product cleanup systems intended to mitigate the consequences of the accidents; LBP-09-19, 70 NRC 433 (2009)
- if a combined license application references a design certification, then the presiding officer shall not admit contentions concerning SAMDAs unless the contention demonstrates that the site characteristics fall outside of the site parameters in the standard design certification; LBP-09-10, 70 NRC 51 (2009)
- if intervenors provide no facts or expert opinion explaining why a conclusion in applicant's environmental report is incorrect, or fail to identify any SAMDAs that should be adopted if some unspecified new

SUBJECT INDEX

- analysis were performed or any cost-beneficial SAMAs, their contention should be dismissed; LBP-10-10, 71 NRC 529 (2010)
- issue of whether location of a nuclear plant in a densely populated area allowed adoption of generic risk factors and a SAMDA decision supported by a policy statement rather than a rulemaking was confronted; LBP-10-10, 71 NRC 529 (2010)
- issues are resolved for an application referencing a design control document if the specific site parameters are covered by the site parameters assumed in the DCD SAMDA analysis; LBP-09-19, 70 NRC 433 (2009)
- the environmental report associated with each application for a standard design certification must address the costs and benefits of SAMDAs; LBP-09-10, 70 NRC 51 (2009)
- this analysis focuses on severe accident mitigation dealing with reactor design and hardware issues; LBP-09-10, 70 NRC 51 (2009)
- SHOW-CAUSE PROCEEDINGS**
- challenges to a licensee's current compliance with its current licensing basis or other operational requirements may be raised via a section 2.206 petition; LBP-07-17, 66 NRC 327 (2007)
- invocation of a 10 C.F.R. 2.206 procedure requires that NRC Staff give serious consideration to requests concerning a licensed facility as long as the request specifies the action sought and sets forth the facts that constitute the basis of the request; LBP-10-7, 71 NRC 391 (2010)
- the proper vehicle to challenge the adequacy of the Updated Final Safety Analysis Report would be a section 2.206 petition, not a challenge to the license renewal; LBP-08-13, 68 NRC 43 (2008)
- See also Request for Action
- SITE CHARACTERIZATION**
- a decommissioning plan for a restricted release site will be judged exclusively upon whether residual radioactivity levels will be as low as is reasonably achievable and the total effective dose equivalent to offsite human beings will be below 25 mrem; LBP-08-4, 67 NRC 105 (2008)
- a decommissioning plan must include an adequate site characterization; LBP-08-4, 67 NRC 105 (2008)
- applicant's site safety analysis report must include seismic and geologic characteristics of the proposed site with appropriate consideration of the most severe historical natural phenomena that have been reported for the site; LBP-09-19, 70 NRC 433 (2009)
- description of the conditions of the site or separate building or outdoor area must be sufficient to evaluate the acceptability of the decommissioning plan; LBP-08-4, 67 NRC 105 (2008)
- DOE is prohibited from characterizing a second repository site unless Congress has specifically authorized and appropriated funds for such activities; LBP-10-11, 71 NRC 609 (2010)
- DOE may determine that the Yucca Mountain site is unsuitable for development as a repository during site characterization; LBP-10-11, 71 NRC 609 (2010)
- in providing information on seismic and geologic characteristics of a proposed site, applicants must conform to the requirements of 10 C.F.R. 100.23; LBP-09-19, 70 NRC 433 (2009)
- petitioner raises a genuine dispute with the application with respect to the adequacy of information needed to characterize the site and offsite hydrogeology to ensure confinement of the extraction fluids; LBP-10-16, 72 NRC 361 (2010)
- the scope of admissible issues in the high-level waste repository proceeding is discussed; LBP-09-6, 69 NRC 367 (2009)
- the site safety analysis report submitted with an early site permit application must contain the seismic, meteorological, hydrologic, and geologic characteristics of the proposed site; LBP-09-19, 70 NRC 433 (2009)
- SITE CHARACTERIZATION PLANS**
- if a board finds that licensee's field sampling plan is not acceptable, it could deny licensee's alternate schedule for submission of a decommissioning plan; LBP-07-7, 65 NRC 507 (2007)
- sufficient information must be included so that pathways for significant offsite contamination can be effectively tracked and the quantity of those pathways estimated; LBP-08-4, 67 NRC 105 (2008)
- sufficient information should be provided to allow the NRC to determine the extent and range of expected radioactive contamination; LBP-08-4, 67 NRC 105 (2008)
- what constitutes "sufficient information," depends, to a large extent, on site-specific conditions; LBP-08-4, 67 NRC 105 (2008)

SUBJECT INDEX

SITE HYDROLOGY

- factors important to hydrological radionuclide transport must be obtained from onsite measurements; LBP-09-19, 70 NRC 433 (2009)
- in its review of early site permit applications, Staff must consider physical characteristics of the site, specifically noting that factors important to hydrological radionuclide transport must be obtained from onsite measurements; LBP-09-19, 70 NRC 433 (2009)
- the site safety analysis report submitted with an early site permit application must contain the seismic, meteorological, hydrologic, and geologic characteristics of the proposed site; LBP-09-19, 70 NRC 433 (2009)

SITE REMEDIATION

- a provision for ALARA determinations allows the use of cost as a factor for determining what level of remediation is cost-effective below the standards, but is not allowed by the New Jersey Agreement State Program; CLI-10-8, 71 NRC 142 (2010)
- an early site permit applicant may submit a plan for redress of the site, which if accepted as part of an approved ESP would allow an applicant to perform certain preconstruction activities without additional authorization; LBP-06-28, 64 NRC 460 (2006)
- boards are to determine whether the site redress plan will adequately redress the activities performed under a limited work authorization should the activities be terminated by either the holder of the LWA or by Commission denial of any corresponding early site permit or combined license; LBP-09-19, 70 NRC 433 (2009)
- filing of a petition for alternative soil remediation standards is permitted as long as the resulting dose would not exceed 15 mrem per year; CLI-10-8, 71 NRC 142 (2010)

SITE RESTORATION

- a limited work authorization authorizes activities for which either a construction permit or combined license is otherwise required, but the LWA application must include a plan for site redress that provides for restoration if the project is cancelled, the LWA is revoked, or a construction permit or COL is denied; LBP-09-19, 70 NRC 433 (2009)
- a site redress plan remains in effect for an early site permit applicant even if the ESP with which the LWA is issued is not referenced in a construction permit or COL application during the period that the ESP remains valid; LBP-09-19, 70 NRC 433 (2009)
- challenges to the adequacy of the NRC's groundwater restoration standards are impermissible; LBP-08-6, 67 NRC 241 (2008)
- if a combined operating license or construction permit is never issued or ultimately denied, the early site permit holder would be required to redress even limited site preparation activities and restore the site; LBP-07-9, 65 NRC 539 (2007)

SITE SAFETY ANALYSIS REPORT

- a combined license application reference to an early site permit must include an SSAR that either includes or incorporates by reference the ESP site safety analysis report and that contains additional information and analyses sufficient to demonstrate that the design of the facility falls within the site characteristics and design parameters specified in the ESP; LBP-09-19, 70 NRC 433 (2009)
- applicant must include seismic and geologic characteristics of the proposed site with appropriate consideration of the most severe historical natural phenomena that have been reported for the site; LBP-09-19, 70 NRC 433 (2009)
- in providing information on seismic and geologic characteristics of a proposed site, applicants must conform to the requirements of 10 C.F.R. 100.23; LBP-09-19, 70 NRC 433 (2009)
- the SSAR filed with an early site permit application must include information that identifies physical characteristics of the proposed site, such as egress limitations from the area surrounding the site, that could pose a significant impediment to the development of emergency plans; LBP-09-19, 70 NRC 433 (2009)
- whether a safety analysis of the risks asserted to be endemic should be performed for a proposed irradiator site at an airport is questioned; CLI-07-26, 66 NRC 109 (2007)

SITE SELECTION

- all reasonable alternatives to the site proposed for the early site permit are to be identified; LBP-09-19, 70 NRC 433 (2009)

SUBJECT INDEX

although substantial weight is accorded to a license applicant's preferences, if the identified purpose of a proposed project reasonably may be accomplished at locations other than the proposed site, the board may require consideration of those alternative sites; CLI-10-18, 72 NRC 56 (2010)
applicant's initial consideration of DOE's Portsmouth, Ohio, and SRS sites as alternative sites was reasonable as part of its alternative site analysis for an early site permit; LBP-09-19, 70 NRC 433 (2009)

brownfield sites owned by companies other than the applicant may reasonably be excluded as alternative sites; LBP-09-19, 70 NRC 433 (2009)

DOE was directed to limit its site selection efforts to Yucca Mountain and to provide for an orderly phase-out of site-specific activities at all other candidate sites; LBP-10-11, 71 NRC 609 (2010)

exclusion of DOE sites in alternative sites analysis that are far outside applicant's region of interest is reasonable; LBP-09-19, 70 NRC 433 (2009)

when reviewing a license application filed by a private applicant, NRC may appropriately accord substantial weight to the preferences of the applicant and/or sponsor and should take into account the needs and goals of the parties involved in the application; CLI-06-10, 63 NRC 451 (2006); LBP-09-7, 69 NRC 613 (2009)

SITE SUITABILITY

DOE's environmental impact statement is not to consider the need for the repository, the time of initial availability of a repository, alternative sites to the Yucca Mountain site, or nongeologic alternatives to such site; LBP-10-11, 71 NRC 609 (2010)

existence of another independent nuclear power plant within the 10-mile-radius emergency planning zone of a proposed new nuclear power plant is a significant factor for purposes of emergency planning for the new reactor; LBP-09-10, 70 NRC 51 (2009)

in an exceptional case, NRC may conduct an irradiator facility siting review if a unique threat is involved which may not be addressed by state and local requirements; CLI-08-3, 67 NRC 151 (2008)

licensing board may disapprove a site for a new reactor only upon one of two findings; LBP-10-24, 72 NRC 720 (2010)

the Commission's discussion of the Staff's underlying review adds necessary additional details and constitutes a supplement to the final environmental impact statement's alternative site review; CLI-07-27, 66 NRC 215 (2007)

the main differences between an early partial decision and an early site permit are that the early partial decision lasts only 5 years and resolves only those site suitability issues that the applicant specifically asks to resolve, whereas the early site permit lasts for 20 years and once it is issued it covers the site; LBP-07-9, 65 NRC 539 (2007)

the Statement of Considerations for Part 36 indicates that in developing those regulations, the NRC considered whether there was a need to impose limits on irradiator siting, but determined that no specific siting limitations were warranted; CLI-08-3, 67 NRC 151 (2008)

with regard to alternative sites for an early site permit, NRC Staff must evaluate both the process (i.e., methodology) used by the applicant and the reasonableness of the product (e.g., potential sites) identified by that process; LBP-09-19, 70 NRC 433 (2009)

SOIL

contention alleging that the Army employs truckers to remove depleted uranium-contaminated soil its site and dump it in the community is inadmissible; LBP-10-4, 71 NRC 216 (2010)

filing of a petition for alternative soil remediation standards is permitted as long as the resulting dose would not exceed 15 mrem per year; CLI-10-8, 71 NRC 142 (2010)

SOLAR POWER

wind or solar power are not considered as stand-alone alternatives because neither source is deemed capable of serving the purpose and need of the project, generating 1600 MWe of baseload power; LBP-10-24, 72 NRC 720 (2010)

SOURCE MATERIAL

all uranium and thorium are source material, but the NRC does not regulate source material in unprocessed ores and source material with insignificant concentrations of radionuclides; CLI-06-14, 63 NRC 510 (2006)

an NRC license is not required to "possess" source material in the form of unprocessed and unrefined ore so long as the ore is not processed or refined; CLI-06-14, 63 NRC 510 (2006)

SUBJECT INDEX

because pyrochlore contains more than 0.05 wt % uranium and thorium, it is subject to NRC regulation as a source material; CLI-10-8, 71 NRC 142 (2010); LBP-08-8, 67 NRC 409 (2008)

petitioner alleges that routine unprotected handling of an unshielded neutron source by licensed operators and uncontrolled access by untrained and unlicensed facility visitors to this neutron source violated ALARA requirements; DD-10-3, 72 NRC 171 (2010)

SOURCE MATERIALS LICENSE AMENDMENT

proximity alone is not sufficient to establish standing for a petitioner's proximity to a source materials activity; LBP-08-24, 68 NRC 691 (2008)

SOURCE MATERIALS LICENSES

burden is on petitioner to allege a specific and plausible means by which contaminants from mining activities may adversely affect him or her; LBP-10-16, 72 NRC 361 (2010)

in cases involving ISL uranium mining and other source materials licensing, petitioner must demonstrate injury, causation, and redressability because proximity to the proposed facility alone is not adequate to demonstrate standing; LBP-10-16, 72 NRC 361 (2010)

intervention petitioner has the burden of showing a specific and plausible means by which the proposed license activities may affect him or her; LBP-10-16, 72 NRC 361 (2010)

no proximity presumption applies in source materials cases; LBP-10-16, 72 NRC 361 (2010)

there is no statutory or regulatory bar, per se, on a foreign-owned or -controlled company holding a source materials license, whether as a licensee or as a parent entity; CLI-09-9, 69 NRC 331 (2009)

SOURCE TERM

in making its determination on the postulated source terms at the early site permit stage, Staff need not authorize proposed reactors to release radioactivity in the amounts used in connection with the dose estimates; CLI-07-27, 66 NRC 215 (2007)

the definition, origin, and derivation of source terms are discussed; LBP-07-9, 65 NRC 539 (2007)

SPECIAL CIRCUMSTANCES

an agency must affirmatively provide a reasoned explanation of the applicability of a categorical exclusion; LBP-06-4, 63 NRC 99 (2006)

SPECIAL NUCLEAR MATERIALS

creditor regulations in 10 C.F.R. 70.44 apply to the creation of creditor interests in special nuclear material; CLI-10-4, 71 NRC 56 (2010)

SPENT FUEL

there is reasonable assurance that a geologic repository will be available by 2025 and that sufficient repository capacity will be available within 30 years beyond the licensed life to dispose of high-level waste and spent fuel generated by any reactor up to that time; LBP-09-18, 70 NRC 385 (2009)

SPENT FUEL POOLS

a contention on spent fuel pool fires is rejected as an impermissible challenge to NRC regulations and the license renewal generic environmental impact statement; CLI-10-11, 71 NRC 287 (2010)

a NEPA analysis of the potential impacts of deliberate attacks on a spent fuel pool and analysis of alternatives to mitigate spent fuel pool accidents are beyond the scope of a license renewal proceeding and therefore inadmissible; CLI-09-10, 69 NRC 521 (2009)

environmental impacts from the spent fuel pool, including potential beyond-design-basis accidents and the need for mitigation measures, are addressed generically in the NRC's generic environmental impact statement for license renewal, and do not require a site-specific analysis as part of an individual license renewal environmental review; CLI-10-14, 71 NRC 449 (2010)

fires are Category 1 environmental issues and therefore are addressed generically in the generic environmental impact statement for license renewals; LBP-08-13, 68 NRC 43 (2008)

petitioner has presented a prima facie showing for waiver of the NRC regulation covering the environmental impacts of spent fuel pool accidents generically, and has shown that its contention concerning earthquake-induced spent fuel pool accidents is otherwise admissible; LBP-10-15, 72 NRC 257 (2010)

petitioner's concerns regarding underground leakage of contaminated water from a crack in the spent fuel pool at Indian Point are addressed; DD-08-2, 68 NRC 339 (2008)

security and mitigation measures the NRC has imposed upon its licensees since September 11, 2001, and national anti-terrorist measures coupled with the robust nature of SFPs, make the probability of a successful terrorist attack, though numerically indeterminable, very low; LBP-08-21, 68 NRC 554 (2008)

SUBJECT INDEX

the National Environmental Policy Act does not require NRC to revisit matters related to high-density spent fuel pool coolant loss or other SFP events in combined license proceedings; LBP-08-21, 68 NRC 554 (2008)

threat of terrorist attack at spent fuel pools has been evaluated generically by NRC and special circumstances for rule waiver have not been shown; LBP-10-15, 72 NRC 257 (2010)

SPENT FUEL STORAGE

a claim that the pads for storing spent fuel are defective is outside the scope of a nuclear power plant operating license renewal proceeding; CLI-06-17, 63 NRC 727 (2006)

a request that the Commission require licensees to return spent fuel pools to their original low-density storage configuration and to use dry storage for any excess fuel is not appropriate for litigation in a license renewal hearing; CLI-06-26, 64 NRC 225 (2006)

although "severe accident," "severe accident mitigation alternatives," and "SAMA" are not defined in NRC's NEPA regulations, the NRC policy documents that originated the terms clearly limit them to nuclear reactors and do not include spent fuel pools or storage; LBP-10-15, 72 NRC 257 (2010)

contentions on the environmental impacts of spent fuel storage are inadmissible; LBP-09-18, 70 NRC 385 (2009)

environmental effects of storing spent fuel for an additional 20 years at the site of nuclear reactors would be not significant; CLI-07-3, 65 NRC 13 (2007)

environmental impacts pertaining to onsite spent fuel storage are a Category 1 issue; CLI-10-14, 71 NRC 449 (2010)

failure of applicant to include new and significant information concerning a Category 1 issue relating to regarding the dangers of high-density racking of spent fuel in its environmental report does not give rise to an admissible contention; LBP-06-20, 64 NRC 131 (2006)

for a contention regarding environmental impacts of spent fuel storage to be within the scope of an operating license renewal proceeding, petitioner must obtain a waiver under 10 C.F.R. 2.335(d); LBP-10-15, 72 NRC 257 (2010)

impacts of design basis accidents at spent fuel storage are characterized as small, and so, no site-specific NEPA review is required; CLI-07-8, 65 NRC 124 (2007)

issues related to the environmental impact of onsite spent fuel storage after the license renewal term are covered by NRC's Waste Confidence Rule and are outside the scope of a license renewal proceeding because contentions may not challenge a regulation; LBP-06-20, 64 NRC 131 (2006)

no discussion of any environmental impact of spent fuel storage for the period following the term of the reactor combined license is required in any environmental report or environmental impact statement prepared in connection with the requested action; LBP-09-17, 70 NRC 311 (2009); LBP-09-18, 70 NRC 385 (2009)

NRC cannot, under NEPA, categorically refuse to consider the consequences of a terrorist attack against a spent fuel storage facility; CLI-10-1, 71 NRC 1 (2010)

petitioner's inaccurate reading and presentation of applicant's spent fuel storage plan cannot serve as a litigable basis for a contention; LBP-09-27, 70 NRC 992 (2009)

recoverability of spent nuclear fuel storage expenses is equally applicable to greater-than-Class-C waste, which is stored onsite in the same manner as spent nuclear fuel; CLI-10-2, 71 NRC 27 (2010)

severe accident mitigation alternatives analyses are not required for the spent fuel storage impacts associated with license renewals; LBP-10-15, 72 NRC 257 (2010)

spent fuel can be stored safely onsite for at least 30 years beyond a plant's licensed life for operation; LBP-09-17, 70 NRC 311 (2009)

spent fuel from an additional 20 years of operation can be stored safely, with small environmental effects, at all plants and such impacts are classified as Category 1 issues that are not within the scope of individual license renewal proceedings; LBP-10-15, 72 NRC 257 (2010)

such issues are outside the scope of a license renewal proceeding; LBP-06-10, 63 NRC 314 (2006)

the Commission has issued a general license for the storage of spent fuel at an onsite independent spent fuel storage installation to all persons authorized to possess or operate nuclear power reactors under 10 C.F.R. Part 50 or Part 52; LBP-09-20, 70 NRC 565 (2009)

the environmental impacts related to storage of spent fuel under Part 72 have been generically evaluated under two previous rulemakings and the Commission's waste confidence proceedings, and thus need not be reassessed; LBP-09-21, 70 NRC 581 (2009)

SUBJECT INDEX

- the Waste Confidence Rule applies to spent fuel discharged from any new generation of reactor designs; LBP-08-21, 68 NRC 554 (2008)
- the Waste Confidence Rule covers the storage of spent fuel in new or existing facilities; LBP-09-10, 70 NRC 51 (2009)
- to the extent that petitioners argue that the provisions of 10 C.F.R. 50.54(hh) should be applied to dry cask storage, they may file a rulemaking petition with the Commission; LBP-09-17, 70 NRC 311 (2009)
- See also Independent Spent Fuel Storage Installation
- SPENT FUEL STORAGE CASKS
 - the stability of ISFSI concrete pads holding dry spent fuel storage casks during earthquakes is addressed; DD-07-2, 65 NRC 365 (2007)
- STANDARD OF PROOF
 - a touchstone for determining whether the reasonable assurance standard is satisfied is compliance with Commission regulations; LBP-07-17, 66 NRC 327 (2007)
 - constructive knowledge is knowledge of facts sufficient to prompt an inquiry that would have uncovered misrepresentations and is not actual knowledge; LBP-09-24, 70 NRC 676 (2009)
 - contention admissibility standards do not call for a dispositive standard of proof for a contention or its bases, but rather petitioner must present a clear statement of the basis for the contention and submit supporting information and references to specific documents and sources that establish the validity of the contention; CLI-10-1, 71 NRC 1 (2010)
 - in the context of license renewal proceedings, whether the reasonable assurance standard is satisfied is directly linked to an assessment of the adequacy of the aging management program; LBP-07-17, 66 NRC 327 (2007)
 - instruction to juries on deliberate ignorance or willful blindness can relieve the government of its constitutional obligation to prove the defendant's knowledge beyond a reasonable doubt; LBP-09-24, 70 NRC 676 (2009)
 - instruction to juries on deliberate ignorance or willful blindness should be used with caution to avoid the possibility that the jury convicts on the lesser standard that the defendant should have known his conduct was illegal; LBP-09-24, 70 NRC 676 (2009)
 - license renewal applicant must demonstrate, by a preponderance of the evidence, that its aging management program provides reasonable assurance that activities authorized by the renewed license will be conducted in a manner consistent with the current licensing basis, and that the effects of aging will be detected and corrected; LBP-07-17, 66 NRC 327 (2007)
 - plaintiff may prove his case by direct or circumstantial evidence; CLI-10-23, 72 NRC 210 (2010)
 - the danger of instruction to juries on deliberate ignorance or willful blindness in an inappropriate case is that juries will convict on a basis akin to a standard of negligence; LBP-09-24, 70 NRC 676 (2009)
 - the warning to jurors that the added instruction on deliberate ignorance or willful blindness is not intended to allow them to base guilt on negligence or carelessness is sufficient to legitimize the instruction; LBP-09-24, 70 NRC 676 (2009)
 - there is a presumption that governmental officials, acting in their official capacities, have properly discharged their duties, and clear evidence is usually required to rebut this presumption; CLI-06-22, 64 NRC 37 (2006)
 - to convict a person accused of making a false statement, the government must prove not only that the statement was false, but that the accused knew it to be false; CLI-10-23, 72 NRC 210 (2010)
 - to prevail in establishing that the accused's actions constituted a violation, Staff must demonstrate by a preponderance of the evidence that the accused had actual knowledge of the information associated with his actions and that he deliberately acted contrary to that knowledge; LBP-09-24, 70 NRC 676 (2009)
 - to prevail on factual issues, the position must be supported by a preponderance of the evidence; CLI-08-26, 68 NRC 509 (2008)
 - to satisfy the reasonable assurance standard for its aging management program, a license renewal applicant must make a showing that meets the preponderance of the evidence threshold of compliance with the applicable regulations, not a 95% confidence level of compliance; CLI-09-7, 69 NRC 235 (2009)
 - to succeed in imposing pretrial detention because the accused is a danger to the community, the government must, among other things, prove in an adversary hearing by clear and convincing evidence

SUBJECT INDEX

- that no conditions of release can reasonably ensure the community's safety; LBP-09-24, 70 NRC 676 (2009)
- where the record in an enforcement proceeding may be devoid of direct evidence to establish knowledge, the Staff may have to build its case upon circumstantial evidence alone; LBP-09-24, 70 NRC 676 (2009)
- whether the "reasonable assurance" standard is satisfied is based on sound technical judgment applied on a case-by-case basis not susceptible to formalistic quantification or mechanistic application; LBP-07-17, 66 NRC 327 (2007)
- STANDARD OF REVIEW**
- a board appropriately reviews the materials cited in support of a contention, while making no pronouncements on whether the information contained in the application or the claims made in the petition are valid; CLI-10-9, 71 NRC 245 (2010)
- a board's determination on a request for access to sensitive unclassified nonsafeguards information is reviewed de novo; CLI-10-24, 72 NRC 451 (2010)
- a board's role in an early site permit proceeding is to carefully probe Staff findings by asking appropriate questions and by requiring supplemental information when necessary, but Staff's underlying technical and factual findings are not open to board reconsideration unless, after a review of the record, the board finds the NRC Staff review inadequate or its findings insufficient; LBP-09-19, 70 NRC 433 (2009)
- a licensing board's review of a petition for standing is to avoid the familiar trap of confusing the standing determination with the assessment of a petitioner's case on the merits; LBP-08-24, 68 NRC 691 (2008)
- although boards should not "flyspeak" environmental documents, petitioners may raise contentions seeking correction of significant inaccuracies and omissions in the environmental report; LBP-10-24, 72 NRC 720 (2010)
- although the Commission has authority to make de novo findings of fact, it does not do so where a licensing board has issued a plausible decision that rests on carefully rendered findings of fact; CLI-09-7, 69 NRC 235 (2009)
- an abuse of discretion standard is applied to Commission review of decisions on evidentiary questions; CLI-10-18, 72 NRC 56 (2010)
- an appeal from an NRC Staff denial of a SUNSI request is reviewed de novo; LBP-09-5, 69 NRC 303 (2009)
- appellant may not simply establish that the licensing board might justifiably have reached the same conclusion as the appellant regarding the petition for discretionary intervention, but must persuade the Commission that a reasonable mind could reach no other result; CLI-06-16, 63 NRC 708 (2006)
- because the burden is on the summary disposition movant, the board must examine the record in the light most favorable to the nonmoving party and give the nonmoving party the benefit of all favorable inferences that can be drawn from the evidence; LBP-10-20, 72 NRC 571 (2010)
- discretionary review is granted based on petitioner's showing that there is a substantial question with respect to the five considerations listed in 10 C.F.R. 2.341(b)(4); CLI-10-5, 71 NRC 90 (2010)
- for conclusions of law, the Commission will review legal questions de novo and reverse a licensing board's legal rulings if they are a departure from or contrary to established law; CLI-10-5, 71 NRC 90 (2010)
- if a board erroneously rejected petitioner's motions, but the record does not suggest that petitioner suffered any prejudicial error, Commission review is not warranted; CLI-10-14, 71 NRC 449 (2010)
- if issuing a license involves oversight of a private project rather than a federally sponsored project, the agency is entitled to give the applicant's preferences substantial weight when considering project design alternatives; LBP-10-14, 72 NRC 101 (2010)
- in an uncontested early site permit proceeding, the licensing board will inquire whether the NRC Staff performed an adequate review and made findings with reasonable support in logic and fact; LBP-07-1, 65 NRC 27 (2007); LBP-07-6, 65 NRC 429 (2007); LBP-07-9, 65 NRC 539 (2007)
- in evaluating a petitioner's standing, boards are to construe the petition in favor of the petitioner; LBP-09-21, 70 NRC 581 (2009)
- in mandatory hearings on uncontested license applications, the board must narrow its inquiry to those topics or sections in Staff documents that it deems most important and should concentrate on portions

SUBJECT INDEX

of the documents that do not on their face adequately explain the logic, underlying facts, and applicable regulations and guidance; LBP-07-1, 65 NRC 27 (2007); LBP-09-19, 70 NRC 433 (2009)

interlocutory review is granted only in extraordinary circumstances; CLI-10-30, 72 NRC 564 (2010)

interlocutory review is permitted at the Commission's discretion only upon a showing that the issue for which interlocutory review is sought threatens the party adversely affected by it with immediate and serious irreparable impact or affects the basic structure of the proceeding in a pervasive or unusual manner; CLI-10-16, 71 NRC 486 (2010); CLI-10-30, 72 NRC 564 (2010)

legal issues are reviewed de novo on appeal, but the Commission generally defers to board findings of fact, unless they are clearly erroneous; CLI-10-17, 72 NRC 1 (2010)

licensing board findings of fact that turn on witness credibility receive the Commission's highest deference on appeal; CLI-10-23, 72 NRC 210 (2010)

licensing boards have authority to regulate the course of proceedings, and the Commission generally defers to the boards on case management decisions; CLI-10-28, 72 NRC 553 (2010)

licensing boards review NRC Staff's enforcement orders de novo to determine on the basis of the hearing record whether the charges are sustained and the sanction imposed is warranted; LBP-09-24, 70 NRC 676 (2009)

mandatory hearings do not involve a de novo review of the NRC Staff's findings, but rather whether the safety and environmental record is sufficient to support license issuance; CLI-07-5, 65 NRC 109 (2007)

NEPA imposes procedural requirements on the NRC to take a hard look at the environmental impacts of building and operating a nuclear reactor; LBP-10-14, 72 NRC 101 (2010)

NRC has broad discretion to determine how thoroughly it needs to analyze a particular subject for NEPA compliance; LBP-10-14, 72 NRC 101 (2010)

on appeal, abuse of discretion is the standard; CLI-10-24, 72 NRC 451 (2010)

on baseline NEPA issues in early site permit cases, boards must reach their own independent determination, but should do so without second-guessing underlying technical or factual findings by the NRC Staff; LBP-07-1, 65 NRC 27 (2007); LBP-07-9, 65 NRC 539 (2007); LBP-09-19, 70 NRC 433 (2009)

on uncontested issues in an early site permit proceeding, the board must independently evaluate the record and the adequacy of the Staff's review and then to decide six fundamental issues that are specified by the law and regulations; LBP-07-9, 65 NRC 539 (2007)

petition for review satisfies 10 C.F.R. 2.341(b)(4)(ii), (iii), and (v) of the standards for review because the challenged portions of the initial decision address significant issues of law and policy that lack governing precedent and raise issues that could affect other license renewal determinations; CLI-10-17, 72 NRC 1 (2010)

petitioner's argument regarding rejection of its contention satisfies the prejudicial procedural error standard for review; CLI-10-17, 72 NRC 1 (2010)

petitioners may request, and the Commission, in its discretion, may grant interlocutory review if it is shown that the issue threatens petitioners with immediate and serious irreparable impacts or affects the basic structure of the proceeding in a pervasive manner; LBP-09-10, 70 NRC 51 (2009)

petitions for review will be granted at the Commission's discretion, giving due weight to the existence of a substantial question with respect to the five considerations of 10 C.F.R. 2.341(b)(4)(i)-(v); CLI-10-14, 71 NRC 449 (2010)

regarding safety issues, boards must determine whether the application and the record of the proceeding contain sufficient information and the review of the application by the NRC Staff has been adequate to support findings pursuant to 10 C.F.R. 30.33, 40.32, and 70.23; LBP-07-6, 65 NRC 429 (2007)

reports before a board are subject to scrutiny both as to those portions that support an intervenor's assertion and those that do not; LBP-09-21, 70 NRC 581 (2009)

Staff must evaluate alternatives to determine whether there are any obviously superior options to the proposed action; LBP-07-6, 65 NRC 429 (2007)

the board's role in mandatory hearings on early site permit applications is analogous to that of an appellate court applying the substantial evidence test; LBP-07-9, 65 NRC 539 (2007)

the Commission addresses a board's additional views when the board refers its decision to the Commission; CLI-10-9, 71 NRC 245 (2010)

SUBJECT INDEX

- the Commission cannot find clear error in a board's failing to acknowledge an argument that was not brought to its attention and to which the petitioners had no opportunity to respond; CLI-09-12, 69 NRC 535 (2009)
- the Commission declined to review licensing board referred rulings because the contentions were rejected by the board due to legal insufficiency; CLI-09-21, 70 NRC 927 (2009)
- the Commission defers to a board's factual findings and generally steps in only to correct clearly erroneous findings, that is, findings not even plausible in light of the record viewed in its entirety; CLI-10-5, 71 NRC 90 (2010)
- the Commission defers to a board's rulings on standing and contention admissibility unless the appeal points to an error of law or abuse of discretion; CLI-08-17, 68 NRC 231 (2008); CLI-09-7, 69 NRC 235 (2009); CLI-09-12, 69 NRC 535 (2009); CLI-09-16, 70 NRC 33 (2009); CLI-09-22, 70 NRC 932 (2009); CLI-10-1, 71 NRC 1 (2010); CLI-10-5, 71 NRC 90 (2010); CLI-10-7, 71 NRC 133 (2010); CLI-10-9, 71 NRC 245 (2010); CLI-10-12, 71 NRC 319 (2010); CLI-10-20, 72 NRC 185 (2010); CLI-10-21, 72 NRC 197 (2010)
- the Commission elaborates on the standards for accepting an appeal filed out of time; LBP-10-21, 72 NRC 616 (2010)
- the Commission generally steps in only to correct a licensing board's clearly erroneous findings; CLI-06-15, 63 NRC 687 (2006)
- the Commission gives substantial deference to boards' determinations on threshold issues, such as standing and contention admissibility; CLI-06-24, 64 NRC 111 (2006)
- the Commission may consider the criteria listed in 10 C.F.R. 2.786(b)(4) when reviewing interlocutory matters on the merits, but when determining whether to undertake such review the standards in section 2.786(g) control the determination; CLI-10-29, 72 NRC 556 (2010)
- the Commission refrains from exercising its authority to make de novo findings of fact in situations where a licensing board has issued a plausible decision that rests on carefully rendered findings of fact; CLI-10-18, 72 NRC 56 (2010)
- the Commission reviews legal questions de novo and will reverse a licensing board's legal rulings if they are a departure from or contrary to established law; CLI-10-18, 72 NRC 56 (2010)
- the Commission routinely accords substantial deference to licensing boards on matters involving standing and credibility determinations, and thus does not lightly set aside a board's grant of discretionary intervention; CLI-06-16, 63 NRC 708 (2006)
- the Commission will consider a petition for review if it raises a substantial question with respect to one or more of the five paragraphs of 10 C.F.R. 2.341(b)(4); CLI-10-17, 72 NRC 1 (2010)
- the Commission will not consider cursory, unsupported arguments; CLI-10-23, 72 NRC 210 (2010)
- the Commission will not consider information that was not raised before the board; CLI-10-9, 71 NRC 245 (2010)
- the Commission will not overturn a hearing judge's findings simply because the Commission might have reached a different result; CLI-10-23, 72 NRC 210 (2010)
- the Commission will review legal questions de novo, and will reverse a licensing board's legal rulings if they are a departure from or contrary to established law; CLI-09-7, 69 NRC 235 (2009)
- the Commission will review referred rulings only if the referral raises significant and novel legal or policy issues, and resolution of the issues would materially advance the orderly disposition of the proceeding; CLI-09-21, 70 NRC 927 (2009)
- the Commission's standard of clear error for overturning a board's factual finding is quite high, and the Commission defers to its boards' findings unless clearly erroneous, that is, not even plausible in light of the record viewed in its entirety; CLI-09-7, 69 NRC 235 (2009)
- the fact that the board accorded greater weight to one party's evidence than to the other's is not a basis for overturning the initial decision; CLI-10-23, 72 NRC 210 (2010)
- the licensing board's responsibilities regarding its review of environmental issues in an uncontested mandatory hearing on a uranium enrichment facility application are described; LBP-07-6, 65 NRC 429 (2007)
- the mere potential for legal error in a contention admissibility decision is not a ground for interlocutory review; CLI-10-30, 72 NRC 564 (2010)

SUBJECT INDEX

- the scope of early review of an enforcement order is severely limited and the order's immediate effectiveness depriving the accused of the freedom to work pending trial is presumptively valid, placing the burden on the accused to demonstrate its invalidity; LBP-09-24, 70 NRC 676 (2009)
- the scope of the licensing board's environmental review in an uncontested early site permit proceeding is discussed; LBP-07-1, 65 NRC 27 (2007)
- the scope of the licensing board's safety review in an uncontested early site permit proceeding is described; LBP-07-1, 65 NRC 27 (2007)
- the standard for review of an interlocutory board order is whether the ruling threatens the petitioner with immediate and serious irreparable impact or will affect the basic structure of the proceeding in a pervasive and unusual manner; CLI-08-7, 67 NRC 187 (2008)
- the standard of clear error for overturning a board's factual finding is quite high; CLI-10-5, 71 NRC 90 (2010); CLI-10-18, 72 NRC 56 (2010)
- to satisfy the "clearly erroneous" standard, a litigant must show that the board's findings are not even plausible in light of the record viewed in its entirety; CLI-10-17, 72 NRC 1 (2010); CLI-10-23, 72 NRC 210 (2010)
- unless there is a strong reason to believe that in a particular case a board has overlooked or misunderstood important evidence, the Commission will defer to its findings of fact; CLI-09-7, 69 NRC 235 (2009)
- when reviewing an early site permit application in an uncontested proceeding, licensing boards are to conduct a simple sufficiency review rather than a de novo review on both Atomic Energy Act and National Environmental Policy Act issues; LBP-07-1, 65 NRC 27 (2007); LBP-07-6, 65 NRC 429 (2007); LBP-09-19, 70 NRC 433 (2009)
- when the Commission reviews board rulings on contention admissibility, it employs the clear error and abuse of discretion standards of review; CLI-10-17, 72 NRC 1 (2010)
- where a party merely complains that the board improperly weighed the evidence and identifies no clear board factual or legal error requiring further Commission consideration on appellate review, the Commission is disinclined to second-guess the board's assessment of the party's affidavits; CLI-08-28, 68 NRC 658 (2008)
- where the final environmental impact statement discussion of alternative sites was insufficient, the board independently reviewed the record on greenfield, competitors' brownfield, noncompetitors' brownfield, and applicant's other nuclear sites to conclude that the Staff's underlying alternative site review was adequate; LBP-09-19, 70 NRC 433 (2009)
- while generally accepting the technical and factual findings of NRC Staff, the board must independently decide whether NEPA has been complied with, the final balance among conflicting factors, and whether the ESP should be issued, denied, or appropriately conditioned; LBP-07-9, 65 NRC 539 (2007)
- with respect to certain NEPA findings, boards in early site permit proceedings are to make independent environmental judgments, though they need not rethink or redo every aspect of the NRC Staff's environmental findings or undertake their own fact-finding activities; LBP-09-19, 70 NRC 433 (2009)
- STANDARD REVIEW PLANS**
- one acceptable methodology for calculating the environmentally adjusted cumulative usage factor is presented in the SRP; CLI-10-17, 72 NRC 1 (2010)
- the plan provides guidance but does not impose requirements on license renewal applicants; CLI-10-17, 72 NRC 1 (2010)
- where applicant is required to include measures to prevent nuclear criticality, an applicant's assertion that petitioners have not demonstrated that the facility involves a significant source of radioactivity with an obvious potential for offsite consequences does not stand up; LBP-07-14, 66 NRC 169 (2007)
- with respect to an adequate site characterization, it is reasonable to interpret the regulations as requiring decommissioning plan submissions to contain the type of information discussed in the NUREG-1700 acceptance criteria; LBP-08-4, 67 NRC 105 (2008)
- STANDING TO INTERVENE**
- a board did not act unreasonably in basing standing on potential harm from new operations that would be similar to harm petitioner claims he has suffered from existing operations; CLI-09-12, 69 NRC 535 (2009)
- a board in one proceeding is not constrained to follow the rulings of another board, absent explicit affirmation by the Commission; LBP-07-10, 66 NRC 1 (2007); LBP-08-24, 68 NRC 691 (2008)

SUBJECT INDEX

- a board is not at liberty to abandon the Commission's 50-mile proximity presumption; LBP-09-16, 70 NRC 227 (2009)
- a board may grant party status only to a single representative for each affected federally recognized Indian tribe; LBP-09-6, 69 NRC 367 (2009)
- a board's decision on one of the admission elements does not necessarily render any discussion of the other superfluous because a decision addressing only one of the two items creates the potential for significant delay if that single determination is later overturned on appeal; LBP-07-10, 66 NRC 1 (2007)
- a board's determination of standing does not depend on whether the cause of the injury flows directly from the challenged action, but whether the chain of causation is plausible; LBP-09-13, 70 NRC 168 (2009); LBP-10-16, 72 NRC 361 (2010)
- a board's standing analysis must avoid the familiar trap of confusing the standing determination with the assessment of a petitioner's case on the merits; LBP-10-16, 72 NRC 361 (2010)
- a clause in a settlement agreement regarding standing does not apply to NRC Staff, nor would it bind a future licensing board to make any particular determination regarding whether any of the petitioners has established its standing, either as of right or as a matter of discretion; LBP-09-23, 70 NRC 659 (2009)
- a declaration in support of petitioner's standing based on geographic proximity must include a specific statement of distance from the licensed facility; CLI-07-18, 65 NRC 399 (2007)
- a determination that an injury is fairly traceable to the challenged action does not depend on whether the cause of the injury flows directly from the challenged action, but whether the chain of causation is plausible; LBP-08-6, 67 NRC 241 (2008); LBP-08-24, 68 NRC 691 (2008); LBP-10-4, 71 NRC 216 (2010)
- a federally recognized Indian tribe may seek to participate in a proceeding; LBP-10-16, 72 NRC 361 (2010)
- a hearing must be held upon the request of any person whose interest may be affected by the proceeding; LBP-08-14, 68 NRC 279 (2008)
- a lack of specificity will be sufficient to reject a claim of standing; LBP-09-18, 70 NRC 385 (2009)
- a licensing board can take official notice of the locations and the distances to the various locations specified by a petitioner as denominated on Mapquest and an American Automobile Association roadmap; LBP-07-10, 66 NRC 1 (2007)
- a licensing board must assess an intervention petition to determine whether the elements of standing are met even if there are no objections to a petitioner's standing; LBP-09-3, 69 NRC 139 (2009)
- a licensing board shall consider three factors when deciding whether to grant standing to a petitioner; LBP-08-6, 67 NRC 241 (2008)
- a licensing board will grant a request for a hearing if it determines that the requestor has standing and has proposed at least one admissible contention; LBP-10-4, 71 NRC 216 (2010)
- a licensing board's review of a petition for standing is to avoid the familiar trap of confusing the standing determination with the assessment of a petitioner's case on the merits; LBP-08-24, 68 NRC 691 (2008)
- a local governmental body need not address standing requirements if it wishes to be a party in a proceeding for a facility located within its boundaries; LBP-08-10, 67 NRC 450 (2008)
- a party claiming violations of their procedural right to protect their interests in cultural resources is to be accorded a special status when it comes to standing, without meeting all the normal standards for redressability and immediacy; LBP-10-16, 72 NRC 361 (2010)
- a person who has been accorded a procedural right to protect his concrete interests can assert that right without meeting all the normal standards for redressability and immediacy; CLI-09-9, 69 NRC 331 (2009)
- a petition for review and request for hearing must include a showing that the petitioner has standing; LBP-09-13, 70 NRC 168 (2009)
- a petitioner awarded standing in one proceeding need not restate all of its case to establish standing in another proceeding related to the same facility; LBP-07-14, 66 NRC 169 (2007)
- a petitioner must demonstrate a concrete and particularized injury that is fairly traceable to the challenged action and is likely to be redressed by a favorable decision; LBP-06-4, 63 NRC 99 (2006); LBP-06-7, 63 NRC 188 (2006); LBP-06-10, 63 NRC 314 (2006)

SUBJECT INDEX

- a petitioner who fails to provide specific information regarding the geographic proximity or the timing and duration of its visits only complicates matters for itself; LBP-07-10, 66 NRC 1 (2007)
- a presumption of standing applies when an individual, an organization, or an individual authorizing an organization to represent his or her interests resides within 50 miles of the proposed facility or has frequent contacts with the area affected by the proposed facility; LBP-10-7, 71 NRC 391 (2010)
- a regular commute that takes petitioner past a plant entrance once or twice a week is sufficient to establish standing; LBP-10-1, 71 NRC 165 (2010)
- a ruling on standing does not constitute dicta simply because the board also concluded that the petitioner had failed to proffer an admissible contention; LBP-07-10, 66 NRC 1 (2007)
- a showing that anyone who uses a substantial quantity of water personally or for livestock from a source that is reasonably contiguous to either an injection or processing site is sufficient to demonstrate an injury in fact for standing; LBP-08-6, 67 NRC 241 (2008)
- a significant pattern of regular contacts within the 50-mile radius around the plant is sufficient to establish proximity-based standing; LBP-09-18, 70 NRC 385 (2009)
- a small or minor unwanted exposure, even one well within regulatory limits, is sufficient to establish an injury in fact; LBP-08-6, 67 NRC 241 (2008)
- a standing ruling in one proceeding is not dispositive of a determination in another proceeding with the same petitioner because the ruling was not the subject of appellate review; LBP-09-18, 70 NRC 385 (2009)
- a state or local governmental entity that wishes to be a party in a proceeding that involves a facility located within its boundaries is automatically deemed to have standing; LBP-06-7, 63 NRC 188 (2006); LBP-06-23, 64 NRC 257 (2006); LBP-08-13, 68 NRC 43 (2008)
- a statement purporting to show a real potential for injury sufficient for standing will be rejected if it is too vague and general; CLI-06-2, 63 NRC 9 (2006)
- a threatened unwanted exposure to radiation, even a minor one, is sufficient to establish an injury; LBP-06-4, 63 NRC 99 (2006)
- a union in one facility lacks standing to participate in other interrelated license transfer proceedings, given that the union did not represent employees at the other facilities; CLI-08-19, 68 NRC 251 (2008)
- absent an obvious potential for harm, it is a petitioner's burden to show how harm will or may occur; LBP-09-28, 70 NRC 1019 (2009)
- agencies should be accorded broad discretion in establishing and applying rules for public participation, including rules for determining which community representatives are to be allowed to participate; CLI-08-19, 68 NRC 251 (2008)
- although a board in another materials license renewal proceeding allowed an Indian organization to participate in that proceeding as an interested Indian tribe under 10 C.F.R. 2.315(c), that ruling is not binding on other boards; LBP-09-13, 70 NRC 168 (2009)
- although a proximity presumption has been invoked when resolving issues of standing for cases involving reactor licensing, in a case involving an enforcement order, the standing requirement is also based on the confirmatory order itself and the adverse effect of the confirmatory order; LBP-07-16, 66 NRC 277 (2007)
- although Article III of the Constitution does not constrain the NRC hearing process, and NRC hearings therefore are not governed by judicially created standing doctrine, the Commission nonetheless has generally looked to judicial concepts of standing where appropriate to determine those interests affected within the meaning of section 189a of the Atomic Energy Act; LBP-09-1, 69 NRC 11 (2009)
- although boards should afford greater latitude to a pleading submitted by a pro se petitioner, that petitioner ultimately bears the burden to provide facts sufficient to show standing; CLI-10-20, 72 NRC 185 (2010)
- although further analysis may show that there is no way for the radioactive materials and byproducts from ISL mining operations to cause harm to persons living nearby, a board cannot decide, when making a standing determination, that there is no reasonable possibility that such harm could occur; LBP-08-6, 67 NRC 241 (2008)
- although petitioner bears the burden of demonstrating standing, in ruling on standing a licensing board is to construe the petition in favor of the petitioner; LBP-09-1, 69 NRC 11 (2009); LBP-09-2, 69 NRC 87 (2009); LBP-09-3, 69 NRC 139 (2009)

SUBJECT INDEX

although petitioner has established the requisite standing, the hearing request must be denied because of a failure to proffer one admissible contention; CLI-10-7, 71 NRC 133 (2010); LBP-10-1, 71 NRC 165 (2010)

although the Army has the burden to protect the public from depleted uranium, that issue is not relevant to a standing inquiry; LBP-10-4, 71 NRC 216 (2010)

although the Commission customarily follows judicial concepts of standing, it is not bound to do so given that it is not an Article III court; CLI-08-19, 68 NRC 251 (2008); LBP-08-24, 68 NRC 691 (2008)

although the pleading requirements of 10 C.F.R. 2.309 are strict by design, a licensing board may permit potential intervenors to cure defects in petitions in order to obviate dismissal of an intervention petition because of inarticulate draftsmanship or procedural or pleading defects; LBP-08-6, 67 NRC 241 (2008)

an administrative agency may establish administrative standing criteria that are less rigorous than those for judicial standing; CLI-09-20, 70 NRC 911 (2009)

an affected federally recognized Indian tribe is automatically entitled to participate in the high-level waste proceeding; LBP-09-6, 69 NRC 367 (2009)

an alleged injury to health and safety, shared equally by many, can form the basis for standing; LBP-09-18, 70 NRC 385 (2009)

an attack on the Commission's proximity presumption is rejected; LBP-09-18, 70 NRC 385 (2009)

an entity wishing to participate as a governmental body must demonstrate that it goes beyond an advisory role and exercises executive or legislative responsibilities; LBP-09-13, 70 NRC 168 (2009)

an extended power uprate is directly associated with continuing reactor operation, and thus the potential geographic scope of the consequences of EPU operation can be considered to be similar to that which supported the creation of a 50-mile presumption for construction permit and operating license proceedings; LBP-07-10, 66 NRC 1 (2007)

an Indian tribe claims a procedural interest in identifying, evaluating, and establishing protections for historic and cultural resources; LBP-10-16, 72 NRC 361 (2010)

an Indian Tribe whose reservation is adjacent to facilities where spent nuclear fuel is currently stored, the nearest of which resides just 600 yards from an ISFSI, has more than a mere interest in a problem; LBP-10-11, 71 NRC 609 (2010)

an individual may satisfy the standing requirements by demonstrating that his or her residence is within the geographical area that might be affected by an accidental release of fission products, and in proceedings involving nuclear power plants this area has been defined as being within a 50-mile radius of such a plant; CLI-07-19, 65 NRC 423 (2007); LBP-06-4, 63 NRC 99 (2006); LBP-06-7, 63 NRC 188 (2006); LBP-07-3, 65 NRC 237 (2007); LBP-07-4, 65 NRC 281 (2007)

an individual petitioner may not request to intervene in his or her own right while simultaneously authorizing other petitioners to represent his or her interests in the proceeding; LBP-10-16, 72 NRC 361 (2010)

an injury in fact must go beyond generalized grievances to affect a petitioner in a personal and individual way; LBP-09-13, 70 NRC 168 (2009); LBP-10-16, 72 NRC 361 (2010)

an injury may be either actual or threatened, but must lie arguably within the zone of interests protected by the statutes governing the proceeding; LBP-06-10, 63 NRC 314 (2006)

an interested governmental entity that has not been admitted as a party under section 2.309 must be provided a reasonable opportunity to participate in a hearing; LBP-08-21, 68 NRC 554 (2008)

an organization's promotion of the public interest, environmental protection, and consumer protection are broad interests shared with many others and too general to constitute a protected interest under the Atomic Energy Act or the National Environmental Policy Act; CLI-07-18, 65 NRC 399 (2007)

any affected unit of local government need not address standing in the high-level waste proceeding, but rather shall be considered a party provided that it files at least one admissible contention in accordance with 10 C.F.R. 2.309(f); LBP-09-6, 69 NRC 367 (2009)

any Native American treaty-based claims to ownership of the land upon which a mining site sits cannot support standing; LBP-08-24, 68 NRC 691 (2008)

any potential harm associated with petitioner's use of water from a water source connecting to a mining site is fairly traceable to the proposed action; LBP-10-16, 72 NRC 361 (2010)

as long as petitioners reside within an area that could realistically be impacted if an accidental release occurs, it is reasonable and consistent with Atomic Energy Act § 189a to find that they have standing

SUBJECT INDEX

to challenge applicant's safety claims and its environmental analysis under the National Environmental Policy Act; LBP-09-4, 69 NRC 170 (2009)

asserted harm need not be great to establish an injury in fact for standing; LBP-08-6, 67 NRC 241 (2008)

because agencies are not constrained by Article III of the Constitution, nor are they governed by judicially created standing doctrines restricting access to federal courts, the criteria for establishing administrative standing may permissibly be less demanding than the criteria for judicial standing; LBP-08-24, 68 NRC 691 (2008); LBP-09-18, 70 NRC 385 (2009)

because petitioner must show an injury, the issue of standing is directly related to the issue of the scope of the proceeding; LBP-07-16, 66 NRC 277 (2007)

because petitioner's circumstances may change from one proceeding to the next, it is important that the presiding officer have up-to-date information regarding any standing claims; LBP-10-21, 72 NRC 616 (2010)

boards apply a proximity-plus test to establish standing in materials cases, where the petitioner must show that the proposed licensing action involves a significant source of radiation that has an obvious potential for offsite consequences; CLI-10-20, 72 NRC 185 (2010)

boards are to consider whether a petitioner has alleged a concrete and particularized injury that is fairly traceable to the challenged action and likely to be redressed by a favorable decision; LBP-08-6, 67 NRC 241 (2008)

boards are to construe intervention petitions in favor of the petitioner; LBP-07-10, 66 NRC 1 (2007); LBP-08-16, 68 NRC 361 (2008); LBP-08-17, 68 NRC 431 (2008); LBP-08-21, 68 NRC 554 (2008)

boards must avoid the familiar trap of confusing the standing determination with the assessment of petitioner's case on the merits; LBP-08-6, 67 NRC 241 (2008)

boards must consider the extent a petitioner's interests are represented by existing parties, not potential parties; LBP-10-11, 71 NRC 609 (2010)

boards shall consider the nature of the petitioner's right under AEA to be made a party to the proceeding, the nature and extent of the petitioner's property, financial, or other interest in the proceeding, and the possible effect of any order that may be entered in the proceeding on the petitioner's interest; LBP-07-4, 65 NRC 281 (2007)

broad and conclusory statements by petitioners that they have direct information concerning the threat to health and safety posed by the license applicant are insufficient to establish standing; LBP-10-4, 71 NRC 216 (2010)

burden is on petitioner to allege a specific and plausible means by which contaminants from mining activities may adversely affect him or her; LBP-10-16, 72 NRC 361 (2010)

contemporaneous judicial standing concepts are applied in NRC proceedings; LBP-10-7, 71 NRC 391 (2010)

contemporaneous judicial standing concepts require that participant establish that it has suffered or will suffer a distinct and palpable injury that constitutes injury-in-fact within the zones of interests arguably protected by the governing, the injury is fairly traceable to the challenged action, and the injury is likely to be redressed by a favorable decision; LBP-10-7, 71 NRC 391 (2010)

contentions are comparable to neither "forms of relief" nor Article III "claims," but are instead comparable to various "grounds" that may be asserted in opposition to a proposed agency action at issue; LBP-09-1, 69 NRC 11 (2009)

courts' refusal to grant automatic standing to labor unions may lie in the fact that unions are formed to represent their members in collective bargaining and other employment-related negotiations, not in administrative or judicial litigation; CLI-08-19, 68 NRC 251 (2008)

daily commute near vicinity of a reactor is sufficient to establish standing; LBP-08-9, 67 NRC 421 (2008)

damage to a nuclear power facility's reputation does not constitute a threatened injury to the interests of the Local's members who work at the facility; CLI-08-19, 68 NRC 251 (2008)

delaying the opening of the Yucca Mountain repository would inflict concrete harm on members of an organization who expend substantial sums to operate their own storage facilities; LBP-09-6, 69 NRC 367 (2009)

SUBJECT INDEX

demonstrating proximity-based standing in a power uprate proceeding requires a determination that the proposed action involves a significant source of radioactivity producing an obvious potential for offsite consequences; LBP-08-9, 67 NRC 421 (2008)

demonstrating proximity-based standing requires a determination that the proposed action involves a significant source of radioactivity producing an obvious potential for offsite consequences; LBP-06-4, 63 NRC 99 (2006)

descriptions of activities as being “near,” in “close proximity,” or “in the vicinity” of the facility in question are insufficient to establish standing; CLI-07-18, 65 NRC 399 (2007)

discretionary intervention is allowed because petitioner’s interests are within the zone of interests related to the proceeding and its extensive participation in similar proceedings in the past would provide valuable insight in developing a sound record; LBP-09-6, 69 NRC 367 (2009)

discretionary standing is appropriate only when one petitioner has been shown to have standing as of right and an admissible contention so that a hearing will be conducted; LBP-07-10, 66 NRC 1 (2007)

each intervening participant that wishes to be a party to a proceeding must establish its own standing; LBP-10-7, 71 NRC 391 (2010)

economic harm itself has been held sufficient to establish standing under the Nuclear Waste Policy Act; LBP-10-11, 71 NRC 609 (2010)

establishing standing for a contention involves a showing of a concrete and particularized injury that is fairly traceable to the challenged action and likely to be redressed by a favorable decision; LBP-09-1, 69 NRC 11 (2009)

even if a party seeking standing has some intent to return to an area, when such intentions are not supported by concrete plans or a specification of when future visits would take place, they do not support a finding of injury in the standing context; LBP-10-1, 71 NRC 165 (2010)

even if injury sufficient to show an existing case or controversy is established, this does not confer standing with regard to injunctive relief; LBP-09-1, 69 NRC 11 (2009)

even if neither applicant nor NRC Staff challenges petitioner’s standing, the board must make its own determination; LBP-07-10, 66 NRC 1 (2007); LBP-08-15, 68 NRC 294 (2008)

even if NRC’s proximity presumption is viewed as more lenient than judicial standing requirements, NRC may choose to retain it; CLI-09-20, 70 NRC 911 (2009)

even in nonreactor construction permit/operating license cases involving an increased potential for offsite consequences in which proximity can be the primary basis for establishing standing, the distance at which a petitioner can be presumed to be affected must take into account the nature of the proposed action and the significance of the radioactive source; LBP-07-10, 66 NRC 1 (2007)

every petitioner bears the burden of demonstrating standing in order to participate in hearings before a licensing board; LBP-09-18, 70 NRC 385 (2009)

failure to indicate how alleged harms might result from license amendments, particularly given not only the shutdown status of the facility, but also the continued applicability of the NRC’s safety-oriented regulations governing defueled nuclear plants, is grounds for denial; LBP-10-11, 71 NRC 609 (2010)

failure to specify any radiological contacts with enough concreteness to establish some impact on petitioner will result in denial of standing; LBP-10-11, 71 NRC 609 (2010)

federal courts have long recognized the right of agencies to tailor their own standing requirements to fit their specific needs; CLI-08-19, 68 NRC 251 (2008)

for a request for hearing and petition to intervene to be granted, petitioner must establish that it has standing and propose at least one admissible contention; LBP-10-15, 72 NRC 257 (2010)

for proximity-based standing, distance from a facility can be verified using the Google Maps distance measurement tool; LBP-10-1, 71 NRC 165 (2010)

general counsel for an Indian tribe is not required to submit a declaration stating the basis of his or her authority to represent the tribe; LBP-08-26, 68 NRC 905 (2008)

having established proximity standing, petitioner need not separately establish the requisite injury, causation, and redressability elements; LBP-09-18, 70 NRC 385 (2009)

how the Commission determines proximity-based standing in license transfer cases is described; CLI-08-19, 68 NRC 251 (2008)

if petitioner cannot establish the elements of proximity-based standing, then he must establish standing according to traditional standing principles; CLI-10-20, 72 NRC 185 (2010)

SUBJECT INDEX

- if petitioner fails to show that a particular licensing action raises an obvious potential for offsite consequences, then the standing inquiry reverts to a traditional standing analysis of whether the petitioner has made a specific showing of injury, causation, and redressability; CLI-08-19, 68 NRC 251 (2008)
- if petitioner is found not to be in substantial and timely compliance with the LSN requirements, that petitioner may request party status upon a subsequent showing of compliance, but any grant of a request is conditioned on accepting the status of the proceeding at the time of admission; LBP-09-6, 69 NRC 367 (2009)
- if petitioner requests a remedy that is beyond the scope of the hearing, then the hearing request must be denied because redressability is an element of standing; LBP-08-14, 68 NRC 279 (2008)
- if the agencies do not see fit to calculate projected doses at several different distances from a facility and to differentiate areas that might receive radiation doses from those that will not, it is hardly reasonable, or fair, to expect petitioners to do better in making their arguments for standing; LBP-07-14, 66 NRC 169 (2007)
- in a case involving an enforcement order, the standing requirement is based on the confirmatory order itself, and petitioner must show that he will be adversely affected by the terms of the order; LBP-08-14, 68 NRC 279 (2008)
- in a decommissioning proceeding, where the proximity presumption does not apply, a petitioner who commuted past the entrance of the plant once or twice a week was found to have standing; CLI-10-7, 71 NRC 133 (2010)
- in a license transfer case, a petitioner cannot successfully claim injury based on the financial qualifications and assurances of the transferor; CLI-07-22, 65 NRC 525 (2007)
- in a materials licensing case, petitioner must show more than that he lives or works within a certain distance of the site where materials will be located; CLI-10-20, 72 NRC 185 (2010)
- in a materials licensing proceeding, petitioners have the burden to show a specific and plausible means whereby the licensing decision may harm them; CLI-09-9, 69 NRC 331 (2009)
- in an indirect license transfer case involving no change in the facility, its operation, licensees, personnel, or financing, petitioners living within 5-10 miles of the plant did not qualify for proximity-based standing; CLI-08-19, 68 NRC 251 (2008)
- in assessing a petition to determine whether the elements for standing are met, boards are to construe the petition in favor of the petitioner; LBP-07-3, 65 NRC 237 (2007)
- in assessing intervention petitions, licensing boards must determine whether standing elements are met even though there are no objections to petitioner's standing; LBP-09-23, 70 NRC 659 (2009)
- in assessing whether petitioner has standing, NRC has long applied contemporaneous judicial concepts of standing; CLI-09-20, 70 NRC 911 (2009)
- in cases involving ISL uranium mining and other source materials licensing, petitioner must demonstrate injury, causation, and redressability because proximity to the proposed facility alone is not adequate to demonstrate standing; LBP-10-16, 72 NRC 361 (2010)
- in cases involving possible construction or operation of a nuclear power reactor, proximity within a 50-mile radius of the proposed facility has been considered sufficient to establish the requisite standing elements; LBP-07-10, 66 NRC 1 (2007); LBP-08-13, 68 NRC 43 (2008); LBP-08-15, 68 NRC 294 (2008); LBP-08-16, 68 NRC 361 (2008); LBP-09-3, 69 NRC 139 (2009); LBP-10-21, 72 NRC 616 (2010)
- in cases not involving nuclear power reactors, whether petitioner could be affected by the licensing action must be determined on a case-by-case basis, taking into account petitioner's distance from the source, the nature of the licensed activity, and the significance of the radioactive source; CLI-10-20, 72 NRC 185 (2010)
- in cases where the record fails to support the existence of a significant source of radioactivity producing an obvious potential for offsite consequences at a particular distance frequented by a petitioner, it becomes petitioner's burden to show a specific and plausible means of how the challenged action may harm him or her; LBP-10-4, 71 NRC 216 (2010)
- in demonstrating that a proposed action involves a significant source of radioactivity producing an obvious potential for offsite consequences, petitioner cannot rely on conclusory allegations about potential radiological harm, but must show how these various harms might result from the proposed action; LBP-09-20, 70 NRC 565 (2009)

SUBJECT INDEX

- in determining whether a petitioner has established standing, boards are to construe the petition in favor of the petitioner; LBP-08-26, 68 NRC 905 (2008); LBP-09-10, 70 NRC 51 (2009); LBP-09-18, 70 NRC 385 (2009); LBP-09-21, 70 NRC 581 (2009); LBP-10-15, 72 NRC 257 (2010)
- in determining whether an individual or organization should be granted party status in a proceeding based on standing as of right, the agency applies contemporaneous judicial standing concepts; LBP-07-3, 65 NRC 237 (2007); LBP-07-4, 65 NRC 281 (2007); LBP-07-10, 66 NRC 1 (2007); LBP-08-6, 67 NRC 241 (2008); LBP-08-9, 67 NRC 421 (2008); LBP-08-26, 68 NRC 905 (2008); LBP-09-1, 69 NRC 11 (2009); LBP-09-3, 69 NRC 139 (2009); LBP-09-6, 69 NRC 367 (2009); LBP-10-4, 71 NRC 216 (2010); LBP-10-21, 72 NRC 616 (2010)
- in determining whether petitioner is an "interested person" for the purposes of a standing determination, NRC is not strictly bound by judicial standing doctrines; CLI-09-20, 70 NRC 911 (2009)
- in establishing proximity-based standing, it is petitioner's responsibility to provide enough detail to allow the board to distinguish a casual interest from a substantial one; LBP-10-1, 71 NRC 165 (2010)
- in evaluating the specificity of petitioners' standing arguments, a licensing board must take into account the information provided by the applicant and the NRC Staff in the environmental impact statement; LBP-07-14, 66 NRC 169 (2007)
- in in-situ leach mining cases the geographical areas that may be affected by mining operations are largely dependent on the size and other characteristics of underground aquifers; LBP-08-6, 67 NRC 241 (2008)
- in license amendment cases, petitioner cannot base standing simply upon a residence or visits near the plant, unless the proposed action quite obviously entails an increased potential for offsite consequences; LBP-08-18, 68 NRC 533 (2008)
- in license transfer cases, the Commission determines on a case-by-case basis whether the proximity presumption should apply, considering the obvious potential for offsite radiological consequences, or lack thereof, from the application at issue, and specifically taking into account the nature of the proposed action and the significance of the radioactive source; CLI-07-19, 65 NRC 423 (2007)
- in nonreactor cases, the potential for offsite consequences is not always clear, and thus the burden falls on petitioner to demonstrate that the proposed action involves a significant source of radioactivity producing an obvious potential for offsite consequences; LBP-09-20, 70 NRC 565 (2009)
- in operating license amendment cases, petitioner must assert an injury-in-fact associated with the challenged license amendment, not simply a general objection to the facility; LBP-07-10, 66 NRC 1 (2007)
- in power reactor license proceedings, proximity within 50 miles of a plant is often enough on its own to demonstrate standing; LBP-08-24, 68 NRC 691 (2008)
- in proceedings involving nuclear power reactors, the Commission has adopted a proximity presumption, whereby a petitioner who resides within 50 miles of the reactor is presumed to have standing without the need to plead injury, causation, and redressability; CLI-09-20, 70 NRC 911 (2009); CLI-10-7, 71 NRC 133 (2010); LBP-06-7, 63 NRC 188 (2006); LBP-06-10, 63 NRC 314 (2006); LBP-06-23, 64 NRC 257 (2006); LBP-09-10, 70 NRC 51 (2009); LBP-09-13, 70 NRC 168 (2009); LBP-09-16, 70 NRC 227 (2009); LBP-09-17, 70 NRC 311 (2009); LBP-09-18, 70 NRC 385 (2009); LBP-09-20, 70 NRC 565 (2009); LBP-09-21, 70 NRC 581 (2009); LBP-10-1, 71 NRC 165 (2010); LBP-10-4, 71 NRC 216 (2010); LBP-10-7, 71 NRC 391 (2010); LBP-10-15, 72 NRC 257 (2010); LBP-10-16, 72 NRC 361 (2010)
- in proceedings not involving power reactors, proximity alone is not sufficient to establish standing; LBP-08-6, 67 NRC 241 (2008)
- in proceedings other than for construction permits, operating licenses, or significant amendments thereto, the Commission decides on a case-by-case basis whether the proximity presumption should apply, taking into account any obvious potential for offsite radiological consequences, as well as the nature of the proposed action and the significance of the radioactive source; LBP-09-20, 70 NRC 565 (2009); LBP-09-28, 70 NRC 1019 (2009)
- in proceedings where petitioner's factual assertions in support of standing are challenged, untenable, conjectural, or conclusory, a board need not uncritically accept such assertions; LBP-10-4, 71 NRC 216 (2010)
- in reactor license proceedings, that zone of possible harm for proximity-based standing is generally deemed to constitute the areas within a 50-mile radius of the site; LBP-08-17, 68 NRC 431 (2008)

SUBJECT INDEX

- in ruling on a hearing request, a licensing board must determine whether petitioner has an interest potentially affected by the proceeding; LBP-08-15, 68 NRC 294 (2008)
- in ruling on a request for a hearing, a licensing board is to consider the nature of petitioner's right under the Atomic Energy Act or the National Environmental Policy Act to be made a party to the proceeding, the nature and extent of petitioner's property, financial, or other interest in the proceeding, and the possible effect of any decision or order that may be issued in the proceeding on the petitioner's interest; LBP-09-10, 70 NRC 51 (2009); LBP-09-13, 70 NRC 168 (2009); LBP-09-16, 70 NRC 227 (2009); LBP-09-17, 70 NRC 311 (2009); LBP-09-18, 70 NRC 385 (2009); LBP-09-20, 70 NRC 565 (2009); LBP-09-21, 70 NRC 581 (2009)
- in ruling on petitions to intervene in the high-level waste proceeding, boards must consider any failure of the petitioner to participate as a potential party in the pre-license application phase under 10 C.F.R. Part 2, Subpart J; LBP-09-6, 69 NRC 367 (2009)
- in source materials cases, petitioner has the burden of showing a specific and plausible means by which the proposed license activities may affect him or her; LBP-09-13, 70 NRC 168 (2009); LBP-10-16, 72 NRC 361 (2010)
- in the absence of a showing that the proposed operating license amendment obviously entails an increased potential for offsite consequences, petitioner must base its standing upon more than residence or activities within a particular proximity of the plant by making a showing of a plausible chain of events that would result in offsite radiological consequences posing a distinct new harm or threat to the participant; LBP-07-10, 66 NRC 1 (2007)
- in the high-level waste proceeding, the Commission conferred standing as of right on certain parties; LBP-09-6, 69 NRC 367 (2009)
- in the high-level waste proceeding, the presiding officer shall consider the factors in 10 C.F.R. 2.309; CLI-08-25, 68 NRC 497 (2008)
- in the high-level waste repository proceeding, a state can meet the requirements for standing as a matter of right, based on the threat posed by transportation of radioactive waste through that state; LBP-09-6, 69 NRC 367 (2009)
- information required to show standing includes the nature of petitioner's right under a relevant statute to be made a party, the nature and extent of petitioner's property, financial, or other interest in the proceeding, and the possible effect of any decision or order that might be issued on petitioner's interest; LBP-09-26, 70 NRC 939 (2009); LBP-10-15, 72 NRC 257 (2010); LBP-10-16, 72 NRC 361 (2010)
- injury in fact is defined as an invasion of a legally protected interest that is concrete and particularized and actual or imminent rather than conjectural or hypothetical; LBP-09-13, 70 NRC 168 (2009); LBP-10-16, 72 NRC 361 (2010)
- injury in fact may be either actual or threatened to establish standing, but must arguably lie within the zone of interests protected by the statutes governing the proceeding; LBP-06-23, 64 NRC 257 (2006); LBP-07-11, 66 NRC 41 (2007); LBP-08-6, 67 NRC 241 (2008)
- interest in the promotion of economic use of energy falls outside the zone of interests protected by either the Atomic Energy Act or the National Environmental Policy Act; CLI-07-18, 65 NRC 399 (2007)
- intervenors may not act as private attorneys-general and raise issues that are of concern to them but do not affect them directly; CLI-07-18, 65 NRC 399 (2007)
- intervention is allowable to those who wish to support a proposal that will affect their interests if the proceeding has one outcome rather than another; LBP-09-6, 69 NRC 367 (2009)
- intervention is permitted in the high-level waste repository proceeding by the state and local governmental bodies in the geologic repository operations area, and by any affected federally recognized Indian tribe; LBP-09-6, 69 NRC 367 (2009)
- intervention petitioners are not required to demonstrate their asserted injury with certainty or to provide extensive technical studies in support of their standing argument; LBP-08-24, 68 NRC 691 (2008)
- it is enough that petitioner has demonstrated a realistic threat of sustaining a direct injury as a result of contaminated groundwater flowing from the site to his property; LBP-10-16, 72 NRC 361 (2010)
- it is generally not sufficient to seek to establish standing in a proceeding by merely cross-referencing the showing made in another proceeding, rather than making a new presentation or at least providing a submission that updates the factual information that was provided previously; LBP-10-21, 72 NRC 616 (2010)

SUBJECT INDEX

it is not acceptable in NRC practice for petitioner to claim standing based on vague assertions, and when that fails, to attempt to repair the defective pleading with fresh details offered for the first time in its reply; LBP-09-2, 69 NRC 87 (2009)

it is not sufficient to rely on the standing of one petitioner because Commission practice requires each party to separately establish standing; CLI-07-18, 65 NRC 399 (2007)

it is unlikely that petitioners will often obtain hearings on confirmatory enforcement orders; LBP-08-14, 68 NRC 279 (2008)

it might be sufficient to allow petitioner to rely on a prior standing demonstration if that prior demonstration is specifically identified and shown to correctly reflect the current status of the petitioner's standing; LBP-10-21, 72 NRC 616 (2010)

judicial concepts of standing are applied in NRC proceedings; CLI-06-6, 63 NRC 161 (2006); LBP-06-4, 63 NRC 99 (2006); LBP-06-10, 63 NRC 314 (2006); LBP-06-23, 64 NRC 257 (2006); LBP-07-11, 66 NRC 41 (2007); LBP-07-14, 66 NRC 169 (2007); LBP-08-13, 68 NRC 43 (2008); LBP-08-14, 68 NRC 279 (2008); LBP-08-15, 68 NRC 294 (2008); LBP-08-16, 68 NRC 361 (2008); LBP-08-18, 68 NRC 533 (2008); LBP-09-10, 70 NRC 51 (2009); LBP-09-13, 70 NRC 168 (2009); LBP-09-16, 70 NRC 227 (2009); LBP-09-17, 70 NRC 311 (2009); LBP-09-18, 70 NRC 385 (2009); LBP-09-20, 70 NRC 565 (2009); LBP-09-26, 70 NRC 939 (2009); LBP-09-28, 70 NRC 1019 (2009); LBP-10-1, 71 NRC 165 (2010); LBP-10-15, 72 NRC 257 (2010); LBP-10-16, 72 NRC 361 (2010)

judicial concepts of standing require a showing that petitioner has suffered or will suffer palpable harm that constitutes an injury in fact, the injury can fairly be traced to the challenged action, and the injury is likely to be redressed by a favorable decision; LBP-08-13, 68 NRC 43 (2008); LBP-08-14, 68 NRC 279 (2008); LBP-08-15, 68 NRC 294 (2008); LBP-08-16, 68 NRC 361 (2008); LBP-09-10, 70 NRC 51 (2009); LBP-09-17, 70 NRC 311 (2009); LBP-09-18, 70 NRC 385 (2009); LBP-09-20, 70 NRC 565 (2009); LBP-09-26, 70 NRC 939 (2009); LBP-09-28, 70 NRC 1019 (2009); LBP-10-1, 71 NRC 165 (2010); LBP-10-4, 71 NRC 216 (2010); LBP-10-11, 71 NRC 609 (2010)

"justiciable controversy" is defined; LBP-08-6, 67 NRC 241 (2008)

licensing boards are bound by Commission and appeal board precedent and therefore are not at liberty to reject the 50-mile proximity presumption; LBP-09-4, 69 NRC 170 (2009)

licensing boards have been lenient in permitting pro se petitioners the opportunity to cure procedural defects in petitions to intervene regarding standing; LBP-09-18, 70 NRC 385 (2009)

licensing boards must assess intervention petitions to determine whether elements for standing are met even though there are no objections to petitioner's standing; LBP-10-21, 72 NRC 616 (2010)

local governmental bodies within whose boundaries a facility is located do not need to make any further demonstration of standing; CLI-07-18, 65 NRC 399 (2007)

members of intervenor organizations who reside, work, or recreate within 50 miles of the proposed nuclear power plant have proximity-based standing; LBP-10-9, 71 NRC 493 (2010)

membership of a petitioning Indian group must be composed principally of persons who are not members of any other acknowledged North American Indian tribe; LBP-09-13, 70 NRC 168 (2009)

mere conclusory allegations about potential harm to petitioner or others is insufficient to confer standing; LBP-08-24, 68 NRC 691 (2008)

merely because a petitioner may have had standing in an earlier proceeding does not automatically grant standing in subsequent proceedings, even if the scope of the earlier and later proceedings is similar; LBP-07-16, 66 NRC 277 (2007)

no proximity presumption applies in source materials cases; LBP-09-13, 70 NRC 168 (2009); LBP-10-16, 72 NRC 361 (2010)

not all entities with governmental ties are entitled to participate in licensing proceedings as local governmental bodies; LBP-09-13, 70 NRC 168 (2009)

NRC has acknowledged the analogous standing of the part-owner of a facility; LBP-09-6, 69 NRC 367 (2009)

NRC must provide a hearing upon the request of any person whose interest may be affected by the proceeding; LBP-07-11, 66 NRC 41 (2007); LBP-08-6, 67 NRC 241 (2008)

NRC's proximity presumption does not disregard contemporaneous judicial concepts of standing, but rather the Commission applied its expertise to determine that persons living within a 50-mile radius of a nuclear reactor face a realistic threat of harm if a release of radioactive material were to occur from the facility; LBP-09-16, 70 NRC 227 (2009)

SUBJECT INDEX

occasional contact with an affected area is not sufficient to establish standing; LBP-07-4, 65 NRC 281 (2007)

occasional trips to areas located close to reactors have been found to be insufficient grounds to demonstrate a risk to the intervenor's health and safety; LBP-08-9, 67 NRC 421 (2008)

offsite consequences need only be plausible, not necessarily probable or likely, and thus standing can be based on plausible but unlikely scenarios; LBP-07-14, 66 NRC 169 (2007)

once a party demonstrates that it has standing to intervene on its own accord, that party may then raise any contention that, if proved, will afford the party relief from the injury it relies upon for standing; CLI-09-9, 69 NRC 331 (2009); LBP-09-16, 70 NRC 227 (2009)

one does not acquire standing as a consequence of being a member of a legislative tribunal; LBP-07-5, 65 NRC 341 (2007)

one who asserts a procedural right to protect a concrete interest can assert that right without meeting all the normal standards for redressability and immediacy; LBP-10-11, 71 NRC 609 (2010)

one who does something "frequently" does so at frequent or short intervals, "frequent" being defined as often or habitually; LBP-10-1, 71 NRC 165 (2010)

one who performs an act "regularly" does so in a regular, orderly, or methodical way; LBP-10-1, 71 NRC 165 (2010)

organizations may demonstrate standing in either an organizational or a representational capacity; LBP-09-28, 70 NRC 1019 (2009)

permission to intervene should prove more readily available where petitioners show significant ability to contribute on substantial issues of law or fact that will not otherwise be properly raised or presented; LBP-10-11, 71 NRC 609 (2010)

petitioner bears the burden of demonstrating standing, but in ruling on standing a licensing board is to construe the petition in favor of the petitioner; LBP-08-6, 67 NRC 241 (2008)

petitioner bears the burden of establishing its standing in a proceeding; LBP-07-10, 66 NRC 1 (2007)

petitioner cannot base standing or a contention on the possibility that the licensee will violate the terms of its license; CLI-10-20, 72 NRC 185 (2010)

petitioner cannot rely on another board's finding of standing in a prior proceeding, even where the same licensed facility is involved; CLI-10-7, 71 NRC 133 (2010)

petitioner cannot satisfy NRC's standing requirement by offering a vague claim of 50-mile proximity in an initial petition and later using a petition for reconsideration to fill in gaps with more specific information that was available all along; CLI-07-21, 65 NRC 519 (2007)

petitioner does not have standing to assert rights of employees or caretakers on her land where caretakers are not minors or otherwise legally incapable of representing their own interests; LBP-08-18, 68 NRC 533 (2008)

petitioner has an affirmative duty to demonstrate that it has standing in each proceeding in which it seeks to participate because a petitioner's status can change over time and the bases for its standing in an earlier proceeding may no longer apply; LBP-09-18, 70 NRC 385 (2009)

petitioner has standing to intervene without the need to specifically plead injury, causation, and redressability if the petitioner lives within, or otherwise has frequent contacts with, the zone of possible harm from the nuclear reactor or other source of radioactivity; LBP-08-9, 67 NRC 421 (2008); LBP-08-26, 68 NRC 905 (2008)

petitioner has the burden to plead sufficient, plausible facts to demonstrate standing; CLI-10-7, 71 NRC 133 (2010); LBP-10-4, 71 NRC 216 (2010)

petitioner may not be granted party status in the high-level waste proceeding if it cannot demonstrate substantial and timely compliance with the requirements in 10 C.F.R. 2.1003 concerning the availability of documentary material on the Licensing Support Network; LBP-09-6, 69 NRC 367 (2009)

petitioner may not establish standing by alleging injury on behalf of another entity, but rather, petitioner must be the object of the actual or threatened injury; LBP-10-4, 71 NRC 216 (2010)

petitioner must allege a concrete and particularized injury that is fairly traceable to the challenged action and is likely to be redressed by a favorable decision; CLI-09-20, 70 NRC 911 (2009); LBP-07-3, 65 NRC 237 (2007); LBP-07-4, 65 NRC 281 (2007); LBP-07-5, 65 NRC 341 (2007); LBP-07-11, 66 NRC 41 (2007); LBP-09-13, 70 NRC 168 (2009); LBP-09-16, 70 NRC 227 (2009); LBP-09-18, 70 NRC 385 (2009); LBP-09-20, 70 NRC 565 (2009); LBP-09-26, 70 NRC 939 (2009); LBP-09-28, 70 NRC 1019 (2009); LBP-10-16, 72 NRC 361 (2010)

SUBJECT INDEX

petitioner must establish standing and proffer at least one admissible contention that meets the requirements of 10 C.F.R. 2.309(f)(1); LBP-10-16, 72 NRC 361 (2010)

petitioner must make a fresh demonstration of standing for each proceeding in which he seeks intervention because petitioner's circumstances may change from one proceeding to the next; CLI-10-7, 71 NRC 133 (2010); LBP-10-21, 72 NRC 616 (2010)

petitioner must meet the prudential standing requirement by showing that the asserted interest arguably falls within the zone of interests protected by the governing law; LBP-08-15, 68 NRC 294 (2008)

petitioner must provide basic information supporting its claim to standing in order to satisfy the requirements of 10 C.F.R. 2.309(d)(1)(ii)-(iv); LBP-08-13, 68 NRC 43 (2008)

petitioner must set forth his or her interest in the proceeding, as well as the possible effect that any order or decision entered therein might have upon that interest; LBP-07-5, 65 NRC 341 (2007)

petitioner must show (among other things) that its potential injury is fairly traceable to a grant of the application; CLI-06-21, 64 NRC 30 (2006)

petitioner must show a pattern of regular, significant contacts within the vicinity of the site to satisfy standing requirements; LBP-10-4, 71 NRC 216 (2010)

petitioner must show an injury in fact that is fairly traceable to the challenged action and likely to be redressed by a favorable decision; LBP-07-16, 66 NRC 277 (2007)

petitioner must show that it has suffered or will suffer a distinct and palpable harm that constitutes injury-in-fact within the zone of interests arguably protected by the governing statute and that this injury can fairly be traced to the challenged action; CLI-06-2, 63 NRC 9 (2006); LBP-10-15, 72 NRC 257 (2010); LBP-10-21, 72 NRC 616 (2010)

petitioner must state its name, address, and telephone number, nature of its right under the Atomic Energy Act to be made a party to the proceeding, nature and extent of its property, financial, or other interest in the proceeding, and possible effect of any decision or order issued in the proceeding on its interest; LBP-10-7, 71 NRC 391 (2010)

petitioner should submit a fully developed showing regarding standing in each proceeding in which it seeks to intervene, regardless of whether it has previously been found to have standing relative to the facility that is the locus of the proceedings; LBP-07-10, 66 NRC 1 (2007)

petitioner who had frequently visited an area allegedly affected by the proposed action for recreational purposes had shown injury in the standing context; LBP-10-1, 71 NRC 165 (2010)

petitioner who might have had standing in an earlier proceeding will not automatically be granted standing in subsequent proceedings; LBP-09-18, 70 NRC 385 (2009)

petitioner who seeks to base standing on contacts within a 50-mile radius of a proposed facility must provide enough detail to allow the board to distinguish a casual interest from a substantial one; CLI-10-7, 71 NRC 133 (2010)

petitioner whose daily commute took her within less than one-half mile of a research reactor had standing based on the obvious potential for offsite consequences; CLI-10-7, 71 NRC 133 (2010)

petitioner whose office was located within one-half mile from a research reactor may be presumed to be affected by operation of the facility; CLI-10-7, 71 NRC 133 (2010)

petitioner's claim that he routinely pierces the 50-mile radius around a reactor site is too vague to support standing; LBP-10-1, 71 NRC 165 (2010)

petitioner's claimed injury must be arguably within the zone of interests protected by the governing statute in the proceeding; LBP-10-16, 72 NRC 361 (2010)

petitioner's participation in a licensing proceeding hinges on a demonstration that the petitioner has standing; LBP-10-16, 72 NRC 361 (2010)

petitioner's present circumstances or the extent to which activities in the recent past reflect a likely pattern of future conduct are considered; LBP-07-10, 66 NRC 1 (2007)

petitioner's proximity to the pertinent facility triggers a presumption that it has standing to intervene without the need to specifically plead injury, causation, and redressability if the petitioner lives within, or otherwise has frequent contacts with, the zone of possible harm; LBP-08-15, 68 NRC 294 (2008); LBP-08-17, 68 NRC 431 (2008); LBP-08-26, 68 NRC 905 (2008)

petitioner's right to participate in a proceeding concerns whether the petitioner has sufficient stake in a matter, as contrasted with whether there is a real dispute; LBP-08-6, 67 NRC 241 (2008)

petitioner's showing establishing standing in one proceeding need not be repeated to establish standing in another proceeding regarding that same facility; LBP-07-10, 66 NRC 1 (2007)

SUBJECT INDEX

petitioner's standing showing can be corrected or supplemented to cure deficiencies by means of its reply pleading; LBP-10-21, 72 NRC 616 (2010)

petitioners are not required to demonstrate their asserted injury with certainty at the contention admission stage, or to provide extensive technical studies in support of their standing argument; LBP-07-14, 66 NRC 169 (2007); LBP-10-16, 72 NRC 361 (2010)

petitioners are not required to show standing for each contention separately; LBP-09-1, 69 NRC 11 (2009)

petitioners bear the burden of providing sufficient relevant, specific information, whether by good-faith estimate or otherwise, to establish the basis for their standing claims; LBP-10-1, 71 NRC 165 (2010)

petitioners in direct license transfer cases who qualified for proximity-based standing lived within a 5-1/2-mile radius of their plant; CLI-08-19, 68 NRC 251 (2008)

petitioners may enforce procedural rights only if the procedures in question are designed to protect some threatened concrete interest of theirs that is the ultimate basis of their standing; LBP-10-11, 71 NRC 609 (2010)

petitioners need not demonstrate a substantial likelihood of redressability, but rather need only show that redress is likely as opposed to speculative; LBP-10-11, 71 NRC 609 (2010)

petitioners need not show a nexus between interest upon which standing is based and the substance of their proposed contentions; CLI-09-9, 69 NRC 331 (2009)

petitioners who fail to provide specific information regarding proximity or frequency of contacts that may establish standing only complicate matters for themselves; LBP-10-1, 71 NRC 165 (2010)

petitioners who rely on water supplies adjacent to a mining site have a right to a hearing; LBP-08-24, 68 NRC 691 (2008)

plaintiffs have been found to have a right to apply for preventive relief where copper mining tailings were carried 25 miles to plaintiff's farm; LBP-08-6, 67 NRC 241 (2008)

preservation of cultural traditions is a protected interest under federal law, and its endangerment or harm qualifies as an injury for the purposes of establishing standing; LBP-08-24, 68 NRC 691 (2008)

preservation of Native American cultural traditions is a protected interest under federal law; LBP-10-16, 72 NRC 361 (2010)

procedural violations of the National Historic Preservation Act have resulted in a grant of standing to tribes; LBP-08-24, 68 NRC 691 (2008)

proximity alone does not suffice for standing in materials licensing cases; CLI-09-12, 69 NRC 535 (2009); LBP-08-24, 68 NRC 691 (2008)

proximity standing in a license transfer proceeding has been recognized at close distances where a petitioner frequently engages in substantial business and related activities in the vicinity of the facility, engages in normal, everyday activities in the vicinity, has regular and frequent contacts in an area near a licensed facility, or otherwise has visits of a length and nature showing an ongoing connection and presence; CLI-07-21, 65 NRC 519 (2007)

proximity standing rests on the presumption that an accident associated with the nuclear facility could adversely affect the health and safety of people working, living, or regularly engaging in activities offsite but within a certain distance of that facility; CLI-08-19, 68 NRC 251 (2008)

proximity-based presumption of standing applies in proceedings for nuclear power plant construction permits, operating licenses, or significant amendments thereto; LBP-10-15, 72 NRC 257 (2010); LBP-10-16, 72 NRC 361 (2010)

proximity-based standing has been denied when petitioner has demonstrated only occasional contact with the zone of possible harm; CLI-07-21, 65 NRC 519 (2007); LBP-10-1, 71 NRC 165 (2010)

proximity-based standing in license transfer proceedings had been denied to petitioners within 5-10 miles, 12 miles, and 40 miles from licensed facilities; CLI-07-21, 65 NRC 519 (2007)

proximity-based standing must be based on the factual circumstances presented by the information before the licensing board regarding the petitioner's activities, which may include consideration of the proximity, timing, and duration of those activities; LBP-07-10, 66 NRC 1 (2007)

proximity-based standing will be denied when petitioner fails to supply more specific information regarding the frequency, nature, and length of his contacts within the proximity zone; LBP-10-1, 71 NRC 165 (2010)

pursuant to the proximity-plus approach, a presumption based on geographical proximity (albeit at distances much closer than 50 miles) may be applied where there is a determination that the proposed

SUBJECT INDEX

action involves a significant source of radioactivity producing an obvious potential for offsite consequences; LBP-10-4, 71 NRC 216 (2010)

redressability requires petitioner to show that its alleged injury-in-fact could be cured or alleviated by some action of the tribunal; LBP-09-13, 70 NRC 168 (2009); LBP-10-16, 72 NRC 361 (2010)

regardless of whether there is a challenge to a petitioner's standing, given the jurisdictional nature of standing under the Atomic Energy Act, the board has an independent obligation to make a standing determination; LBP-10-1, 71 NRC 165 (2010)

regular but intermittent residence 1 week a month in a house 35 miles from a facility is sufficient for standing purposes; LBP-07-10, 66 NRC 1 (2007)

requirement to show distinct new harm from a license amendment application would not preclude standing to contest commencement of new operations at a separate site, where petitioner showed potential for harm to himself from new operation; CLI-09-12, 69 NRC 535 (2009)

showing that estimated dose consequences associated with operation under extended power uprate conditions can be expected to increase by the 20% power level change establishes that the proposed EPU creates an obvious potential for offsite consequences; LBP-07-10, 66 NRC 1 (2007)

significant contacts with an affected area can be sufficient to establish standing, even when full-time residence within the 50-mile zone is not shown; LBP-07-4, 65 NRC 281 (2007)

some circumstances exist in which petitioners may be presumed to have standing based on their geographical proximity to a facility or source of radioactivity, without the need to show injury in fact, causation, or redressability; LBP-08-6, 67 NRC 241 (2008)

someone living adjacent to the site for proposed construction of a federally licensed facility has standing to challenge the licensing agency's failure to prepare an environmental impact statement, even though he cannot establish with any certainty that the statement will cause the license to be withheld or altered, and even though the facility will not be completed for many years; LBP-10-24, 72 NRC 720 (2010)

standing as of right is not available in export license proceedings but the Commission has exercised its discretion to hold an open legislative-type hearing; LBP-09-1, 69 NRC 11 (2009)

standing cannot be based on unfounded conjecture; LBP-09-28, 70 NRC 1019 (2009)

standing generally has been denied when the threat of injury is not concrete and particularized; LBP-09-13, 70 NRC 168 (2009); LBP-10-16, 72 NRC 361 (2010)

standing is granted to an Indian tribe based on its interest in cultural artifacts onsite that could be affected by a proposed licensing action; CLI-09-9, 69 NRC 331 (2009)

"standing to sue" doctrine is defined; LBP-08-6, 67 NRC 241 (2008)

standing was not granted where litigant tried to rely on very narrow statutory provisions to challenge the much broader aspects of a statute that had no meaningful relationship to the litigant's situation; LBP-09-6, 69 NRC 367 (2009)

standing will be denied where contact has been limited to mere occasional trips to areas located close to reactors; LBP-10-1, 71 NRC 165 (2010)

state and federally recognized Indian tribes do not need to address standing requirements if the facility is located within their boundaries; CLI-09-15, 70 NRC 1 (2009); CLI-10-4, 71 NRC 56 (2010)

state and local governmental bodies in which the geologic repository operations area is located and any affected federally recognized Indian tribe need not address the standing requirements; CLI-08-25, 68 NRC 497 (2008)

substantial deference is given to boards' determinations on threshold issues, such as standing and contention admissibility; CLI-09-20, 70 NRC 911 (2009)

SUNSI requests need not be accompanied by affidavits or include lengthy, detailed justifications addressing the likelihood of standing; LBP-09-5, 69 NRC 303 (2009)

SUNSI requests need to include the name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the proposed licensing action sufficient to demonstrate a reasonable basis to conclude he or she could likely establish standing; LBP-09-5, 69 NRC 303 (2009)

the appropriate distance for proximity standing is decided on a case-by-case basis taking into account the nature of the proposed action and the significance of the radioactive source; LBP-07-14, 66 NRC 169 (2007)

SUBJECT INDEX

- the benefits of the proximity presumption are not limited to those who reside within the area in which the presumption applies, but can be extended to those who conduct everyday activities or visit within that area; LBP-07-10, 66 NRC 1 (2007)
- the better practice for an intervention petitioner is to submit a fully developed showing regarding standing in each proceeding in which it seeks to intervene, regardless of whether it has previously been found to have standing relative to the facility that is the locus of the proceedings; LBP-09-18, 70 NRC 385 (2009)
- the board declines to impose a requirement that petitioners perform an independent technical analysis at the standing phase of a proceeding, especially when the chain of plausible causation that could lead to offsite doses is abundantly clear; LBP-07-14, 66 NRC 169 (2007)
- the Commission defers to a board's rulings on standing and contention admissibility in the absence of clear error or abuse of discretion; CLI-09-9, 69 NRC 331 (2009); CLI-09-12, 69 NRC 535 (2009); CLI-10-1, 71 NRC 1 (2010); CLI-10-3, 71 NRC 49 (2010); CLI-10-7, 71 NRC 133 (2010); CLI-10-20, 72 NRC 185 (2010)
- the Commission has accepted a proximity presumption granting standing to residents within 50 miles of a reactor, but has not accepted any such presumption in nonreactor cases; LBP-07-14, 66 NRC 169 (2007)
- the Commission recognizes a 50-mile proximity presumption to establish standing in proceedings concerning nuclear power reactor construction and operating licenses; LBP-09-28, 70 NRC 1019 (2009)
- the common thread in decisions applying the 50-mile proximity presumption is a recognition of the potential effects at significant distances from the facility of the accidental release of fissionable materials; LBP-09-4, 69 NRC 170 (2009)
- the definition of "party" under the Nuclear Waste Policy Act implies that local governments enjoy standing as of right; LBP-08-10, 67 NRC 450 (2008)
- the distinction between "frequently" and "regularly" highlights the importance of making a more detailed factual showing, rather than relying on conclusory adjectives and adverbs, when a standing claim rests on the nature of petitioner's activities purportedly near to, or bearing some connection with, the reactor facility at issue; LBP-10-1, 71 NRC 165 (2010)
- the elements of standing will be presumed to be satisfied if an individual lives within the zone of possible harm from a significant source of radioactivity, which has been defined in proceedings involving nuclear power plants as being within a 50-mile radius of such a plant; LBP-07-11, 66 NRC 41 (2007)
- the fact that an ancestor of a member of the Oglala Delegation of the Great Sioux Nation Treaty Council signed several treaties with the United States more than 100 years ago does not establish that the delegation is a current and official successor to the delegation that signed such treaties, or that the delegation is a local governmental entity that currently exercises executive authority; LBP-09-13, 70 NRC 168 (2009)
- the increased risk of living within 50 miles of a nuclear power plant constitutes injury-in-fact, is traceable to the challenged action, and is likely to be redressed by a favorable decision that either denies a license or mandates compliance with legal requirements that protect the interests of the petitioners; LBP-09-4, 69 NRC 170 (2009)
- the lateness of petitioner's filing is justifiable because a relevant document was not revealed in a search of NRC's public database because of deficiencies in tagging; LBP-08-6, 67 NRC 241 (2008)
- the longest specific distance for which the Commission has granted proximity-based standing in a license transfer case is 6 to 6-1/2 miles; CLI-07-21, 65 NRC 519 (2007)
- the nontrivial increased risk of living within 50 miles of a proposed reactor constitutes injury-in-fact, is traceable to the challenged action, and is likely to be redressed by a favorable decision that either denies a license or mandates compliance with legal requirements that protect the interests of the petitioners; CLI-09-20, 70 NRC 911 (2009); LBP-09-16, 70 NRC 227 (2009)
- the person who has been accorded a procedural right to protect his concrete interests can assert that right without meeting all the normal standards for redressability and immediacy; LBP-08-24, 68 NRC 691 (2008)
- the presiding officer must assess a petition to intervene even if there are no objections to a petitioner's standing; LBP-08-16, 68 NRC 361 (2008)

SUBJECT INDEX

the presiding officer must determine whether petitioner is a person whose interest may be affected by the proceeding; LBP-10-7, 71 NRC 391 (2010)

the process of sifting and weighing participants' factual proffers often calls upon a board to make difficult choices, so that a petitioner who fails to provide specific information regarding the geographic proximity or the timing and duration of its visits only complicates matters for itself; LBP-09-18, 70 NRC 385 (2009)

the proximity presumption applies in proceedings for nuclear power plant construction permits, operating licenses, or significant amendments thereto; LBP-08-13, 68 NRC 43 (2008); LBP-08-15, 68 NRC 294 (2008); LBP-09-26, 70 NRC 939 (2009)

the proximity presumption does not permit persons with no actual or imminent claim of injury to obtain a hearing; LBP-09-4, 69 NRC 170 (2009)

the proximity presumption extends to petitioners living in or having frequent contacts with an area within a 50-mile radius of a nuclear reactor; LBP-08-18, 68 NRC 533 (2008)

the radioactive source posing the danger in a reactor license renewal case is the identical source giving rise to the 50-mile proximity presumption rule for reactor construction permit and operating license proceedings; LBP-06-7, 63 NRC 188 (2006)

the rationale for the 50-mile presumption does not depend upon the probability that a proposed reactor is likely to generate an accidental release of radioactive materials, but rather the fact that, if such an accident were to occur, it could realistically impact the geographic area within which the petitioners reside; LBP-09-4, 69 NRC 170 (2009)

the requirement that an injury or threat of injury be concrete and particularized perforce means that the injury must not be conjectural or hypothetical; LBP-09-28, 70 NRC 1019 (2009); LBP-10-4, 71 NRC 216 (2010)

the requirement to establish standing does not apply to petitions for discretionary intervention because discretionary intervention was created to afford party status to petitioners unable to demonstrate standing; CLI-06-16, 63 NRC 708 (2006)

the requirement to show actual injury derives ultimately from the doctrine of standing, a constitutional principle that prevents courts of law from undertaking tasks assigned to the political branches; LBP-09-1, 69 NRC 11 (2009)

the requisite injury may be either actual or threatened, but must arguably lie within the zone of interests protected by the statutes governing the proceeding; LBP-07-4, 65 NRC 281 (2007)

the role of "private attorney general" is not contemplated under the Atomic Energy Act; CLI-08-19, 68 NRC 251 (2008)

the source of the practice in NRC proceedings of referring to judicial standing concepts is a 1976 Commission decision in which it affirmed the appeal board's determination that petitioners in the case did not meet the judicial standing test; LBP-09-1, 69 NRC 11 (2009)

the standing requirement for showing injury in fact has always been significantly less than for demonstrating an acceptable contention; LBP-08-6, 67 NRC 241 (2008)

the test to demonstrate prudential standing is not meant to be especially demanding; LBP-09-6, 69 NRC 367 (2009)

the ultimate test for standing is not whether NRC's test conforms to that applied by federal courts, but whether NRC's test represents a reasonable construction of section 189a of the Atomic Energy Act; LBP-09-4, 69 NRC 170 (2009)

there is no conflict between the basic requirements for standing, as applied in the federal courts, and the NRC's proximity presumption; CLI-09-22, 70 NRC 932 (2009); LBP-09-4, 69 NRC 170 (2009)

there is no obvious potential for harm at petitioner's property 20 miles from an uranium enrichment facility location; LBP-08-6, 67 NRC 241 (2008)

there is no requirement for any nexus between an asserted injury and a contention; LBP-09-1, 69 NRC 11 (2009)

three conditions must be satisfied for the proximity presumption to afford standing as of right; LBP-07-10, 66 NRC 1 (2007)

to demonstrate standing to intervene, petitioner must state, and boards must assess, the nature of petitioner's right under the governing statutes to be made a party, the nature and extent of petitioner's property, financial, or other interest, and the possible effect of the outcome of the proceeding on petitioner's interest; CLI-09-20, 70 NRC 911 (2009)

SUBJECT INDEX

- to demonstrate standing, petitioner must identify an interest in the proceeding and specify the facts pertaining to that interest; CLI-08-19, 68 NRC 251 (2008)
- to determine whether an interest is in the zone of interests of a statute, it is necessary first to discern the interests arguably to be protected by the statutory provision at issue, and then to inquire whether petitioner's interests affected by the agency action are among them; LBP-09-13, 70 NRC 168 (2009); LBP-10-16, 72 NRC 361 (2010)
- to determine whether petitioner has an interest potentially affected by a proceeding, the licensing board considers the nature of the petitioner's right under the Atomic Energy Act to be made a party, the nature and extent of petitioner's property, financial, or other interest in the proceeding, and the possible effect of any decision or order on petitioner's interest; LBP-08-14, 68 NRC 279 (2008)
- to determine whether petitioners have standing, boards accept as true all material allegations of the complaint and construe the complaint in favor of the complaining party; CLI-10-20, 72 NRC 185 (2010)
- to determine whether there is potential for offsite consequences at specific sites, licensing boards have authority to infer obvious intermediate steps in a chain of causation that could lead to offsite doses; LBP-07-14, 66 NRC 169 (2007)
- to establish an injury in fact, a party merely has to show some threatened concrete interest personal to the party that the National Historic Preservation Act was designed to protect; LBP-08-24, 68 NRC 691 (2008); LBP-10-16, 72 NRC 361 (2010)
- to establish causation, petitioner must show that there is a causal connection between the injury-in-fact and the conduct complained of; LBP-09-13, 70 NRC 168 (2009); LBP-10-16, 72 NRC 361 (2010)
- to establish proximity-based standing, it is petitioner's responsibility to provide enough detail to allow the board to distinguish a casual interest from a substantial one; LBP-10-7, 71 NRC 391 (2010)
- to establish standing based on frequent contacts, petitioner must show that he frequently engages in substantial business and related activities in the vicinity of the facility, engages in normal, everyday activities in the vicinity, has regular and frequent contacts in an area near a licensed facility, or otherwise has visits of a length and nature showing an ongoing connection and presence; LBP-10-1, 71 NRC 165 (2010)
- to establish standing, economic interests must be linked to potential radiological or environmental risks; LBP-09-6, 69 NRC 367 (2009)
- to establish standing in federal court, a party must show injury in fact, causation, and redressability; LBP-09-13, 70 NRC 168 (2009); LBP-10-16, 72 NRC 361 (2010)
- to establish standing, petitioner's claimed injury must be arguably within the zone of interests protected by the governing statute in the proceeding; LBP-09-13, 70 NRC 168 (2009)
- to establish the requisite proximity for standing, petitioner must clearly indicate where he lives and/or what contact he has with the site; LBP-10-1, 71 NRC 165 (2010); LBP-10-7, 71 NRC 391 (2010)
- to interpose a new contention after a proceeding has been terminated requires submission of a fresh intervention petition that fulfills the applicable standards for such filings, including an appropriate standing demonstration; LBP-10-21, 72 NRC 616 (2010)
- to intervene as of right in any Commission licensing proceeding, a petitioner must demonstrate that its interest may be affected by the proceeding and specify the facts pertaining to that interest; CLI-07-18, 65 NRC 399 (2007)
- to meet its burden, it is generally sufficient if petitioner provides plausible factual allegations that satisfy each element of standing; LBP-10-4, 71 NRC 216 (2010)
- to qualify for standing, a petitioner must allege a concrete and particularized injury that is fairly traceable to the challenged action and (likely to be redressed by a favorable decision; LBP-06-23, 64 NRC 257 (2006)
- to the extent contaminants can plausibly migrate from leach mining operations to the aquifer from which a petitioner obtains his or her water, a petitioner would have a claim of a cognizable injury and could be accorded standing; LBP-08-24, 68 NRC 691 (2008)
- "transmission services" is a concept central to the determination of standing in a license transfer proceeding; CLI-06-2, 63 NRC 9 (2006)
- tribes that have addressed procedural violations of the National Historic Preservation Act have uniformly been granted standing under the relaxed standard and have proceeded directly to the merits of the NHPA claim; LBP-10-16, 72 NRC 361 (2010)

SUBJECT INDEX

- under the proximity presumption, petitioner in an operating license proceeding who lives within 50 miles of a nuclear power reactor is presumed to have standing without the need specifically to plead injury, causation, and redressability; LBP-09-26, 70 NRC 939 (2009)
- under the proximity presumption, petitioner need not specifically plead injury, causation, and redressability if the petitioner lives within, or otherwise has frequent contacts with, the zone of possible harm from the nuclear reactor or other source of radioactivity; LBP-06-4, 63 NRC 99 (2006)
- under the test for prudential standing, a party's attempt to establish standing will fail only if the petitioner's interests are so marginally related to or inconsistent with the purposes implicit in the statute that it cannot reasonably be assumed that Congress intended to permit the suit; LBP-09-6, 69 NRC 367 (2009)
- unless a proposed action involves obvious potential for offsite consequences, such as with construction or operation of reactor or certain major alterations to facility, petitioner must allege some specific injury in fact that will result from the action taken; LBP-08-18, 68 NRC 533 (2008)
- vague assertions of possible harm do not amount to a showing of concrete and particularized injury to petitioner's interests that is actual or imminent, not conjectural or hypothetical; LBP-08-18, 68 NRC 533 (2008)
- when a petitioner cannot establish proximity-plus standing, he or she must resort to establishing standing under traditional standing principles; LBP-10-4, 71 NRC 216 (2010)
- when a state advises a licensing board that a proceeding involves a facility within its borders, the board shall not require a further demonstration of standing; LBP-06-7, 63 NRC 188 (2006)
- when denial of a license would alleviate a petitioner's asserted potential injury, any admissible contention with such a result can be prosecuted by a petitioner, regardless of whether that contention is directly related to that petitioner's articulated injury; LBP-09-16, 70 NRC 227 (2009)
- when standing in a prior proceeding related to the same facility is based on an issue that is outside the scope of the new proceeding, it cannot serve as the basis for standing in the new proceeding; LBP-07-14, 66 NRC 169 (2007)
- where a facility will not be located within an Indian tribe's boundaries, the tribe must meet the standing requirements imposed by 10 C.F.R. 2.309(d)(1); LBP-10-16, 72 NRC 361 (2010)
- where a party's procedural right has been violated, that party has standing to contest the procedural violation even when the underlying interest that the procedural right seeks to protect does not face an "immediate" threat; CLI-09-9, 69 NRC 331 (2009)
- where a petitioner is accorded standing in one proceeding, that petitioner need not make a separate demonstration of standing in another proceeding regarding that same facility and the same parties; LBP-08-24, 68 NRC 691 (2008)
- where an abrogated treaty was the only grounds supporting an Indian group's claim of standing, the board correctly found that the Indian group did not have standing as a party to the proceeding; CLI-09-9, 69 NRC 331 (2009)
- where there is no obvious potential for offsite harm, petitioner must show a specific and plausible means of how the challenged action may harm him or her; CLI-09-9, 69 NRC 331 (2009)
- whether and at what distance a petitioner can be presumed to be affected must be judged on a case-by-case basis, taking into account the nature of the proposed action and the significance of the radioactive source; LBP-08-6, 67 NRC 241 (2008); LBP-10-4, 71 NRC 216 (2010)
- STANDING TO INTERVENE, ORGANIZATIONAL
- a board properly found no standing where petitioner failed to demonstrate that it, or any of its members, would suffer any concrete or particularized harm from a proposed license renewal; CLI-06-6, 63 NRC 161 (2006)
- a broadly stated interest in a problem is not sufficient by itself to render the organization adversely affected or aggrieved; LBP-09-13, 70 NRC 168 (2009)
- a Native American group that has failed to establish that it is a federally recognized Indian tribe is denied standing based on its tribal status; LBP-09-13, 70 NRC 168 (2009)
- a "same zip code" test for standing is inappropriate, given that the sizes of zip-code areas vary greatly throughout the country; CLI-07-22, 65 NRC 525 (2007)
- affidavits by an individual with standing authorizing an organization to represent him must be filed with specific reference to the proceeding in which standing is sought for the organization; CLI-09-9, 69 NRC 331 (2009)

SUBJECT INDEX

an advisory body that lacks executive or legislative responsibilities is so far removed from having the representative authority to speak and act for the public that it does not qualify as a governmental entity; CLI-07-18, 65 NRC 399 (2007)

an organization may base its standing on immediate or threatened injury to either its organizational interests or to the interests of identified members; LBP-09-2, 69 NRC 87 (2009); LBP-10-15, 72 NRC 257 (2010); LBP-10-16, 72 NRC 361 (2010)

an organization must demonstrate that the action at issue will cause an injury in fact to the organization's interests and the injury is within the zone of interests protected by NEPA or the AEA; LBP-06-23, 64 NRC 257 (2006); LBP-10-16, 72 NRC 361 (2010)

an organization seeking to intervene in a representational capacity must demonstrate that the licensing action will affect at least one of its members, identify that member by name and address, and show that it is authorized by that member to request a hearing on his or her behalf; LBP-09-6, 69 NRC 367 (2009)

an organization seeking to intervene in its own right must demonstrate a palpable injury in fact to its organizational interests that is within the zone of interests protected by the Atomic Energy Act or the National Environmental Policy Act; LBP-08-24, 68 NRC 691 (2008); LBP-08-26, 68 NRC 905 (2008)

an organization that is neither a federally recognized Indian tribe nor a local governmental body does not qualify for standing; LBP-09-13, 70 NRC 168 (2009)

because petitioner's pleadings fail to provide adequate information about the interests of the organization to which he belongs and how those interests would be adversely affected by the licensing proceeding, the board is precluded from granting organizational standing; LBP-10-4, 71 NRC 216 (2010)

economic interests of an organization representing nuclear utility members confer standing on the organization; LBP-09-6, 69 NRC 367 (2009)

failure of an organizational participant to have a representative provide an appearance notice in accord with section 2.314(b) might provide cause for an appropriate sanction for failure properly to prosecute the litigation; LBP-10-7, 71 NRC 391 (2010)

for an organization to qualify for the proximity presumption, a bare assertion that a member lives within 50 miles is not sufficient; LBP-07-4, 65 NRC 281 (2007)

for an organizational petitioner to establish standing, it must show immediate or threatened injury to either its organizational interests or to the interest of identified members; LBP-08-6, 67 NRC 241 (2008); LBP-08-24, 68 NRC 691 (2008)

general policy interests alone are not sufficient to establish organizational standing, but rather, a petitioner must demonstrate a discrete institutional injury to the organization itself; LBP-07-4, 65 NRC 281 (2007); LBP-09-20, 70 NRC 565 (2009)

injury-in-fact to establish standing requires more than a general interest in preservation of the environment; LBP-09-28, 70 NRC 1019 (2009)

neither the asserted claim nor the requested relief must require an individual member to participate in the organization's legal action; CLI-07-18, 65 NRC 399 (2007)

no obvious potential for offsite consequences sufficient to establish organizational standing was shown even though the organization's office was a mere 3 miles from the facility; LBP-09-28, 70 NRC 1019 (2009)

not all organizations with governmental ties are entitled to participate in NRC proceedings as a local governmental body (county, municipality, or other subdivision); CLI-07-18, 65 NRC 399 (2007)

organizations seeking to challenge regulations of a government agency failed to demonstrate standing where they did not demonstrate a concrete application of the regulations that threatened imminent harm to their interests; CLI-09-20, 70 NRC 911 (2009)

organizations seeking to intervene in their own right must satisfy the same standing requirements as individuals seeking to intervene because an organization, like an individual, is considered a "person"; CLI-07-18, 65 NRC 399 (2007)

petitioner cannot rely on an affidavit authorizing representation that was executed with respect to one proceeding to authorize representation in a separate proceeding involving the same license; CLI-10-7, 71 NRC 133 (2010)

petitioner must demonstrate that the action at issue will cause an injury-in-fact to the organization's interests or the interests of its members and that the injury is within the zone of interests protected by the National Environmental Policy Act or the Atomic Energy Act; LBP-09-10, 70 NRC 51 (2009);

SUBJECT INDEX

- LBP-07-11, 66 NRC 41 (2007); LBP-07-14, 66 NRC 169 (2007); LBP-09-13, 70 NRC 168 (2009); LBP-09-16, 70 NRC 227 (2009); LBP-09-17, 70 NRC 311 (2009); LBP-09-20, 70 NRC 565 (2009); LBP-09-21, 70 NRC 581 (2009); LBP-09-26, 70 NRC 939 (2009)
- petitioner must show some risk of discrete institutional injury to itself, other than the general environmental and policy interests of the sort repeatedly found insufficient for organizational standing; CLI-08-19, 68 NRC 251 (2008); CLI-10-3, 71 NRC 49 (2010); LBP-08-13, 68 NRC 43 (2008); LBP-08-15, 68 NRC 294 (2008)
- petitioner organizations have established standing based on their members' proximity to transportation routes, even where it was not possible to predict with accuracy which of its members were most likely to be harmed or the extent of the damage; LBP-09-6, 69 NRC 367 (2009)
- petitioner's status as an anti-nuclear advocate and a source of information for its community is insufficient, without more, to qualify it for organizational standing; CLI-08-19, 68 NRC 251 (2008)
- petitioner's use of litigation to speed the licensing of the Yucca Mountain repository is germane to its purpose and does not require the actual participation of any of its members individually; LBP-09-6, 69 NRC 367 (2009)
- standing was found for an organization representing three members living in close proximity to a decommissioning site, who expressed concern that depleted uranium materials could affect a waterway abutting the property of two members; CLI-10-20, 72 NRC 185 (2010)
- the injury-in-fact necessary to establish organizational standing must be more than a mere interest in a problem, no matter how longstanding the interest and no matter how qualified the organization is in evaluating the problem; LBP-09-13, 70 NRC 168 (2009); LBP-10-16, 72 NRC 361 (2010)
- the interests that the representative organization seeks to protect must be germane to its own purpose; CLI-07-18, 65 NRC 399 (2007)
- the member of an organization that seeks standing must qualify for standing in his or her own right, and the interests that the organization seeks to protect must be germane to its own purpose; LBP-09-6, 69 NRC 367 (2009)
- the organization must show that the interests of the organization will be harmed by the proposed licensing action; LBP-07-4, 65 NRC 281 (2007)
- the organization must, in its own right, satisfy the same requirements of injury, causation, and redressability as an individual; LBP-09-28, 70 NRC 1019 (2009)
- there are certain organizations for which member authorization for organizational standing might be presumed; LBP-09-6, 69 NRC 367 (2009)
- to assert an appropriate injury, an organization must demonstrate a palpable injury in fact to its organizational interests; LBP-10-16, 72 NRC 361 (2010)
- to derive standing from a member, an organization must demonstrate that the individual member has standing to participate and has authorized the organization to represent his or her interests; LBP-10-16, 72 NRC 361 (2010)
- to establish representational standing, an organization must show that at least one of its members may be affected by the licensing action and, accordingly, would have standing to sue in his or her own right, must identify that member by name and address, and must show that the organization is authorized to request a hearing on behalf of that member; LBP-07-3, 65 NRC 237 (2007); LBP-07-4, 65 NRC 281 (2007)
- to satisfy the likelihood of establishing standing criteria in the context of a SUNSI request, petitioner organizations are required to provide sufficient information to allow the NRC Staff to conclude that the requirements for standing could likely be satisfied; LBP-09-5, 69 NRC 303 (2009)
- when an organization takes formal corporate action to initiate litigation not only germane but integral to its purpose, that action can constitute the requisite, if implicit, proof of authorization for intervention; LBP-09-6, 69 NRC 367 (2009)
- STANDING TO INTERVENE, REPRESENTATIONAL**
- a member must qualify for standing in his or her own right, the interests that the organization seeks to protect must be germane to its own purpose, and neither petitioner's contentions nor the requested relief must require an individual member to participate in the proceeding; CLI-08-19, 68 NRC 251 (2008); LBP-08-15, 68 NRC 294 (2008); LBP-08-17, 68 NRC 431 (2008); LBP-09-16, 70 NRC 227 (2009); LBP-09-18, 70 NRC 385 (2009); LBP-09-20, 70 NRC 565 (2009)

SUBJECT INDEX

a public interest group may establish representational standing by having its affected members authorize the organization to represent them; LBP-06-10, 63 NRC 314 (2006)

affidavits authorizing organizational representation are to be filed with specific reference to the proceeding in which standing is sought and petitioners given the opportunity to cure such defects in their affidavits; LBP-09-13, 70 NRC 168 (2009)

an affidavit supporting representational standing must describe precisely how the affiant is aggrieved, whether based on employment, residence, or activities; CLI-08-19, 68 NRC 251 (2008)

an entity seeking to intervene on behalf of its members must show it has an individual member who can fulfill all the necessary standing elements and who has authorized the organization to represent his or her interests; LBP-08-16, 68 NRC 361 (2008)

an individual petitioner may not request to intervene in his or her own right while simultaneously authorizing other petitioners to represent his or her interests in the proceeding; CLI-07-19, 65 NRC 423 (2007); LBP-10-16, 72 NRC 361 (2010)

an organization asserting representational standing must demonstrate that the interest of at least one of its members will be harmed, demonstrate that the member would have standing in his or her own right, identify that member by name and address, and demonstrate that the organization is authorized to request a hearing on behalf of that member; CLI-07-18, 65 NRC 399 (2007); LBP-06-23, 64 NRC 257 (2006); LBP-07-4, 65 NRC 281 (2007); LBP-08-6, 67 NRC 241 (2008); LBP-08-9, 67 NRC 421 (2008); LBP-08-24, 68 NRC 691 (2008); LBP-08-26, 68 NRC 905 (2008); LBP-09-10, 70 NRC 51 (2009); LBP-09-13, 70 NRC 168 (2009); LBP-09-16, 70 NRC 227 (2009); LBP-09-18, 70 NRC 385 (2009); LBP-09-20, 70 NRC 565 (2009); LBP-09-21, 70 NRC 581 (2009); LBP-09-26, 70 NRC 939 (2009); LBP-09-28, 70 NRC 1019 (2009); LBP-10-15, 72 NRC 257 (2010); LBP-10-16, 72 NRC 361 (2010); LBP-10-21, 72 NRC 616 (2010)

an organization that wishes to intervene in a proceeding may do so either in its own right by demonstrating harm to its organizational interests, or in a representational capacity by demonstrating harm to its members; LBP-09-2, 69 NRC 87 (2009)

assertions that a member lives within the service area of the utility that operates a licensed facility or within the same county as the facility is insufficiently specific to justify a finding of standing; CLI-07-18, 65 NRC 399 (2007)

authorization affidavits for representational standing may not be filed with a reply; CLI-08-19, 68 NRC 251 (2008)

because petitioner fails to establish his own standing as an individual, the board is precluded from granting representational standing on behalf of an organization; LBP-10-4, 71 NRC 216 (2010)

even though members' affidavits did not explicitly authorize the organizations to represent them, this was implicit in their providing the affidavits; LBP-07-11, 66 NRC 41 (2007)

failure under 10 C.F.R. 2.309(d) to support an intervention petition with affidavits providing necessary information regarding the basis for representational standing could interpose a jurisdictional flaw potentially warranting the participant's dismissal from the proceeding; LBP-10-7, 71 NRC 391 (2010)

if an organization does not identify the members it purportedly represents, the Commission cannot determine whether the organization actually does represent members who consider that they will be affected by the licensing action or is simply seeking the vindication of its own value preference; CLI-07-18, 65 NRC 399 (2007)

if none of the affidavits submitted in support of a hearing request indicate that an organization seeking to intervene represents the interests of the submitter, the organization has failed to establish it has standing; LBP-08-16, 68 NRC 361 (2008)

in ruling on standing, NRC cannot automatically assume that an organization member necessarily considers him- or herself potentially aggrieved by a particular outcome of the proceeding; CLI-08-19, 68 NRC 251 (2008)

it might be reasonably inferred that by joining an organization, the members are implicitly authorizing it to represent any personal interests which might be affected by the proceeding; LBP-09-6, 69 NRC 367 (2009)

neither the asserted claim nor the requested relief must require an individual member to participate in the organization's legal action; CLI-07-18, 65 NRC 399 (2007); CLI-08-19, 68 NRC 251 (2008)

nothing precludes an individual from seeking to intervene both on his/her own behalf and as a representative of others; CLI-07-19, 65 NRC 423 (2007)

SUBJECT INDEX

- organization must identify a member by name and address, show how that member would be affected by the licensing action, and demonstrate that the member has authorized the organization to request a hearing on his or her behalf; CLI-08-19, 68 NRC 251 (2008); LBP-08-13, 68 NRC 43 (2008); LBP-08-15, 68 NRC 294 (2008); LBP-08-17, 68 NRC 431 (2008)
- petitioner may not claim standing based on vague assertions, and when that fails, attempt to repair the defective pleading with fresh details offered for the first time in a petition for reconsideration; CLI-08-19, 68 NRC 251 (2008)
- petitioner must demonstrate that at least one of its members would have standing to intervene on his or her own behalf, and that such a specifically identified member has authorized the organization to represent the member's interests; CLI-10-1, 71 NRC 1 (2010); LBP-06-7, 63 NRC 188 (2006); LBP-07-11, 66 NRC 41 (2007); LBP-07-14, 66 NRC 169 (2007); LBP-09-3, 69 NRC 139 (2009); LBP-10-11, 71 NRC 609 (2010)
- requirements apply to labor unions; CLI-08-19, 68 NRC 251 (2008)
- the interests that the representative organization seeks to protect must be germane to its own purpose; CLI-07-18, 65 NRC 399 (2007)
- the member of a petitioning organization seeking representation must qualify for standing in his or her own right; CLI-07-18, 65 NRC 399 (2007)
- the principle regarding the representational standing of unions is also applicable to public interest groups, who also, in significant part, exist to represent the interests of their members; CLI-08-19, 68 NRC 251 (2008)
- there are certain organizations for which member authorization for organizational standing might be presumed; LBP-09-6, 69 NRC 367 (2009)
- to satisfy the likelihood of establishing standing criteria in the context of a SUNSI request, petitioner organizations are required to provide sufficient information to allow the NRC Staff to conclude that the requirements for standing could likely be satisfied; LBP-09-5, 69 NRC 303 (2009)
- when an organization takes formal corporate action to initiate litigation not only germane but integral to its purpose, that action can constitute the requisite, if implicit, proof of authorization; LBP-09-6, 69 NRC 367 (2009)
- when an organization takes formal corporate action to initiate litigation not only germane but integral to its purpose, that action can constitute the requisite, if implicit, proof of authorization for intervention; LBP-09-6, 69 NRC 367 (2009)
- without written authorization for representation, the Commission would have no concrete indication that, in fact, the member wishes to have the organization represent its interests in the proceeding; CLI-07-18, 65 NRC 399 (2007)
- STATE GOVERNMENT**
- a state or local governmental entity that wishes to be a party in a proceeding that involves a facility located within its boundaries is automatically deemed to have standing; LBP-06-7, 63 NRC 188 (2006); LBP-08-13, 68 NRC 43 (2008)
- a state that wishes to be a party in a proceeding for a facility located within its boundaries need not address the standing requirements; LBP-06-23, 64 NRC 257 (2006)
- if applicant chooses to submit a complete and integrated emergency plan at the early site permit stage, applicant also is required to make a good-faith effort to obtain a certification from federal, state, and local governmental agencies with emergency planning responsibilities; LBP-09-19, 70 NRC 433 (2009)
- in the high-level waste repository proceeding, a state can meet the requirements for standing as a matter of right, based on the threat posed by transportation of radioactive waste through that state; LBP-09-6, 69 NRC 367 (2009)
- intervention is permitted in the high-level waste repository proceeding by the state and local governmental bodies in the geologic repository operations area; LBP-09-6, 69 NRC 367 (2009)
- the Atomic Energy Act does not give a state an absolute right of cross-examination, but requires only that the Commission afford reasonable opportunity for state representatives to interrogate witnesses; LBP-06-20, 64 NRC 131 (2006)
- the Commission shall permit intervention by the state governmental body in which the geologic repository operations area is located if the contention requirements in 10 C.F.R. 2.309(f) are satisfied with respect to at least one contention; CLI-08-25, 68 NRC 497 (2008)
- See also Agreement State Programs

SUBJECT INDEX

STATE REGULATORY REQUIREMENTS

for purposes of NPDES permits, effluent is defined as liquid waste that is discharged into a river, lake, or other body of water, and it includes heat; CLI-07-16, 65 NRC 371 (2007)

issues concerning alleged violations of state law or regulations are outside the scope of, and not material to, an NRC power uprate proceeding; CLI-07-25, 66 NRC 101 (2007)

nothing in the National Environmental Policy Act shall be deemed to authorize any federal agency to review any effluent limitation or other requirement established pursuant to the Clean Water Act or to authorize any such agency to impose any effluent limitation other than those set by EPA or a state agency that has been delegated such authority; LBP-09-25, 70 NRC 867 (2009)

to enter into an Agreement State program, a state's regulations must be found compatible with the performance objectives and technical requirements set forth in Subparts C and D, respectively, of the 10 C.F.R. Part 61 regulations; LBP-06-8, 63 NRC 241 (2006)

when water quality decisions have been made by a state pursuant to the Clean Water Act and these decisions are raised in NRC licensing proceedings, the NRC is bound to take the Environmental Protection Agency's considered decisions at face value; LBP-09-25, 70 NRC 867 (2009)

STATE STATUTES

before it is granted authority to participate in the Agreement State program, a state must pass legislation establishing the authority for that state to conduct a radiation control program, and must further assume and implement that authority through the promulgation of state regulations; LBP-06-8, 63 NRC 241 (2006)

issues concerning alleged violations of state law or regulations are outside the scope of, and not material to, an NRC power uprate proceeding; CLI-07-25, 66 NRC 101 (2007); LBP-08-24, 68 NRC 691 (2008)

STATEMENT OF CONSIDERATIONS

as guidance reached in a rulemaking following notice and comment, and endorsed by the Commission, the SOC is entitled to special weight; CLI-08-3, 67 NRC 151 (2008)

the Commission often refers to the SOC as an aid in interpreting its regulations; CLI-08-3, 67 NRC 151 (2008)

the SOC for Part 36 indicates that in developing those regulations, the NRC considered whether there was a need to impose limits on irradiator siting, but determined that no specific siting limitations were warranted; CLI-08-3, 67 NRC 151 (2008)

STATES

when a state advises a licensing board that a proceeding involves a facility within its borders, the board shall not require a further demonstration of standing; LBP-06-7, 63 NRC 188 (2006)

See also Agreement States

STATION BLACKOUT

all structures, systems, and components relied on in safety analyses or plant evaluations to perform a function that demonstrates compliance with the NRC's regulations are subject to aging management review for license renewal; CLI-10-14, 71 NRC 449 (2010)

STATUTES

adjudication is not the proper forum for challenging applicable statutory requirements or the basic structure of the agency's regulatory process; CLI-09-14, 69 NRC 580 (2009); LBP-07-10, 66 NRC 1 (2007); LBP-08-16, 68 NRC 361 (2008); LBP-08-17, 68 NRC 431 (2008); LBP-09-3, 69 NRC 139 (2009)

contentions challenging applicable statutory requirements or Commission regulations are not admissible in agency adjudications; LBP-07-4, 65 NRC 281 (2007); LBP-09-16, 70 NRC 227 (2009); LBP-09-26, 70 NRC 939 (2009); LBP-10-21, 72 NRC 616 (2010)

See also Atomic Energy Act; Energy and Water Development Appropriations Act; Energy Policy Act of 1992; Energy Reorganization Act; Federal Food, Drug, and Cosmetic Act; National Environmental Policy Act

STATUTORY CONSTRUCTION

a court should not adopt an interpretation that would render a statutory provision redundant or nonsensical; LBP-09-16, 70 NRC 227 (2009)

a specific policy embodied in a later federal statute should control the construction of the earlier statute, even though it has not been expressly amended; LBP-10-11, 71 NRC 609 (2010)

SUBJECT INDEX

a text should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant, and so that one section will not destroy another unless the provision is the result of obvious mistake or error; LBP-09-16, 70 NRC 227 (2009); LBP-10-22, 72 NRC 661 (2010)

an inference drawn from congressional silence cannot be credited when it is contrary to all other textual and contextual evidence of congressional intent; LBP-10-11, 71 NRC 609 (2010)

Congress can be presumed to be aware of one specific agency rule only when that rule has been expressly discussed in the legislative history; LBP-10-11, 71 NRC 609 (2010)

Congress does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions, i.e., hiding elephants in mouseholes; LBP-10-11, 71 NRC 609 (2010)

“coordination” does not mean that National Environmental Policy Act regulations govern National Historic Preservation Act analysis or vice versa; LBP-06-11, 63 NRC 483 (2006)

courts generally accord considerable weight to an agency’s construction of the statutes it administers; CLI-10-13, 71 NRC 387 (2010)

each word that Congress used must be given a separate and distinct significance that is consistent with its ordinary meaning; LBP-09-30, 70 NRC 1039 (2009)

effect should be given to all of a statute’s provisions; LBP-06-11, 63 NRC 483 (2006)

federal statutes cannot be construed to negate their own stated purposes; LBP-06-1, 63 NRC 41 (2006)

if the intent of Congress is clear, the court as well as the agency must give effect to the unambiguously expressed intent of Congress; LBP-10-11, 71 NRC 609 (2010)

it is a fundamental principle that the meaning of a word cannot be determined in isolation, but must be drawn from the context in which it is used; LBP-09-15, 70 NRC 198 (2009)

not only the bare meaning of the word but also its placement and purpose in the statutory scheme are considered; LBP-09-15, 70 NRC 198 (2009)

references to the word “private” in the legislative history of the Atomic Energy Act appear in the context of a general discussion of the purpose of the AEA, which recognized that the prior law placed prohibitions on private participation in atomic energy; LBP-09-6, 69 NRC 367 (2009)

rights under a construction permit are forfeited only when a construction permit has expired and has not been extended; CLI-10-6, 71 NRC 113 (2010)

since most words admit of different shades of meaning, susceptible of being expanded or abridged to conform to the sense in which they are used, the presumption that identical words in a statute always have identical meaning readily yields to the controlling force of the circumstance that the words, though in the same act, are found in such dissimilar connections as to warrant the conclusion that they were employed in the different parts of the act with different intent; LBP-09-30, 70 NRC 1039 (2009)

statutes should not be interpreted so as to create internal inconsistencies, an absurd result, or an interpretation inconsistent with congressional intent; LBP-10-11, 71 NRC 609 (2010)

the “direct participation of local citizens in nuclear reactor licensing” is not a right to have all legal arguments on contention admissibility take place near the facility at issue, but rather the right of persons with standing to file contentions in licensing proceedings and litigate admissible contentions; LBP-08-23, 68 NRC 679 (2008)

the Department of Energy is not a “person” for purposes of AEA §11s; CLI-09-14, 69 NRC 580 (2009)

the doctrine of *expressio unis est exclusio alterius* instructs that where a law expressly describes a particular situation to which it shall apply, what was omitted or excluded was intended to be omitted or excluded; LBP-08-24, 68 NRC 691 (2008)

the most natural way to read a provision that sets forth a general obligation followed by a set of specific requirements is that the specific requirements provide the details necessary to fulfilling the general obligation; LBP-09-15, 70 NRC 198 (2009)

the specific prevails over the general; CLI-08-26, 68 NRC 509 (2008)

the term “reinstatement” is not directly or indirectly mentioned in section 185 of the Atomic Energy Act; CLI-10-6, 71 NRC 113 (2010)

the ultimate test for standing is not whether NRC’s test conforms to that applied by federal courts, but whether NRC’s test represents a reasonable construction of section 189a of the Atomic Energy Act; LBP-09-4, 69 NRC 170 (2009)

SUBJECT INDEX

the voluntary surrender of a construction permit that has not expired, that is, where the construction completion date had not yet arrived, does not constitute a situation to which the “forfeiture” provision of the Atomic Energy Act applies; CLI-10-6, 71 NRC 113 (2010)

where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion; LBP-10-11, 71 NRC 609 (2010)

words of a statute must be read in their context and with a view to their place in the overall statutory scheme; LBP-10-11, 71 NRC 609 (2010); LBP-10-20, 72 NRC 571 (2010)

STAY

a court inclined to apply collateral estoppel based on a judgment that is subject to appeal may want to avoid the question by staying the case pending the appeal; LBP-09-24, 70 NRC 676 (2009)

a government motion for an indefinite enforcement hearing delay must be denied when the government fails to show that the prompt conduct of the NRC hearing process would interfere with the government’s prosecution of the criminal charges and when the subject of the order has shown that the delay would continue to deprive him of his chosen livelihood and its anticipated income; LBP-06-13, 63 NRC 523 (2006)

a mandate for stay must issue 7 calendar days after the time to request rehearing expires or a timely filed rehearing petition is denied, whichever is later; CLI-08-9, 67 NRC 353 (2008)

a motion to stay issuance of a license might be granted where the factors usually considered in granting emergency injunctive relief are satisfied; CLI-08-13, 67 NRC 396 (2008)

a party opposing a renewed license does not face irreparable harm by the mere issuance of a renewed license; CLI-08-13, 67 NRC 396 (2008)

a showing of a threat of immediate and irreparable harm that will result absent a stay is required for grant of the stay; CLI-10-8, 71 NRC 142 (2010)

a stay of the close of hearings in both license renewal proceedings for 14 days following the date of issuance of mandate is ordered to afford a state the opportunity to request participant status; CLI-08-9, 67 NRC 353 (2008)

a stay pending appeal is granted where the absence of a stay would mean the destruction of the business in its current form; CLI-10-8, 71 NRC 142 (2010)

although a request for suspension of a proceeding does not fit cleanly into NRC procedural rules for stays, the Commission exercises discretion and consider petitioner’s request; CLI-10-17, 72 NRC 1 (2010)

although technically not applicable to a request for a stay of NRC Staff action, the 10 C.F.R. 2.342(e) standards simply restate commonplace principles of equity universally followed when judicial or quasi-judicial bodies consider stays or other forms of temporary injunctive relief; CLI-10-8, 71 NRC 142 (2010)

as litigation moves forward or terminates, the equities that traditionally govern stays or injunctive relief may change; CLI-06-23, 64 NRC 107 (2006)

because the board’s declining to refer petitioners’ request for a stay of construction to the Commission is the equivalent of the direct denial of a stay motion, a petition for review may be filed; LBP-08-11, 67 NRC 460 (2008)

by its terms, 10 C.F.R. 2.342(a) applies to a stay of a decision or action of a presiding officer or licensing board and therefore does not apply to NRC’s approval of a state’s application to become an Agreement State; CLI-10-8, 71 NRC 142 (2010)

factors that influence the grant of a stay are addressed; LBP-08-11, 67 NRC 460 (2008)

failure to address the four stay factors in a motion to stay issuance of a license is reason enough to deny the motion; CLI-08-13, 67 NRC 396 (2008)

failure to satisfy the first two stay factors renders it unnecessary to make determinations on the two remaining factors, harm to other parties and where the public interest lies; CLI-10-8, 71 NRC 142 (2010)

if proponent cannot show irreparable harm, it must make an overwhelming showing that it is likely to succeed on the merits; CLI-08-13, 67 NRC 396 (2008)

in reviewing a stay application, the Commission considers whether the moving party has made a strong showing that it is likely to prevail on the merits, whether the party will be irreparably injured unless a

SUBJECT INDEX

- stay is granted, whether the granting of a stay would harm other parties, where the public interest lies; CLI-10-8, 71 NRC 142 (2010)
- likelihood of success on the merits and irreparable harm are the most important factors in determining stay motions; CLI-08-13, 67 NRC 396 (2008)
- mere injuries, however substantial, in terms of money, time, and energy necessarily expended in the absence of a stay are not enough to establish irreparable injury; CLI-10-8, 71 NRC 142 (2010)
- no instance has occurred in NRC jurisprudence where either the Commission or its boards have ruled that expenses of any kind constituted irreparable injury; CLI-09-6, 69 NRC 128 (2009)
- NRC has entertained requests for stays of final agency action in anticipation of judicial review; CLI-10-8, 71 NRC 142 (2010)
- NRC rules of procedure do not provide for a motion to stay issuance of a license while proceedings are pending before the board; CLI-08-13, 67 NRC 396 (2008)
- only a party to a proceeding, or an interested governmental entity participating under section 2.315, may file a request to stay proceedings pending a rulemaking; CLI-07-13, 65 NRC 211 (2007)
- participants in ongoing adjudicatory proceedings that have filed a rulemaking petition should be provided an opportunity to seek a stay of the adjudication pending a resolution of the rulemaking petition; LBP-08-16, 68 NRC 361 (2008)
- proponent must show that likelihood of success on the merits, irreparable harm, absence of harm to others, and the public interest weigh in its favor; CLI-08-13, 67 NRC 396 (2008)
- the possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation, weighs heavily against a claim of irreparable harm; CLI-10-8, 71 NRC 142 (2010)
- there are no grounds to stay the proceeding to permit petitioners' counsel to depose Staff counsel; LBP-06-10, 63 NRC 314 (2006)
- when evaluating a motion for a stay the Commission places the greatest weight on irreparable injury to the moving party unless a stay is granted; CLI-10-8, 71 NRC 142 (2010)
- without a showing of irreparable harm, the moving party must show that success on the merits is a virtual certainty to warrant issuance of a stay; CLI-10-8, 71 NRC 142 (2010)
- See also Abeyance of Proceeding
- STAY OF EFFECTIVENESS**
- a party seeking a stay must show that it faces imminent, irreparable harm that is both certain and great; CLI-09-23, 70 NRC 935 (2009)
- in deciding whether to grant a stay, the Commission considers whether the moving party has made a strong showing that it is likely to prevail on the merits, whether the party will be irreparably injured unless a stay is granted, whether the granting of a stay would harm the other parties, and where the public interest lies; CLI-09-23, 70 NRC 935 (2009)
- issuance of a license is not stayed by a petition for review; CLI-09-7, 69 NRC 235 (2009)
- mere speculation concerning a nuclear accident does not demonstrate immediate and irreparable harm; CLI-06-8, 63 NRC 235 (2006)
- party seeking a stay did not show an overwhelming probability of success on the merits of its appeal sufficient to overcome its lack of showing of irreparable harm; CLI-09-23, 70 NRC 935 (2009)
- the possibility that the prevailing party would use the board's order in his favor to persuade a District Court to reconsider part of the penalty imposed on him in a parallel criminal proceeding did not constitute immediate, irreparable harm to the NRC Staff; CLI-09-23, 70 NRC 935 (2009)
- whether the party seeking a stay faces potentially irreparable harm is the most important factor considered in the Commission's determination whether to grant a stay; CLI-09-23, 70 NRC 935 (2009)
- STEAM DRYER**
- cracking of a dryer could cause a release of loose parts that could have an adverse impact on safety-related equipment and thus it is within the scope of aging management review in a license renewal proceeding; LBP-08-25, 68 NRC 763 (2008)
- STEAM GENERATORS**
- applicant normally is required to perform a load rejection test before an extended power uprate can be granted; LBP-07-2, 65 NRC 153 (2007)

SUBJECT INDEX

generator load rejection transients occasionally occur and are classified as anticipated operational occurrences that nuclear power stations must be designed and built to withstand; LBP-07-2, 65 NRC 153 (2007)

STRUCTURAL ANALYSIS

the Commission asks the parties to address whether the structural analysis that applicant has committed to perform on its primary containment drywell shell matches or bounds the sensitivity analyses that one of the ALSBP judges would impose; CLI-08-10, 67 NRC 357 (2008)

SUBPART G PROCEDURES

a board would only be allowed to choose a Subpart G hearing process if issues of motive or intent of the party or eyewitness material to the resolution of the contested matter are in dispute; LBP-08-24, 68 NRC 691 (2008)

Commission rules in 10 C.F.R. 2.311(d) set a 10-day limit for appealing the selection of a particular hearing procedure because an appeal cannot wait until a board issues a decision on the merits of a contention; CLI-09-7, 69 NRC 235 (2009)

cross-examination occurs virtually automatically, subject to normal judicial management and the requirement to file a cross-examination plan; LBP-09-10, 70 NRC 51 (2009)

in a Subpart L proceeding, the board must apply the summary disposition standard set forth in Subpart G; LBP-10-20, 72 NRC 571 (2010)

parties are permitted to propound interrogatories, take depositions, and cross-examine witnesses without leave of the board; LBP-10-16, 72 NRC 361 (2010)

petitioner requesting a Subpart G hearing must demonstrate, by reference to the contention and the bases provided and the specific procedures in Subpart G of Part 2, that resolution of the contention necessitates resolution of material issues of fact which may be best determined through the use of the identified procedures; LBP-08-24, 68 NRC 691 (2008)

requirements for applying Subpart G to a particular proceeding are set out in 10 C.F.R. 2.700; CLI-09-7, 69 NRC 235 (2009)

the rule for Subpart G procedures explicitly applies to eyewitnesses, not expert witnesses; CLI-09-7, 69 NRC 235 (2009)

the standard for allowing the parties to conduct cross-examination is the same under Subparts G and L; LBP-10-15, 72 NRC 257 (2010)

these hearing procedures apply only to certain enumerated types of proceedings, not including materials license proceedings; LBP-09-1, 69 NRC 11 (2009)

these procedures focus on issues where the credibility of an eyewitness may reasonably be expected to be at issue, and/or issues of motive or intent of the party or eyewitness; LBP-09-22, 70 NRC 640 (2009)

use of the permissive term, "may," in 10 C.F.R. 2.310(a) indicates that licensing boards have some discretion in determining whether to hold hearings under Subpart L or Subpart G; LBP-08-6, 67 NRC 241 (2008)

SUBPART G PROCEEDINGS

cross-examination occurs virtually automatically, subject to normal judicial management and the requirement to file a cross-examination plan; LBP-10-15, 72 NRC 257 (2010)

each expert witness is required to create, sign, and submit a written expert report; LBP-09-30, 70 NRC 1039 (2009)

under Subpart L informal hearing procedures, summary disposition motions are to be resolved in accord with the same standards for dispositive motions that are utilized for formal hearings under Subpart G; LBP-10-8, 71 NRC 433 (2010)

SUBPART J PROCEEDINGS

Class 1 documentary material covers information a party intends to rely upon in support of its position; CLI-06-5, 63 NRC 143 (2006)

Class 2 documentary material is material that the party in possession knows does not support its position; CLI-06-5, 63 NRC 143 (2006)

Class 3 documentary materials are "reports and studies" prepared on behalf of potential parties to the proceeding that are relevant to the issues listed in the Topical Guidelines contained in Regulatory Guide 3.69 and must be relevant to the license application; CLI-06-5, 63 NRC 143 (2006)

SUBJECT INDEX

drafts of the license application are not Class 1, Class 2, or Class 3 documentary material under Subpart J, so the regulations do not require making draft license applications available on the Licensing Support Network; CLI-06-5, 63 NRC 143 (2006)

material that falls within Class 1 or Class 2 is the underlying independent documentary material used (or not used if nonsupporting) by the Department of Energy in formulating its license application; CLI-06-5, 63 NRC 143 (2006)

NRC rules do not provide for the filing of reply briefs in the context of appeals from an interlocutory decision or initial or partial decisions; CLI-08-12, 67 NRC 386 (2008)

section 2.1003's reference to "all documentary material (including circulated drafts but excluding preliminary drafts) generated by, or at the direction of, or acquired by" conveys that possession or control of documentary material is a prerequisite to the duty to produce it; CLI-08-12, 67 NRC 386 (2008)

the distinction between "preliminary" and "circulated" drafts is a significant one in the Commission's Subpart J regulations; CLI-06-5, 63 NRC 143 (2006)

the general rule on amicus briefs, 10 C.F.R. 2.315(d), as a formal matter applies only to petitions for review filed under section 2.341 or to matters taken up by the Commission *sua sponte*, not to appeals filed under section 2.1015; CLI-08-22, 68 NRC 355 (2008)

the Licensing Support Network functions as a mechanism for early collection of all extant documents that normally would be collected later through traditional discovery; CLI-08-22, 68 NRC 355 (2008)

the purpose of 10 C.F.R. 2.1003 is to define the availability of material, not to provide definitions of types of materials; CLI-06-5, 63 NRC 143 (2006)

the threshold question in determining if certain items must be made available on the High-Level Waste Repository Licensing Support Network is whether the particular items fall within any of the three classes of documentary material; CLI-06-5, 63 NRC 143 (2006)

SUBPART K PROCEDURES

the Commission's rules in 10 C.F.R. 2.1113 do not provide for supplementing Subpart K presentations; CLI-08-26, 68 NRC 509 (2008)

the presiding officer is allowed to resolve factual and legal disputes in spent fuel storage controversies, including disagreements between experts, on the basis of a brief discovery period and written submissions and oral argument without a full trial-type evidentiary hearing; CLI-08-26, 68 NRC 509 (2008)

SUBPART L PROCEDURES

a board has discretion to allow parties to cross-examine witnesses in Subpart L proceedings if the board deems this practice necessary to establish an adequate record; LBP-08-24, 68 NRC 691 (2008)

a board may ask witnesses to appear in person and answer questions; LBP-09-22, 70 NRC 640 (2009)

a party seeking to conduct cross-examination must file a written motion and obtain leave from the board; LBP-09-10, 70 NRC 51 (2009)

boards may allow parties to conduct cross-examination in Subpart L proceedings; LBP-09-22, 70 NRC 640 (2009)

in conducting Subpart L hearings, board members pose questions to the parties' witnesses in those areas that, in the board's judgment, require additional clarification and development; LBP-08-22, 68 NRC 590 (2008)

NRC Staff must produce a hearing file and make it available to all parties; LBP-09-22, 70 NRC 640 (2009)

parties may file motions with the board to request cross-examination if they choose; LBP-08-24, 68 NRC 691 (2008)

the board has the primary responsibility for questioning the witnesses at any evidentiary hearing; LBP-10-16, 72 NRC 361 (2010)

the standard for allowing the parties to conduct cross-examination is the same under Subparts G and L; LBP-10-15, 72 NRC 257 (2010)

use of the permissive term, "may," in 10 C.F.R. 2.310(a) indicates that boards have discretion in determining whether to hold hearings under Subpart L or Subpart G; LBP-08-6, 67 NRC 241 (2008)

witness panels may be questioned in areas that, in the board's judgment, require additional clarification and parties may be asked to provide proposed written questions both before and during the hearing in order to assist the board in its questioning; CLI-09-7, 69 NRC 235 (2009)

SUBJECT INDEX

SUBPART L PROCEEDINGS

- a party seeking to conduct cross-examination must file a written motion and obtain leave of the board; LBP-10-15, 72 NRC 257 (2010)
- after the board issues its initial decision, it must provide questions proffered by the parties to the Commission's Secretary for inclusion in the official record of the proceeding; LBP-07-17, 66 NRC 327 (2007)
- boards must apply the summary disposition standard set forth in Subpart G; LBP-10-20, 72 NRC 571 (2010)
- cross-examination by the parties is allowed only when the presiding officer decides that it is necessary to ensure an adequate record for decision; CLI-09-7, 69 NRC 235 (2009)
- discovery is generally prohibited except for specified mandatory disclosures under 10 C.F.R. 2.336(f), (a), and (b) and the mandatory production of the hearing file under 10 C.F.R. 2.1203(a); LBP-10-16, 72 NRC 361 (2010)
- each witness is not required to generate an analysis, but rather must disclose the analysis or other authority upon which the witness bases his or her opinion; LBP-09-30, 70 NRC 1039 (2009)
- if the duty to make disclosures applied only to parties who have claims and contentions, it would create an unintended and invidious asymmetry in mandatory disclosures, which are the only form of discovery available in Subpart L proceedings; LBP-09-30, 70 NRC 1039 (2009)
- in a license renewal proceeding, there is no mandatory or automatic default to Subpart L procedures; LBP-07-15, 66 NRC 261 (2007)
- in conducting Subpart L hearings, board members pose questions to the parties' witnesses in those areas that, in the board's judgment, require additional clarification and development; LBP-07-17, 66 NRC 327 (2007)
- mandatory disclosure is the only form of discovery allowed, and all other forms are expressly prohibited; LBP-10-23, 72 NRC 692 (2010)
- proposed questions that are proffered to the board during a hearing must be kept by the board in confidence until they are either propounded by the board, or until issuance of the initial decision on the issue being litigated; LBP-07-17, 66 NRC 327 (2007)
- proposed questions, submitted by the parties, for the board, that were originally filed under seal with the board, will be made public in a separate issuance; LBP-08-4, 67 NRC 105 (2008)
- summary disposition is proper only if parties' filings in the proceeding show that there is no genuine issue as to any material fact and that the moving party is entitled to a decision as a matter of law; LBP-06-5, 63 NRC 116 (2006)
- summary disposition may be entered with respect to any matter in a proceeding if the motion, along with any appropriate supporting materials, shows that there is no genuine issue as to any material fact and that the moving party is entitled to a decision as a matter of law; LBP-08-2, 67 NRC 54 (2008); LBP-08-3, 67 NRC 85 (2008)
- summary disposition motions are to be resolved in accord with the same standards for dispositive motions that are utilized for formal hearings under Subpart G; LBP-10-8, 71 NRC 433 (2010)
- the mandatory disclosure provisions of 10 C.F.R. 2.336 apply; CLI-10-24, 72 NRC 451 (2010); CLI-10-25, 72 NRC 469 (2010)
- the opportunity for cross-examination under Subpart L is equivalent to the opportunity for cross-examination under the Administrative Procedure Act; LBP-07-4, 65 NRC 281 (2007); LBP-08-6, 67 NRC 241 (2008)
- the Staff elects whether or not to be a party to some or all contentions; CLI-07-20, 65 NRC 499 (2007)
- See also Informal Proceedings

SUBPART N PROCEDURES

- if a hearing on a contention is expected to take no more than 2 days to complete, the board can impose the Subpart N procedures for expedited proceedings with oral hearings specified at 10 C.F.R. 2.1400-1407; LBP-10-16, 72 NRC 361 (2010)

SUMMARY DISPOSITION

- a licensing board cannot make a determination of whether there is a genuine issue of material fact without carefully examining the evidence presented in the parties' affidavits; LBP-07-13, 66 NRC 131 (2007)

SUBJECT INDEX

- a licensing board ruling on a summary disposition motion must view the record in the light most favorable to the party opposing such a motion and deny the motion if movant fails to meet its burden, even in the face of an inadequate response; LBP-07-12, 66 NRC 113 (2007)
- a motion must be granted if the filings in the proceeding together with the statements of the parties and the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a decision as a matter of law; LBP-09-15, 70 NRC 198 (2009)
- a motion to strike is an inappropriate vehicle to address whether arguments in a summary disposition answer raise matters outside the scope of a contention; LBP-08-2, 67 NRC 54 (2008); LBP-08-3, 67 NRC 85 (2008)
- a party is not required to prove its case in making or opposing a motion for summary disposition; LBP-07-13, 66 NRC 131 (2007)
- a properly supported request to reply to a summary disposition response would seem to be a reasonable candidate for a favorable board discretionary decision permitting the filing; LBP-08-2, 67 NRC 54 (2008); LBP-08-3, 67 NRC 85 (2008)
- a ruling granting summary disposition on a single contention, where other contentions are still pending in an adjudication, is not a final decision, and is not susceptible to Commission review; CLI-08-2, 67 NRC 31 (2008)
- a showing that there is no genuine issue as to any material fact and that the moving party is entitled to a decision as a matter of law is necessary; LBP-06-9, 63 NRC 289 (2006)
- affidavits must set forth facts that would be admissible in evidence; LBP-07-13, 66 NRC 131 (2007)
- all material facts set forth in the statement required to be served by the moving party will be considered to be admitted unless controverted by the statement required to be served by the opposing party; LBP-08-2, 67 NRC 54 (2008); LBP-08-3, 67 NRC 85 (2008)
- all or any part of the matters involved in a proceeding may be summarily dismissed if the motion, along with any appropriate supporting materials, shows that there is no genuine issue as to any material fact and that the moving party is entitled to a decision as a matter of law; LBP-10-8, 71 NRC 433 (2010)
- although wholly conclusory statements for which no supporting evidence is offered need not be taken as true for summary judgment purposes, a court may not make credibility determinations or weigh the evidence at the summary judgment stage; LBP-07-12, 66 NRC 113 (2007)
- an answer supporting or opposing a motion for summary disposition or other dispositive motion shall be filed within 20 days after service of the motion; LBP-09-22, 70 NRC 640 (2009)
- any doubt as to the existence of a genuine issue of material fact is resolved against the proponent of summary disposition; LBP-10-20, 72 NRC 571 (2010)
- applicable NRC standards governing summary disposition are set forth in 10 C.F.R. 2.710; CLI-10-11, 71 NRC 287 (2010)
- applicant may challenge an expert opinion in the disclosure stage, via a motion for summary disposition, if it can show that there is no genuine issue as to any material fact and that it is entitled to a decision as a matter of law; LBP-09-30, 70 NRC 1039 (2009)
- applicant moves for summary disposition of a contention involving whether leak detection through monitoring wells is necessary as part of the plant's aging management program; LBP-07-12, 66 NRC 113 (2007)
- at issue in summary disposition is not whether evidence unmistakably favors one side or the other, but whether there is sufficient evidence favoring the nonmoving party for a reasonable trier of fact to find in favor of that party; CLI-10-11, 71 NRC 287 (2010)
- because the burden is on the summary disposition movant, the board must examine the record in the light most favorable to the nonmoving party and give the nonmoving party the benefit of all favorable inferences that can be drawn from the evidence; LBP-10-20, 72 NRC 571 (2010)
- boards should not, at the summary disposition stage, try to untangle the expert affidavits' and decide which experts are more correct; CLI-08-2, 67 NRC 31 (2008)
- caution should be exercised in granting summary disposition, which may be denied if there is reason to believe that the better course would be to proceed to a full hearing; CLI-10-11, 71 NRC 287 (2010)
- compliance with the requirement that a summary disposition movant make a sincere effort to contact other parties in the proceeding and to resolve the issues raised in the motion can only be determined from the objective reasonableness of the movant's efforts, as shown by all the facts and circumstances, not by his or her subjective intent; LBP-06-5, 63 NRC 116 (2006)

SUBJECT INDEX

- even if the basic facts are uncontroverted, summary disposition is inappropriate when the evidence is susceptible of different interpretations or inferences; LBP-07-12, 66 NRC 113 (2007)
- facts are "material" if they will affect the outcome of a proceeding under the governing law; LBP-07-12, 66 NRC 113 (2007)
- failure to raise any challenge to a Staff environmental impact statement correction essentially renders that aspect of an intervenor challenge moot, because the intervenor has failed to raise a litigable challenge to the previously identified error; LBP-06-9, 63 NRC 289 (2006)
- FOIA litigation is ordinarily resolved in summary disposition without discovery and without evidentiary trials or hearings; CLI-08-5, 67 NRC 174 (2008); LBP-08-7, 67 NRC 361 (2008)
- guidance on determining whether an issue is "material" is taken from procedures for contention admissibility; LBP-07-13, 66 NRC 131 (2007)
- if an expert asserts a factual or technical position that is so patently incorrect or absurd, a presiding officer must reject that position as constituting a genuine dispute; LBP-06-5, 63 NRC 116 (2006)
- if it appears from the affidavits of the opposing party that the opposing party cannot, for reasons stated, present by affidavit facts essential to justify the party's opposition, the board may refuse the application for summary disposition or may order a continuance as may be necessary or just; LBP-09-22, 70 NRC 640 (2009)
- if movant satisfies its initial burden and supports its motion by affidavit, opponent must either proffer rebutting evidence or submit an affidavit explaining why it is impractical to do so; LBP-07-12, 66 NRC 113 (2007)
- if reasonable minds could differ as to the import of the evidence, summary disposition is not appropriate; CLI-10-11, 71 NRC 287 (2010)
- if the evidence in favor of the nonmoving party is merely colorable or not significantly probative, summary disposition may be granted; CLI-10-11, 71 NRC 287 (2010)
- if the filings demonstrate the existence of a genuine material fact, the evidence submitted in support of a motion fails to show the nonmovant's position is a sham or fails to foreclose the possibility of a factual dispute, or there is an issue as to the credibility of movant's evidentiary material, movant will be found to have failed to meet its burden on summary disposition; LBP-07-12, 66 NRC 113 (2007)
- if the filings in the proceeding together with the statements of the parties and the affidavits show that there is no genuine issue as to any material fact and that the moving party is entitled to a decision as a matter of law, such a motion shall be granted; LBP-08-7, 67 NRC 361 (2008)
- if the presiding officer determines from affidavits filed by the opposing party that the opposing party cannot present by affidavit the facts essential to justify its opposition, the presiding officer may order a continuance to permit such affidavits to be obtained, or may take other appropriate action; LBP-07-12, 66 NRC 113 (2007)
- if the support a party offers, to demonstrate that a genuine dispute exists as to a material fact, indicates that, after expanding that support to its logical limits, it cannot support a finding of fact material to the determination the agency must make, that party's position cannot prevail; LBP-07-13, 66 NRC 131 (2007)
- if there is doubt as to whether the parties should be required to proceed further, a motion for summary disposition should be denied; LBP-07-12, 66 NRC 113 (2007)
- in addressing the motion and the opposition thereto, licensing boards must examine the substance of the information provided by the parties; LBP-07-13, 66 NRC 131 (2007)
- in an evidentiary hearing, the board may weigh competing evidence and expert opinion and may resolve/decide factual disputes, whereas this is not possible when ruling on motions for summary disposition, which are restricted to situations where there is no genuine issue as to any material fact; LBP-09-22, 70 NRC 640 (2009)
- in deciding a summary disposition motion the tribunal must examine the evidence in the light most favorable to the nonmoving party; LBP-08-7, 67 NRC 361 (2008)
- in informal, Subpart L, proceedings, summary disposition motions are to be resolved in accord with the standards for dispositive motions for formal hearings, as set forth in Part 2, Subpart G; LBP-06-5, 63 NRC 116 (2006); LBP-08-2, 67 NRC 54 (2008); LBP-08-3, 67 NRC 85 (2008); LBP-10-20, 72 NRC 571 (2010)
- in ruling on a motion for summary disposition, a licensing board or presiding officer should not conduct a trial on affidavits; CLI-10-11, 71 NRC 287 (2010)

SUBJECT INDEX

in ruling on summary disposition motions, the evidence of the nonmovant is to be believed, and all justifiable inferences are to be drawn in his favor; CLI-10-11, 71 NRC 287 (2010)

it is an abuse of the adjudicatory process to use a motion as a subterfuge for the filing of interrogatories, requests for admission, or other discovery; LBP-06-5, 63 NRC 116 (2006)

it is inappropriate at the summary disposition stage for a board to attempt to untangle the expert affidavits and decide which experts are more correct; LBP-06-5, 63 NRC 116 (2006); LBP-07-12, 66 NRC 113 (2007)

it is not sufficient for there to be merely the existence of some alleged factual dispute between the parties, but rather that there be no genuine issue of material fact; CLI-10-11, 71 NRC 287 (2010)

mere allegations are insufficient, including speculative or bare conclusory statements by an expert; LBP-07-13, 66 NRC 131 (2007)

motion concerning contention questioning applicant's handling of its severe accident mitigation alternatives analysis concerning evacuation times, economic consequences, and meteorological patterns is granted; LBP-07-13, 66 NRC 131 (2007)

motions may be filed 20 days after the occurrence or circumstance from which the motion arises, rather than the 10-day time frame, provided that the moving party commences sincere efforts to contact and consult all other parties within 10 days of the occurrence or circumstance, and the accompanying certification so states; LBP-09-22, 70 NRC 640 (2009)

motions may be granted only if the truth is clear; LBP-10-20, 72 NRC 571 (2010)

movant bears the initial burden of making the requisite showing that there is no genuine issue as to any material fact, which it attempts to do by means of a required statement of material facts not at issue and any supporting materials (including affidavits, discovery responses, and documents) that accompany its dispositive motion; LBP-06-9, 63 NRC 289 (2006)

movant must show that the matter entails no genuine issue as to any material fact and that movant is entitled to a decision as a matter of law; LBP-07-12, 66 NRC 113 (2007); LBP-10-20, 72 NRC 571 (2010)

NRC regulations teach that a fact cannot be material to a ruling unless its consideration could materially affect the decision of the NRC vis-a-vis implementation of any particular severe accident mitigation alternative; LBP-07-13, 66 NRC 131 (2007)

NRC standards governing summary disposition are based on those the federal courts apply to motions for summary judgment under Rule 56 of the Federal Rules of Civil Procedure; CLI-10-11, 71 NRC 287 (2010)

only disputes over facts that might affect the outcome of a proceeding would preclude summary disposition, factual disputes that are unnecessary not being counted; CLI-10-11, 71 NRC 287 (2010); LBP-07-13, 66 NRC 131 (2007)

opponent does not have to show that it would prevail on the issues, but must demonstrate that there is a genuine factual issue to be tried; LBP-07-12, 66 NRC 113 (2007)

opponent must counter each adequately supported material fact with its own statement of material facts in dispute and supporting materials, or the movant's facts will be deemed admitted; LBP-06-9, 63 NRC 289 (2006)

opponent must set forth specific facts showing that there is a genuine issue, and may not rely on mere allegations or denials; CLI-10-11, 71 NRC 287 (2010); LBP-07-12, 66 NRC 113 (2007); LBP-07-13, 66 NRC 131 (2007)

opponent of summary disposition must counter any adequately supported material facts provided by the movant with its own separate, short, and concise statement of the material facts as to which it is contended there exists a genuine issue to be heard; LBP-08-2, 67 NRC 54 (2008); LBP-08-3, 67 NRC 85 (2008); LBP-10-8, 71 NRC 433 (2010)

opponents of summary disposition must respond to each of the "material facts" listed by the movant, admitting or denying each of them, and must set forth specific facts, by affidavit or otherwise, showing that there are genuine issues of fact; LBP-06-5, 63 NRC 116 (2006)

proponent of a summary disposition motion bears the burden of making the requisite showing by providing a separate, short, and concise statement of the material facts as to which the moving party contends that there is no genuine issue to be heard; LBP-08-2, 67 NRC 54 (2008); LBP-08-3, 67 NRC 85 (2008); LBP-08-7, 67 NRC 361 (2008); LBP-10-8, 71 NRC 433 (2010)

representations of movant are described; LBP-09-22, 70 NRC 640 (2009)

SUBJECT INDEX

resolution of a summary disposition motion in a license renewal proceeding is governed by the standards for summary disposition set forth in Subpart G; LBP-07-12, 66 NRC 113 (2007)

specificity and support are required for the positions parties take in their filings; LBP-07-13, 66 NRC 131 (2007)

specificity standards for contention admissibility serve as minimum conditions for setting out specific facts showing there is a genuine issue of fact; LBP-07-13, 66 NRC 131 (2007)

Staff's agreement with a movant's factual or technical positions, either informally or in a formal document such as a Safety Evaluation Report, does not "resolve" the dispute or mean that there is no genuine issue of material fact in dispute; LBP-06-5, 63 NRC 116 (2006)

such motions are not a tool for trying to convince a licensing board to decide, on written submissions, genuine issues of material fact that warrant resolution at a hearing; LBP-10-20, 72 NRC 571 (2010)

summary disposition motions are generally evaluated according to the same standards used by Federal District Courts in ruling on motions for summary judgment; LBP-07-12, 66 NRC 113 (2007)

summary disposition rules 10 C.F.R. 2.1205 and 2.710 are substantially similar; LBP-10-20, 72 NRC 571 (2010)

summary disposition standards are not applicable to and do not replace the standards applicable to motions to reopen; CLI-08-28, 68 NRC 658 (2008)

the appropriate vehicle to address whether arguments in a summary disposition answer raise matters outside the scope of a contention is a reply pleading; LBP-08-2, 67 NRC 54 (2008); LBP-08-3, 67 NRC 85 (2008)

the argument that information provided in support of an intervenor's response to a summary disposition motion should not be considered because the information is outside the scope of the intervenor's admitted contention, if true, can be a meritorious assertion; LBP-08-2, 67 NRC 54 (2008); LBP-08-3, 67 NRC 85 (2008)

the Commission generally applies the same standard for summary disposition that federal courts apply when ruling on motions for summary judgment under Rule 56 of the Federal Rules of Civil Procedure; LBP-10-20, 72 NRC 571 (2010)

the Commission grants review of a licensing board decision that dismissed a contention on summary disposition, reversing the decision in part, and remanding the contention to the board for hearing, as limited by the Commission's ruling; CLI-10-11, 71 NRC 287 (2010)

the contention admissibility threshold is less than is required at the summary disposition stage; LBP-09-26, 70 NRC 939 (2009)

the correct inquiry in deciding summary motions is whether there are material factual issues that can be properly resolved only by a finder of fact because they may reasonably be resolved in favor of either party; CLI-10-11, 71 NRC 287 (2010)

the determinative factor in a summary disposition motion is whether there is any genuine issue of material fact remaining in dispute, and that determination is made through examination of the filings in respect of the motion; LBP-07-13, 66 NRC 131 (2007)

the foundation for the threshold criteria regarding the required level of support is found in the contention admissibility provisions; LBP-07-13, 66 NRC 131 (2007)

the judge's function in ruling on summary disposition motions is not to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for hearing; CLI-10-11, 71 NRC 287 (2010)

the licensing board shall not entertain motions for summary disposition unless the board finds that such motions, if granted, are likely to expedite the proceeding; CLI-09-15, 70 NRC 1 (2009); CLI-10-4, 71 NRC 56 (2010); LBP-09-22, 70 NRC 640 (2009)

the preliminary question for a judge deciding a summary disposition motion is whether there is any evidence upon which a jury could properly proceed to find a verdict for the nonmovant; LBP-07-13, 66 NRC 131 (2007)

the quality of evidentiary support is expected to be of a higher level than that at the contention filing stage; CLI-10-15, 71 NRC 479 (2010)

there is no right to reply to an answer to a motion for summary disposition, but if the answer contains an allegation that is plainly and factually incorrect, the moving party can request the opportunity to respond and to correct the record; LBP-06-5, 63 NRC 116 (2006)

SUBJECT INDEX

this is not a tool for trying to convince a licensing board to decide, on written submissions, genuine issues of material fact that warrant resolution at a hearing; LBP-07-12, 66 NRC 113 (2007)

this is not the vehicle for untangling expert disputes so long as the experts are competent and the information they provide is adequately stated and explained; LBP-08-2, 67 NRC 54 (2008); LBP-08-3, 67 NRC 85 (2008)

to justify reopening the record to admit a new contention, the moving papers must be strong enough, in the light of any opposing filings, to avoid summary disposition, and the new information must be significant and plausible enough to require reasonable minds to inquire further; LBP-10-21, 72 NRC 616 (2010)

to the degree the response to a summary disposition motion fails to contravene the material facts proffered by the movant, the movant's facts will be considered to be admitted; LBP-08-2, 67 NRC 54 (2008); LBP-08-3, 67 NRC 85 (2008); LBP-10-8, 71 NRC 433 (2010)

under Subpart L informal hearing procedures, summary disposition motions are to be resolved in accord with the same standards for dispositive motions that are utilized for formal hearings under Subpart G; LBP-10-8, 71 NRC 433 (2010)

weighing the affidavits of competing experts is not appropriate at the summary disposition stage; LBP-07-2, 65 NRC 153 (2007)

when conflicting expert opinions are involved, summary disposition is rarely appropriate; LBP-06-5, 63 NRC 116 (2006)

where applicant's amended license application has eliminated the dispute, there remains no genuine dispute of material fact and applicant is entitled to summary disposition as a matter of law; LBP-06-24, 64 NRC 360 (2006)

where relevant documents and affidavits show that there is no genuine issue as to any material fact and that the moving party is entitled to a decision as a matter of law, summary disposition is appropriate; CLI-10-11, 71 NRC 287 (2010)

where the nonmoving party declines to oppose a motion for summary disposition, the moving party is not perforce entitled to a favorable judgment, but has the burden to show that he is entitled to judgment under established principles; LBP-08-7, 67 NRC 361 (2008)

SUMMARY JUDGMENT

NRC standards governing summary disposition are based on those the federal courts apply to motions for summary judgment under Rule 56 of the Federal Rules of Civil Procedure; CLI-10-11, 71 NRC 287 (2010)

plaintiffs have prevailed against a motion for summary judgment where chloride spillage was allegedly carried 100 miles to plaintiff's farm; LBP-08-6, 67 NRC 241 (2008)

SUPPLEMENTAL ENVIRONMENTAL IMPACT STATEMENT

compliance with NEPA requires that, if new and significant information arises after the date of the issuance of the EIS and before the agency decision, then NRC Staff must supplement or revise its EIS and consider such information; CLI-10-29, 72 NRC 556 (2010); LBP-10-15, 72 NRC 257 (2010); LBP-10-17, 72 NRC 501 (2010)

contentions relating to the conclusions that the NRC Staff reaches in its NEPA analysis with regard to the environmental impacts from radiological releases to groundwater must await future publication of its SEIS; LBP-08-13, 68 NRC 43 (2008)

for license renewals, Staff's review must take account of public comments concerning new and significant information on Category 1 findings; LBP-06-20, 64 NRC 131 (2006)

if a rule is suspended for analysis, each SEIS would reflect the corrected analysis until such time as the rule is amended; CLI-07-3, 65 NRC 13 (2007)

new information must raise significant environmental impacts that may affect the overall view of the project's impacts; CLI-06-19, 63 NRC 19 (2006)

new information that may call for a supplement must present a seriously different picture of the environmental impact of the proposed project from what was previously envisioned; CLI-06-29, 64 NRC 417 (2006); LBP-06-19, 64 NRC 53 (2006)

pending resolution of a rulemaking petition, NRC Staff may, where appropriate, seek the Commission's permission to suspend the generic determination of a Category 1 issue and include a new analysis in the plant-specific environmental impact statements; CLI-07-3, 65 NRC 13 (2007)

Staff must address adverse environmental effects that cannot be avoided; LBP-07-4, 65 NRC 281 (2007)

SUBJECT INDEX

Staff shall supplement an environmental impact statement if there are substantial changes in the proposed action that are relevant to environmental concerns or there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts; LBP-06-19, 64 NRC 53 (2006); LBP-08-11, 67 NRC 460 (2008)

the fact that an Integrated Resource Plan revision process has been instituted does not support a claim that the final SEIS is inadequate because of its reliance on earlier studies; LBP-09-26, 70 NRC 939 (2009)

SUSPENSION OF PROCEEDING

a state could seek to have licensing proceedings suspended pending an NRC decision on its rulemaking petition, if it participated in the proceedings as an interested state; CLI-09-10, 69 NRC 521 (2009)

although a request for suspension of a proceeding does not fit cleanly into NRC procedural rules for stays, the Commission exercises discretion and consider petitioner's request; CLI-10-17, 72 NRC 1 (2010)

although NRC regulations do not provide for a motion to suspend a proceeding, the Commission has considered similar requests in the exercise of its inherent supervisory powers over proceedings; CLI-08-23, 68 NRC 461 (2008)

an interested state may petition to suspend proceedings; CLI-08-9, 67 NRC 353 (2008)

consideration of pending issues will not be postponed until the resolution of other issues unrelated to the adjudication; CLI-10-17, 72 NRC 1 (2010)

NRC's general policy is to avoid unnecessary delays in adjudicatory proceedings, and intervenors have not provided a sufficient justification to show that delay is necessary; LBP-10-9, 71 NRC 493 (2010)

this drastic action is not warranted absent immediate threats to public health and safety; CLI-08-23, 68 NRC 461 (2008)

TAILINGS

See Uranium Mill Tailings

TECHNICAL SPECIFICATIONS

licensee requests that operating licenses for both units be amended to change the associated technical specifications to implement uprated power operation; LBP-07-10, 66 NRC 1 (2007)

TECHNOLOGICALLY ENHANCED NATURALLY OCCURRING RADIOACTIVE MATERIALS

at the time NRC drafted the regulation defining "background radiation," the term naturally occurring radioactive material was understood to include TENORM; CLI-06-14, 63 NRC 510 (2006)

TENORM is any naturally occurring material not subject to regulation under the Atomic Energy Act whose radionuclide concentrations or potential for human exposure have been increased above levels encountered in the natural state by human activities; LBP-06-1, 63 NRC 41 (2006)

TERMINATION OF LICENSE

a license is terminated even if the licensee decommissions the site in accordance with alternative decommissioning criteria pursuant to 10 C.F.R. 20.1404; CLI-09-1, 69 NRC 1 (2009)

decommissioning is not complete, and an operating license cannot be terminated, in effect, until all spent fuel and high-level waste has been removed from the site; LBP-09-17, 70 NRC 311 (2009)

the 1987 Commission Policy Statement on Deferred Plants sets forth the process under which a plant could be placed in a terminated status pending withdrawal of the CP, as well as procedures and requirements for reactivating the facility from terminated status; LBP-10-7, 71 NRC 391 (2010)

the criteria for acceptability of a site for license termination under restricted conditions are discussed; CLI-09-1, 69 NRC 1 (2009)

when a nuclear power plant ceases operations, the owner must apply for a license to terminate, which cannot be granted until the NRC is satisfied that the plant has been properly dismantled and decommissioned so that residual radiation meets established rules, and that no spent fuel or high-level wastes would be onsite; LBP-09-21, 70 NRC 581 (2009)

whether a site is suitable for unrestricted or restricted release, the license is terminated upon the completion of decommissioning; CLI-09-1, 69 NRC 1 (2009)

TERMINATION OF PROCEEDING

dismissal of one contention on mootness grounds would not terminate a case where the board had expressly retained jurisdiction to decide whether to admit another contention; LBP-09-27, 70 NRC 992 (2009)

SUBJECT INDEX

extended power uprate proceeding that has been terminated may not be reopened; CLI-10-17, 72 NRC 1 (2010)

following termination of a proceeding, the proper avenue for a person challenging an existing license is to file a request to modify, suspend, or revoke a license; CLI-09-5, 69 NRC 115 (2009)

grant of a motion for summary disposition on intervenor's sole remaining contention terminates the contested portion of the proceeding; LBP-06-24, 64 NRC 360 (2006)

if a previously terminated contested hearing is subsequently renoticed, a new licensing board would need to be established to preside over the renoticed litigation; LBP-09-23, 70 NRC 659 (2009)

proceedings on license amendments continue until they are over, even if the amendment is issued in the interim; CLI-09-5, 69 NRC 115 (2009)

the licensing board finds that petitioners have standing to intervene but have not submitted a contention that is admissible, and that therefore the proceeding must be terminated; LBP-07-11, 66 NRC 41 (2007)

when an adjudicatory proceeding has been terminated before a licensing board pursuant to a settlement agreement, the board loses its jurisdiction over, and thus its authority to act with respect to, that licensing action; LBP-09-23, 70 NRC 659 (2009)

with grant of an unopposed motion to withdraw the sole intervention petition, the proceeding is terminated; LBP-10-3, 71 NRC 213 (2010)

TERRORISM

a contention challenging the failure to include in the environmental impact statement for license renewal any consideration of the effects of an aircraft attack is inadmissible; LBP-10-10, 71 NRC 529 (2010)

a NEPA analysis is not the vehicle for exploring questions about the potential for a terrorist attack on a proposed nuclear facility; LBP-08-16, 68 NRC 361 (2008)

a NEPA analysis of the potential impacts of deliberate attacks on a spent fuel pool and analysis of alternatives to mitigate spent fuel pool accidents are beyond the scope of a license renewal proceeding and therefore inadmissible; CLI-09-10, 69 NRC 521 (2009)

although a contention regarding the risks of terrorism related to the high-density racking of spent fuel in pools is new and significant information concerning a Category 1 matter, the contention is not admissible in a license renewal proceeding; LBP-06-20, 64 NRC 131 (2006)

although the Commission has complied with the court's ruling for facilities within the Ninth Circuit, that experience is very limited and does not demonstrate that conducting environmental analyses of terrorist scenarios for the licensing of all major facilities would be practicable or lead to meaningful additional information; CLI-10-9, 71 NRC 245 (2010)

although the U.S. Court of Appeals for the Ninth Circuit has held that the NRC must address certain terrorism-related matters to satisfy its NEPA obligations, the Commission has stated that it does not consider itself bound by that holding outside the Ninth Circuit; LBP-09-2, 69 NRC 87 (2009)

an appeals court ruling does not constitute new information on which a party can base a new contention; CLI-07-9, 65 NRC 139 (2007)

because of the questions of law and policy about the environmental impacts of terrorist attacks, the Commission decides to consider this issue itself; LBP-06-28, 64 NRC 404 (2006)

contention raising question of whether a quantitative as opposed to qualitative analysis of terrorist attacks and the alternatives for mitigation and prevention is necessary is referred to the Commission as a novel issue; LBP-10-15, 72 NRC 257 (2010)

contentions asserting that the risks associated with terrorist attacks require that the agency prepare an environmental assessment or an environmental impact statement are outside the scope of agency NEPA review and are inadmissible; LBP-06-4, 63 NRC 99 (2006)

for licensing decisions involving facilities located within the jurisdictional boundaries of the U.S. Court of Appeals for the Ninth Circuit, the NRC Staff will consider, as part of its NEPA analysis, the potential environmental consequences, if any, of a terrorist attack on the proposed facility to occur; CLI-09-15, 70 NRC 1 (2009)

given that consideration of terrorist attacks is part of the NRC's NEPA obligations in the Ninth Circuit, the issue of whether terrorist attacks have been fully considered in the NEPA analysis for a power plant in that jurisdiction is plainly material to the decision the NRC must make; LBP-10-15, 72 NRC 257 (2010)

hearings on alternative terrorist scenario claims could not be conducted in a meaningful way without substantial disclosure of classified and safeguards information on threat assessments and security

SUBJECT INDEX

arrangements and without substantial litigation over their significance; CLI-08-1, 67 NRC 1 (2008); CLI-08-26, 68 NRC 509 (2008)

licensing boards are required to apply the Commission's directive that outside the Ninth Circuit, NEPA does not require the evaluation of the impact of terrorist attacks by aircraft or other means; LBP-09-10, 70 NRC 51 (2009); LBP-09-18, 70 NRC 385 (2009); LBP-09-17, 70 NRC 311 (2009)

NEPA does not require applicants or licensees to consider terrorist attacks as part of their environmental reviews; LBP-09-26, 70 NRC 939 (2009)

NEPA imposes no legal duty on the NRC to consider intentional malevolent acts on a case-by-case basis in conjunction with commercial power reactor license renewal applications; LBP-07-11, 66 NRC 41 (2007); LBP-08-13, 68 NRC 43 (2008)

NEPA is not an appropriate vehicle for exploring questions about the potential for a terrorist attack upon a proposed nuclear facility; CLI-10-1, 71 NRC 1 (2010)

NRC cannot, under NEPA, categorically refuse to consider the consequences of a terrorist attack against a spent fuel storage facility; CLI-10-1, 71 NRC 1 (2010)

NRC has maximum procedural leeway in how it addresses the environmental impacts; LBP-06-27, 64 NRC 399 (2006)

NRC has no legal duty to consider the environmental impacts of terrorism at NRC licensed facilities; LBP-08-6, 67 NRC 241 (2008)

NRC's categorical refusal to consider the environmental effects of a terrorist attack is found to be unreasonable under the National Environmental Policy Act; CLI-06-23, 64 NRC 107 (2006)

petitioner failed to provide any evidence to challenge NRC's conclusion that the environmental effects of a hypothetical terrorist attack on a nuclear plant would be no worse than those caused by a severe accident; LBP-10-10, 71 NRC 529 (2010)

petitioner's assertion that terrorist-act-originated SAMA analysis is required by Ninth Circuit law satisfies the requirements of 10 C.F.R. 2.309(f)(1)(iii) that the issue be within the scope of a license renewal proceeding; LBP-10-15, 72 NRC 257 (2010)

security and mitigation measures the NRC has imposed upon its licensees since September 11, 2001, and national anti-terrorist measures, coupled with the robust nature of SFPs, make the probability of a successful terrorist attack, though numerically indeterminable, very low; LBP-08-21, 68 NRC 554 (2008)

Staff failed to disclose data underlying its terrorism analysis in the final environmental assessment and thus failed to meet the NEPA-mandated hard-look standard; CLI-10-18, 72 NRC 56 (2010)

Staff's generic environmental impact statement for license renewal has already performed a discretionary analysis of terrorist acts in connection with license renewal and concluded that the core damage and radiological release from such acts would be no worse than the damage and release to be expected from internally initiated events; CLI-07-8, 65 NRC 124 (2007)

terrorism contentions are directly related to security and are therefore, under NRC license renewal rules, unrelated to the detrimental effects of aging, and consequently are beyond the scope of, not material to, and inadmissible in, a license renewal proceeding; CLI-07-8, 65 NRC 124 (2007); CLI-07-9, 65 NRC 139 (2007)

terrorist attacks are not to be considered part of the NEPA analysis required for licensing actions; LBP-07-14, 66 NRC 169 (2007)

the agency decided not to include the threat of air attacks in the 2007 revision to the design basis threat rule, a decision upheld by the Ninth Circuit; CLI-10-9, 71 NRC 245 (2010)

the Commission addresses the problem of terrorist attacks at nuclear facilities in cooperation with other agencies, including the military, and outside the hearing process; LBP-07-14, 66 NRC 169 (2007)

the environmental effect caused by third-party miscreants is simply too far removed from the natural or expected consequences of agency action to require a study under NEPA; CLI-10-1, 71 NRC 1 (2010)

the level of risk of a terrorist attack depends upon political, social, and economic factors external to the NRC licensing process, and thus it is not sensible to hold an NRC licensing decision, rather than terrorists themselves, as the proximate cause of an attack on an NRC-licensed facility; CLI-07-8, 65 NRC 124 (2007)

the National Environmental Policy Act does not require NRC to revisit matters related to high-density spent fuel pool coolant loss or other SFP events in combined license proceedings; LBP-08-21, 68 NRC 554 (2008)

SUBJECT INDEX

the National Infrastructure Protection Plan is concerned with security issues, not environmental quality standards and requirements, and it is environmental quality standards and requirements that the environmental analysis is obliged to address, not security issues; CLI-08-1, 67 NRC 1 (2008)

there is no NEPA requirement that NRC consider the environmental consequences of hypothetical terrorist attacks on NRC-licensed facilities; CLI-07-8, 65 NRC 124 (2007); CLI-07-10, 65 NRC 144 (2007); CLI-07-11, 65 NRC 148 (2007); LBP-08-21, 68 NRC 554 (2008); LBP-09-2, 69 NRC 87 (2009); LBP-10-10, 71 NRC 529 (2010)

there is no proximate-cause link between an NRC licensing action, such as renewing an operating license, and any altered risk of terrorist attack; CLI-07-8, 65 NRC 124 (2007)

threat of terrorist attack at spent fuel pools has been evaluated generically by NRC and special circumstances for rule waiver have not been shown; LBP-10-15, 72 NRC 257 (2010)

under NEPA the Commission looks to the reasonably foreseeable impacts of simply licensing the facility, not the reasonably foreseeable effects of a successful terrorist attack; LBP-09-26, 70 NRC 939 (2009)

where petitioner has not shown a reasonably close causal relationship between an aircraft attack and the relicensing proceeding at issue, such an attack does not warrant NEPA evaluation; CLI-10-9, 71 NRC 245 (2010)

with respect to aircraft crash as an element of the design basis threat, adequate protection against an air threat is ensured by the active defenses provided by other federal agencies, together with what reasonably could be expected of licensees; CLI-10-1, 71 NRC 1 (2010)

TESTIMONY

a long delay in an enforcement proceeding could result in the fading of witnesses' memories and runs the risk of witnesses' unavailability; CLI-06-12, 63 NRC 495 (2006)

a non-expert witness who was identified as the source of information but who had been removed from applicant's witness list could have been subjected to discovery and compelled to provide testimony before the board; LBP-06-15, 63 NRC 591 (2006)

in a Subpart L evidentiary hearing, the board may ask witnesses to appear in person and answer questions; LBP-09-22, 70 NRC 640 (2009)

rebuttal testimony shall be under oath or by affidavit so that it is suitable for being received into evidence directly, in exhibit form; LBP-09-22, 70 NRC 640 (2009)

TESTING

adequacy of methods used to evaluate plant performance during large transients is discussed; LBP-06-5, 63 NRC 116 (2006)

applicant normally is required to perform two large-transient tests before an extended power uprate can be granted; LBP-07-2, 65 NRC 153 (2007)

each nuclear power plant must implement a program that includes all testing required to demonstrate that the structures, systems, and components will perform satisfactorily in service; LBP-07-2, 65 NRC 153 (2007)

leach rate testing protocol for slag and baghouse dust piles is discussed; CLI-09-1, 69 NRC 1 (2009)

preconstruction monitoring and testing to establish background information is exempted from the prohibition on commencement of construction; LBP-10-16, 72 NRC 361 (2010)

the final safety analysis report must include the applicant's plans for preoperational testing and initial operations; LBP-07-2, 65 NRC 153 (2007)

THERMAL ANALYSIS

thermal effluent discharge impacts of the proposed cooling system intake and discharge structures on aquatic resources are discussed; LBP-09-7, 69 NRC 613 (2009)

THERMAL DISCHARGE IMPACTS

applicant is required to provide in its environmental report a site-specific analysis of entrainment, impingement, and heat shock/thermal discharge impacts from its once-through cooling systems; LBP-08-13, 68 NRC 43 (2008)

THORIUM

although thorium is source material, NRC does not regulate it in unprocessed ores and in material with insignificant concentrations of radionuclides; CLI-06-14, 63 NRC 510 (2006)

SUBJECT INDEX

TIME LIMITED AGING ANALYSES

- a license renewal applicant seeking to satisfy aging management requirements by reliance upon existing TLAAAs in its current licensing basis would rely on 10 C.F.R. 54.21(c)(1)(i) or (ii); CLI-10-17, 72 NRC 1 (2010)
- a technically accurate projection of the TLAA that predicts that the component will fail due to aging during the 20-year period of extended operation will not suffice; LBP-08-25, 68 NRC 763 (2008)
- allowing applicant to postpone performance of an analysis-of-record TLAA until after the license renewal is issued is inconsistent with the language, structure, and intent of the Part 54 regulations and inconsistent with NRC precedent; LBP-08-25, 68 NRC 763 (2008)
- analysis of metal fatigue that ignores the known and substantial effects of the light-water reactor environment is insufficient, as both a technical and a legal matter; LBP-08-25, 68 NRC 763 (2008)
- applicant's use of a conservative number of transients in the calculations of the environmentally adjusted cumulative usage factor is adequate to provide the degree of assurance required by 10 C.F.R. 54.29(a); LBP-08-25, 68 NRC 763 (2008)
- as the threshold parameter of the TLAA for metal fatigue, applicant must complete the analysis of the cumulative usage factors for the license renewal period and include the results in the license renewal application; LBP-08-13, 68 NRC 43 (2008)
- because environmentally adjusted cumulative usage factors are not contained in licensee's current licensing basis, they cannot be TLAAAs and thereby a prerequisite to license renewal; CLI-10-17, 72 NRC 1 (2010)
- each license renewal application must contain an evaluation of TLAAAs, a list of TLAAAs, a demonstration relating to TLAAAs, and the actual TLAAAs; LBP-08-25, 68 NRC 763 (2008)
- each license renewal application must demonstrate that the TLAAAs remain valid for the period of extended operation, have been projected to the end of the period of extended operation, or that the effects of aging on the intended function(s) will be adequately managed for the period of extended operation; LBP-08-25, 68 NRC 763 (2008)
- even if the TLAAAs predict that the component will fail during the period of extended operation, a license renewal can still be granted if applicant demonstrates that the effects of aging will be adequately managed during the PEO; LBP-08-25, 68 NRC 763 (2008)
- if applicant's metal fatigue analyses on Class I components do not comply with the ASME Code and do not provide reasonable assurance as required by 10 C.F.R. 54.21(c)(1) and 54.29(a), then a license renewal cannot be issued; LBP-08-25, 68 NRC 763 (2008)
- license renewal applicant who chooses to rely upon an existing TLAA may demonstrate compliance with 10 C.F.R. 54.21(c)(1)(i) by showing that the existing cumulative usage factor calculations remain valid because the number of assumed transients would not be exceeded during the period of extended operation; CLI-10-17, 72 NRC 1 (2010)
- license renewal applications must include an evaluation of TLAAAs demonstrating that the analyses will remain valid for the period of extended operation, have been projected to the end of the period of extended period of operation, or the effects of aging on the intended functions will be adequately managed for the period of extended operation; CLI-10-17, 72 NRC 1 (2010)
- NRC Staff's guidance document NUREG/CR-6909, which prescribes guidance on the calculation of metal fatigue on reactor components in a light water reactor environment, is built upon a larger and more recent database than NUREG/CR-5704 and -6583 but use of the earlier NUREGs is sufficient; LBP-08-25, 68 NRC 763 (2008)
- section 54.21(c)(1)(i)-(iii) requires that the applicant make its demonstration that the effects of aging will be adequately managed during the period of extended operation in the application, which is necessarily before the license may be granted; LBP-08-25, 68 NRC 763 (2008)
- section 54.29(a) speaks of both past and future actions, referring specifically to those that have been or will be taken with respect to managing the effects of aging and TLAAAs; CLI-10-17, 72 NRC 1 (2010)
- technical accuracy of the TLAAAs is necessary, but not sufficient, to demonstrate that it remains valid because a technically accurate TLAA that shows that the component will fail during the period of extended operation does not satisfy 10 C.F.R. 54.21(c)(1)(i); LBP-08-25, 68 NRC 763 (2008)
- the "demonstrations" mandated by 10 C.F.R. 54.21(c)(1)(i) and (ii) require that the TLAAAs be performed in a technically accurate manner and produce a prediction that the component will not fail due to aging during the period of extended operation; LBP-08-25, 68 NRC 763 (2008)

SUBJECT INDEX

the differences between predictive and tracking TLAAs is discussed; LBP-08-25, 68 NRC 763 (2008)
the scope of a license renewal proceeding under 10 C.F.R. Part 54 encompasses a review of the plant structures and components that will require an aging management review for the period of extended operation and the plant's systems, structures, and components that are subject to TLAAs; CLI-10-17, 72 NRC 1 (2010)
the statutory conditions for grant of a license renewal are described; LBP-08-25, 68 NRC 763 (2008)
use of a simplified Green's function methodology for the environmentally adjusted cumulative usage factor metal fatigue analyses for the core spray and reactor recirculation outlet nozzles is inconsistent with the ASME Code and thus cannot serve as the analysis-of-record and does not satisfy the requirements of 10 C.F.R. 54.21(c)(1) or 54.29(a); LBP-08-25, 68 NRC 763 (2008)

TIME LIMITS

the only timing requirement for giving notice of participation by an interested state is that a representative shall identify those contentions on which it will participate in advance of any hearing held; LBP-06-20, 64 NRC 131 (2006)

TOTAL EFFECTIVE DOSE EQUIVALENT

a decommissioning plan for a restricted release site will be judged exclusively upon whether residual radioactivity levels will be as low as is reasonably achievable and the total effective dose equivalent to offsite human beings will be below 25 mrem; LBP-08-4, 67 NRC 105 (2008)
emissions not directly tied to licensed activity are excluded; CLI-06-14, 63 NRC 510 (2006)
individuals located at the boundary of the exclusion area cannot be exposed to more than 25 rem total effective dose equivalent in any 2-hour period, and any individual located at the outer boundary of the low population zone cannot be exposed to more than 25 rem TEDE during the entire period of any radioactive release; LBP-09-19, 70 NRC 433 (2009)
licensees must ensure that the TEDE to individual members of the public from a licensed operation does not exceed 0.1 rem per year exclusive of the dose contributions from background radiation; LBP-06-1, 63 NRC 41 (2006)
the TEDE is defined as the sum of the deep-dose equivalent (for external exposures) and the committed effective dose equivalent (for internal exposures); LBP-08-4, 67 NRC 105 (2008)

TRANSCRIPTS

after a closed hearing, parties can propose creation of a public copy of the transcript, with appropriate redactions for protected information; LBP-10-5, 71 NRC 329 (2010)
the public is entitled to copies of the transcripts of all hearings; LBP-10-2, 71 NRC 190 (2010)

TRANSFER OF OWNERSHIP

if, at some point in the future, applicant were to decide to change the ownership structure and to enter into a joint venture with another entity, its license would have to be amended to reflect this change; LBP-09-18, 70 NRC 385 (2009)

TRANSIENTS

adequacy of licensee's analytical tools to predict plant performance in large transient events is questioned; LBP-06-5, 63 NRC 116 (2006)
an MSIV transient is classified as an anticipated operational occurrence, and nuclear power stations must be designed and built to withstand them; LBP-07-2, 65 NRC 153 (2007)
generator load rejection transients occasionally occur and are classified as anticipated operational occurrences that nuclear power stations must be designed and built to withstand; LBP-07-2, 65 NRC 153 (2007)
transients can be, and often are, anticipated operational occurrences which are conditions of normal operation; LBP-07-2, 65 NRC 153 (2007)
when an MSIV transient occurs, the reactor operator is required to analyze what happened and how the reactor systems responded and performed, and to report to the NRC; LBP-07-2, 65 NRC 153 (2007)

TRANSMISSION SERVICES

this concept is central to the determination of standing in a license transfer proceeding; CLI-06-2, 63 NRC 9 (2006)

TRANSPORTATION OF RADIOACTIVE MATERIALS

in the high-level waste repository proceeding, a state can meet the requirements for standing as a matter of right, based on the threat posed by transportation of radioactive waste through that state; LBP-09-6, 69 NRC 367 (2009)

SUBJECT INDEX

petitioner alleges release of controlled byproduct nuclear materials in containers not certified for transport of such materials on public roads and not labeled with the required labeling; DD-10-3, 72 NRC 171 (2010)

petitioner organizations have established standing based on their members' proximity to transportation routes, even where it was not possible to predict with accuracy which of its members were most likely to be harmed or the extent of the damage; LBP-09-6, 69 NRC 367 (2009)

TREATIES

a Native American nation retains its water rights even after its land rights have been extinguished, but those reserved rights must originate in a treaty in order to survive; LBP-09-6, 69 NRC 367 (2009)
Congress's plenary power with respect to Native Americans entitles it to abrogate treaties with Native American nations; LBP-09-13, 70 NRC 168 (2009)

licensing boards are required to reject treaty-based claims of ownership by Native American tribes; LBP-08-24, 68 NRC 691 (2008)

plenary authority over the tribal relations of the Indians has been exercised by Congress from the beginning, and the power has always been deemed a political one, not subject to be controlled by the judicial department of the government; LBP-08-24, 68 NRC 691 (2008)

the United States is no longer bound by the terms of the 1868 Fort Laramie Treaty; LBP-09-13, 70 NRC 168 (2009)

where an abrogated treaty was the only grounds supporting an Indian group's claim of standing, the board correctly found that the Indian group did not have standing as a party to the proceeding; CLI-09-9, 69 NRC 331 (2009)

TRITIUM

NRC includes the EPA drinking water standard in the technical specifications that a licensee must meet; LBP-07-9, 65 NRC 539 (2007)

the potential for contamination of water is primarily a NEPA issue because it involves the environmental impacts of the proposed early site permit and possible mitigation measures, but also has a safety element because safety regulations require that exposure to radiation be as low as reasonably achievable; LBP-07-9, 65 NRC 539 (2007)

TRUST RELATIONSHIP DOCTRINE

a trust duty in the NRC as a federal permitting agency arises out of 1851 and 1868 treaties with Indian tribes; LBP-08-6, 67 NRC 241 (2008)

federal agencies are required to take actions or refrain from taking actions in fulfillment of Congress's duty to protect the Indians; LBP-09-13, 70 NRC 168 (2009)

trust responsibility imposes a fiduciary duty on NRC, as a federal agency, to Indian tribes and their members; LBP-08-24, 68 NRC 691 (2008)

TSUNAMIS

licensees must have and follow emergency procedures for natural phenomena as appropriate for the geographical location of the facility; LBP-06-12, 63 NRC 403 (2006)

TURBINES

licensee's report to NRC of a manual reactor trip due to main turbine high vibrations included the details of the event, provided an analysis of the event, including estimated change in conditional core damage probability, and provided a list of corrective actions; DD-09-2, 70 NRC 899 (2009)

UNCONTESTED ISSUES

the presiding officer has no authority or duty to resolve uncontested issues in the high-level waste proceeding; CLI-08-25, 68 NRC 497 (2008)

UNCONTESTED LICENSE APPLICATIONS

for early site permits, section 52.21, the notice requirements of section 2.104(b)(2), and the Notice of Hearing itself outline a board's review obligation; LBP-06-28, 64 NRC 460 (2006)

for uranium enrichment facilities, licensing boards must determine whether NRC Staff's review of the application has been adequate to support the finding to be made by the Director of the Office of Nuclear Materials Safety and Safeguards; CLI-09-15, 70 NRC 1 (2009); CLI-10-4, 71 NRC 56 (2010)
in an early site permit proceeding, the board must narrow its inquiry to those topics or sections in NRC Staff documents that it deems most important and should concentrate on portions of the documents that do not on their face adequately explain the logic, underlying facts, and applicable regulations and guidance; LBP-07-1, 65 NRC 27 (2007); LBP-07-6, 65 NRC 429 (2007)

SUBJECT INDEX

licensing boards do not conduct a de novo review of the application; CLI-09-15, 70 NRC 1 (2009)
licensing boards must determine whether the applicant and record of the proceeding contain sufficient information to support license issuance; CLI-09-15, 70 NRC 1 (2009)
NRC Staff is authorized to issue a renewed license once the Director of the Office of Nuclear Reactor Regulation has made the appropriate findings; CLI-09-7, 69 NRC 235 (2009)
regarding safety issues, boards must determine whether the application and the record of the proceeding contain sufficient information and the review of the application by the NRC Staff has been adequate to support findings pursuant to 10 C.F.R. 30.33, 40.32, and 70.23; LBP-07-6, 65 NRC 429 (2007)
the scope of the licensing board's environmental review in an early site permit proceeding is discussed; LBP-07-1, 65 NRC 27 (2007)
the scope of the licensing board's safety review in an uncontested early site permit proceeding is described; LBP-07-1, 65 NRC 27 (2007)
when a proceeding involving an application for a construction permit is uncontested the Board will not conduct a de novo review, but rather will conduct a simple sufficiency review of the uncontested issues; LBP-07-1, 65 NRC 27 (2007); LBP-07-6, 65 NRC 429 (2007)

UNIONS

See Labor Unions

UNRESTRICTED RELEASE

a license is terminated upon the completion of decommissioning; CLI-09-1, 69 NRC 1 (2009)
the unavailability of funding for decommissioning adequate to achieve unrestricted release of a site is not one of the conditions specified in 10 C.F.R. 20.1403(a); CLI-09-1, 69 NRC 1 (2009)

UPDATED FINAL SAFETY ANALYSIS REPORT

adequacy of the UFSAR and compliance with the current licensing basis are outside the scope of license renewal proceedings; LBP-08-13, 68 NRC 43 (2008)

URANIUM

although uranium is source material, NRC does not regulate it in unprocessed ores and in material with insignificant concentrations of radionuclides; CLI-06-14, 63 NRC 510 (2006)
contention that worldwide uranium supplies will be inadequate to permit the anticipated power production benefits during the license term is potentially material to the licensing proceeding; LBP-08-15, 68 NRC 294 (2008)
petitioner's failure to cite any document that, read as a whole, supports its theory that uranium supplies will be insufficient to support operation of a reactor unit during its licensed period renders it inadmissible; LBP-08-16, 68 NRC 361 (2008)

See also Depleted Uranium

URANIUM ENRICHMENT FACILITIES

although not legally binding, Staff guidance documents provide further information about the content of the integrated safety analysis summary and how an applicant can comply with criticality safety regulations; LBP-06-17, 63 NRC 747 (2006)
an affirmative finding by the Commission that issuance of a license for a uranium enrichment facility will not be inimical to the common defense and security is required; CLI-09-15, 70 NRC 1 (2009)
an approach for disposition of depleted tails that is consistent with the USEC Privatization Act, such as transfer to DOE for disposal, constitutes a plausible strategy; CLI-10-4, 71 NRC 56 (2010)
an enrichment facility is not a production or utilization facility and, therefore, NRC does not have antitrust responsibilities for it; CLI-09-15, 70 NRC 1 (2009)
an environmental report and an environmental impact statement for a materials license must include a statement on the alternatives to the proposed action, including a discussion of the no-action alternative; CLI-09-15, 70 NRC 1 (2009)
applicant is required to provide NRC Staff with a site-specific estimate of the costs for decommissioning the facility, and a description and certification of the means by which funds for decommissioning will be assured; LBP-06-17, 63 NRC 747 (2006)
applicant must comply with certain performance requirements regarding nuclear criticality safety; LBP-06-17, 63 NRC 747 (2006)
applicant must provide documentation of its compliance with the performance requirements of section 70.61 in its integrated safety analysis summary; LBP-06-17, 63 NRC 747 (2006)

SUBJECT INDEX

applicant must submit a decommissioning funding plan for its proposed facility; LBP-06-15, 63 NRC 591 (2006); LBP-07-6, 65 NRC 429 (2007)

before a facility can be licensed, a hearing is required to be held on that license application; CLI-09-15, 70 NRC 1 (2009)

containers are exempted from labeling requirements if they are attended by an individual who takes the precautions necessary to prevent the exposure of individuals in excess of the established limits; LBP-07-6, 65 NRC 429 (2007)

creditor regulations in 10 C.F.R. 50.81 apply to the creation of creditor interests in equipment, devices, or important parts thereof, capable of separating the isotopes of uranium or enriching uranium in the isotope U-235; CLI-10-4, 71 NRC 56 (2010)

creditor regulations in 10 C.F.R. 70.44 apply to the creation of creditor interests in special nuclear material; CLI-10-4, 71 NRC 56 (2010)

creditor regulations may be augmented by license conditions as necessary to allow ownership arrangements, such as sale and leaseback, provided it can be found that such arrangements are not inimical to the common defense and security of the United States; CLI-09-15, 70 NRC 1 (2009); CLI-10-4, 71 NRC 56 (2010)

depleted uranium from an enrichment facility is appropriately classified as a low-level radioactive waste; CLI-09-15, 70 NRC 1 (2009); CLI-10-4, 71 NRC 56 (2010)

design of new facilities must provide for criticality control including adherence to the double contingency principle; LBP-06-17, 63 NRC 747 (2006)

DOE must accept for dispositioning, depleted uranium from a private uranium enrichment facility upon request of the facility operator or appropriate third party; LBP-06-15, 63 NRC 591 (2006)

DOE will indemnify a licensee against claims arising from nuclear incidents to the extent that licensee cannot obtain commercial insurance at reasonable rates; LBP-07-6, 65 NRC 429 (2007)

financial criteria of 10 C.F.R. 70.22(a)(8) and 70.23(a)(5) can be met by conditioning the license to require funding commitments to be in place prior to construction and operation; CLI-10-4, 71 NRC 56 (2010)

for license applications for uranium enrichment facilities, NRC shall conduct a single adjudicatory hearing on the record with regard to the licensing of the construction and operation of the facility; LBP-07-6, 65 NRC 429 (2007)

if a facility is licensed, prior to commencement of operations NRC will verify through an inspection that the facility meets the construction and operation requirements of the license; CLI-10-4, 71 NRC 56 (2010)

neither a uranium enrichment facility nor a nuclear power plant may be owned, controlled, or dominated by a foreign entity; CLI-09-9, 69 NRC 331 (2009)

proof of adequate liability insurance must be filed with the NRC before a license for the operation of a facility may be issued; LBP-07-6, 65 NRC 429 (2007)

Staff must evaluate alternatives to determine whether there are any obviously superior options to the proposed action; LBP-07-6, 65 NRC 429 (2007)

Staff's draft and final environmental impact statements are to include a statement that will briefly describe and specify the need for the proposed action; LBP-06-17, 63 NRC 747 (2006)

the environmental costs of the facility must be compared to the Staff's assessment of the benefits derived from the additional domestic supply of enriched uranium and the presence of upgraded enrichment technology in the United States; LBP-07-6, 65 NRC 429 (2007)

the occupational radiation protection measures that the radiation protection program must address are discussed; LBP-07-6, 65 NRC 429 (2007)

there is no obvious potential for harm at petitioner's property 20 miles from the facility location; LBP-08-6, 67 NRC 241 (2008)

under the double contingency principle, process designs should incorporate sufficient factors of safety to require at least two unlikely, independent, and concurrent changes in process conditions before a criticality accident is possible; LBP-06-17, 63 NRC 747 (2006)

use of conspicuously posted signs, in conjunction with the applicant's radiation work permit program, is an acceptable alternative to section 20.1601(a) requirements; LBP-07-6, 65 NRC 429 (2007)

SUBJECT INDEX

URANIUM ENRICHMENT FACILITY PROCEEDINGS

- a hearing on a uranium enrichment facility application will be held under the authority of sections 53, 63, 189, 191, and 193 of the Atomic Energy Act; CLI-10-4, 71 NRC 56 (2010)
- a hearing will be conducted according to the rules of practice in 10 C.F.R. Part 2, Subparts A, C, G, and to the extent that classified information becomes involved, Subpart I; CLI-10-4, 71 NRC 56 (2010)
- a licensing board is to determine, with respect to safety matters, whether the application and record of the proceeding contain sufficient information and whether the NRC Staff's review of the application has been adequate; LBP-06-17, 63 NRC 747 (2006)
- a licensing board must determine in its initial decision whether the requirements of section 102(2)(A), (C), and (E) of the National Environmental Policy Act have been complied with; CLI-09-15, 70 NRC 1 (2009)
- a state, county, municipality, federally recognized Indian tribe, or agencies thereof may submit a petition to the Commission to participate as a party or nonparty; CLI-10-4, 71 NRC 56 (2010)
- all parties, except NRC Staff, shall make mandatory disclosures within 45 days of the issuance of the licensing board order admitting contentions; CLI-10-4, 71 NRC 56 (2010)
- any person who does not wish, or is not qualified, to become a party to the proceeding may request permission to make a limited appearance pursuant to the provisions of 10 C.F.R. 2.315(a); CLI-09-15, 70 NRC 1 (2009); CLI-10-4, 71 NRC 56 (2010)
- before a uranium enrichment facility can be licensed, a hearing is required to be held on that license application; LBP-06-17, 63 NRC 747 (2006)
- boards must determine whether the review conducted by the NRC Staff pursuant to 10 C.F.R. Part 51 has been adequate; LBP-06-17, 63 NRC 747 (2006)
- contested and uncontested designations apply issue-by-issue, and not to proceedings-at-large; LBP-06-17, 63 NRC 747 (2006)
- discovery under 10 C.F.R. 2.709 shall not commence until the issuance of the safety evaluation report or environmental impact statement unless the licensing board, in its discretion, finds that commencing discovery against NRC Staff on safety issues before the SER is issued, or on environmental issues before the FEIS is issued will expedite the hearing without adversely affecting the Staff's ability to complete its evaluation in a timely manner; CLI-10-4, 71 NRC 56 (2010)
- in a contested proceeding, the licensing board shall make findings of fact and conclusions of law on admitted contentions; CLI-09-15, 70 NRC 1 (2009)
- in an uncontested proceeding, the licensing board will not conduct a de novo evaluation of the application, but will determine whether there is sufficient information to support license issuance and whether the NRC Staff's review of the application is adequate; CLI-09-15, 70 NRC 1 (2009); CLI-10-4, 71 NRC 56 (2010); LBP-06-17, 63 NRC 747 (2006)
- in uncontested proceedings, licensing boards must determine whether the application and record of the proceeding contain sufficient information to support license issuance; CLI-09-15, 70 NRC 1 (2009)
- intervention petitions must address the nature of petitioner's right under the Atomic Energy Act to be made a party to the proceeding, the nature and extent of petitioner's property, financial, or other interest in the proceeding, and the possible effect of any order that may be entered in the proceeding on petitioner's interest; CLI-10-4, 71 NRC 56 (2010)
- intervention petitions must provide the name, address, and telephone number of the petitioner and specifically explain the reasons why intervention should be permitted; CLI-10-4, 71 NRC 56 (2010)
- intervention petitions shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding; CLI-10-4, 71 NRC 56 (2010)
- licensing boards must promptly certify to the Commission all novel legal or policy issues that would benefit from early Commission consideration should such issues arise in this proceeding; CLI-10-4, 71 NRC 56 (2010)
- matters of fact and law to be considered are whether the application satisfies the applicable standards in 10 C.F.R. 30.33, 40.32, and 70.23, and whether the requirements of Part 51 have been met; LBP-06-17, 63 NRC 747 (2006)
- matters of fact and law to be considered in a proceeding on an application for a license to construct and operate a uranium enrichment facility are whether the application satisfies the applicable standards in 10 C.F.R. Parts 30, 40, and 70, and whether the requirements of the National Environmental Policy Act

SUBJECT INDEX

- and the NRC's implementing regulations in 10 C.F.R. Part 51 have been met; CLI-09-15, 70 NRC 1 (2009); CLI-10-4, 71 NRC 56 (2010)
- no later than 30 days before the commencement of the hearing at which an issue is to be presented, all parties other than the NRC Staff shall make the required pretrial disclosures; CLI-10-4, 71 NRC 56 (2010)
- participants who believe that they have a good cause for not submitting documents electronically must file an exemption request with their initial paper filing requesting authorization to continue to submit documents in paper format; CLI-10-4, 71 NRC 56 (2010)
- regarding safety issues, boards must determine whether the application and the record of the proceeding contain sufficient information and the review of the application by the NRC Staff has been adequate to support findings pursuant to 10 C.F.R. 30.33, 40.32, and 70.23; LBP-07-6, 65 NRC 429 (2007)
- regardless of whether the proceeding is contested or uncontested, a licensing board must consider three baseline NEPA issues; LBP-06-17, 63 NRC 747 (2006)
- state and federally recognized Indian tribes do not need to address standing requirements if the facility is located within their boundaries; CLI-10-4, 71 NRC 56 (2010)
- the Commission gives notice of hearing, guidance on conduct of the proceeding, and procedures for access to sensitive unclassified nonsafeguards information and safeguards information for contention preparation; CLI-10-4, 71 NRC 56 (2010)
- the Commission retains its inherent supervisory authority over the proceeding to provide additional guidance to the licensing board and participants and to resolve any matter in controversy itself; CLI-09-15, 70 NRC 1 (2009)
- the Commission will endeavor to identify efficiencies, and provide pertinent resources, to further reduce the time the agency needs to complete reviews and reach decisions in these proceedings; CLI-07-17, 65 NRC 392 (2007)
- the licensing board must narrow its inquiry to those topics or sections in Staff documents that it deems most important and should concentrate on portions of the documents that do not on their face adequately explain the logic, underlying facts, and applicable regulations and guidance; LBP-07-6, 65 NRC 429 (2007)
- the licensing board shall not entertain motions for summary disposition unless it finds that such motions, if granted, are likely to expedite the proceeding; CLI-09-15, 70 NRC 1 (2009); CLI-10-4, 71 NRC 56 (2010)
- the licensing board's standard of review on environmental issues in a mandatory uncontested proceeding is discussed; LBP-07-6, 65 NRC 429 (2007)
- to avoid unnecessary delays in the proceeding, the licensing board should not routinely grant requests for extensions of time and should manage the schedule such that the overall hearing process is completed within 28-1/2 months; CLI-09-15, 70 NRC 1 (2009)
- when a proceeding involving an application for a construction permit is uncontested, the board will not conduct a de novo review, but rather will conduct a simple sufficiency review of the uncontested issues; LBP-07-6, 65 NRC 429 (2007)
- URANIUM FUEL CYCLE**
- both temporary and permanently committed land resources are specified as part of the uranium fuel cycle; LBP-09-21, 70 NRC 581 (2009)
- carbon dioxide emissions are to be listed as zero; LBP-09-21, 70 NRC 581 (2009)
- each environmental report prepared for the combined license stage must take Table S-3 as the basis for evaluating the contribution of the environmental effects of the fuel cycle to the environmental costs of licensing the reactor; CLI-09-21, 70 NRC 927 (2009)
- inadequacy of environmental report's reliance on Table S-3 regarding radioactive effluents from the uranium fuel cycle is not litigable in a combined license proceeding; LBP-08-16, 68 NRC 361 (2008)
- URANIUM MILL TAILINGS**
- for tailings or wastes to fall within the definition of byproduct material, the plain statutory and regulatory language requires that such tailings or wastes be produced from ore that has been processed for its source material content; LBP-06-1, 63 NRC 41 (2006)
- URANIUM MILL TAILINGS DISPOSAL**
- byproduct material from in situ extraction operations must be disposed of at existing large mill tailings disposal sites; LBP-10-16, 72 NRC 361 (2010)

SUBJECT INDEX

transfer of depleted uranium from enrichment operations to DOE for deconversion and disposal constitutes a plausible strategy for dispositioning; LBP-06-15, 63 NRC 591 (2006)

URANIUM MINING AND MILLING

allegations that mining activities may cause harm to public health and safety are within the scope of a materials license renewal proceeding and material to the findings the NRC must make; LBP-08-27, 68 NRC 951 (2008)

in cases involving ISL uranium mining and other source materials licensing, petitioner must demonstrate injury, causation, and redressability because proximity to the proposed facility alone is not adequate to demonstrate standing; LBP-10-16, 72 NRC 361 (2010)

NRC does not regulate conventional uranium mining; CLI-06-14, 63 NRC 510 (2006)

proximity alone is not sufficient to establish standing for a petitioner's proximity to a source materials activity; LBP-08-24, 68 NRC 691 (2008)

U.S. CONSTITUTION

a First Amendment basis for public access to administrative proceedings is recognized; LBP-10-2, 71 NRC 190 (2010)

the First Amendment requires a presumption of openness in civil proceedings; LBP-10-2, 71 NRC 190 (2010)

the First Amendment requires public access to deportation hearings despite government's strenuous objections that open hearings would enable terrorists to obtain information useful to their malevolent goals; LBP-10-2, 71 NRC 190 (2010)

the right to hold specific private employment and to follow a chosen profession free from unreasonable governmental interference comes within the liberty and property concepts of the Fifth Amendment; LBP-06-13, 63 NRC 523 (2006)

USEC PRIVATIZATION ACT

an approach for disposition of depleted tails that is consistent with the Act, such as transfer to DOE for disposal, constitutes a plausible strategy; CLI-09-15, 70 NRC 1 (2009); CLI-10-4, 71 NRC 56 (2010)

DOE must accept for dispositioning depleted uranium from a private uranium enrichment facility upon request of the facility operator or appropriate third party; LBP-06-15, 63 NRC 591 (2006)

VAUGHN INDEX

when access to documents is disputed in FOIA litigation, the government must submit detailed public affidavits identifying the documents withheld, the FOIA exemptions claimed, and a particularized explanation of why each document falls within the claimed exemption; LBP-08-7, 67 NRC 361 (2008)

VIOLATIONS

a licensee employee who contributes to submission of information to the NRC that the employee knows is not complete or accurate in some material respect places the licensee in violation; LBP-09-24, 70 NRC 676 (2009)

a senior plant supervisor's deliberate failure to contact the appropriate site security manager in order to initiate an assessment of the trustworthiness and reliability of the two contract technicians who falsified a maintenance report is a violation; LBP-08-14, 68 NRC 279 (2008)

an employee of a licensee may not deliberately submit to the NRC information that he knows to be incomplete or inaccurate in some respect material to the NRC; CLI-10-23, 72 NRC 210 (2010); LBP-09-24, 70 NRC 676 (2009)

careless disregard in the execution of one's duties does not amount to deliberate misconduct or a violation; LBP-09-24, 70 NRC 676 (2009)

deliberate misconduct refers to an intentional act or omission that the person knows would cause a licensee to be in violation of any rule; LBP-09-24, 70 NRC 676 (2009)

failure to document a falsified work order is a violation of 10 C.F.R. 50.9; LBP-08-14, 68 NRC 279 (2008)

in the absence of evidence to the contrary, NRC does not presume that a licensee will violate agency regulations wherever the opportunity arises; CLI-10-20, 72 NRC 185 (2010)

information submitted to an NRC inspector that was not complete and accurate in all material respects is a violation; LBP-09-12, 70 NRC 159 (2009)

issues concerning alleged violations of state law or regulations are outside the scope of, and not material to, an NRC power uprate proceeding; CLI-07-25, 66 NRC 101 (2007)

SUBJECT INDEX

licensee's failure to develop and implement a formalized procedure to neutralize a spill involving hydrofluoric acid, resulting in exposure to licensee operators, is a Severity Level III violation; LBP-10-18, 72 NRC 519 (2010)

materially incorrect responses to the NRC's communications are violations; CLI-10-23, 72 NRC 210 (2010)

perfection in applicant's QA program is not required, but once a pattern of QA violations has been shown, applicant has the burden of showing that the license may be granted notwithstanding the violations; LBP-10-9, 71 NRC 493 (2010)

Severity Level III violation is recategorized to a violation with no assigned severity level, based on settlement agreement; LBP-10-18, 72 NRC 519 (2010)

substantial delay in both the submittal and approval of a decommissioning plan might involve a violation of 10 C.F.R. 40.42; LBP-08-8, 67 NRC 409 (2008)

VOLCANOES

contention asserting that DOE's description of its expert elicitation relating to a probabilistic volcanic hazard analysis update fails to comply with this section or the NRC guidance document that DOE formally committed to follow, is admissible; LBP-09-29, 70 NRC 1028 (2009)

WAIVER

a party's failure to advance a collateral estoppel argument does not perforce trigger the waiver principle, thus precluding a tribunal from applying collateral estoppel; LBP-09-24, 70 NRC 676 (2009)

a privilege that is not claimed is waived; LBP-06-25, 64 NRC 367 (2006)

attorney-client privilege belongs to the client, not to the lawyer, and thus the client may waive the privilege, either by an express waiver or by an implied waiver; CLI-08-6, 67 NRC 179 (2008)

even if the Commission could waive the application fee for access to safeguards information, the mere fact that petitioners are public interest organizations provides no special reason for departing from well-established NRC practice; CLI-09-4, 69 NRC 80 (2009)

if a company claims that its internal investigation establishes that it has met its obligation, then the company has waived the attorney-client privilege associated with the internal investigation; CLI-08-6, 67 NRC 179 (2008)

implied waiver of the attorney-client privilege exists when a regulated company voluntarily discloses investigative materials to a government agency; CLI-08-6, 67 NRC 179 (2008)

WAIVER OF OBJECTION

a licensing board is authorized to accept assertions of the applicant and Staff that have not been controverted by a party; LBP-06-7, 63 NRC 188 (2006)

a party's failure to raise a matter in its proposed findings of fact and conclusions of law seemingly waives these items as grounds for its challenge to the final environmental impact statement; LBP-09-7, 69 NRC 613 (2009)

a petitioner that fails to submit a reply brief is foreclosed from challenging the assertions advanced by the licensee and the NRC Staff in their answers, unless it put such assertions in issue in its petition; LBP-06-7, 63 NRC 188 (2006)

arguments that an intervenor fails to adequately develop are treated as waived; LBP-06-19, 64 NRC 53 (2006)

arguments that are not mentioned on appeal are considered waived; CLI-10-3, 71 NRC 49 (2010)

it is not the duty of an adjudicative body to dig through the reams of paper that litigants have deposited to construct and develop their arguments; LBP-06-19, 64 NRC 53 (2006)

WAIVER OF RULE

a petition for rule waiver must be accompanied by an affidavit that describes with particularity the special circumstances that justify the waiver; CLI-10-10, 71 NRC 281 (2010)

a petition for rule waiver must show that special circumstances with respect to the subject matter of the particular proceeding are such that the application of the rule or regulation (or a provision of it) would not serve the purposes for which the rule or regulation was adopted; CLI-10-10, 71 NRC 281 (2010); LBP-10-12, 71 NRC 656 (2010)

a petition to waive a Commission regulation can be granted only in unusual and compelling circumstances; LBP-10-22, 72 NRC 661 (2010)

a petitioner may, within the adjudicatory context, submit a request for waiver of a rule; LBP-07-4, 65 NRC 281 (2007)

SUBJECT INDEX

- a prima facie showing merely requires the presentation of enough information to allow a board to infer (absent disproof) that special circumstances exist to support a rule waiver; LBP-10-15, 72 NRC 257 (2010)
- absent a waiver pursuant to 10 C.F.R. 2.335, any challenge brought to aspects of a referenced certified reactor design is outside the scope of a combined operating license proceeding; LBP-08-16, 68 NRC 361 (2008)
- absent a waiver pursuant to 10 C.F.R. 2.335, Category 1 issues cannot be addressed in a license renewal proceeding; LBP-08-13, 68 NRC 43 (2008)
- absent a waiver pursuant to 10 C.F.R. 2.335, no rule or regulation of the Commission is subject to attack in any adjudicatory proceeding; CLI-07-16, 65 NRC 371 (2007); CLI-09-20, 70 NRC 911 (2009); LBP-08-17, 68 NRC 431 (2008); LBP-08-21, 68 NRC 554 (2008); LBP-09-10, 70 NRC 51 (2009); LBP-09-21, 70 NRC 581 (2009); LBP-10-12, 71 NRC 656 (2010); LBP-10-15, 72 NRC 257 (2010); LBP-10-16, 72 NRC 361 (2010)
- as a general matter, a board ruling denying a waiver request is interlocutory in nature, and therefore not appealable until the board has issued a final decision resolving the case; CLI-08-27, 68 NRC 655 (2008)
- because petitioner had not made a prima facie case for rule waiver, the Board declined to certify the matter to the Commission and found that it was prohibited from considering the matter further; CLI-10-29, 72 NRC 556 (2010)
- boards must certify the matter of rule waiver to the Commission for a determination of whether the application of the regulation should be waived or an exception granted under the specific circumstances presented; LBP-10-12, 71 NRC 656 (2010)
- board's role in considering a petition for waiver under 10 C.F.R. 2.335 is limited to deciding whether petitioner has made a prima facie showing of special circumstances that would support a waiver; LBP-10-15, 72 NRC 257 (2010)
- deferral of review of board denial of rule waiver petition did not cause irreparable injury; CLI-10-29, 72 NRC 556 (2010)
- for a contention regarding environmental impacts of spent fuel storage to be within the scope of an operating license renewal proceeding, petitioner must obtain a waiver under 10 C.F.R. 2.335(d); LBP-10-15, 72 NRC 257 (2010)
- if petitioner has made a prima facie showing of special circumstances for rule waiver, then the board certifies the matter to the Commission; LBP-10-15, 72 NRC 257 (2010); LBP-10-22, 72 NRC 661 (2010)
- if there is no prima facie showing for a rule waiver, the board may not further consider the matter; LBP-10-22, 72 NRC 661 (2010)
- in addressing a petition for a rule waiver, the board, in lieu of holding oral argument to obtain answers to its questions, poses questions for NRC Staff about the waiver petition; LBP-09-29, 70 NRC 1028 (2009)
- in the context of a safety contention, petitioner must show a waiver of the regulation is necessary to reach a significant safety problem; LBP-10-15, 72 NRC 257 (2010)
- licensing board decisions denying a petition for waiver are interlocutory and not immediately reviewable; CLI-10-29, 72 NRC 556 (2010)
- matters at issue must involve special circumstances with respect to the subject matter of the particular proceeding; LBP-06-23, 64 NRC 257 (2006)
- new and significant information about a Category 1 issue is not a proper subject for a contention, absent a waiver of section 51.53(c)(3)(i); LBP-07-4, 65 NRC 281 (2007)
- NRC regulations may not be attacked in individual NRC adjudicatory proceedings, unless the Commission waives the rule at issue for a particular proceeding, or the rule is changed or suspended due to a rulemaking review; CLI-09-3, 69 NRC 68 (2009); CLI-09-10, 69 NRC 521 (2009); LBP-09-6, 69 NRC 367 (2009)
- one way to challenge a generic finding, or Category 1 issue, in a license renewal proceeding is to apply for a waiver when special circumstances are such that the application of the rule or regulation would not serve the purposes for which the rule or regulation was adopted; CLI-07-3, 65 NRC 13 (2007)
- participants may not submit paper copies of their filings unless they seek a waiver; CLI-09-15, 70 NRC 1 (2009)

SUBJECT INDEX

petition for waiver of regulation excluding consideration of alternatives and the need for power from the operating license phase must establish that all of applicant's fossil fuel baseload generation that is less efficient than the facility under consideration has been accounted for; LBP-10-12, 71 NRC 656 (2010)

petitioner has alleged sufficient new information concerning the seismic situation to raise a prima facie showing that strict application of the generic NEPA analysis of the management of spent fuel in nuclear reactors would not serve the purpose for which Part 51 Appendix B and 10 C.F.R. 51.53(c)(2) were adopted; LBP-10-15, 72 NRC 257 (2010)

petitioner has presented a prima facie showing for waiver of the NRC regulation covering the environmental impacts of spent fuel pool accidents generically, and has shown that its contention concerning earthquake-induced spent fuel pool accidents is otherwise admissible; LBP-10-15, 72 NRC 257 (2010)

petitioner has the burden of demonstrating that there is warrant for waiver of a rule prohibiting consideration of the need for power and energy alternatives at the operating license stage; LBP-10-12, 71 NRC 656 (2010)

"prima facie showing" means that the affidavits supporting a petition for rule waiver must present each element of the case for waiver in a persuasive manner with adequate supporting facts; LBP-10-12, 71 NRC 656 (2010)

request for waiver of application of 10 C.F.R. 51.53(b), 51.95(b), and 51.106(c) precluding consideration of need for power and alternative energy sources from a Part 50 operating license proceeding fails to provide the prima facie showing required; LBP-10-12, 71 NRC 656 (2010)

requests for rule waiver or exception must be accompanied by an affidavit that identifies with particularity the special circumstances alleged to justify the waiver or exception requested; LBP-08-17, 68 NRC 431 (2008); LBP-09-6, 69 NRC 367 (2009)

the affidavit accompanying a petition for rule waiver need not be prepared by an expert; LBP-10-15, 72 NRC 257 (2010)

the appropriate standard for determining whether a waiver petition is timely is reasonableness; LBP-10-12, 71 NRC 656 (2010)

the Commission does not grant waivers where the circumstances on which the waiver's proponent relies are common to a large class of applicants or facilities; CLI-09-3, 69 NRC 68 (2009)

the Commission has set forth a four-part test for grant of a rule waiver, and all four factors must be met; LBP-10-22, 72 NRC 661 (2010)

the sole ground for petition of waiver or exception is that special circumstances with respect to the subject matter of the particular proceeding are such that the application of the rule or regulation would not serve the purposes for which the rule or regulation was adopted; LBP-08-17, 68 NRC 431 (2008)

the special circumstances necessary to obtain waiver of a rule must be set forth with particularity and supported by an affidavit or other proof; LBP-10-9, 71 NRC 493 (2010)

threat of terrorist attack at spent fuel pools has been evaluated generically by NRC and special circumstances for rule waiver have not been shown; LBP-10-15, 72 NRC 257 (2010)

to certify a waiver petition to the Commission, the board must find that petitioner has met extremely high standards showing the existence of compelling circumstances in which the rationale of the regulation is undercut; LBP-10-12, 71 NRC 656 (2010)

to challenge a generic determination in a license renewal proceeding, petitioner must seek and receive a waiver; LBP-08-26, 68 NRC 905 (2008)

to challenge a regulation, petitioner must submit a supporting affidavit setting forth with particularity the special circumstances that justify the waiver or exception requested; LBP-09-18, 70 NRC 385 (2009)

to meet its burden to justify certification of its request to waive 10 C.F.R. 51.53(b), 51.95(b), and 51.106(c), petitioner must make a prima facie showing that the proposed facility would not be needed to meet increased energy needs or to replace older, less economical operating capacity, and that there are viable alternatives likely to exist that could tip the NEPA cost-benefit balance against issuance of the operating license; LBP-10-12, 71 NRC 656 (2010)

to support a contention challenging a Commission rule, petitioner must request, and demonstrate any supporting reasons for, a waiver of the rule; CLI-10-9, 71 NRC 245 (2010)

waiver of a rule or regulation is granted on the sole ground that special circumstances with respect to the subject matter of the particular proceeding are such that the application of the rule or regulation would not serve the purposes for which the rule or regulation was adopted; LBP-09-6, 69 NRC 367 (2009)

SUBJECT INDEX

waivers are limited to very unusual cases, such as where it appears that an alternative exists that is clearly and substantially environmentally superior; LBP-10-12, 71 NRC 656 (2010)

when considering whether to undertake pendent appellate review of otherwise unappealable issues, the Commission has expressed a willingness to take up otherwise unappealable issues that are “inextricably intertwined” with appealable issues; CLI-08-27, 68 NRC 655 (2008)

WASTE CONFIDENCE RULE

a challenge to the Waste Confidence Rule, which is the subject of a rulemaking, is inadmissible; CLI-10-9, 71 NRC 245 (2010)

a low-level waste confidence rule would not, if it followed the pattern set by the high-level waste confidence rule, alter any requirements to consider in the adjudicatory proceeding the environmental impacts of waste storage during the term of the license; CLI-09-3, 69 NRC 68 (2009)

a waste confidence rulemaking is not the appropriate instrument for resolving low-level radioactive waste issues, particularly issues of disposal; CLI-09-3, 69 NRC 68 (2009)

challenges to the Waste Confidence Rule must be made in the context of a rulemaking, not in the context of an adjudicatory proceeding; CLI-10-19, 72 NRC 98 (2010)

contentions challenging the Waste Confidence Rule are inadmissible; LBP-08-17, 68 NRC 431 (2008); LBP-09-17, 70 NRC 311 (2009); LBP-09-18, 70 NRC 385 (2009)

contentions that concern greater-than-Class-C waste, seek to require a change to the decommissioning cost estimate, or constitute a challenge to Table S-3 of 10 C.F.R. 51.51 are inadmissible; LBP-09-16, 70 NRC 227 (2009)

if new information becomes available in the course of waste confidence rulemaking proceedings that contravenes a combined license application, petitioner may file a motion to admit a new or amended contention; LBP-09-18, 70 NRC 385 (2009)

if petitioners are dissatisfied with the Commission’s generic approach to a problem, their remedy lies in the rulemaking process, not in adjudication; LBP-08-23, 68 NRC 679 (2008)

ISL mining does not involve fuel rod waste and to the extent such waste is indirectly relevant, the Waste Confidence rule would prohibit its consideration in a license amendment proceeding; LBP-08-6, 67 NRC 241 (2008)

issues related to the environmental impact of onsite spent fuel storage after the license renewal term are covered by NRC’s Waste Confidence Rule and are outside the scope of a license renewal proceeding because contentions may not challenge a regulation; LBP-06-20, 64 NRC 131 (2006)

NRC has made a generic determination that there is reasonable assurance that at least one mined geologic repository will be available within the first quarter of the twenty-first century with sufficient capacity for any reactor to dispose of the high-level waste that it generates; LBP-09-10, 70 NRC 51 (2009); LBP-09-18, 70 NRC 385 (2009)

petitioners and others who believe the Waste Confidence Rule needs revision must use rulemaking proceedings to express their concerns; LBP-09-4, 69 NRC 170 (2009)

regulations cover the storage of spent fuel in new or existing facilities; LBP-09-10, 70 NRC 51 (2009); LBP-09-17, 70 NRC 311 (2009); LBP-09-18, 70 NRC 385 (2009)

the Commission addresses a certified question by a licensing board on the admissibility of proposed contentions involving the Waste Confidence Rule; CLI-10-19, 72 NRC 98 (2010)

the Commission has made a determination, on a generic basis, that spent fuel generated by any reactor can be safely managed and that sufficient repository capacity will be available; LBP-08-17, 68 NRC 431 (2008)

the environmental impacts related to storage of spent fuel under Part 72 have been generically evaluated under two previous rulemakings and the Commission’s waste confidence proceedings, and thus need not be reassessed; LBP-09-21, 70 NRC 581 (2009)

the rule applies to the spent fuel discharged from any new generation of reactor designs; LBP-08-21, 68 NRC 554 (2008)

the rule is applicable to all new reactor proceedings, and contentions challenging the rule or seeking its reconsideration are not admissible; LBP-08-16, 68 NRC 361 (2008)

to support a contention challenging a Commission rule, petitioner must request, and demonstrate any supporting reasons for, a waiver of the rule; CLI-10-9, 71 NRC 245 (2010)

See also Radioactive Waste Disposal

SUBJECT INDEX

WASTE DISPOSAL

because disposal of Greater-Than-Class-C waste is the responsibility of the federal government, the disposal of GTCC radioactive waste is not directly affected by the partial closure of the Barnwell disposal facility and so is not an admissible aspect of a contention; LBP-08-16, 68 NRC 361 (2008)

before any waste may be received at the high-level waste repository, DOE must update its application with additional information, including, specifically, additional design data obtained during construction; LBP-10-22, 72 NRC 661 (2010)

byproduct material from in situ extraction operations must be disposed of at existing large mill tailings disposal sites; LBP-10-16, 72 NRC 361 (2010)

further inquiry is warranted into the safety-related matter of whether the Final Safety Analysis Report has failed to include necessary information concerning applicant's plans for onsite management of Class B and C waste; LBP-08-16, 68 NRC 361 (2008)

neither an intervenor nor an applicant/licensee (nor seemingly the NRC) has the authority to challenge or direct DOE's estimates of the fees it will charge to a uranium enrichment facility that requests DOE to disposition its depleted uranium waste; CLI-06-22, 64 NRC 37 (2006)

whether applicant might someday require a permit under 10 C.F.R. Part 61 for a disposal facility is too speculative and therefore not material to the findings the NRC must make to support the action that is involved; LBP-08-16, 68 NRC 361 (2008)

See also Radioactive Waste Disposal; Radioactive Waste Management

WASTE STORAGE

See Radioactive Waste Storage

WASTE DISPOSAL SITES

contention alleging that the Army employs truckers to remove depleted uranium-contaminated soil from its site and dump it in the community is inadmissible; LBP-10-4, 71 NRC 216 (2010)

See also Radioactive Waste Disposal

WASTEWATER

NRC is prohibited from using NEPA to impose additional effluent limitations on an applicant's wastewater discharges to surface waters; LBP-10-14, 72 NRC 101 (2010)

WATER

applicant's climate change analysis for the 990,000-year period may be limited to the effects of increased water flow through the high-level waste repository as a result of climate change; LBP-10-22, 72 NRC 661 (2010)

contention that concerns onsite and offsite impacts of active and passive dewatering associated with the proposed project satisfies the admissibility criteria; LBP-09-10, 70 NRC 51 (2009)

WATER POLLUTION

a general assessment of radioactivity within waters of the Great Lakes Basin does not address specific issues with regard to the proposed reactor, and it does not provide any support for the petitioners' assertions needed to advance an admissible contention; LBP-09-16, 70 NRC 227 (2009)

allegations of radiological and nonradiological contamination of drinking water are outside the scope of license renewal proceedings because they involve no aging-related issues and are Category 1, or generic, issues; LBP-06-10, 63 NRC 314 (2006)

any potential harm associated with petitioner's use of water from a water source connecting to a mining site is fairly traceable to the proposed action; LBP-10-16, 72 NRC 361 (2010)

contention is rejected as lacking support for the premise that ongoing mining operations will drain or contaminate wetlands, such that their economic benefits will be decreased; LBP-10-16, 72 NRC 361 (2010)

effects of heat shock on the protection and propagation of fish and shellfish is a Category 2 environmental issue and must be addressed on a case-by-case basis in a license renewal application; CLI-07-16, 65 NRC 371 (2007)

heat shock falls within the scope of the Clean Water Act; CLI-07-16, 65 NRC 371 (2007)

NPDES permits may address thermal discharges into bodies of water; CLI-07-16, 65 NRC 371 (2007)

NRC is prohibited from reviewing any effluent limitation or other requirement established pursuant to the Clean Water Act; CLI-07-16, 65 NRC 371 (2007)

NRC is prohibited from using NEPA to impose additional effluent limitations on applicant's wastewater discharges to surface waters; LBP-10-14, 72 NRC 101 (2010)

SUBJECT INDEX

standing was found for an organization representing three members living in close proximity to decommissioning site, who expressed concern that depleted uranium materials could affect a waterway abutting the property of two members; CLI-10-20, 72 NRC 185 (2010)

the environmental baseline reflects the effects of all currently existing pollution sources in the relevant watershed, including contributions of all nuclear power plants, and petitioners failed to provide information indicating that this aggregate analysis was insufficient under NEPA; LBP-09-16, 70 NRC 227 (2009)

the potential for tritium contamination of water is primarily a NEPA issue because it involves the environmental impacts of the proposed early site permit and possible mitigation measures, but also has a safety element because safety regulations require that exposure to radiation be as low as reasonably achievable; LBP-07-9, 65 NRC 539 (2007)

to the extent contaminants can plausibly migrate from leach mining operations to the aquifer from which a petitioner obtains his or her water, a petitioner would have a claim of a cognizable injury and could be accorded standing; LBP-08-24, 68 NRC 691 (2008)

See also Groundwater Contamination

WATER QUALITY

abdication of water quality effects entirely to other agencies' certifications subverts the special purpose of NEPA; LBP-09-16, 70 NRC 227 (2009)

although applicant's description of existing water quality conditions did not separately evaluate the contributions of specific sources, it nonetheless formed an environmental baseline against which to measure the cumulative impact of the proposed new reactor; LBP-09-16, 70 NRC 227 (2009)

challenge to the technical adequacy of baseline water quality data and adequate confinement of the host aquifer in applicant's environmental report is admissible; LBP-10-16, 72 NRC 361 (2010)

extent and duration of dredging, its impacts on water quality, the disposal of any dredged material, and the impacts on aquatic biota are discussed; LBP-09-7, 69 NRC 613 (2009)

issues relating to threats to public health and safety and potential impacts on the environment arising out of water quality issues are within the scope of a license amendment proceeding; LBP-08-6, 67 NRC 241 (2008)

nothing in the National Environmental Policy Act shall be deemed to authorize any federal agency to review any effluent limitation or other requirement established pursuant to the Clean Water Act or to authorize any such agency to impose any effluent limitation other than those set by EPA or a state agency that has been delegated such authority; LBP-09-25, 70 NRC 867 (2009)

NRC is barred from imposing or second-guessing effluent limitations or water quality certification requirements imposed by EPA or an authorized state, but it may address water quality matters in its assessment of the environmental impact of a license renewal; LBP-06-20, 64 NRC 131 (2006)

petitioner demonstrates a genuine dispute with the applicant on the adequacy of the water quality analysis; LBP-09-16, 70 NRC 227 (2009)

the field sampling plan's analysis of waterways is intended to identify groundwater, possible cave, and surface water paths and to assess the contents of those waters to determine if depleted uranium is leaching or will leach off the site in quantities significant enough that humans might receive more than 25 mrems of total radioactive exposure from all of the site's pathways; LBP-08-4, 67 NRC 105 (2008)

the reach of 33 U.S.C. § 1371(c)(2) is confined to navigable waters, which do not even encompass all surface waters; LBP-09-25, 70 NRC 867 (2009)

when decisions have been made by a state pursuant to the Clean Water Act and these decisions are raised in NRC licensing proceedings, the NRC is bound to take the Environmental Protection Agency's considered decisions at face value; LBP-09-25, 70 NRC 867 (2009)

WATER SUPPLY

a Native American nation retains its water rights even after its land rights have been extinguished, but those reserved rights must originate in a treaty in order to survive; LBP-09-6, 69 NRC 367 (2009)

WETLANDS

contention is rejected as lacking support for the premise that ongoing mining operations will drain or contaminate wetlands, such that their economic benefits will be decreased; LBP-10-16, 72 NRC 361 (2010)

SUBJECT INDEX

the board erred in admitting a contention concerning the economic value of wetlands without requiring petitioners to demonstrate that the proposed licensing action or no-action alternative would have any effect on wetlands; CLI-09-9, 69 NRC 331 (2009)

the fact that disposal of dredged or fill material in wetlands is regulated by EPA and the U.S. Army Corps of Engineers does not render a contention inadmissible; LBP-09-10, 70 NRC 51 (2009)

WHISTLEBLOWERS

although not required by regulation, settlement agreements that contain language reinforcing employees' rights to raise safety concerns and communicate with the NRC avoid the possibility of being construed in a way that could be a violation; DD-10-1, 72 NRC 149 (2010)

nondisparagement clauses in retention bonus agreements are common in employment agreements and NRC should not interfere with these agreements unless it finds such a clause violates 10 C.F.R. 50.7(f) or is applied in a fashion that prevents or retaliates against an employee for engaging in protected activities such as communicating with NRC; DD-10-1, 72 NRC 149 (2010)

the purpose of 10 C.F.R. 50.7(f) is to ensure that licensees do not enter into employment agreements that would prohibit, restrict, or otherwise discourage an employee or former employee from providing the NRC with information of regulatory significance; DD-10-1, 72 NRC 149 (2010)

WIND POWER

wind or solar power are not considered as stand-alone alternatives because neither sources is deemed capable of serving the purpose and need of the project, generating 1600 MWe of baseload power; LBP-10-24, 72 NRC 720 (2010)

WITHDRAWAL

after issuance of a notice of hearing, withdrawal of an application shall be on such terms as the presiding officer may prescribe; CLI-10-13, 71 NRC 387 (2010)

an attorney is not permitted to withdraw from representing a client unless withdrawal can be accomplished without material adverse effect to the client's interests; LBP-10-21, 72 NRC 616 (2010)

an unopposed motion to withdraw the sole intervention petition is granted and the proceeding is terminated; LBP-10-3, 71 NRC 213 (2010)

section 2.107(a) does not authorize withdrawal of an application but rather clarifies that licensing boards have authority to impose reasonable conditions upon voluntary withdrawals in appropriate circumstances; LBP-10-11, 71 NRC 609 (2010)

the law on withdrawal of an application does not require a determination of whether applicant's decision to withdraw is sound where the applicant's filing was wholly voluntary in the first place; LBP-10-11, 71 NRC 609 (2010)

the public interest would best be served by leaving the option open to the applicant should changed conditions warrant pursuit of a withdrawn application; LBP-10-11, 71 NRC 609 (2010)

the Secretary of the Department of Energy does not have the discretion to substitute his policy for the one established by Congress that mandates progress toward a merits decision by NRC on a construction permit for the high-level waste repository; LBP-10-11, 71 NRC 609 (2010)

when a hearing notice has been issued, withdrawal of an application would be subject to such terms as the presiding officer may prescribe; LBP-09-23, 70 NRC 659 (2009)

when applicant decides it no longer wishes to have the agency evaluate its application, the usual approach is for the applicant to request that the agency permit it to withdraw its licensing request; LBP-09-23, 70 NRC 659 (2009)

when applicant withdraws an application, all agency consideration of the matter ends, including any Staff technical review and any adjudicatory proceeding, either as to contested matters raised by any intervenors or any uncontested/mandatory hearing that might be required; LBP-09-23, 70 NRC 659 (2009)

See also Motions to Withdraw

WITNESSES

a board's findings regarding a particular witness's knowledge or state of mind depend, as a general rule, largely on that witness's credibility; CLI-10-23, 72 NRC 210 (2010)

a long delay in an enforcement proceeding could result in the fading of witnesses' memories and runs the risk of witnesses' unavailability; CLI-06-12, 63 NRC 495 (2006)

SUBJECT INDEX

a non-expert witness who was identified as the source of information but who had been removed from applicant's witness list could have been subjected to discovery and compelled to provide testimony before the board; LBP-06-15, 63 NRC 591 (2006)

diligent, even aggressive, probing for weaknesses in a witness's or counsel's position may be necessary if presiding officers are to fulfill their duty to develop an adequate record that will contribute to informed decisionmaking; CLI-10-17, 72 NRC 1 (2010)

in a Subpart L evidentiary hearing, the board may ask witnesses to appear in person and answer questions; LBP-09-22, 70 NRC 640 (2009)

licensing board findings of fact that turn on witness credibility receive the Commission's highest deference on appeal; CLI-10-23, 72 NRC 210 (2010)

selection of hearing procedures for contentions at the outset of a proceeding is not immutable, because the availability of Subpart G procedures depends critically on the credibility of eyewitnesses, and the identity of such witnesses may not be known until after the contentions are admitted; LBP-09-10, 70 NRC 51 (2009)

Subpart G procedures focus on issues where the credibility of an eyewitness may reasonably be expected to be at issue, and/or issues of motive or intent of the party or eyewitness; LBP-09-22, 70 NRC 640 (2009)

WITNESSES, EXPERT

a petitioner denied discretionary intervention could still participate as amicus curiae or as an expert witness; CLI-06-16, 63 NRC 708 (2006)

although an expert may be misinterpreting data submitted by applicant, this is not considered at the contention admissibility stage; LBP-09-27, 70 NRC 992 (2009)

an expert opinion that merely states a conclusion (e.g., the application is deficient, inadequate, or wrong) without providing a reasoned basis or explanation for that conclusion is inadequate because it deprives the board of the ability to make the necessary, reflective assessment of the opinion; CLI-06-10, 63 NRC 451 (2006); LBP-09-16, 70 NRC 227 (2009)

applicant may challenge an expert opinion in the disclosure stage, via a motion for summary disposition, if it can show that there is no genuine issue as to any material fact and that it is entitled to a decision as a matter of law; LBP-09-30, 70 NRC 1039 (2009)

boards need not accept an expert's bare conclusions that an application is deficient, inadequate, or wrong as support for a contention; CLI-10-2, 71 NRC 27 (2010)

disclosure of the name and telephone number of an expert witness, if this information is not known to the party, is not required; LBP-09-30, 70 NRC 1039 (2009)

each witness is not required to generate an analysis, but rather must disclose the analysis or other authority upon which the witness bases his or her opinion; LBP-09-30, 70 NRC 1039 (2009)

experience with and information about past direct and indirect effects of individual past actions may be useful in illuminating or predicting the direct and indirect effects of a proposed action; LBP-09-16, 70 NRC 227 (2009)

expert opinion that merely states a conclusion (e.g., the application is deficient, inadequate, or wrong) without providing a reasoned basis or explanation for that conclusion is inadequate because it deprives the board of the ability to make the necessary, reflective assessment of the opinion; LBP-09-6, 69 NRC 367 (2009); LBP-10-6, 71 NRC 350 (2010); LBP-10-10, 71 NRC 529 (2010)

for Subpart G proceedings, each expert witness is required to create, sign, and submit a written expert report; LBP-09-30, 70 NRC 1039 (2009)

if an expert witness has a copy of the analysis or other authority upon which his or her opinion is based, and it is extant and reasonably available to that witness and/or the party, then the mandatory disclosure should include that analysis or other authority; LBP-09-30, 70 NRC 1039 (2009)

if an expert witness is subsequently selected, or any analysis or other authority is subsequently amended or newly developed, then this information must be promptly disclosed; LBP-09-30, 70 NRC 1039 (2009)

it is the petitioner's obligation to present factual information and/or expert opinion necessary to support its contention; LBP-07-3, 65 NRC 237 (2007)

mandatory disclosures by parties include the disclosure of the name of any person, including any expert, upon whose opinion the party bases its claims and contentions and may rely upon as a witness, and a

SUBJECT INDEX

- copy of the analysis or other authority upon which that person bases his or her opinion; LBP-09-22, 70 NRC 640 (2009)
- neither mere speculation nor bare or conclusory assertions, even by an expert, alleging that a matter should be considered will suffice to allow the admission of a proffered contention; LBP-07-3, 65 NRC 237 (2007); LBP-08-16, 68 NRC 361 (2008)
- on appeal, the Commission is loath to address complaints concerning a board's skepticism of expert witness's testimony, given that the Commission lacks the Board's ability to observe the demeanor of the parties' expert witnesses in general and petitioner's witness in particular; CLI-10-17, 72 NRC 1 (2010)
- petitioner does not have to provide a complete or final list of its experts or evidence or prove the merits of its contention at the admissibility stage; CLI-09-12, 69 NRC 535 (2009); LBP-09-6, 69 NRC 367 (2009)
- petitioner does not need to provide expert opinion or a substantive affidavit in order to satisfy 10 C.F.R. 2.309(f)(1)(v); LBP-10-15, 72 NRC 257 (2010)
- summary disposition is not the vehicle for untangling expert disputes so long as the experts are competent and the information they provide is adequately stated and explained; LBP-07-2, 65 NRC 153 (2007); LBP-07-12, 66 NRC 113 (2007); LBP-08-2, 67 NRC 54 (2008)
- support for a contention that consisted of brief quotes from the petitioners' correspondence with a physicist were found to be bare conclusory remarks with respect to which the petitioner offered no explanation or analysis; CLI-10-2, 71 NRC 27 (2010)
- there is no requirement that an expert's opinion must include specific references to supporting sources and documents; LBP-09-6, 69 NRC 367 (2009)
- when specialists express conflicting views, an agency must have discretion to rely on the reasonable opinions of its own qualified experts; CLI-08-26, 68 NRC 509 (2008)
- WORK ENVIRONMENT**
- petitioner's request that NRC scrutinize the steps taken to improve the handling of safety concerns brought to management by workers is granted in part and denied in part; DD-07-1, 65 NRC 195 (2007)
- ZONE OF INTERESTS**
- injury in fact may be either actual or threatened to establish standing, but must arguably lie within the zone of interests protected by the statutes governing the proceeding; LBP-08-6, 67 NRC 241 (2008)
- petitioner's claimed injury must be arguably within the zone of interests protected by the governing statute in the proceeding; LBP-10-16, 72 NRC 361 (2010)
- preservation of Native American cultural traditions is a protected interest under federal law; LBP-10-16, 72 NRC 361 (2010)
- the breadth of the applicable zone of interests will vary according to the particular statutory provisions at issue; LBP-08-24, 68 NRC 691 (2008)
- to determine whether an interest is in the zone of interests of a statute, it is necessary first to discern the interests arguably to be protected by the statutory provision at issue and then to inquire whether petitioner's interests affected by the agency action are among them; LBP-08-24, 68 NRC 691 (2008); LBP-10-16, 72 NRC 361 (2010)

FACILITY INDEX

AMERICAN CENTRIFUGE PLANT; Docket No. 70-7004
MATERIALS LICENSE; April 3, 2006; MEMORANDUM AND ORDER; CLI-06-9, 63 NRC 433 (2006); CLI-06-10, 63 NRC 451 (2006)
MATERIALS LICENSE; February 1, 2007; MEMORANDUM AND ORDER; CLI-07-5, 65 NRC 109 (2007)
MATERIALS LICENSE; April 13, 2007; INITIAL DECISION (Authorizing the Issuance of the American Centrifuge Plant License); LBP-07-6, 65 NRC 429 (2007)
ARKANSAS NUCLEAR ONE, Units 1 and 2; Docket Nos. 50-313, 50-368
REQUEST FOR ACTION; January 9, 2006; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206; DD-06-1, 63 NRC 133 (2006)
BEAVER VALLEY POWER STATION, Units 1 and 2; Docket Nos. 50-334, 50-412
LICENSE TRANSFER; January 31, 2006; MEMORANDUM AND ORDER; CLI-06-2, 63 NRC 9 (2006)
BELL BEND NUCLEAR POWER PLANT; Docket No. 52-039-COL
COMBINED LICENSE; August 10, 2009; MEMORANDUM AND ORDER (Ruling on Petitions to Intervene and Requests for Hearing); LBP-09-18, 70 NRC 385 (2009)
COMBINED LICENSE; January 7, 2010; MEMORANDUM AND ORDER; CLI-10-7, 71 NRC 133 (2010)
BELLEFONTE NUCLEAR PLANT, Units 1 and 2; Docket Nos. 50-438, 50-439
CONSTRUCTION PERMIT; January 7, 2010; MEMORANDUM AND ORDER; CLI-10-6, 71 NRC 113 (2010)
CONSTRUCTION PERMIT; April 2, 2010; MEMORANDUM AND ORDER (Ruling on Intervention Petition); LBP-10-7, 71 NRC 391 (2010)
CONSTRUCTION PERMIT; September 29, 2010; MEMORANDUM AND ORDER; CLI-10-26, 72 NRC 474 (2010)
BELLEFONTE NUCLEAR POWER PLANT, Units 3 and 4; Docket Nos. 52-014, 52-015
COMBINED LICENSE; September 12, 2008; MEMORANDUM AND ORDER (Ruling on Standing, Hearing Petition Timeliness, and Contention Admissibility); LBP-08-16, 68 NRC 361 (2008)
COMBINED LICENSE; February 17, 2009; MEMORANDUM AND ORDER; CLI-09-3, 69 NRC 68 (2009)
COMBINED LICENSE; November 3, 2009; MEMORANDUM AND ORDER; CLI-09-21, 70 NRC 927 (2009)
BIG ROCK POINT INDEPENDENT SPENT FUEL STORAGE INSTALLATION; Docket Nos. 50-155, 72-043
LICENSE TRANSFER; April 26, 2007; MEMORANDUM AND ORDER; CLI-07-19, 65 NRC 423 (2007)
LICENSE TRANSFER; June 28, 2007; MEMORANDUM AND ORDER; CLI-07-21, 65 NRC 519 (2007)
BIG ROCK POINT PLANT; Docket Nos. 50-155, 72-043
LICENSE TRANSFER; August 22, 2008; MEMORANDUM AND ORDER; CLI-08-19, 68 NRC 251 (2008)
CALLAWAY PLANT, Unit 2; Docket No. 52-037
COMBINED LICENSE; August 28, 2009; MEMORANDUM AND ORDER (Approving Settlement Agreement and Terminating Contested Adjudicatory Proceeding); LBP-09-23, 70 NRC 659 (2009)

FACILITY INDEX

CALVERT CLIFFS INDEPENDENT SPENT FUEL STORAGE INSTALLATION; Docket No. 72-8
LICENSE TRANSFER; July 26, 2006; MEMORANDUM AND ORDER; CLI-06-21, 64 NRC 30 (2006)

CALVERT CLIFFS NUCLEAR POWER PLANT, Unit 3; Docket No. 52-016
COMBINED LICENSE; March 24, 2009; MEMORANDUM AND ORDER (Ruling on Joint Petitioners' Standing and Contentions); LBP-09-4, 69 NRC 170 (2009)
COMBINED LICENSE; July 30, 2009; MEMORANDUM AND ORDER (Granting Motion for Summary Disposition of Contention 2); LBP-09-15, 70 NRC 198 (2009)
COMBINED LICENSE; October 13, 2009; MEMORANDUM AND ORDER; CLI-09-20, 70 NRC 911 (2009)
COMBINED LICENSE; December 28, 2010; ORDER (Ruling on Intervenors' Proposed New Contention 10); LBP-10-24, 72 NRC 720 (2010)

CALVERT CLIFFS NUCLEAR POWER PLANT, Units 1 and 2; Docket Nos. 50-317, 50-318
LICENSE TRANSFER; July 26, 2006; MEMORANDUM AND ORDER; CLI-06-21, 64 NRC 30 (2006)

CATAWBA NUCLEAR STATION, Units 1 and 2; Docket Nos. 50-413, 50-414
REQUEST FOR ACTION; January 9, 2006; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206; DD-06-1, 63 NRC 133 (2006)

COMANCHE PEAK NUCLEAR POWER PLANT, Units 3 and 4; Docket Nos. 52-034, 52-035
COMBINED LICENSE; August 6, 2009; MEMORANDUM AND ORDER (Ruling on Standing and Contentions of Petitioners, and Other Pending Matters); LBP-09-17, 70 NRC 311 (2009)
COMBINED LICENSE; March 11, 2010; MEMORANDUM AND ORDER (Ruling on New SUNSI Contentions, Mootness of Original Contention 7, and Intervenors' Access to ISG-016); LBP-10-5, 71 NRC 329 (2010)
COMBINED LICENSE; June 25, 2010; MEMORANDUM AND ORDER (Ruling on Mootness of Contentions 13 and 18, and New Environmental Contentions); LBP-10-10, 71 NRC 529 (2010)
COMBINED LICENSE; September 29, 2010; MEMORANDUM AND ORDER; CLI-10-25, 72 NRC 469 (2010)

DAVIS-BESSE NUCLEAR POWER STATION, Unit 1; Docket No. 50-346
LICENSE TRANSFER; January 31, 2006; MEMORANDUM AND ORDER; CLI-06-2, 63 NRC 9 (2006)

DEWEY-BURDOCK IN SITU URANIUM RECOVERY FACILITY; Docket No. 40-9075-MLA
MATERIALS LICENSE AMENDMENT; August 5, 2010; MEMORANDUM AND ORDER (Ruling on Petitions to Intervene and Requests for Hearing); LBP-10-16, 72 NRC 361 (2010)

DIABLO CANYON NUCLEAR POWER PLANT, Units 1 and 2; Docket Nos. 50-275, 50-323
LICENSE RENEWAL; August 4, 2010; MEMORANDUM AND ORDER (Rulings on Standing, Contention Admissibility, Waiver Petition, and Selection of Hearing Procedures); LBP-10-15, 72 NRC 257 (2010)

DIABLO CANYON POWER PLANT INDEPENDENT SPENT FUEL STORAGE INSTALLATION; Docket No. 72-26
INDEPENDENT SPENT FUEL STORAGE INSTALLATION; September 6, 2006; MEMORANDUM AND ORDER; CLI-06-23, 64 NRC 107 (2006)
INDEPENDENT SPENT FUEL STORAGE INSTALLATION; November 9, 2006; MEMORANDUM AND ORDER; CLI-06-27, 64 NRC 399 (2006)
INDEPENDENT SPENT FUEL STORAGE INSTALLATION; February 26, 2007; MEMORANDUM AND ORDER; CLI-07-11, 65 NRC 148 (2007)
INDEPENDENT SPENT FUEL STORAGE INSTALLATION; January 15, 2008; MEMORANDUM AND ORDER; CLI-08-1, 67 NRC 1 (2008)
INDEPENDENT SPENT FUEL STORAGE INSTALLATION; March 27, 2008; ORDER; CLI-08-5, 67 NRC 174 (2008)
INDEPENDENT SPENT FUEL STORAGE INSTALLATION; April 30, 2008; MEMORANDUM AND ORDER; CLI-08-8, 67 NRC 193 (2008)
INDEPENDENT SPENT FUEL STORAGE INSTALLATION; May 14, 2008; ORDER (Granting NRC Staff's Unopposed Motion for Summary Disposition of San Luis Obispo Mothers for Peace's Contention 1(b)); LBP-08-7, 67 NRC 361 (2008)
INDEPENDENT SPENT FUEL STORAGE INSTALLATION; October 23, 2008; MEMORANDUM AND ORDER; CLI-08-26, 68 NRC 509 (2008)

FACILITY INDEX

DONALD C. COOK NUCLEAR PLANT, Unit 1; Docket No. 50-315
REQUEST FOR ACTION; September 4, 2009; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206;
DD-09-2, 70 NRC 899 (2009)

DUANE ARNOLD ENERGY CENTER; Docket No. 50-331
LICENSE TRANSFER; July 26, 2006; MEMORANDUM AND ORDER; CLI-06-21, 64 NRC 30 (2006)

EAGLE ROCK ENRICHMENT FACILITY; Docket No. 70-7015
MATERIALS LICENSE; July 23, 2009; ORDER (Notice of Receipt of Application for License; Notice
of Consideration of Issuance of License; Notice of Hearing and Commission Order; and Order
Imposing Procedures for Access to Sensitive Unclassified Nonsafeguards Information and Safeguards
Information for Contention Preparation); CLI-09-15, 70 NRC 1 (2009)

FERMI NUCLEAR POWER PLANT, Unit 3; Docket No. 52-033
COMBINED LICENSE; February 17, 2009; MEMORANDUM AND ORDER; CLI-09-4, 69 NRC 80
(2009)
COMBINED LICENSE; July 31, 2009; MEMORANDUM AND ORDER (Ruling on Hearing Requests);
LBP-09-16, 70 NRC 227 (2009)
COMBINED LICENSE; November 17, 2009; MEMORANDUM AND ORDER; CLI-09-22, 70 NRC 932
(2009)
COMBINED LICENSE; June 15, 2010; ORDER (Ruling on Proposed New Contentions 15 and 16);
LBP-10-9, 71 NRC 493 (2010)

FERMI POWER PLANT INDEPENDENT SPENT FUEL STORAGE INSTALLATION; Docket No. 72-71
LICENSE MODIFICATION; August 21, 2009; MEMORANDUM AND ORDER (Ruling on Standing
and Contention Admissibility); LBP-09-20, 70 NRC 565 (2009)

FERMI POWER PLANT INDEPENDENT SPENT FUEL STORAGE INSTALLATION; Docket No. 72-72
ENFORCEMENT; January 7, 2010; MEMORANDUM AND ORDER; CLI-10-3, 71 NRC 49 (2010)

GLE COMMERCIAL FACILITY; Docket No. 70-7016
MATERIALS LICENSE; January 7, 2010; ORDER (Notice of Receipt of Application for License; Notice
of Consideration of Issuance of License; Notice of Hearing and Commission Order; and Order
Imposing Procedures for Access to Sensitive Unclassified Nonsafeguards Information and Safeguards
Information for Contention Preparation); CLI-10-4, 71 NRC 56 (2010)

H.B. ROBINSON PLANT, Unit 2; Docket No. 50-261
REQUEST FOR ACTION; January 9, 2006; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206;
DD-06-1, 63 NRC 133 (2006)

HIGH-LEVEL WASTE REPOSITORY
PRE-LICENSE APPLICATION MATTERS; September 8, 2008; MEMORANDUM AND ORDER;
CLI-08-21, 68 NRC 351 (2008)

HIGH-LEVEL WASTE REPOSITORY; Docket No. PAPO-00
PRE-LICENSE APPLICATION MATTERS; February 2, 2006; MEMORANDUM AND ORDER;
CLI-06-5, 63 NRC 143 (2006)
PRE-LICENSE APPLICATION MATTERS; January 4, 2008; MEMORANDUM (Setting Forth Full
Reasoning for Denying Nevada's Motion to Strike); LBP-08-1, 67 NRC 37 (2008)
PRE-LICENSE APPLICATION MATTERS; April 23, 2008; MEMORANDUM AND ORDER (Denying
the Department of Energy's Motion to Strike); LBP-08-5, 67 NRC 205 (2008)
PRE-LICENSE APPLICATION MATTERS; June 17, 2008; MEMORANDUM AND ORDER; CLI-08-12,
67 NRC 386 (2008); CLI-08-14, 67 NRC 402 (2008)
PRE-LICENSE APPLICATION MATTERS; August 13, 2008; MEMORANDUM AND ORDER;
CLI-08-18, 68 NRC 246 (2008)
PRE-LICENSE APPLICATION MATTERS; August 22, 2008; MEMORANDUM AND ORDER;
CLI-08-20, 68 NRC 272 (2008)
PRE-LICENSE APPLICATION MATTERS; September 8, 2008; MEMORANDUM AND ORDER;
CLI-08-22, 68 NRC 355 (2008)

HIGH-LEVEL WASTE REPOSITORY; Docket Nos. PAPO-00, PAPO-001
PRE-LICENSE APPLICATION MATTERS; June 5, 2008; MEMORANDUM AND ORDER; CLI-08-11,
67 NRC 379 (2008)

FACILITY INDEX

HIGH-LEVEL WASTE REPOSITORY; Docket No. PAPO-001
PRE-LICENSE APPLICATION MATTERS; June 20, 2008; MEMORANDUM AND ORDER (Case Management Order Concerning Petitions to Intervene, Contentions, Responses and Replies, Standing Arguments, and Referencing or Attaching Supporting Materials); LBP-08-10, 67 NRC 450 (2008)

HIGH-LEVEL WASTE REPOSITORY; Docket No. 63-001
CONSTRUCTION AUTHORIZATION; October 17, 2008; ORDER; CLI-08-25, 68 NRC 497 (2008)
CONSTRUCTION AUTHORIZATION; May 11, 2009; MEMORANDUM AND ORDER (Identifying Participants and Admitted Contentions); LBP-09-6, 69 NRC 367 (2009)
CONSTRUCTION AUTHORIZATION; June 30, 2009; MEMORANDUM AND ORDER; Docket No. 63-001-HLW; CLI-09-14, 69 NRC 580 (2009)
CONSTRUCTION AUTHORIZATION; December 9, 2009; MEMORANDUM AND ORDER (Addressing Contentions Filed After Initial Petitions); LBP-09-29, 70 NRC 1028 (2009)
CONSTRUCTION AUTHORIZATION; March 11, 2010; MEMORANDUM AND ORDER; CLI-10-10, 71 NRC 281 (2010)
CONSTRUCTION AUTHORIZATION; April 23, 2010; MEMORANDUM AND ORDER; CLI-10-13, 71 NRC 387 (2010)
CONSTRUCTION AUTHORIZATION; June 29, 2010; MEMORANDUM AND ORDER (Granting Intervention to Petitioners and Denying Withdrawal Motion); LBP-10-11, 71 NRC 609 (2010)
CONSTRUCTION AUTHORIZATION; December 14, 2010; MEMORANDUM AND ORDER (Deciding Phase I Legal Issues and Denying Rule Waiver Petitions); LBP-10-22, 72 NRC 661 (2010)

IDAHO STATE UNIVERSITY AGN-201; Docket No. 50-284
REQUEST FOR ACTION; July 30, 2010; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206; DD-10-3, 72 NRC 171 (2010)

IN SITU LEACH FACILITY, Crawford, Nebraska; Docket No. 40-8943
LICENSE RENEWAL; November 21, 2008; MEMORANDUM AND ORDER (Ruling on Hearing Requests); LBP-08-24, 68 NRC 691 (2008)
LICENSE RENEWAL; December 10, 2008; ORDER (Ruling on Motion to Admit New Contention); LBP-08-27, 68 NRC 951 (2008)
MATERIALS LICENSE AMENDMENT; January 27, 2009; MEMORANDUM AND ORDER (Ruling on Foreign Ownership and Arsenic Contentions and Other Pending Matters); LBP-09-1, 69 NRC 11 (2009)
MATERIALS LICENSE AMENDMENT; May 18, 2009; MEMORANDUM AND ORDER; CLI-09-9, 69 NRC 331 (2009)

INDIAN POINT, Units 1, 2, and 3; Docket Nos. 50-003, 50-247, 50-286, 72-51
LICENSE TRANSFER; August 22, 2008; MEMORANDUM AND ORDER; CLI-08-19, 68 NRC 251 (2008)

INDIAN POINT, Units 2 and 3; Docket Nos. 50-247, 50-286
LICENSE RENEWAL; December 12, 2007; MEMORANDUM AND ORDER; CLI-07-28, 66 NRC 275 (2007)
LICENSE RENEWAL; April 30, 2008; MEMORANDUM AND ORDER; CLI-08-7, 67 NRC 187 (2008)
LICENSE RENEWAL; July 31, 2008; MEMORANDUM AND ORDER (Ruling on Petitions to Intervene and Requests for Hearing); LBP-08-13, 68 NRC 43 (2008)
LICENSE RENEWAL; October 6, 2008; MEMORANDUM AND ORDER; CLI-08-23, 68 NRC 461 (2008)
LICENSE RENEWAL; November 6, 2008; MEMORANDUM AND ORDER; CLI-08-27, 68 NRC 655 (2008)
LICENSE RENEWAL; December 9, 2008; MEMORANDUM AND ORDER; CLI-08-29, 68 NRC 899 (2008)
LICENSE RENEWAL; March 5, 2009; MEMORANDUM AND ORDER; CLI-09-6, 69 NRC 128 (2009)
LICENSE RENEWAL; June 30, 2010; MEMORANDUM AND ORDER (Ruling on the Admissibility of New York's New and Amended Contentions 12B, 16B, 35, and 36); LBP-10-13, 71 NRC 673 (2010)
LICENSE RENEWAL; July 8, 2010; MEMORANDUM AND ORDER; CLI-10-19, 72 NRC 98 (2010)
LICENSE RENEWAL; November 30, 2010; MEMORANDUM AND ORDER; CLI-10-30, 72 NRC 564 (2010)

FACILITY INDEX

REQUEST FOR ACTION; January 9, 2006; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206; DD-06-1, 63 NRC 133 (2006)

REQUEST FOR ACTION; August 14, 2008; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206; DD-08-2, 68 NRC 339 (2008)

REQUEST FOR ACTION; May 29, 2009; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206; DD-09-1, 69 NRC 501 (2009)

IRIGARAY AND CHRISTENSEN RANCH FACILITIES; Docket No. 40-08502

MATERIALS LICENSE RENEWAL; July 23, 2009; MEMORANDUM AND ORDER (Ruling on Petition for Review and Request for Hearing); LBP-09-13, 70 NRC 168 (2009)

JAMES A. FITZPATRICK NUCLEAR POWER PLANT; Docket No. 50-333

LICENSE TRANSFER; August 22, 2008; MEMORANDUM AND ORDER; CLI-08-19, 68 NRC 251 (2008)

REQUEST FOR ACTION; January 9, 2006; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206; DD-06-1, 63 NRC 133 (2006)

JEFFERSON PROVING GROUND SITE; Docket No. 40-8838

MATERIALS LICENSE AMENDMENT; February 28, 2008; INITIAL DECISION; LBP-08-4, 67 NRC 105 (2008)

LEVY COUNTY NUCLEAR POWER PLANT, Units 1 and 2; Docket Nos. 52-029, 52-030

COMBINED LICENSE; July 8, 2009; MEMORANDUM AND ORDER (Rulings on Standing, Contention Admissibility, Motion to File New Contention, and Selection of Hearing Procedure); LBP-09-10, 70 NRC 51 (2009)

COMBINED LICENSE; August 27, 2009; INITIAL SCHEDULING ORDER; LBP-09-22, 70 NRC 640 (2009)

COMBINED LICENSE; December 29, 2009; ORDER (Denying Motion to Compel Disclosure of Bases for Expert Opinion); LBP-09-30, 70 NRC 1039 (2009)

COMBINED LICENSE; January 7, 2010; MEMORANDUM AND ORDER; CLI-10-2, 71 NRC 27 (2010)

COMBINED LICENSE; November 18, 2010; MEMORANDUM AND ORDER (Denying Motion for Summary Disposition of Contention 8A); LBP-10-20, 72 NRC 571 (2010)

COMBINED LICENSE; December 22, 2010; MEMORANDUM AND ORDER (Granting Motion to Compel Disclosure of Groundwater Modeling Information); LBP-10-23, 72 NRC 692 (2010)

MCGUIRE NUCLEAR STATION, Units 1 and 2; Docket Nos. 50-369, 50-370

REQUEST FOR ACTION; January 9, 2006; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206; DD-06-1, 63 NRC 133 (2006)

MILLSTONE NUCLEAR POWER STATION, Unit 3; Docket No. 50-423

OPERATING LICENSE AMENDMENT; June 4, 2008; MEMORANDUM AND ORDER (Ruling on Petition to Intervene and Request for Hearing); LBP-08-9, 67 NRC 421 (2008)

OPERATING LICENSE AMENDMENT; August 13, 2008; MEMORANDUM AND ORDER; CLI-08-17, 68 NRC 231 (2008)

OPERATING LICENSE AMENDMENT; March 5, 2009; MEMORANDUM AND ORDER; CLI-09-5, 69 NRC 115 (2009)

MILLSTONE NUCLEAR POWER STATION, Units 2 and 3; Docket Nos. 50-336, 50-423

OPERATING LICENSE RENEWAL; January 31, 2006; MEMORANDUM OPINION AND ORDER; CLI-06-4, 63 NRC 32 (2006)

MIXED OXIDE FUEL FABRICATION FACILITY; Docket No. 70-3098

MATERIALS LICENSE AMENDMENT; October 31, 2007; MEMORANDUM AND ORDER (Ruling on Standing and Contentions); LBP-07-14, 66 NRC 169 (2007)

MATERIALS LICENSE AMENDMENT; June 27, 2008; MEMORANDUM AND ORDER (Ruling on Contentions and All Other Pending Matters); LBP-08-11, 67 NRC 460 (2008)

MATERIALS LICENSE AMENDMENT; February 4, 2009; MEMORANDUM AND ORDER; CLI-09-2, 69 NRC 55 (2009)

MONTICELLO NUCLEAR GENERATING PLANT; Docket No. 50-263

LICENSE RENEWAL; February 2, 2006; MEMORANDUM AND ORDER; CLI-06-6, 63 NRC 161 (2006)

FACILITY INDEX

NATIONAL ENRICHMENT FACILITY; Docket No. 70-3103
MATERIALS LICENSE; March 3, 2006; MEMORANDUM AND ORDER (Ruling on Summary Disposition Cross-Motions Relating to Remand from CLI-05-20); LBP-06-9, 63 NRC 289 (2006)
MATERIALS LICENSE; March 3, 2006; SECOND PARTIAL INITIAL DECISION (Environmental Impacts of Disposal of Depleted Uranium); LBP-06-8, 63 NRC 241 (2006)
MATERIALS LICENSE; May 31, 2006; THIRD PARTIAL INITIAL DECISION (Safety-Related Contentions); LBP-06-15, 63 NRC 591 (2006)
MATERIALS LICENSE; June 2, 2006; MEMORANDUM AND ORDER; CLI-06-15, 63 NRC 687 (2006)
MATERIALS LICENSE; June 23, 2006; FINAL PARTIAL INITIAL DECISION (Mandatory Hearing/Uncontested Issues); LBP-06-17, 63 NRC 747 (2006)
MATERIALS LICENSE; August 17, 2006; MEMORANDUM AND ORDER; CLI-06-22, 64 NRC 37 (2006)

NINE MILE POINT NUCLEAR STATION, Units 1 and 2; Docket Nos. 50-220, 50-410
LICENSE TRANSFER; July 26, 2006; MEMORANDUM AND ORDER; CLI-06-21, 64 NRC 30 (2006)

NORTH ANNA POWER STATION, Unit 3; Docket No. 52-017
COMBINED LICENSE; August 15, 2008; MEMORANDUM AND ORDER (Ruling on Petitioner's Standing and Contentions and NCUC's Request to Participate as a Nonparty Interested State); LBP-08-15, 68 NRC 294 (2008)
COMBINED LICENSE; November 7, 2008; ORDER (Denying the Motion of the Blue Ridge Environmental Defense League to Reconsider the Board's Order of August 15, 2008); LBP-08-23, 68 NRC 679 (2008)
COMBINED LICENSE; November 25, 2009; MEMORANDUM AND ORDER (Admitting Contention 10 in Part); LBP-09-27, 70 NRC 992 (2009)
COMBINED LICENSE; September 2, 2010; MEMORANDUM AND ORDER (Rulings on Motion to Dismiss Contention 10 and Proposed New Contention 11); LBP-10-17, 72 NRC 501 (2010)

OYSTER CREEK NUCLEAR GENERATING STATION; Docket No. 50-219
LICENSE RENEWAL; February 27, 2006; MEMORANDUM AND ORDER (Denying New Jersey's Request for Hearing and Petition To Intervene, and Granting NIRS's Request for Hearing and Petition to Intervene); LBP-06-7, 63 NRC 188 (2006)
LICENSE RENEWAL; March 22, 2006; MEMORANDUM AND ORDER (Denying NIRS's Motion for Leave to Add Contentions or Supplement the Basis of the Original Contention); LBP-06-11, 63 NRC 391 (2006)
LICENSE RENEWAL; June 6, 2006; MEMORANDUM AND ORDER (Contention of Omission Is Moot, and Motions Concerning Mandatory Disclosure Are Moot); LBP-06-16, 63 NRC 737 (2006)
LICENSE RENEWAL; September 6, 2006; MEMORANDUM AND ORDER; CLI-06-24, 64 NRC 111 (2006)
LICENSE RENEWAL; October 10, 2006; MEMORANDUM AND ORDER (Granting Petition to File a New Contention); LBP-06-22, 64 NRC 229 (2006)
LICENSE RENEWAL; February 26, 2007; MEMORANDUM AND ORDER; CLI-07-8, 65 NRC 124 (2007)
LICENSE RENEWAL; December 18, 2007; INITIAL DECISION (Rejecting Citizens' Challenge to AmerGen's Application to Renew Its Operating License for the Oyster Creek Nuclear Generating Station); LBP-07-17, 66 NRC 327 (2007)
LICENSE RENEWAL; May 28, 2008; ORDER (Requesting Additional Briefs); CLI-08-10, 67 NRC 357 (2008)
LICENSE RENEWAL; June 17, 2008; MEMORANDUM AND ORDER; CLI-08-13, 67 NRC 396 (2008)
LICENSE RENEWAL; July 24, 2008; MEMORANDUM AND ORDER (Denying Citizens' Motion to Reopen the Record and to Add a New Contention); LBP-08-12, 68 NRC 5 (2008)
LICENSE RENEWAL; October 6, 2008; MEMORANDUM AND ORDER; CLI-08-23, 68 NRC 461 (2008)
LICENSE RENEWAL; November 6, 2008; MEMORANDUM AND ORDER; CLI-08-28, 68 NRC 658 (2008)
LICENSE RENEWAL; April 1, 2009; MEMORANDUM AND ORDER; CLI-09-7, 69 NRC 235 (2009)

FACILITY INDEX

PALISADES NUCLEAR PLANT; Docket No. 50-255
LICENSE RENEWAL; March 7, 2006; MEMORANDUM AND ORDER (Ruling on Standing, Contentions, and Other Pending Matters); LBP-06-10, 63 NRC 314 (2006)
LICENSE RENEWAL; June 23, 2006; MEMORANDUM AND ORDER; CLI-06-17, 63 NRC 727 (2006)
LICENSE RENEWAL; February 26, 2007; MEMORANDUM AND ORDER; CLI-07-9, 65 NRC 139 (2007)
LICENSE TRANSFER; April 26, 2007; MEMORANDUM AND ORDER; CLI-07-18, 65 NRC 399 (2007)
LICENSE TRANSFER; June 28, 2007; MEMORANDUM AND ORDER; CLI-07-22, 65 NRC 525 (2007)
PALISADES NUCLEAR PLANT; Docket Nos. 50-255, 72-7
LICENSE TRANSFER; August 22, 2008; MEMORANDUM AND ORDER; CLI-08-19, 68 NRC 251 (2008)
REQUEST FOR ACTION; March 20, 2007; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206; DD-07-2, 65 NRC 365 (2007)
PERRY NUCLEAR POWER PLANT, Unit 1; Docket No. 50-440
LICENSE TRANSFER; January 31, 2006; MEMORANDUM AND ORDER; CLI-06-2, 63 NRC 9 (2006)
PILGRIM NUCLEAR POWER STATION; Docket No. 50-293
LICENSE RENEWAL; October 10, 2006; ORDER; CLI-06-26, 64 NRC 225 (2006)
LICENSE RENEWAL; October 16, 2006; MEMORANDUM AND ORDER (Ruling on Standing and Contentions of Petitioners Massachusetts Attorney General and Pilgrim Watch); LBP-06-23, 64 NRC 257 (2006)
LICENSE RENEWAL; January 11, 2007; MEMORANDUM AND ORDER; CLI-07-2, 65 NRC 10 (2007)
LICENSE RENEWAL; January 22, 2007; MEMORANDUM AND ORDER; CLI-07-3, 65 NRC 13 (2007)
LICENSE RENEWAL; March 15, 2007; MEMORANDUM AND ORDER; CLI-07-13, 65 NRC 211 (2007)
LICENSE RENEWAL; October 17, 2007; MEMORANDUM AND ORDER (Ruling on Entergy's Motion for Summary Disposition of Pilgrim Watch Contention 1, Regarding Adequacy of Aging Management Program for Buried Pipes and Tanks and Potential Need for Monitoring Wells to Supplement Program); LBP-07-12, 66 NRC 113 (2007)
LICENSE RENEWAL; October 30, 2007; MEMORANDUM AND ORDER (Ruling on Motion to Dismiss Petitioners' Contention 3 Regarding Severe Accident Mitigation Alternatives); LBP-07-13, 66 NRC 131 (2007)
LICENSE RENEWAL; January 15, 2008; MEMORANDUM AND ORDER; CLI-08-2, 67 NRC 31 (2008)
LICENSE RENEWAL; May 16, 2008; MEMORANDUM AND ORDER; CLI-08-9, 67 NRC 353 (2008)
LICENSE RENEWAL; October 6, 2008; MEMORANDUM AND ORDER; CLI-08-23, 68 NRC 461 (2008)
LICENSE RENEWAL; October 30, 2008; INITIAL DECISION; LBP-08-22, 68 NRC 590 (2008)
LICENSE RENEWAL; June 4, 2009; MEMORANDUM AND ORDER; CLI-09-10, 69 NRC 521 (2009)
LICENSE RENEWAL; June 4, 2009; MEMORANDUM AND ORDER (Requesting Additional Briefing); CLI-09-11, 69 NRC 529 (2009)
LICENSE RENEWAL; March 26, 2010; MEMORANDUM AND ORDER; CLI-10-11, 71 NRC 287 (2010)
LICENSE RENEWAL; June 17, 2010; MEMORANDUM AND ORDER; CLI-10-14, 71 NRC 449 (2010); CLI-10-15, 71 NRC 479 (2010)
LICENSE RENEWAL; August 27, 2010; MEMORANDUM AND ORDER; CLI-10-22, 72 NRC 202 (2010)
LICENSE RENEWAL; November 5, 2010; MEMORANDUM AND ORDER; CLI-10-28, 72 NRC 553 (2010)
LICENSE TRANSFER; August 22, 2008; MEMORANDUM AND ORDER; CLI-08-19, 68 NRC 251 (2008)

FACILITY INDEX

- POHAKULOA TRAINING AREA, Island of Hawaii, Hawaii; Docket No. 40-9083
MATERIALS LICENSE; August 12, 2010; MEMORANDUM AND ORDER; CLI-10-20, 72 NRC 185 (2010)
- POINT BEACH NUCLEAR PLANT, Unit 1; Docket No. 50-266
LICENSE AMENDMENT; October 14, 2008; MEMORANDUM AND ORDER (Denying Request for Hearing); LBP-08-19, 68 NRC 545 (2008)
- PRAIRIE ISLAND NUCLEAR GENERATING PLANT, Units 1 and 2; Docket Nos. 50-282, 50-306
LICENSE RENEWAL; December 5, 2008; MEMORANDUM AND ORDER (Ruling on Petition to Intervene, Request for Hearing, and Motion to Strike); LBP-08-26, 68 NRC 905 (2008)
LICENSE RENEWAL; September 30, 2010; MEMORANDUM AND ORDER; CLI-10-27, 72 NRC 481 (2010)
REQUEST FOR ACTION; July 20, 2010; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206; DD-10-2, 72 NRC 163 (2010)
- R.E. GINNA NUCLEAR POWER PLANT; Docket No. 50-244
LICENSE TRANSFER; July 26, 2006; MEMORANDUM AND ORDER; CLI-06-21, 64 NRC 30 (2006)
REQUEST FOR ACTION; January 9, 2006; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206; DD-06-1, 63 NRC 133 (2006)
- SCHOFIELD BARRACKS, Oahu, Hawaii; Docket No. 40-9083
MATERIALS LICENSE; February 24, 2010; MEMORANDUM AND ORDER (Denying Requests for Hearing); LBP-10-4, 71 NRC 216 (2010)
MATERIALS LICENSE; August 12, 2010; MEMORANDUM AND ORDER; CLI-10-20, 72 NRC 185 (2010)
- SEABROOK STATION, Unit 1; Docket No. 50-443
LICENSE TRANSFER; July 26, 2006; MEMORANDUM AND ORDER; CLI-06-21, 64 NRC 30 (2006)
OPERATING LICENSE AMENDMENT; October 14, 2008; MEMORANDUM AND ORDER (Denying Request for Hearing); LBP-08-20, 68 NRC 549 (2008)
- SHEARON HARRIS NUCLEAR POWER PLANT, Unit 1; Docket No. 50-400
LICENSE RENEWAL; August 3, 2007; MEMORANDUM AND ORDER (Ruling on Standing and Contentions of Petitioners North Carolina Waste Awareness and Reduction Network and Nuclear Information and Resource Service); LBP-07-11, 66 NRC 41 (2007)
REQUEST FOR ACTION; January 9, 2006; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206; DD-06-1, 63 NRC 133 (2006)
REQUEST FOR ACTION; June 13, 2007; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206; DD-07-3, 65 NRC 643 (2007)
- SHEARON HARRIS NUCLEAR POWER PLANT, Units 2 and 3; Docket Nos. 52-022, 52-023
COMBINED LICENSE; July 23, 2008; MEMORANDUM AND ORDER; CLI-08-15, 68 NRC 1 (2008)
COMBINED LICENSE; October 30, 2008; MEMORANDUM AND ORDER (Ruling on Standing and Contention Admissibility); LBP-08-21, 68 NRC 554 (2008)
COMBINED LICENSE; May 18, 2009; MEMORANDUM AND ORDER; CLI-09-8, 69 NRC 317 (2009)
COMBINED LICENSE; June 30, 2009; MEMORANDUM AND ORDER (Ruling on Admissibility of Contention TC-1 in Response to the Commission's Remand in CLI-09-8)
COMBINED LICENSE; March 11, 2010; MEMORANDUM AND ORDER; CLI-10-9, 71 NRC 245 (2010)
- SOUTH TEXAS PROJECT, Units 1 and 2; Docket Nos. 50-498, 50-499
REQUEST FOR ACTION; February 24, 2007; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206; DD-07-1, 65 NRC 195 (2007)
- SOUTH TEXAS PROJECT, Units 3 and 4; Docket Nos. 52-012, 52-013
COMBINED LICENSE; April 20, 2009; MEMORANDUM AND ORDER (Affirming Denial of Access to SUNSI); LBP-09-5, 69 NRC 303 (2009)
COMBINED LICENSE; August 27, 2009; MEMORANDUM AND ORDER (Ruling on Standing and Admissibility of Certain Contentions); LBP-09-21, 70 NRC 581 (2009)
COMBINED LICENSE; September 23, 2009; MEMORANDUM AND ORDER; CLI-09-18, 70 NRC 859 (2009)
COMBINED LICENSE; September 29, 2009; MEMORANDUM AND ORDER (Ruling on Admissibility of Contentions 8-16); LBP-09-25, 70 NRC 867 (2009)

FACILITY INDEX

COMBINED LICENSE; January 29, 2010; ORDER (Rulings on the Admissibility of New Contentions and on Intervenor's Challenge to Staff Denial of Documentary Access); LBP-10-2, 71 NRC 190 (2010)

COMBINED LICENSE; June 17, 2010; MEMORANDUM AND ORDER; CLI-10-16, 71 NRC 486 (2010)

COMBINED LICENSE; July 2, 2010; MEMORANDUM AND ORDER (Rulings on Motions to Dismiss Contentions 8, 9, 14, 16, 21; Amended Contentions 8 and 21; New Colocation Contentions; and New Main Cooling Reservoir Contentions); LBP-10-14, 72 NRC 101 (2010)

COMBINED LICENSE; September 29, 2010; MEMORANDUM AND ORDER; CLI-10-24, 72 NRC 451 (2010)

SPECIAL NUCLEAR FACILITY; Docket No. 70-143

ENFORCEMENT; December 13, 2007; MEMORANDUM AND ORDER (Denying Requests for Hearing); LBP-07-16, 66 NRC 277 (2007)

ST. LUCIE NUCLEAR POWER PLANT, Units 1 and 2; Docket Nos. 50-335, 50-389

ENFORCEMENT; August 15, 2008; MEMORANDUM AND ORDER (Denying Request for Hearing); LBP-08-14, 68 NRC 279 (2008)

LICENSE TRANSFER; July 26, 2006; MEMORANDUM AND ORDER; CLI-06-21, 64 NRC 30 (2006)

SUSQUEHANNA STEAM ELECTRIC STATION, Units 1 and 2; Docket Nos. 50-387, 50-388

OPERATING LICENSE RENEWAL; March 22, 2007; MEMORANDUM AND ORDER (Ruling on Standing and Contentions of Petitioner Eric Joseph Epstein); LBP-07-4, 65 NRC 281 (2007)

OPERATING LICENSE RENEWAL; July 27, 2007; MEMORANDUM AND ORDER (Ruling on Standing and Contentions); LBP-07-10, 66 NRC 1 (2007)

OPERATING LICENSE RENEWAL; October 5, 2007; MEMORANDUM AND ORDER; CLI-07-25, 66 NRC 101 (2007)

TURKEY POINT NUCLEAR GENERATING PLANT, Units 3 and 4; Docket Nos. 50-250, 50-251

LICENSE TRANSFER; July 26, 2006; MEMORANDUM AND ORDER; CLI-06-21, 64 NRC 30 (2006)

OPERATING LICENSE AMENDMENT; October 14, 2008; MEMORANDUM AND ORDER (Denying Request for Hearing); LBP-08-18, 68 NRC 533 (2008)

REQUEST FOR ACTION; July 9, 2010; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206; DD-10-1, 72 NRC 149 (2010)

VERMONT YANKEE NUCLEAR POWER STATION; Docket No. 50-271

LICENSE RENEWAL; September 22, 2006; MEMORANDUM AND ORDER (Ruling on Standing, Contentions, Hearing Procedures, State Statutory Claim, and Contention Adoption); LBP-06-20, 64 NRC 131 (2006)

LICENSE RENEWAL; October 10, 2006; ORDER; CLI-06-26, 64 NRC 225 (2006)

LICENSE RENEWAL; January 11, 2007; MEMORANDUM AND ORDER; CLI-07-1, 65 NRC 1 (2007)

LICENSE RENEWAL; January 22, 2007; MEMORANDUM AND ORDER; CLI-07-3, 65 NRC 13 (2007)

LICENSE RENEWAL; March 15, 2007; MEMORANDUM AND ORDER; CLI-07-13, 65 NRC 211 (2007)

LICENSE RENEWAL; April 11, 2007; MEMORANDUM AND ORDER; CLI-07-16, 65 NRC 371 (2007)

LICENSE RENEWAL; November 7, 2007; MEMORANDUM AND ORDER (Ruling on NEC Motions to File and Admit New Contention); LBP-07-15, 66 NRC 261 (2007)

LICENSE RENEWAL; October 6, 2008; MEMORANDUM AND ORDER; CLI-08-23, 68 NRC 461 (2008)

LICENSE RENEWAL; November 24, 2008; PARTIAL INITIAL DECISION (Ruling on Contentions 2A, 2B, 3, and 4); LBP-08-25, 68 NRC 763 (2008)

LICENSE RENEWAL; June 4, 2009; MEMORANDUM AND ORDER; CLI-09-10, 69 NRC 521 (2009)

LICENSE RENEWAL; July 8, 2009; FULL INITIAL DECISION (Denying NEC's Motion to File a New Contention); LBP-09-9, 70 NRC 41 (2009)

LICENSE RENEWAL; July 8, 2010; MEMORANDUM AND ORDER; CLI-10-17, 72 NRC 1 (2010)

LICENSE RENEWAL; October 28, 2010; MEMORANDUM AND ORDER (Ruling on Motion to Reopen Proffering New Contention); LBP-10-19, 72 NRC 529 (2010)

FACILITY INDEX

LICENSE TRANSFER; August 22, 2008; MEMORANDUM AND ORDER; CLI-08-19, 68 NRC 251 (2008)

OPERATING LICENSE AMENDMENT; January 17, 2006; MEMORANDUM AND ORDER (Ruling on Deliberative Process Privilege Claims); LBP-06-3, 63 NRC 85 (2006)

OPERATING LICENSE AMENDMENT; January 31, 2006; MEMORANDUM AND ORDER (Denying Motion for Summary Disposition of New England Coalition Contention 3); LBP-06-5, 63 NRC 116 (2006)

OPERATING LICENSE AMENDMENT; March 3, 2006; MEMORANDUM AND ORDER; CLI-06-8, 63 NRC 235 (2006)

OPERATING LICENSE AMENDMENT; May 25, 2006; MEMORANDUM AND ORDER (Ruling on Admissibility of Three Additional Contentions); LBP-06-14, 63 NRC 568 (2006)

OPERATING LICENSE AMENDMENT; June 23, 2006; MEMORANDUM AND ORDER (Approving Settlement Agreement, Granting Dismissal of Contentions, and Accepting Withdrawal of Vermont Department of Public Service); LBP-06-18, 63 NRC 830 (2006)

OPERATING LICENSE AMENDMENT; February 26, 2007; INITIAL DECISION (Ruling on NEC Contention 3); LBP-07-2, 65 NRC 153 (2007)

REQUEST FOR ACTION; January 9, 2006; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206; DD-06-1, 63 NRC 133 (2006)

REQUEST FOR ACTION; March 4, 2006; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206; DD-06-2, 63 NRC 425 (2006)

REQUEST FOR ACTION; April 28, 2008; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206; DD-08-1, 67 NRC 347 (2008)

VIRGIL C. SUMMER NUCLEAR STATION, Units 2 and 3; Docket Nos. 52-027-COL, 52-028-COL
COMBINED LICENSE; February 18, 2009; ORDER (Ruling on Standing and Contention Admissibility); LBP-09-2, 69 NRC 87 (2009)

COMBINED LICENSE; January 7, 2010; MEMORANDUM AND ORDER; CLI-10-1, 71 NRC 1 (2010)

COMBINED LICENSE; March 17, 2010; MEMORANDUM AND ORDER ON REMAND (Denying on Remand the Sierra Club and Friends of the Earth's Petition to Intervene)

COMBINED LICENSE; August 27, 2010; MEMORANDUM AND ORDER; CLI-10-21, 72 NRC 197 (2010)

VOGTLE ELECTRIC GENERATING PLANT, Units 3 and 4; Docket Nos. 52-025, 52-026

COMBINED LICENSE; March 5, 2009; MEMORANDUM AND ORDER (Ruling on Standing and Contention Admissibility); LBP-09-3, 69 NRC 139 (2009)

COMBINED LICENSE; June 25, 2009; MEMORANDUM AND ORDER; CLI-09-13, 69 NRC 575 (2009)

COMBINED LICENSE; July 31, 2009; MEMORANDUM AND ORDER; CLI-09-16, 70 NRC 33 (2009)

COMBINED LICENSE; January 8, 2010; MEMORANDUM AND ORDER (Ruling on Petition to Intervene); LBP-10-1, 71 NRC 165 (2010)

COMBINED LICENSE; May 19, 2010; MEMORANDUM AND ORDER (Ruling on Dispositive Motion Regarding Contention SAFETY-1); LBP-10-8, 71 NRC 433 (2010)

COMBINED LICENSE; November 30, 2010; MEMORANDUM AND ORDER (Ruling on Request to Admit New Contention); LBP-10-21, 72 NRC 616 (2010)

WALTZ MILL FACILITY; Docket No. 70-00698

MATERIALS LICENSE; March 29, 2007; MEMORANDUM AND ORDER; CLI-07-15, 65 NRC 221 (2007)

WATERFORD STEAM ELECTRIC STATION, Unit 3; Docket No. 50-382

REQUEST FOR ACTION; January 9, 2006; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206; DD-06-1, 63 NRC 133 (2006)

WATTS BAR NUCLEAR PLANT, Unit 2; Docket No. 50-391

OPERATING LICENSE; November 19, 2009; MEMORANDUM AND ORDER (Granting Petition to Intervene); LBP-09-26, 70 NRC 939 (2009)

OPERATING LICENSE; March 26, 2010; MEMORANDUM AND ORDER; CLI-10-12, 71 NRC 319 (2010)

FACILITY INDEX

OPERATING LICENSE; June 29, 2010; MEMORANDUM AND ORDER (Denial of Petition to Waive
10 C.F.R. §§ 51.53(b), 51.95(b), 51.106(c) in the Watts Bar Operating License Proceeding);
LBP-10-12, 71 NRC 656 (2010)

OPERATING LICENSE; November 30, 2010; MEMORANDUM AND ORDER; CLI-10-29, 72 NRC 556
(2010)

WILLIAM STATES LEE III NUCLEAR STATION, Units 1 and 2; Docket Nos. 52-018, 52-019

COMBINED LICENSE; September 22, 2008; MEMORANDUM AND ORDER (Ruling on Petition for
Intervention and Request for Hearing); LBP-08-17, 68 NRC 431 (2008)

COMBINED LICENSE; November 3, 2009; MEMORANDUM AND ORDER; CLI-09-21, 70 NRC 927
(2009)

